

APPEAL NO. 010909
FILED JUNE 5, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 10, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____ (all dates are 2000 unless otherwise noted), and that the claimant did not have disability.

The claimant appealed, asserting that Dr. B's testimony had been mischaracterized and that the claimant's "stroke was caused in whole or in part by the confrontation with Ms. W which elevated [claimant's] blood pressure resulting in a[n] infarction." The respondent (carrier) responds, urging affirmance.

DECISION

Reversed and remanded.

The claimant was employed as a night driver supervisor. It is undisputed that on the evening of _____, the claimant sought a meeting with Ms. W regarding a promotion to fleet manager that had been denied the claimant. Although denied by Ms. W, by all other accounts that meeting degenerated into a loud, heated, confrontational argument. Either during that argument or very shortly thereafter, the claimant suffered a stroke. As the claimant contends, the key is the causation of the stroke (or cerebrovascular accident referred to in the medical records as a CVA).

Most of the medical evidence deals with treatment of the CVA rather than causation. A report dated August 22 from Dr. G gives a diagnosis of "stroke secondary to hypertension." Dr. B is the claimant's treating doctor and an internal medicine specialist. In answer to some questions, Dr. B, in a letter dated December 18, wrote:

[Claimant's] stroke on _____, I think was in large part a result of the confrontation in the office, rather than long standing hypertension. We really don't have any evidence of [claimant] having significant hypertension over a long period of time. Certainly stressful events can produce abrupt medical conditions such as [claimant's].

Dr. B also testified at the CCH and explained that the physical cause of a stroke is a clot in a blood vessel of the brain. Dr. B was asked what causes the blood clot and Dr. B gave a number of causes including uncontrolled hypertension for a number of years (which the claimant did not have), high blood pressure (which the claimant did have), and a history of diabetes (which the claimant had). Dr. B testified that one underlying cause of the stroke was the claimant's high blood pressure. There was no medical evidence to the contrary. The claimant asserts that the heated argument with Ms. W caused his blood pressure to increase, which in turn was an underlying cause of the CVA. On the other

hand, based on Dr. B's testimony, the hearing officer found that some time prior to _____, the claimant had a "blood clot in his circulatory system [which] entered into a capillary, blocking the flow of blood to a portion of his brain." There was no medical evidence to support that theory. The hearing officer further found:

Findings of Fact

5. The medical evidence does not show by reasonable medical probability that the blood clot traveled to or lodged in the blood vessel of the Claimant's brain on _____, because of his discussion with [Ms. W].
6. The blood clot which lodged in the Claimant's capillary and causing a stroke could have traveled to and lodged in a capillary at any time, regardless of whether or not the Claimant was furthering the business interests of the Employer at the time such and [sic] event occurred.

The hearing officer adopted the "but for" rationale set out in Employers Casualty Company v. Bratcher, 823 S.W.2d 719 (Tex. App.-El Paso 1992, writ denied) finding that the claimant could have had the stroke at any time. The claimant appeals that determination stating that "at no time did [Dr. B] state that there was a blood clot winding its way through the circulatory system of [claimant]."

The hearing officer correctly held that the provisions of Section 408.006 (mental trauma injuries) and Section 408.008(3) (compensability of heart attacks) are not applicable to this case. The hearing officer is also generally correct in stating that workers' compensation cases involving strokes "are confined to allegations that the strokes were caused by physical efforts [or weather conditions such as heat] rather than emotional distress or trauma." However, Texas Workers' Compensation Commission Appeal No. 93476, decided August 12, 1993, involving a stroke after heavy exertion is instructive as it touches on a number of cases involving strokes and cites Aetna Insurance Co. v. Hart 315 S.W.2d 169 (Tex. Civ. App.-Houston 1958, writ ref'd n.r.e.) a case with striking similarities to the instant case. In Hart the injured employee worked for a dry cleaning establishment and suffered a stroke after "being berated" by a rude customer. The court in affirming the jury stated:

Appellant says that since the stroke could have resulted from several things the evidence is insufficient to show it resulted from the emotional stimulus. We cannot agree. We have recited much of the medical testimony above and think it suffices to preclude the conclusion that the precipitating cause of the stroke was anything other than the emotional stimulus produced by the incident with the [customer].

In this case the only medical evidence regarding causation is the testimony and medical reports of Dr. B.

The hearing officer in reaching her decision relies on Bratcher, *supra*. We believe that the situation in Hart, *supra*, is factually more analogous to the present case than Bratcher. We reverse the hearing officer's decision and remand the case to the hearing officer for reconsideration in light of Appeal No. 93476, *supra*, and Hart and review of the medical evidence. No rehearing on remand is necessary. The hearing officer at her discretion may permit additional argument from the parties.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge