APPEAL NO. 012071-s
FILED OCTOBER 18, 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 was held on August 7, 2001. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable heart attack on _____________, and that the claimant had disability from ____________, through February 18, 2001, and from February 20, 2001, through February 22, 2001. The appellant (carrier) appealed and the claimant responded.

DECISION

The hearing officer's decision is affirmed.

COMPENSABLE HEART ATTACK

Section 408.008, regarding compensability of heart attacks, provides:

A heart attack is a compensable injury under this subtitle only if:

(1) the attack can be identified as:

(A) occurring at a definite time and place; and

(B) caused by a specific event occurring in the course and scope of the employee's employment;

(2) the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack; and

(3) the attack was not triggered solely by emotional or mental stress factors, unless it was precipitated by a sudden stimulus.

On _____________, the claimant had been working for the employer as a warehouse manager for approximately 19 years, and was 58 years old. The claimant said that on that day, he was helping two employees drag 35 100-pound rolls of insulation from the warehouse to a truck and load them on to the truck by hand when he started to feel pain. He said that he then used a forklift to unload rolls off another truck, that he would unload loose rolls by hand, that his pain got worse and he was short of breath, and that he went to the office and told his supervisor he was not feeling good. The claimant's supervisor said that the claimant told him that he was having chest pain, tingling or numbness in his arms, and shortness of breath. An ambulance was called and the

claimant was taken to a hospital emergency room.

At the hospital, the claimant was seen by Dr. S, a cardiologist, who diagnosed the claimant as having had an acute myocardial infarction. The next day, Dr. S performed an angioplasty procedure for the claimant's totally occluded left anterior descending coronary artery. The claimant also had blockage of 50% to 80% in his other coronary arteries. Dr. S reported that the claimant has arteriosclerotic heart disease. Dr. S wrote several letters regarding the claimant's heart attack. He initially wrote that the claimant's myocardial infarction was probably provoked by the physical activity of loading and unloading, and that the physical activity did not cause the underlying cardiovascular disease. In a subsequent letter, Dr. S noted that the claimant developed an acute myocardial infarction while he was loading and unloading at work, and that he, Dr. S, feels that "the physical activity precipitated his myocardial infarction." The claimant's testimony and medical records do not reflect any prior history of heart problems or heart treatment. The claimant smoked for 40 years.

Dr. J, who is board certified in internal medicine and pulmonary disease, reviewed the claimant's medical records and a transcript of the claimant's recorded statement and wrote that the claimant's heart attack was the result of the natural progression of heart disease, that the claimant's age and smoking history are sufficient factors to account for a heart attack, and that the claimant's work activities were not out of the ordinary and presented no unusual or specific stress. Dr. J opined that the claimant's heart attack happened at work, but did not happen because of work.

The claimant said that while his work required him to do some lifting every day, he would only have to lift the 100-pound rolls between once a week and once a month. The claimant's supervisor said that the rolls that were manually dragged and lifted weighed between 80 and 100 pounds each and that the claimant frequently does that kind of work.

In Allen v. Employers Casualty Company, 888 S.W.2d 219 (Tex. App.-Amarillo 1994, no writ), the court affirmed a judgment against a claimant in a case where the claimant sought to recover death benefits under the 1989 Act for her husband's heart attack and death. The court held that, to recover, the claimant had the burden to establish by the evidence that her husband's heart attack was a compensable injury under the 1989 Act, that is, that the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack. The court noted that even though there was medical evidence contrary to the jury's determination that the preponderance of the medical evidence did not indicate that the work rather than the natural progression of the heart disease was a substantial contributing factor to the heart attack, the jury had reached the answer it deemed most reasonable from the conflicting evidence and that the court was not authorized to set it aside, finding that the jury's answer was not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

In Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1999, the Appeals Panel reversed a hearing officer's decision that a claimant sustained a compensable heart attack and rendered a decision against the claimant. In so doing, the Appeals Panel noted that the medical opinion upon which the hearing officer's decision in favor of the claimant was based only recited that the claimant's physical stress at work was "a contributing cause of his myocardial death." The Appeals Panel stated that the medical evidence must measure up to a preponderance level, the medical evidence must be compared and weighed as to the effect of the work and the natural progression of a preexisting heart condition, and that the employee's work must be more than a contributing factor of the attack, it must be a substantial contributing factor. In Texas Workers' Compensation Commission Appeal No. 93582, decided August 23, 1999, the Appeals Panel affirmed a hearing officer's decision that a claimant sustained a compensable heart attack based in part on a doctor's opinion that it was "highly likely" that the claimant's vigorous work directly resulted in the "acute change" that occurred on the day of the heart attack. In that case, the Appeals Panel noted that there can be more than one substantial contributing factor, so long as the work is a greater factor than the natural progress of any underlying heart condition or disease. In Texas Workers' Compensation Commission Appeal No. 002831, decided January 8, 2001, the Appeals Panel affirmed a hearing officer's decision that a claimant did not sustain a compensable heart attack, noting that the determination of the compensability of a heart attack must be based on a comparing or weighing of the effect of the work against the natural progression of a preexisting heart condition.

In Texas Workers' Compensation Commission Appeal No. 91046 decided December 2, 1991, the Appeals Panel affirmed a hearing officer's decision that a claimant sustained a compensable heart attack where the treating doctor stated that the claimant's work was "the precipitating factor" for the attack. In that case, the Appeals Panel noted that the word "precipitating" is stronger than "contributing" and that the doctor's statement provided a sufficient basis for the hearing officer to conclude that the work was a substantial contributing factor to the heart attack. In the case under consideration, the claimant's treating cardiologist also felt that the claimant's physical activity at work "precipitated" his heart attack. In Texas Workers' Compensation Commission Appeal No. 92501, decided November 4, 1992, the Appeals Panel affirmed a hearing officer's decision that a claimant sustained a compensable heart attack, noting that the claimant's treating doctor, a cardiologist, had taken into account both the underlying condition and the claimant's work when the doctor stated "although it is true that his work did not cause build-up of fat and cholesterol in his coronary arteries, the severe physical exertion he was doing at the time of onset was undoubtedly the precipitating factor to his myocardial infarction." In Texas Workers' Compensation Commission Appeal No. 001266, decided July 12, 2000, the Appeals Panel noted that whether a claimant has sustained a compensable heart attack is generally a question of fact for the hearing officer to decide.

The carrier appeals the hearing officer's findings that the claimant's heart attack was caused by physical activity (dragging heavy rolls of insulation and loading them on a truck) during the course and scope of his employment; that a preponderance of the medical

evidence regarding the heart attack indicates that the claimant's work (dragging heavy rolls of insulation and loading them on a truck) was a substantial contributing factor of the heart attack; and that a preponderance of the medical evidence indicates that the claimant's heart attack was not the natural progression of a preexisting heart condition or disease. There is no appeal of the hearing officer's finding that the claimant's heart attack was not triggered by emotional or mental stress. The carrier also appeals the hearing officer's conclusion that the claimant sustained a compensable heart attack on ___________. The carrier contends that the appealed findings and conclusion are against the great weight and preponderance of the evidence. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's findings and his decision that the claimant sustained a compensable heart attack are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

DISABILITY

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The carrier appeals the hearing officer's determination that the claimant had disability from _______________ through February 18, 2001, and from February 20, 2001, through February 22, 2001. The carrier's primary contention is that claimant did not have disability because he did not sustain a compensable injury. In that we are affirming the hearing officer's decision that the claimant sustained a compensable heart attack, we do not find merit in that contention. In the alternative, the carrier points out that the claimant worked on February 19, 2001, and was then asked by the employer to obtain a work release before doing any more work, and that the claimant did not work again until after February 22, 2001, because of additional testing and attendance at a funeral. We note that the evidence reflects that the work-release given on February 20, 2001, was only for light duty and that the additional testing was heart-related. The hearing officer heard and read the evidence related to the contentions made on appeal and determined the period of the claimant's disability. We conclude that the hearing officer's decision on the disability issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS WORKERS' COMPENSATION INSURANCE FUND** (effective September 1, 2001, the true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY**) and the name and address of its registered agent for service of process is

MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS, 78701.

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Robert W. Potts
Appeals Judge

CONCUR:

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Gary L. Kilgore
Appeals Judge

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Thomas A. Knapp
Appeals Judge