

APPEAL NO. 020712
FILED MAY 15, 2002

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 June 14, 2001, and September 11, 2001, with the record closing on October 1, 2001. The case was remanded to the hearing officer by our decision in Texas Workers' Compensation Commission Appeal No. 012587, decided December 13, 2001, for reconstruction of the record, for correction of the witness list, and for ruling on admission or exclusion of exhibits from the record. A hearing on remand was held on February 25, 2002, with the same hearing officer presiding. The hearing officer added Dr. A to the witness list, ruled that Claimant's Exhibit Nos. 1, 3, 4, and 5 would not be admitted as they were not timely exchanged, and reconstructed the record as required. The hearing officer determined that the decedent's injury extended to and included a heart attack on _____, which caused his death. The appellant (carrier) appeals on sufficiency of the evidence grounds. The respondent (claimant/beneficiary) did not file a response.

DECISION

Reversed and rendered.

The decedent, then age 68, was injured in the course and scope of his employment in a motor vehicle accident (MVA) on _____, when the vehicle in which he was a passenger was hit on the passenger side. The decedent was taken to an emergency room, treated, and released. The following day he went to his family doctor with whom he had treated for several years, Dr. P, and was subsequently admitted to the hospital and later to a rehabilitation facility for approximately three weeks for treatment of injuries sustained in the MVA, which included a closed head injury, cuts, bruises, and broken bones in his pelvis. Under the history portion of the admissions paperwork, Dr. P noted: "ASHD [arteriosclerotic heart disease]. . . . Peripheral vascular disease. . . . Hypertensive cardiovascular disease. Ischemic heart disease. Cardiac arrhythmia." After the decedent's release from the hospital, cardiac-tachycardia was noted in his medical records, starting on June 9, 1994, and appearing 13 more times in 1994. The decedent's condition continued to deteriorate, and by July 12, 1995, he was placed in a nursing home. According to the deposition testimony (taken April 17, 1996) of Dr. C, a neurologist, the decedent was diagnosed with cortical and subcortical dementia, an organic brain disease. Dr. C concluded that the area of the brain that controls all muscles, including the heart, was damaged. Dr. C opined that the brain disorder was not due to Alzheimer's disease or to a stroke, but, rather, to a reasonable medical probability, to the blow to the head received in the MVA. Dr. A, the decedent's attending physician for the last six months of his life, testified that the decedent was in a debilitated state, and that he did not ambulate much, had poor nutritional status, and had a feeding tube in place. With respect to the decedent's cardiac condition, Dr. A was only aware that the decedent had an EKG one month before

his death that was not abnormal, and that he was not on medication for high blood pressure. Dr. A did not treat the decedent for cardiac problems, and was unaware of any history of cardiac problems other than hypertension. He stated that the immediate cause of death was a heart attack, but opined that the ultimate cause of death was the original injury, and the neurological condition of the decedent was the precipitating cause of death. Dr. A testified that he is a family practitioner, not a neurologist or cardiologist, and that it would be important to know whether the decedent had any cardiac conditions before the MVA.

The claimant/beneficiary, the decedent's wife, testified that the decedent did not have any heart problems, that he was not being treated for any of the conditions listed by Dr. P, nor was he taking any medication for heart conditions. She testified that the decedent was always active and in good health, and was working as a plumber at the time of the MVA. She also testified that at the time of his death, the decedent had been bedridden since June 1998, and had been in a fetal position, with rigid arms and legs, for most of the year before his death.

There is no copy of the death certificate in evidence, but Dr. AV, the carrier's peer review doctor, a medical doctor board certified in internal medicine, occupational medicine, and medical toxicology, relates that the death certificate shows the cause of death as atherosclerotic heart disease. Dr. AV opines that the injury (from the MVA) did not produce or aggravate the heart disease. He points to the decedent's history of several heart conditions, noted upon admission to the hospital soon after the MVA, and the fact that the cardiac death occurred six years after the MVA to conclude that the death was a natural progression of a preexisting heart condition. He further stated that the decedent's neurological problems were not causally related to the initial compensable injury.

Section 408.008 sets forth the statutory requirements for compensability of a heart attack under the 1989 Act:

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.

All of the above elements must be found in order for a heart attack to be compensable. Texas Workers' Compensation Commission Appeal No. 92555, decided December 2, 1992.

In order to prevail, the claimant/beneficiary has the burden to prove, by a preponderance of the medical evidence, that the decedent's work was a substantial contributing factor of the heart attack when balanced against the natural progression of a preexisting heart condition or disease. Texas Workers' Compensation Commission Appeal No. 931003, decided December 16, 1993. We have noted on several occasions that this provision of the statute requires a comparison or weighing of the conditions leading to the heart attack. It is insufficient if the medical evidence indicates that the work was a factor related to the heart attack. The preponderance of the medical evidence must indicate that the work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor. See Texas Workers' Compensation Commission Appeal No. 93121, decided April 2, 1993, and cases cited therein.

Applying Section 408.008, the hearing officer found that the decedent's fatal heart attack (at age 75)

occurred at a definite time and place. The event which occurred in the course and scope of employment (automobile wreck on _____) was a causative factor, but it is very remote in time. At the same time, it would appear to be the substantial contributing factor to [the decedent's] heart disease progressing. Considering the condition [the decedent] was in, the heart disease, if it preexisted, progressed very slowly.

The hearing officer points to the decedent's apparent good cardiovascular health before the MVA, good blood pressure readings, and performance on a lifting test for Dr. G not long after the MVA. The hearing officer felt that the MVA accelerated the decedent's decline and death. Based on these findings, the hearing officer concluded that the decedent did sustain a compensable heart attack on _____.

We must disagree with the hearing officer's conclusion that the decedent's heart attack was caused by a specific event (the MVA on _____) occurring in the course and scope of his employment. The MVA is far too remote in time to be the "specific event" cause of the heart attack which caused the decedent's death on _____. *Compare* Texas Workers' Compensation Commission Appeal No. 000864, decided June 9, 2000. In that case, the claimant (who had diabetes; had sustained a massive heart attack in 1987, 12 years earlier; had a two coronary artery bypass performed in 1987; and was under the

care of a cardiologist) died from a heart attack 67 minutes after being involved in an MVA. The Appeals Panel held:

Section 408.008 provides that a heart attack is a compensable injury only if it can be identified as occurring at a definite time and place, caused by a specific event occurring in the course and scope of employment, and if 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."

Section 408.008(2). 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. Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1991. The claimant has the burden of proving the compensability of a heart attack. Texas Workers' Compensation Commission Appeal No. 91081, decided December 31, 1991. Proof of the specific event is normally established by lay testimony. Lay testimony, however, cannot establish that the work being done at the time of the heart attack was a substantial contributing factor when weighed or balanced against the natural progression of a preexisting heart condition. We have also observed that there can be more than one substantial contributing factor but, to be compensable, the work must be a greater factor than the natural progress of any underlying heart condition or disease. Texas Workers' Compensation Commission Appeal No. 93582, decided August 23, 1993.

The ultimate issue to be determined in this case is whether the decedent sustained a compensable heart attack resulting in death. The hearing officer concluded that the work-related injury from the MVA, rather than the natural progression of a preexisting heart condition or disease, was a substantial contributing factor of the decedent's death. The medical evidence does not causally connect any bodily injuries with the cardiac arrhythmia; however, the medical evidence does indicate that the stress of the MVA probably caused the sudden episode of arrhythmia. Based on the medical evidence, the hearing officer could determine that the stress caused by the MVA was more a substantial factor than the natural progression of the underlying heart condition or disease.

In the instant case, the great weight of the evidence does not establish that the MVA six years earlier was a substantial contributing factor to the decedent's heart attack, rather than the heart attack being the natural progression of a preexisting heart condition or disease. Lay testimony cannot establish the causal connection, and we hold that the medical evidence in this case is insufficient to establish the causal connection.

Section 408.008(2) requires that the preponderance of the medical evidence indicates that the decedent's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the heart attack. The medical evidence regarding the heart attack comes from Dr. A and Dr. AV. Dr. A, the attending physician, stated that the immediate cause of death was a heart attack, but opined that the ultimate cause of death was the original injury. Dr. A is a family practitioner, and it was neither asserted nor proved that he has expertise in the area of cardiology. Dr. A does not provide further explanation or substantiation about how the original work-related injury caused the heart attack more than six years after the MVA, and he was not aware of the several cardiac and vascular conditions mentioned in the decedent's history by Dr. P. His testimony falls short of saying, with reasonable medical probability, that the decedent's work-related injury was a substantial contributing factor of the heart attack rather than the natural progression of a preexisting heart condition or disease. Because of the lack of substantiation of his opinion and his lack of awareness of possible cardiac and vascular conditions of the decedent, Dr. A's opinion is unreliable. Dr. AV, on the other hand, was aware of the cardiac and vascular conditions, and opines that, based upon reasonable medical probability, the injury did not produce or aggravate the preexisting heart disease. He states that the heart attack was the natural progression of the preexisting heart condition, and that the decedent's work was not the substantial contributing factor to the heart attack, nor was the heart attack caused by a sudden stimulus. Dr. AV's opinion provides evidence from which compliance with Section 408.008 can be determined, while Dr. A's opinion does not.

We note also that the hearing officer misstates the legal requirements of Section 408.008. The work-related injury must be "a substantial contributing factor of the attack" itself, rather than the "substantial contributing factor to [the decedent's] heart disease progressing," as the hearing officer states.

In this case, the determination of the hearing officer that the MVA, more than six years earlier, was a substantial contributing factor of the heart attack, rather than the heart attack being the natural progression of a preexisting heart condition or disease, is against the great weight of the evidence. We therefore reverse the decision that the decedent's injury extended to and included a heart attack on _____, which caused his death, and render a decision that the injury did not extend to and include a heart attack.

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
TEXAS MUTUAL INSURANCE COMPANY
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge