

APPEAL NO. 030818
FILED MAY 12, 2003

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 February 24, 2003. The record was held open until March 7, 2003, to obtain additional medical records. The hearing officer resolved the disputed issue by deciding that the decedent did not sustain a compensable fatal heart attack on _____. The appellant (claimant beneficiary) appealed, arguing that there is no evidence in the record that supports the hearing officer's finding that the preponderance of the medical evidence concerning the decedent's heart attack indicated that natural progression of his preexisting heart condition and disease, rather than his work, was a substantial contributing factor of the heart attack. The claimant beneficiary additionally argues that the overwhelming weight of the evidence shows that the work-related activities the decedent performed significantly contributed to his suffering a fatal heart attack. The claimant beneficiary also contends that the hearing officer relied on facts outside the record. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed as reformed.

The claimant beneficiary had the burden to prove that the decedent's fatal heart attack was a compensable injury, that is, that the elements of Section 408.008 were met. Under that statute, a heart attack can be compensable only when it is found to be caused by a specific event in the employment and when the preponderance of the medical evidence indicates that the work, rather than the natural progression of a preexisting heart condition or disease, was a substantial contributing factor of the heart attack. See, e.g., Texas Workers' Compensation Commission Appeal No. 91081, decided December 31, 1991; Texas Workers' Compensation Commission Appeal No. 93948, decided December 3, 1993; Texas Workers' Compensation Commission Appeal No. 94327, decided April 28, 1994; and Texas Workers' Compensation Commission Appeal No. 001817, decided September 12, 2000.

We have noted on several occasions that this provision of the statute requires a comparison or weighing between 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 the cases cited therein. Finally, we have noted that "there can be more than one substantial contributing factor, so long as the work is a greater factor than the natural progression of any underlying heart condition or disease." Texas Workers' Compensation Commission Appeal No. 970148, decided March 12,

1997, citing Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1991.

The claimant beneficiary argues that the hearing officer disregarded the expert testimony of Dr. H based on facts not in evidence. We disagree. There was conflicting evidence regarding the temperature at the time of the incident, whether the decedent was jogging or walking, and whether the decedent was in the sun or shade. We note that while the hearing officer discussed these issues in the Statement of the Evidence portion of the decision, no specific finding of fact was made regarding these issues. Dr. H testified at the CCH that if the evidence reflected that for the majority of the time the decedent was performing his work, not only was the decedent not jogging but was under the shade of the wing of the airplane, it would affect his conclusions.

The claimant beneficiary also argues that the hearing officer made a mistake of law by applying “a positional risk analysis to the facts, and by holding that there can be only one ‘substantial factor’ of a fatal heart attack.” The hearing officer specifically stated that he considered, compared, and weighed the medical evidence as to the effect of the decedent’s work and the natural progression of his heart condition. Further, the hearing officer specifically found that the preponderance of the medical evidence concerning the decedent’s heart attack indicated that natural progression of his preexisting heart condition and disease, rather than his work, was a substantial contributing factor of the heart attack. The hearing officer neither applied the wrong standard nor erred as a matter of law.

Finally, the hearing officer’s statement on the record that he served 30 years in the Air Force and could not shut out 30 years of knowledge is not an indication that he would be considering facts not in evidence in making a determination in this case, as alleged by the claimant.

We reform the decision portion of the decision and order to read as follows: The decedent did not sustain a compensable fatal heart attack on _____.

We affirm the decision and order of the hearing officer as reformed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge