

APPEAL NO. 031786
FILED AUGUST 20, 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 was held on June 16, 2003. The hearing officer resolved the disputed issues by deciding that the decedent did not sustain a compensable heart attack on _____, and that the appellant (claimant beneficiary) is a proper legal beneficiary of decedent. The claimant beneficiary appealed, disputing the determination that the decedent did not sustain a compensable heart attack on _____. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

It was undisputed that the claimant suffered a fatal heart attack while at the worksite on _____. 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.

Whether 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 was a question of fact for the hearing officer to resolve based upon a weighing of the

medical evidence. Texas Workers' Compensation Commission Appeal No. 012723, decided December 10, 2001. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

**RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge