

APPEAL NO. 040757
FILED MAY 19, 2004

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 23, 2004. The hearing officer determined that the decedent's death on (date of decedent's death), was not a result of his compensable injury sustained on _____. The appellant (claimant beneficiary) appealed, asserting that the hearing officer applied the incorrect legal standard in reaching his determination, and otherwise asserting that the determination is not supported by the evidence. The respondent (carrier) responded, urging affirmance of the hearing officer's decision.

DECISION

Reversed and remanded.

Attached to the claimant's appeal is a document entitled Amendment to Certificate of Death, dated March 26, 2004. As the document had not yet been created at the time of the CCH, it was neither offered or admitted into evidence. In its response to the claimant's appeal, the carrier objects to the consideration of the amended death certificate. Documents submitted for the first time on appeal are generally not considered unless they constitute admissible, newly discovered evidence. We conclude that this is one of the rare instances when attachments to the claimant's appeal in fact meet the requirements of newly discovered evidence necessary to warrant a remand. Having reviewed the report, we conclude that its admission on remand could result in a different decision. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). The attached amended death certificate lists pulmonary silicosis as a likely cause of the decedent's death. In the Statement of the Evidence, the hearing officer points out that the initial death certificate did not list silicosis as a contributing factor in the decedent's death. Because the death certificate was amended after the date of the hearing, there was no way that the claimant beneficiary could have submitted it into evidence. The amended death certificate appears to more accurately reflect the findings contained in the autopsy report than the initial death certificate, which was placed into evidence at the CCH.

The parties stipulated that the decedent sustained a compensable injury to his lungs in the form of silicosis on _____, from inhaling silica. The parties further stipulated that the claimant beneficiary was the decedent's spouse at the time of his death, and that she is the sole legal beneficiary of the decedent.

On appeal, the claimant beneficiary asserts that the hearing officer applied the incorrect legal standard in reaching his decision. We agree. Section 408.181 provides that "[a]n insurance carrier shall pay death benefits to the legal beneficiary if a compensable injury to the employee results in death." In determining that the

decedent's death was not a result of the compensable injury, the hearing officer held the claimant beneficiary to the standard of proof contained in Section 408.008, which provides that 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. (Emphasis added.) 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.

The issue at the CCH was not whether the decedent suffered a compensable heart attack, but instead it was framed as “[w]as the [d]ecedent's death a result of his compensable injury sustained on _____?” We have held that generally, in claims for death benefits, the claimant beneficiary is not required to prove that the compensable injury was the sole cause of death, but only that it was a **producing cause** of the decedent's death. (Emphasis added.) See Texas Workers' Compensation Commission Appeal No. 000088, decided February 25, 2000; Texas Workers' Compensation Commission Appeal No. 962391, decided January 8, 1997. This is a lesser standard of proof than that contained in Section 408.008, which requires proof that the heart attack occurred as a result of a specific work-related event. We see a significant difference between a case wherein the claimant sustains a heart attack and it is claimed that the heart attack is the actual compensable injury, and a case such as the one before us wherein it is undisputed that the claimant sustained a compensable injury, later dies, and it is claimed that the compensable injury was a producing cause of the death. It seems to us to be a matter of common knowledge that an individual could have a condition, which in and of itself is not fatal, but when combined with one or more other conditions, causes death. The issue in this case was not whether the decedent sustained a work-related heart attack, traceable to a specific event, but instead it was whether the decedent's compensable injury was a producing cause of his death. As such, we find that the hearing officer erred in holding the claimant beneficiary to the standard of proof contained in Section 408.008.

Because we find that the amended death certificate attached to the claimant's appeal constitutes newly discovered evidence and because we find that the hearing officer applied the wrong legal standard in deciding this matter, we find it necessary to remand the case back to the hearing officer for further consideration. On remand the hearing officer is directed to consider the amended death certificate and make findings of fact and conclusions of law as to whether the decedent's compensable injury was a producing cause of his death.

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 Commission's Division of Hearings, pursuant to Section 410.202, which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Daniel R. Barry
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Veronica L. Ruberto
Appeals Judge