

APPEAL NO. 93653

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001, *et seq.* (1989 Act), a contested case hearing was held on July 13, 1993, with a hearing officer. The hearing officer determined that the appellant, claimant herein, did not sustain a compensable heart attack in the course and scope of her employment on ____, as a food service worker employed by the (employer).

The claimant appeals this decision and urges error in the hearing officer's findings that there was insufficient evidence to prove the claimant's heart attack (myocardial infarction) occurred at a definite time and place and insufficient medical evidence to prove that the claimant's work was a substantial contributing factor causing the claimant's heart attack. The carrier argues that the decision of the hearing officer should be affirmed because the appellant has failed to clearly and precisely rebut the decision of the hearing officer on these points as required by Section 410.202(c) and has failed to meet the requirements of Section 408.008(1) and (2) for establishing the compensability of her heart attack. The fact that the claimant had a heart attack at an unspecified time and place was not an issue.

DECISION

We affirm the hearing officer's decision.

As to the sufficiency of an appeal, we have held that no particular form of appeal is required and that an appeal, even though inartfully worded, may be considered. Texas Workers' Compensation Commission Appeal No. 93040, decided March 1, 1993, and cases cited therein. The claimant's appeal is essentially a restatement of her position at the contested case hearing and a request that "the hearing officer's decision be reversed." The issues claimant is appealing in this case are reasonably clear. Her appeal is based on a sufficiency of the evidence to support the decision of the hearing officer. The carrier responded in terms of evidentiary sufficiency. For this reason, we believe carrier has not in any way been prejudiced or misled by this appeal. Its contention is without merit.

The claimant, then a 46-year-old kitchen helper, arrived at her work location at the normal time of 6:00 a.m. on ____, to work a four hour shift. Her specific duties included helping set up the food items on the cafeteria serving line and washing dishes. About 6:30, while working on the food service line, she started feeling pain in the center of her lower back which moved to her chest and both arms. She went to the loading dock area to rest and returned about 7:00 a.m. to the dish room to operate the dishwasher. The process consisted of placing the returned dishes on a conveyor belt, spraying them with rinse water and pushing them into the washing mechanism. Normally this is a two-person job with one person at the loading end and one at the receiving end of the process, the work stations being approximately 10 feet apart. On the day in question, as the lone employee in the

dish room, she had to not only feed the dishes into the washer, but also pick up the clean dishes at the other end and put them on the proper shelves. Doing alone what was normally a two-person job forced her, according to her testimony, to great physical exertion. By 9:00 a.m., the claimant asserts she was in such pain that she bumped her elbow on a post causing even more severe pain in the elbow. She told her supervisor she had to leave. The supervisor told her to clock out and go home. Her shift normally ended at 10:00.

At home, she called her doctor, who was not available to see her. She took some over-the-counter pain medication and went to bed. She went to work the next two days and had her first appointment with her family physician, (Dr. H) on _____. He referred her to (Dr. N), a cardiologist who hospitalized her on _____. A cardiac catheterization was performed the next day. Based on an abnormal EKG done on _____, he concluded a myocardial infarction "occurred sometime within the last 48-72 hours. . . ." An angiogram showed a totally occluded front wall artery and a 75% lesion in a major side branch off that artery. The artery was opened with angioplasty on _____, and the lesion was reduced to "a minor irregularity." She was discharged from the hospital on August 30, 1991. Her past history showed she was a regular smoker (still trying to quit) of many years. On February 29, 1992, she was certified for disability retirement benefits based on "acute myocardial infarction that occurred on _____."

At the contested case hearing, medical evaluations from the claimant's treating doctors, from (Dr. E), a consultant to the disability determination division of the E R S of Texas, and from the panel of doctors who evaluated the claimant's request for medical retirement, were admitted into evidence.

Dr. H concluded in a letter of August 4, 1992, that "[i]t was felt that this patient probably had damage prior to being seen in this office and that her continuing to work during this time placed her at considerable risk of having a catastrophic event." Dr. N, the claimant's cardiologist, stated in a report of February 18, 1992:

. . . I do not think we can say that this particular heart attack occurred at a definite time/place . . . The first evidence of any abnormality that we can really pinpoint is the abnormal EKG on _____ and the elevated myocardial enzymes that same day. This merely states that the myocardial infarction occurred sometime within the previous 48-72 hours, but does not actually tell us an exact date/time as to when it happened.

He goes on to describe the "spectrum of [this] disease" from chest pain to complete infarction and concludes:

. . . I do not feel there was a specific event occurring in the course and scope

of this lady's employment which triggered her myocardial infarction.

Based on his knowledge of the role exertion plays in heart attacks in general and his clinical knowledge of the claimant in particular, he does not feel that the strain and overexertion she experienced on ____:

triggered her infarction. I do not think that 'it is clear that the attack can be identified as having occurred at a definite time/place, and . . . that it was caused by a specific event occurring in the course and scope of employment.' Additionally, I do not even feel this was a 'substantial factor' of the attack. In all likelihood, since the patient's coronary angiograms showed minor lesions also in the right coronary and circumflex arteries, as well as the 75% lesion in the branch of the heart attack vessel, this lady had underlying coronary disease (albeit at a less than critical stage) which was no doubt related to her almost 50 'pack-year' smoking history.

Dr. E examined the claimant on September 11, 1992, and diagnosed arteriosclerotic heart disease, obesity, history of lumbosacral strain (without major limiting signs of significant back disease), and mildly elevated cholesterol levels.

The claimant introduced the two page certification of a medical board which recommended her for retirement for an acute myocardial infarction that occurred on _____. No rationale for this conclusion is included in the statement and the three medical board doctors are not otherwise identified.

The claimant in her testimony insists that she only had pain on _____, not on any preceding or succeeding days, and has no idea why Dr. N would say she had pain the day before. She stresses that the extra exertions in the dish wash room brought on by her having to do the job of two people caused the heart attack, though in other testimony she admitted that her pain began shortly after she arrived at work and before she began her dish washing task.

The claimant has the burden of establishing by a preponderance of the evidence that a compensable injury has occurred. With regard to heart attacks, Section 408.008 provides:

Section 408.008. Compensability of heart attacks

A heart attack is a compensable injury under this Act 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 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.¹

These "new and much more demanding standards" (Texas Workers' Compensation Appeal No. 92460, decided October 12, 1992) have been discussed at length in a series of Appeals Panel decisions beginning with Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1991. Briefly, these decisions stress that the proof required by (1) (A) and (B), above, may be met by lay testimony, often that of the claimant who is frequently the only person in a position to describe the timing and locations of symptoms later diagnosed as a heart attack. The part (2) finding of a preponderance of the medical evidence can be reached only after comparing or weighing the available medical evidence as to the effect of the work being performed by the employee against the natural progression of a pre-existing heart condition or disease. See Texas Workers' Compensation Commission Appeal No. 93582, decided August 23, 1993, and Texas Workers' Compensation Commission Appeal No. 91046, decided December 2, 1991. The burden is on the claimant to establish within reasonable medical probability that the work was a substantial contributing factor rather than pre-existing condition. See Texas Workers' Compensation Commission Appeal No. 92115, decided May 4, 1992, quoting approvingly from 1 Montford, Barber, Duncan, A Guide to Texas Workers' Comp. Reform, Section 4A 14, page 4-78 (1991).

Issues of the time and place of a heart attack, causes and contributing factors, are ordinarily questions of fact to be determined by the hearing officer based on his or her evaluation of the evidence. See Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and is entitled to believe all or part or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 93416, decided July 7, 1993. The hearing officer, as the trier of fact, also resolves conflicts

¹This third element is not an issue in this case.

and inconsistencies in the medical evidence and judges the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th District] 1984, no writ). In reviewing the sufficiency of the evidence to support a finding, only if we determine that the evidence is so weak or the finding so against the great weight and preponderance of the evidence as to be manifestly erroneous and unjust do we find a sound basis to disturb the decision of the fact finder. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Texas Workers' Compensation Commission Appeal No. 93477, decided July 19, 1993.

The applicable Findings of Fact and Conclusions of Law of the hearing officer are:

FINDINGS OF FACT

3. There is insufficient evidence to prove that the Claimant's heart attack (myocardial infarction) occurred at a definite time and place.
4. There is insufficient medical evidence to prove that the Claimant's work was a substantial contributing factor causing the Claimant's heart attack.

CONCLUSIONS OF LAW

2. The Claimant failed to prove, by a preponderance of the evidence, that she sustained a compensable heart attack in the course and scope of her employment on ____.

In this case, the hearing officer found the evidence insufficient to establish a definite time and place of the heart attack. The claimant insists that she only felt pain on the morning of ____, not any day before or after, and that this proves when the attack occurred. Her testimony, however, indicates that she suffered pain before the exertion at the dishwasher that the claimant pinpoints as the cause and onset of the attack. The medical evidence discloses that heart attacks generally run a course from the onset of angina (pain) to the myocardial infarction itself, and that in this case the claimant's heart attack could not be reduced to a specific time and place. Reviewing this record, we cannot say that there was insufficient evidence on which the hearing officer could base this finding.

With regard to the second element of the statute, both the treating cardiologist and the hearing officer balanced the available evidence and concluded that a preponderance of the evidence failed to show that the claimant's work exertions on ____, rather than the natural progression of a pre-existing heart condition, was a substantial contributing factor of the attack. Dr. N's language closely parallels the statute and, although we have held the mere incantation of "magic words" is not determinative of the issue (See Texas Workers'

Compensation Appeal No. 93183, decided November 22, 1992), in this case, Dr. N directly related his firsthand knowledge of the patient's medical condition to both his professional knowledge of how and why heart attacks occur and to the statutory requirements. Significantly, he discounted work related stress as a factor in this case in favor of an essentially undisputed pre-existing condition of arteriosclerosis that was naturally progressing. The claimant's lay opinion to the contrary that her work caused her heart attack; her initial treating physician's opinion that her continuing to work with pre-existing heart damage "placed her at considerable risk of having a catastrophic event," and the bare conclusion of the medical retirement board physicians that claimant had a heart attack on ____, were considered and weighed by the hearing officer. Clearly, based on this record, there was sufficient evidence to support the hearing officer's conclusions after balancing all the evidence, that claimant's work related activity was not a substantial contributing factor of the heart attack.

For the reasons set forth above, we do not disturb the findings and conclusions of the hearing officer that the claimant failed to prove, by a preponderance of the evidence, that she sustained a compensable heart attack in the course and scope of her employment on _____. The hearing officer's decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge