APPEAL NO. 94448

On March 7, 1994, a contested case hearing was held (date of injury), with a hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). The issues at the hearing were whether the appellant/cross-respondent (claimant) sustained a compensable heart attack on (date of injury), and whether the claimant timely filed his claim, or had good cause for failing to do so. The hearing officer determined that the claimant sustained a heart attack in the course and scope of his employment with (employer) on (date of injury, and that claimant failed, without good cause, to timely file his Notice of Injury and claim for Compensation (TWCC-41). The respondent/cross-appellant (carrier) appeals the determination that the heart attack is compensable. The claimant appeals the determination that he did not have good cause for not timely filing the TWCC-41. The carrier responds that the hearing officer's determination that the claimant did not timely file his TWCC-41 and had no good cause for his failure to do so is supported by sufficient evidence and should be affirmed.

DECISION

Finding the evidence sufficient to support the challenged findings of the hearing officer, we affirm.

The claimant worked for the employer, a (City one), (State one), company since August 1991. His job with the employer involved relining pipes without removing them from the ground. At one time, the employer had employees working on two 12-hour shifts so that employees were working 12 hours and then off for 12 hours. At the time of the heart attack, the two crews were working separately and often worked extremely long hours. If a part of a job is started, it must be finished. Air pressure is used to insert the lining. If problems occur, it can be very difficult to remove the lining from the pipe.

On Saturday, April 4, 1992, the claimant started work at about 4:00 a.m. after getting about three hours of sleep because of the long work hours on the prior shift. He worked 87 hours that week on a job in (City 2), (State 2). He was a supervisor, as was (Mr. P), who also worked part of that shift. They planned to work until about noon. Mr. P had an appointment in (City one) that afternoon and the claimant and a niece were to drive to (City one) for his wife's family reunion the next day. They developed problems and the crew worked until about 2:30 on Sunday morning. Saturday morning at about 10:00 or 11:00 the claimant had chest pains. He laid down in the truck for a little while, got to feeling better, got up, and went back to work. The claimant told Mr. P about his chest pains, but since they thought they would be through by about 1:00 p.m., Mr. P left for (City one) to keep his appointment. The claimant called his wife in (City one) to tell her he would be late and told her about the chest pains. She told him to go to a doctor. He said that he had to stay on the job because he was the only supervisor on the job after Mr. P left. As a supervisor, he normally did not do manual labor, but he had to do manual labor that day. Because of the problems, he had to work until about 2:30 a.m. He went to the apartment, took a shower, and rested. He got up at about 7:00 a.m. so he and his niece

could drive to (City one) to the family reunion. His chest pains started back. At about 8:00 a.m. the pain got worse. They were near the (Hospital 1) in (City 3), (State 2), and went to the emergency room. He was told he was having a heart attack, was admitted, and stayed there for nine days.

The claimant testified that prior to the heart attack he smoked about one and one half packs of cigarettes a day. He had no history of high blood pressure or heart disease. Prior to the heart attack, he had a pilot's license and a commercial driver's license. Each required an annual physical, and, according to his testimony, he would not have been able to pass the Fl A A physical if he had high blood pressure. The records of the doctors who treated him at Hospital 1 show a 90% stenosis of the proximal end of the left anterior descending artery, 60-70% stenosis of the right middle coronary artery, and 30% stenosis of the right coronary artery. He took medication to dissolve blood clots and was advised to have angioplasty. He went to the (Hospital 2) in (City one) for a second opinion. On May 5, 1992, he underwent a modified Bruce Protocol Stress Test without chest pain. On May 12, 1992, he was administered a Bruce Protocol Stress Test for 10 minutes and 30 seconds with no chest pain and normal exercise capacity. An angioplasty was not performed.

The claimant introduced a newspaper article about a New England Journal of Medicine article that among other things reported that sudden exercise may increase heart attack risk and that strain may fracture a fatty build-up of plaque in the lining of a heart artery leading to a blood clot that plugs off the heart blood supply. The claimant also introduced two letters signed by (Dr. R) who treated the claimant at Hospital 1. In a letter dated July 22, 1992, Dr. R. wrote: "It is my opinion the heart attack suffered by [claimant] was related to the excessive hours (87 in that week), and the unusual physical strain, and mental stress experienced by [claimant] under the circumstances of his employment at the time of his attack. These circumstances were a substantial contributing factor of the attack." In a letter dated October 13, 1993, Dr. R wrote: "It is my opinion that the heart attack suffered by [claimant] was precipitated by the excessive hours (87 hours in that week), and the unusual physical strain, and mental stress experienced by [claimant] under the circumstances of his employment at the time of the attack. These circumstances were a substantial contributing factor of the attack." The claimant introduced a statement signed by (Mr. O). He stated that he worked with the claimant on April 4, 1992. He said that they were to get off at about mid-day, but worked until the next morning. The line was messing up and they were in danger of losing it completely. The claimant was in charge and did a lot of heavy lifting and pulling. He looked real pale to Mr. O who could tell he was hurting. He tried to get him to go to the doctor, but he could not leave the job.

The carrier introduced a letter dated December 9, 1993, and signed by (Dr. S), a doctor who treated the claimant at Hospital 1. Dr. S wrote "[claimant] was admitted to the hospital on ___ with severe chest pain through the Emergency Room. He was diagnosed to have an acute myocardial infarction and was treated for the same. Cardiac catherization was done which revealed severe coronary artery disease in two vessels. He was treated for the same and sent home. The cause for his myocardial infarction is

coronary artery disease." The following question and answer are from direct examination of the claimant.

> Q. Have the doctors given you any idea what could have brought on this heart attack, I mean, other than this blood clot; or have they given you an idea as to what caused the blood clot?
>
> A. Yeah, they said they could--you know, the stress and the hard, you know, work that I wasn't really used to and doing it all--you know, all of a sudden for such a long period of time--

The following questions and answers are from cross-examination of the claimant.

> Q. Now, you said that you were doing this heavy labor all day on Saturday. Is that my understanding of your testimony?
>
> A. Right.
>
> Q. Did that continue up until the time you got off work?
>
> A. Right.
>
> Q . Okay. Now, are you alleging that it was the generally long hours that day and the stress of having to work those long hours that caused this heart attack?
>
> A. I think so.
>
> Q. You're not pointing to any specific event of physical exertion in the course and scope of employment that caused the heart attack?
>
> A. Not one certain thing, just, you know, all of it.

The claimant and his wife testified about filing the TWCC-41. When the claimant was in intensive care, Mr. P told them that they were going to file under workers' compensation. They learned from (Mr. N) at Hospital 1 that the workers' compensation claim was denied but that they could appeal. They are not familiar with workers' compensation and did not know that they had to file a claim. In June 1992 they moved and had difficulty getting their mail. They signed and returned everything that was mailed to them. The Texas Workers' Compensation Commission (Commission) did not have evidence of sending a TWCC-41 to them. The Commission sent the form a couple of months ago. The claimant signed it and returned it. At the benefit review conference (BRC) held on September 22, 1993, it was noted that a TWCC-41 was not in the file. The TWCC-41 was mailed to the Commission on October 19, 1993, and received on October 20, 1993.

The hearing officer found that the claimant filed his claim with the Commission on October 20, 1993, more than one year after the claimant's heart attack on (date of injury). She also found that the claimant did not act as a reasonably prudent person in failing to file his claim with the Commission on or before April 4, 1993. She concluded that the claimant failed, without good cause, to timely file his claim for compensation. Sections 409.003 and 409.004 require that a claimant or a person acting on the behalf of the claimant shall file with the Commission a claim for compensation no later than one year after the date of the injury or have good cause for failing to file in a timely manner. The test for good cause is whether the claimant acted as a reasonably prudent person in not filing his claim until it was filed. Texas Workers' Compensation Commission Appeal No. 931157, decided February 3, 1994. The Appeals Panel has held that ignorance of the law does not constitute good cause for not timely filing a claim. Texas Workers' Compensation Commission Appeal No. 93423, decided July 12, 1993. The decision of the hearing officer that the claimant did not show good cause for failure to timely file his claim for compensation is supported by sufficient evidence and we will not disturb that decision on appeal. Appeal No. 931157, *supra*.

Even though not timely filing a claim without good cause for failing to timely file precludes recovery of benefits by this claimant, we now look to the issue of compensability.

Section 408.008 of the 1989 Act provides:

> Sec. 408.008. COMPENSABILITY OF HEART ATTACKS. A heart attack is a compensable injury under this subtitle only if:
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> (1) the attack can be identified as:
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> (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.

We first look at the requirement that the heart attack be caused by a specific event occurring in the course and scope of employment. In Texas Workers' Compensation Commission Appeal No. 91046, decided December 2, 1991, the Appeals Panel reviewed

cases under the prior workers' compensation law noting that language of the 1989 Act is generally consistent with the case law that said an accidental injury is an undesigned, untoward event traceable to a definite time, place, and cause. While the specific event will quite often occur in a short time frame, the Act does not so state this to be a requirement. In Texas Workers' Compensation Appeal No. 93121, decided April 2, 1993, the Appeals Panel stated that the burden would require proof by a preponderance of the medical evidence that the exertion of lifting boxes that day before his heart attack, rather than the natural progression of his preexisting condition, was a substantial contributing factor of the attack. The time spent lifting boxes was not specified. Similarly, in the case under appeal, we conclude that it was reasonable for the hearing officer to find the specific event to be a 22-hour work shift in which the claimant performed manual labor that he ordinarily did not perform and had to lay down because of chest pains. The hearing officer is the sole judge of the weight and credibility to be given to the evidence. An appellate body is not authorized to set aside the findings because the fact finder may have drawn inferences and conclusions different from those the fact finder deemed most reasonable even though the record contains evidence of or even gives equal support to, inconsistent inferences. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The Appeals Panel will reverse a finding of the hearing officer only if is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Each case stands on its facts. This decision is limited to the specific factual setting of this case.

We now move to the requirement that the preponderance of the medical evidence regarding the heart attack indicates that the employee's work rather than the natural progression of a pre-existing heart condition or disease was a substantial contributing factor. The medical evidence must be compared or weighed as to the effect of the work and the natural progression of a pre-existing heart condition. Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1991. The evidence must indicate that the effect of the work being performed by the employee was a substantial contributing factor when balanced against the natural progression of pre-existing heart condition or disease. There can be more than one substantial contributing factor, so long as the work is a greater factor than the natural progress of any underlying heart condition or disease. Appeal No. 91009, *supra*. Dr. R did state in his letter dated October 12, 1993, that the heart attack was precipitated by the excessive hours and physical strain and that these circumstances were a substantial contributing factor. In Appeal No. 91046, *supra*, we noted that cases show that the modifier "precipitating" is stronger than "contributing." Dr. R also used mental stress in his report. The third part of Section 408.008 of the 1989 Act provides that the heart attack must not be triggered solely by emotional or mental stress factors. There is no evidence that the attack was caused solely by these factors. The hearing officer could reasonably conclude that the 22-hour shift in which the claimant performed manual labor that he did not normally perform and had to lay down because of chest pains caused the heart attack and the medication dissolved the blood clot and eliminated the need for angioplasty. *Compare* Appeal No. 93121, *supra*, where there was considerable evidence of a severe underlying heart condition or disease which had already required a quintuple coronary bypass procedure.

The record and the decision and order of the hearing officer indicate that she weighed and compared the evidence and determined that the preponderance of the medical evidence indicates that the employee's work rather than the natural progress of a pre-existing heart condition or disease was a substantial contributing factor. The hearing officer is the sole judge of the weight and credibility to be given the evidence. She may believe all, part, or none of the testimony. The Appeals Panel will reverse a finding of fact of the hearing officer only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

Tommy W. Lueders
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

CONCURRING OPINION:

I concur in the result. I do not join in the opinion that the requirement of Section 408.008(1)(b), requiring that the attack be caused by a specific event, has been met by evidence of work performed in a 22-hour period.

Joe Sebesta
Appeals Judge