

APPEAL NO. 950349

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq.* On February 7, 1995, a contested case hearing was convened in (city), Texas, with (hearing officer) presiding. The issue was whether the deceased worker, (claimant), sustained a compensable fatal heart attack on (date of injury). The appellants and claimants herein are (beneficiary), the surviving spouse of the deceased, and his two minor sons. At the time of his death, the deceased was a police officer for the (city), the respondent and a self-insured governmental entity, which shall be referred to in this decision as either the carrier or the employer, depending upon the context of the reference.

The hearing officer found that the deceased did not sustain a compensable heart attack, and the carrier was therefore not liable for death benefits.

The claimants have appealed, arguing that the great weight of the evidence is in favor of compensability of the claim, and further arguing that the carrier failed to prove that the deceased had a preexisting heart disease. The carrier responds that there was no medical evidence in favor of a showing that it was claimant's work, rather than a preexisting heart condition, that was a significant contributing factor in his heart attack, and that the autopsy was proof of a preexisting heart condition as the cause of the attack.

DECISION

We affirm.

The case involved the unfortunate fatal heart attack of a 45 year old police officer for the employer. According to the claimant/spouse, the deceased had been employed as a police officer for over 25 years, and had done his current job for the past eight years. At the time of his death, the deceased was in charge of processing juvenile prisoners into detention, which involved both paperwork and the physical tasks of accomplishing incarceration of arrested juveniles. A transcribed interview with Officer (Mr. S), who worked with deceased on the date of his death, and the testimony of the claimant/spouse, indicated that the deceased was not a complainer, had not complained about chest pains prior to his date of death, was physically active, and had assisted in processing many more prisoners than usual on the date of death. The shift he worked that day was from about 2:30 to 10:30 p.m.; he was stricken, according to Mr. S, as he arose from his desk a little after 10:00 p.m. to enter information into the computer. The day in question was busier than usual because of a football game, and the fact that a large number of gang members had been arrested.

The claimant/spouse testified that six years earlier, her husband had been injured on the job when he was punched in the face by a prisoner, and fell as he gave chase. However, to her knowledge, no altercation had happened on the day of his death.

The autopsy report for deceased stated that he had 100% occlusion, due to arteriosclerotic plaques, of the right coronary artery, and up to a 90% occlusion of the remaining arteries. The cause of death was stated as severe coronary artery atherosclerosis.

Although claimant's medical evidence was excluded because of the failure to exchange doctors' depositions that were taken (without notice of deposition to the carrier), claimant/spouse testified to her understanding that (Dr. K), whom she described as a practicing pediatrician (with a couple of years of experience with heart diseases), and (Dr. SV), identified as the police counsellor since 1970, were of the opinion that the extraordinarily stressful day caused decedent's heart attack.

The 1989 Act has restricted compensability of heart attacks from the standard under the previous law. Section 408.008 states:

A heart attack is a compensable injury under this subtitle 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 employee's 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.

The hearing officer's findings of fact indicate that he believed the evidence did not prove a case under either (2) or (3). We agree. The theory of compensability was mental or emotional stress. There was no evidence of a "sudden stimulus," as opposed to generalized heavy workload over the course of a day. Texas Workers' Compensation Commission Appeal No. 94892, decided August 18, 1994; Texas Workers' Compensation Commission Appeal No. 92555, decided December 2, 1992. Further, we agree that there was medical evidence (the autopsy) indicating the presence, albeit unknown to the deceased previously, of a significant heart condition, including a total blockage of a main artery. Finally, there was no medical evidence admitted into the record to sustain the claimant's burden to prove that work was a greater factor than the occluded heart condition. (The hearing officer misspoke when he stated that excluded evidence was "in the record"; such evidence becomes only an appellate exhibit in the event a point of appeal is raised as

to the hearing officer's exclusion of same, which was not present here. Apparently, the hearing officer nevertheless reviewed this evidence and stated it would not have changed his opinion even if admitted.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The record in this case does not lead us to the conclusion that the hearing officer's determination has been clearly wrong, and the decision and order of the hearing officer are accordingly affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge