APPEAL NO. 950363

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 22, 1994, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The sole issue, as restated, was: "Did the decedent sustain a compensable heart attack on (date of injury)?" The hearing officer determined that the decedent had sustained a compensable fatal heart attack on the day in question. Appellant, carrier, contends that the decedent's heart attack was not compensable and that the respondent, beneficiary claimant (herein claimant), had not met her burden of proof. Carrier further contends that the hearing officer erred in failing to admit a medical report it had offered and requests that we reverse the hearing officer's decision and render a decision in its favor. Claimant responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

Reversed and rendered for the reasons stated herein.

Decedent was a 46-year-old male who had been employed by (employer), employer, in some sort of managerial capacity. It is undisputed that on (date of injury), decedent arrived at work as usual and, after giving some assignments, he went up into an attic or loft in an unair-conditioned metal warehouse to work on an air conditioning unit. It is further undisputed that decedent worked off and on (anywhere from 75% to 90%) in the attic from 9:30 a.m. until about 5:00 p.m., and that the temperature was very hot with high humidity. The evidence was that the attic where decedent was working was either not ventilated or was poorly ventilated. Witnesses who saw decedent during the day stated he appeared hot, was sweating and was dirty. Coworkers indicated that they had offered decedent diet colas and water through the day, some of which he accepted and some of which he refused. It is further undisputed that at approximately 5:10 p.m., decedent was found slumped over a table in the employer's break room. Emergency medical services (EMS) was called and decedent was taken to the hospital where he was later pronounced dead.

Medical records going back to 1975 were introduced. Hospital records related to a hernia repair in 1975 showed decedent to be in relatively good health. Hospital records of 1993 showed care for a forehead laceration. Records of May 1994 showed treatment for gout. Hospital notes and laboratory results of December 1991 showed "Cholesterol 319 H" and "uric acid 8.8 H" with a notation "cholesterol & UA ↑." Another note of February 1992 showed "cholesterol 318 H" and "Triglycerides 422 <p>" with a notation "[u]nable to perform LDL due to increased triglycerides." Another such report of August 1992 for "CV Risk Profile" showed "Triglycerides 384 H [and] Cholesterol 266 H." A CV Risk Profile of October 1992 showed "Triglycerides 237 H [and] Cholesterol 231." A laboratory report of May 31, 1994 (approximately a week before decedent's death), showed "Triglycerides 314 H [and] Cholesterol 323 H." Those findings were circled. Claimant testified that decedent, at the time of his death, was taking medications for gout. A statement from one of

decedent's coworkers stated that decedent had told her "he was taking medication to reduce his high cholesterol level." Claimant insisted the medication, however, was for gout.

The death certification lists the immediate cause of death as "marked coronary artery sclerosis due to arteriosclerotic cardiovascular disease." The autopsy report, relating to the heart, stated:

> The coronary arteries showed severe confluent arteriosclerosis of the left main coronary artery and the left anterior descending coronary artery ranging to a maximum narrowing of 98 percent. The circumflex and right coronary arteries showed scattered atheromatous plaques ranging to 50 percent narrowing of the lumen by arteriosclerosis. The pulmonary arteries showed atherosclerotic streaks. The great veins were unremarkable. The aorta and its major branches showed severe calcific arteriosclerosis.

The EMS report, in the comment section, in handwriting, states:

> Pt hx of MI and high cholesterol--pt working all day in uninsulated attic of warehouse installing A/C unit[.] Pt came down to break room and collapsed--

Claimant contends, and is supported by the evidence, that the commentary regarding a history of "MI" is erroneous. Our review of the record in evidence indicates that there is no record of a myocardial infarction. (Dr. S), a retired (in 1991) family practitioner, who had formerly treated decedent's family, stated in a letter dated October 25, 1994:

> I was not involved with medical care [of] [decedent] since my retirement.. [sic]
>
> On the day the patient expired he had worked on air conditioning in [an] attic most of that day. His wife said the attic was hot and she asked me if I thought the heat could have been a factor in causing him to suffeer [sic] a fatal heart attack and I answered yes.

(Mr. K), a paramedic with the EMS unit that responded to the emergency call, testified that, in his opinion, the very hot temperatures and humidity in the attic "was a contributing factor" in precipitating decedent's heart attack. There was no evidence of Mr. K's qualifications or medical expertise other than that he had been a paramedic for this EMS unit for 15 years.

Carrier had obtained a release from decedent's family to obtain medical records and, according to carrier's representation to the hearing officer at the CCH, carrier's adjustor had obtained many, or most, records by mid-November 1994. Carrier requested a continuance of the CCH on December 15, 1994, stating ". . . these [the medical] records have not yet been received from these health care providers." The hearing officer apparently initially granted the continuance by order dated "10th [sic] day of Dec. 1994," but subsequently, apparently due to claimant's objection, amended her order denying a continuance by order

dated December 21, 1994. Carrier represented that it immediately sent what records it had to (Dr. MS), an internal medicine specialist, for review on December 21st. Dr. MS reviewed the records and rendered a report and opinion, also dated December 21st. That report was made available to claimant at approximately 8:00 p.m. on December 21st (according to claimant's response). The hearing officer, on objection by claimant, refused to admit the report when it was offered the next day at the CCH, because it had not been timely exchanged and there was no good cause for failing to do so.

The hearing officer determined, in pertinent part:

FINDING OF FACT

4.The decedent's heart attack on (date of injury) was temperature related, and it was caused by his working on the air conditioning unit in the hot attic at work.

5.The investigator's report contained in the autopsy report concerning the decedent is not credible to the extent that is [sic] relies upon information that the decedent has a past history of myocardial infarction. The investigator [NN] got that information from the emergency room doctor [Dr. M], who got that information from the paramedic [Mr. K], who got the information from the decedent's coworker [Ms. W]. There are no medical records in evidence reflecting that the decedent had a myocardial infarction prior to (date of injury), nor is there any evidence that the people mentioned above got this information from medical records generated at or near the time of said myocardial infarction.

6.The evidence is insufficient to establish that in reaching her conclusions, the medical examiner who autopsied the decedent considered, or was even provided with, information concerning the temperature and environment in which the decedent worked for several hours immediately prior to his attack.

7.The preponderance of the medical evidence regarding decedent's heart attack indicated that the decedent's work on (date of injury) rather than the progression of a pre-existing heart condition or disease was a substantial contributing factor of his attack.

We find those determinations to be against the great weight and preponderance of the evidence, and not correct as a matter of law, for the reasons stated below:

Section 408.008 provides as follows:

A heart attack is a compensable injury under this subtitle only if:

(1)the attack can be identified as:

(A)occurring at defined 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.

The key element in this case is that the preponderance of the medical evidence must indicate that the employee's work, rather than the natural progression of a pre-existing heart condition or disease was a substantial contributing factor of the attack. Texas Workers' Compensation Commission Appeal No. 93121, decided April 2, 1993. In Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1991, the Appeals Panel said the medical evidence must be weighed or compared as to the effect of the work and the natural progression of a pre-existing heart condition. Further, the work must be more than merely a contributing factor, but rather must meet the statutorily imposed higher standard of a substantial contributing factor. *See* Appeal No. 93121, *supra*. Claimant's testimony regarding the medical aspects of the case on how heat caused the decedent's heart attack does not constitute medical evidence. The only "medical" evidence that heat and humidity were factors at all came from Mr. K, the paramedic on the scene, and Dr. S. Section 408.008, quoted above, requires medical evidence to establish that the work, in this case the heat, was a substantial contributing factor rather than the natural progression of the pre-existing heart disease. (To digress a moment, we note that just because claimant and decedent were unaware that decedent had pre-existing heart disease does not mean that it did not exist, which, based on the autopsy report, it most surely did.) Mr. K was obviously not a doctor as defined by Section 401.011(17). Whether he was a health care practitioner as defined by Section 401.011(21) is unclear in that he was identified only as a paramedic with 15 years' experience. Consequently, whether his testimony constituted medical evidence required by Section 408.008 is questionable. And, even if it did, his testimony did not constitute what the Appeals Panel has required in the above cited decisions. Nor did Mr. K state that the heat was a substantial contributing factor, stating, at most, it was only a factor. Neither does Dr. S's October 25, 1994, letter, quoted in almost its entirety, constitute the required weighing and evidence of the heat being a substantial contributing factor. Rather, Dr. S states he had been retired since 1991, had not seen decedent since that time and responded "yes" when claimant asked him if he thought heat could have been a factor (not a "substantial contributing factor"). Dr. S apparently had no

medical records available, and there is no evidence that he had the autopsy report available. Rather, Dr. S was asked an incomplete, hypothetical question and replied "yes" without any type of explanation. Nor is there any indication that Dr. S considered that answer as constituting medical evidence within a reasonable medical probability. Under the circumstances of this case, we hold that, as a matter of law, Dr. S's letter does not constitute the type of medical evidence necessary to establish that the heat, rather than the natural progression of the pre-existing heart condition, was a substantial contributing factor of decedent's heart attack.

The hearing officer, in her decision, finds the autopsy "not credible to the extent that is [sic] relies upon information . . . of myocardial infarction." We do not retreat from giving a hearing officer great deference in factual determinations (Section 410.165(a)), but an autopsy report is not like other types of reports which rely to a large extent on the patient's history. Rather, the autopsy report was a detailed, objective, clinical observation of the decedent's bodily organs. The fact that the medical examiner did not have information concerning the temperature and environment in which the decedent worked is immaterial because that information would have absolutely no impact on the fact (not opinion) that the coronary arteries showed severe confluent arteriosclerosis of the left main coronary artery and the left anterior descending coronary artery was narrowed (blocked) up to 98%, with "the aorta and its major branches showing severe calcific arteriosclerosis." Similarly, the fact that the EMS report may, and possibly did, contain erroneous information about a past history of MI, does not change the fact that the decedent did indeed have severe coronary artery disease, whether or not he or claimant, were aware of it. Consequently, we find that the hearing officer's determination that the preponderance of the medical evidence "indicated that the decedent's work . . . was a substantial contributing factor to his attack" rather than the progression of a pre-existing heart condition or disease to be against the great weight and preponderance of the evidence, and wrong as a matter of law.

Regarding carrier's appeal of the hearing officer's ruling on the inadmissibility of Dr. MS's report, we would note that the hearing officer inquired into when carrier had the reports and records it submitted to Dr. MS; acknowledged that it would have been nice, although not absolutely necessary, for carrier's adjustor to be assured he had all the records in proper format; and determined that Dr. MS's report could and should have been obtained earlier, and that the late exchange the day before the hearing was untimely. Evidentiary rulings by the hearing officer on documents which are admitted or not admitted are generally viewed as being discretionary on the part of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94816, decided August 10, 1994. The standard of review on such evidentiary issues is abuse of discretion. Texas Workers' Compensation Commission Appeal No. 93580, decided August 26, 1993. In determining whether there was an abuse of discretion, we look to see if the hearing officer acted without reference to any guiding rules or principles. Morrow v. H.E.B., 714 S.W.2d 297 (Tex. 1986).

Although the hearing officer could reasonably have found good cause (under the circumstances where the complete medical records had allegedly not been received by the

carrier's attorney) to admit a medical report, which clearly went to the heart of the issue, we are unwilling to say that the hearing officer acted without reference to any guiding rules or principles. We have no basis to conclude that carrier could not have requested Dr. MS's review much earlier.

Upon review of the record submitted, we reverse the hearing officer's decision that the decedent sustained a compensable fatal heart attack and render a new decision that claimant failed to prove by a preponderance of the medical evidence that decedent's work rather than the natural progression of a pre-existing heart condition or disease was a substantial contributing factor of the attack. Claimant is not entitled to benefits as a result of decedent's (date of injury), heart attack and carrier is not liable for benefits.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge