APPEAL NO. 962422

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 October 23, 1996, in (city), Texas, with (hearing officer) presiding as hearing officer. The disputed issues at the CCH were whether the claimant sustained a compensable heart attack on (date of injury), and whether he had disability. The hearing officer found that the heart attack was not compensable and that the claimant did not have disability. Appellant, (subclaimant), appeals the decision with regard to the compensability issue and the respondent (carrier) responds. The claimant did not file an appeal or a response to the subclaimant's appeal. The decision as to the claimant's disability became final by operation of law. Section 410.169.

DECISION

We affirm.

First, we address the carrier's contention that the subclaimant lacks standing to appeal. We note that the subclaimant, a hospital, files its request for appeal "both as subclaimant and on behalf of . . . claimant." Its appeal states that the claimant has assigned his benefits to the subclaimant and "[a]dditionally, [the claimant] has stated to [the subclaimant] his desire to appeal the ruling." The claimant was assisted by an ombudsman at the CCH and the subclaimant's attorney did not represent the claimant at the CCH. The subclaimant did not present any evidence of the claimant's assignment of benefits and its attorney does not argue that he represents the claimant on appeal. Therefore, we reject the appeal as being "on behalf of" the claimant.

The subclaimant is not specifically named as a "party" in the style of the CCH decision. However, the subclaimant's attorney did sign in at the CCH as "attorney for subclaimant," and was referred to by the hearing officer on the record as "attorney for subclaimant" and the appellant is referred to as "subclaimant" in the decision. The carrier did not challenge the subclaimant's status at the CCH. The record does not indicate that the subclaimant is anything less than a subclaimant per Section 409.009. We have allowed appeals from subclaimant health care providers when there is no challenge to their status at the hearing. Texas Workers' Compensation Commission Appeal No. 951659, decided November 17, 1995, *see also* Texas Workers' Compensation Commission Appeal No. 94404, decided May 20, 1994. We accept subclaimant's appeal on the issue which has not become final by operation of law.

Second, we analyze whether the decision is against the great weight and preponderance of the evidence. It is undisputed that the claimant sustained a heart attack on (date of injury), when he was trying to start a lawn mower while working for (employer). A heart attack is compensable if the attack occurred at a definite time and place, was caused by a specific event in the course of employment and the preponderance of medical evidence indicates that the claimant's work, rather than the natural progression of a preexisting heart

condition, was a substantial contributing factor. Section 408.008. The hearing officer found that, while the attack occurred in the course of employment, the medical evidence did not establish that the work, rather than a natural progression of a preexisting heart condition, was a substantial contributing factor. The claimant has the burden of proof to show his heart attack is compensable. We reject the claimant's argument that carrier must first raise an issue of a preexisting heart condition.

The subclaimant argues that there is "not one word of evidence from any source to support the carrier's claim that a preexisting heart condition caused, or even contributed to, the heart attack in question." The claimant sought treatment with Dr. D for chest pains he felt after "cranking" the lawn mower. Dr. D referred him to Dr. B, who admitted him into the subclaimant's hospital. (A date of injury), admission report from (hospital) reveals that the claimant smoked two packs of cigarettes per day for 40 years. Dr. B's report indicates that, while the lawn mower incident "played a major role" in the heart attack, he "cannot say absolutely for certain one way or the other that this event was caused or was not caused with [sic] his activity." Dr. B's report does mention "progressive narrowing of the coronary arteries over time." Dr. A reviewed the claimant's medical records on the carrier's behalf. He opined that the claimant had coronary artery disease and that the natural progression of the disease caused the heart attack. We find that there was evidence to support the decision and that it is not so against the great weight and preponderance of the evidence so as to demand reversal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Since the decision and order are not against the great weight and preponderance of the evidence, we affirm.

Christopher Rhodes
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge