APPEAL NO. 971012

This appeal is brought 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 April 23, 1997. Addressing the disputed issues, he (hearing officer) determined that the appellant/cross-respondent (claimant) did not suffer a compensable heart attack on _____; that he timely reported his claimed injury; and that he did not have disability. The claimant appeals the adverse determinations, arguing that they are against the great weight and preponderance of the evidence. The respondent/cross-appellant (carrier) replies that the determinations that the heart attack was not compensable and that the claimant did not have disability are sufficiently supported by the evidence and should be affirmed. The carrier also appeals the determination that the claimant gave his employer timely notice of the injury, arguing that this determination was not supported by the evidence. The appeals file contains no response to the carrier's appeal.

DECISION

Affirmed.

The claimant worked as a mechanic. He testified that shortly after lunch on _____, he was working under a truck replacing hydraulic lines when he experienced cramps in his left arm. The pain then moved up to the back of his head. Because the pain was severe and he was losing control of his left arm, he locked the shop and went to the office of Ms. M, the office manager and controller. He said he walked into the office holding his left arm and testified, variously, that he told Ms. M that he needed to go to a doctor and wanted his paycheck to pay for the doctor; that he described his pain to her and told her what had happened; that "I didn't describe any of it"; that he was working when the pain started; and that "he did not say he hurt himself at work." Ms. M testified that the claimant never reported to her the work-related nature of his illness and that she only found out about this claim on October 9, 1996, when called by the claimant's attorney. She also said she did not notice anything wrong with him when he came to her office on _____, and that he did not say he was hurt, only that he was sick with chest and stomach pain. She said he asked for personal time off to see a doctor and was concerned about his health insurance.

The claimant's wife then drove him to the hospital where he was eventually referred to Dr. A and Dr. B for treatment. He was diagnosed with unstable angina and atherosclerotic coronary artery disease and underwent bypass surgery on July 16, 1996, and cardiac catheterization. The claimant contended that he was healthy before the incident at work on _____, and that the stress of a rush job made his work "extra hard," thereby causing his "heart attack." Neither party appealed the determination of the hearing officer that the claimant's "angina attack was a heart attack within the [1989] Act." Conclusion of Law No. 4. *See* Texas Workers' Compensation Commission Appeal No. 970037, decided February 20, 1997.

Section 408.008 provides, for purposes of this appeal, that a heart attack is a

compensable injury only if the attack can be identified as occurring at a definite time and place; was caused by a specific event occurring in the course and scope of employment; and the preponderance of the medical evidence "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." Section 408.008(2). In Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1991, we stressed that "the evidence must be compared or weighted [sic] as to the effect of the work and the natural progression of a heart condition." The Appeals Panel has also noted that the work must be more than a contributing factor, but rather must meet the higher statutory standard of a "substantial contributing factor." *See* Texas Workers' Compensation Commission Appeal No. 93121, decided April 2, 1993. In the case we now consider, there was sufficient evidence, in the form of the claimant's testimony, to conclude that the heart attack occurred at a specific time and place.

The medical evidence regarding causation of the heart attack consisted of the opinions of Dr. A and an opinion of Dr. K, a carrier-selected "peer review" doctor, who based his conclusions on a review of the medical records only. Treatment records of Dr. A reflect a family history of heart disease, a 31-year pack per day history of smoking, high blood pressure, and hypercholesterolemia. Dr. A completed a series of "To Whom It May Concern" letters. On September 20, 1996, he wrote that "[i]ncreased stress is a well known risk factor of heart disease and therefore I can not exclude the fact that his job predisposed him to this disease and subsequently his heart surgery." In an undated, but presumably later, letter, Dr. A wrote that "the strenuous work [claimant] was doing on [sic] July of 1996 . . . was the cause of the angina attack which ultimately had to be repaired through bypass surgery." In a letter of October 3, 1996, Dr. A recited the claimant's account of the incident on _____, particularly the sudden onset of pain in the neck and chest, and concluded: "Based on this history, it is my opinion that the strenuous work being undertaken by [claimant] cannot be excluded as a contributing cause of the angina attack. . . ." Finally, on March 19, 1997, Dr. A again recited the claimant's account on the onset of pain and concluded: "It is my opinion that the above described physical activity was the cause of the angina attack. . . ." In a November 14, 1996, report, Dr. K wrote:

> In reviewing the patient's chart, it becomes evident that this patient had numerous cardiovascular risk factors, both mother and father had atherosclerotic vascular disease and the patient was also a heavy smoker. He had a long standing history of hypertension as well as hypercholesterolemia. . . . These risk factors represent more than ample factors for acceleration of atherosclerosis in this patient. There is absolutely no evidence that atherogenesis is work related, even in conditions of very high stress. It is my strong belief that [claimant's] employment is not a factor in his ultimate need for coronary bypass surgery and ensuing complications.

The hearing officer concluded that the claimant did not establish that he had a compensable heart attack, in particular, that he did not prove that the work rather than the

natural progression of the preexisting cardiovascular condition (atherosclerosis) was a substantial contributing factor of the heart attack. In his appeal of this determination, the claimant argues that Dr. A's opinion should prevail over the opinion of Dr. K "who never examined" the claimant. The carrier responds that Dr. A's opinions failed to compare or weigh the preexisting condition against the employment in reaching an opinion about the cause of this heart attack. The claimant had the burden of proving that his heart attack was compensable. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Causation was a question of fact for the hearing officer to decide. *See* Texas Workers' Compensation Commission Appeal No. 94092, decided February 24, 1994. As fact finder, the hearing officer was the sole judge of the weight and credibility of the evidence. Section 410.165(a). In reviewing the expert evidence in this case, he could conclude that Dr. A failed to compare or weigh the role of the claimant's preexisting heart and vascular condition in arriving at his opinion on causation. Similarly, the fact that Dr. K was not a treating doctor and reached his conclusions on the basis of a review of the records could properly be considered by the hearing officer in determining what weight to give his report. We will reverse a factual determination of a hearing officer only if it is so against the great weight and preponderance of the evidence as to be clearly erroneous and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). In this case, the hearing officer found Dr. K's opinion more persuasive and credible than that of Dr. A. The claimant would have us reweigh the evidence and substitute our opinion for that of the hearing officer. This we decline to do under our standard of review. To the contrary, we find the evidence sufficient to support the decision of the hearing officer that the claimant did not establish that he suffered a compensable heart attack.

The carrier appeals that part of the decision of the hearing officer that the claimant gave timely notice of his injury as required by Section 409.001(a). To fulfill the notice requirement, the employer need be notified of the general nature of the injury and that it is claimed to be job related. Texas Workers' Compensation Commission Appeal No. 91016, decided September 6, 1991. Whether adequate and timely notice was given is generally a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93761, decided October 4, 1993. In its appeal, the carrier points to portions of the claimant's testimony that it believes amount to an admission by the claimant that he never mentioned to Ms. M that his claimed injury was work related. As pointed out above, the claimant stated at other times in his testimony that he did assert a work connection. Obviously, differing conclusions and inferences could be reached from this evidence. It was precisely the responsibility of the hearing officer to weigh this evidence and determine what facts had been established. In doing so, he could accept or reject in whole or in part any of the evidence. Texas Workers' Compensation Commission Appeal No. 93819, decided October 28, 1993. We again decline to usurp the role of the hearing officer by substituting our opinion of what facts were proved.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge