

APPEAL NO. 980663

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 March 6, 1998, in (city), Texas, with (hearing officer) presiding as hearing officer. In response to the issues before her, the hearing officer determined that: (1) respondent (claimant) is not entitled to supplemental income benefits (SIBS) for the second quarter; (2) claimant's average weekly wage (AWW) is \$268.54; and (3) claimant's compensable injury was a producing cause of claimant's (date of injury), heart attack. Appellant (carrier) appeals, contending that the hearing officer erred in determining that claimant's compensable injury was a producing cause of claimant's heart attack. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order. The parties did not appeal the SIBS and AWW determinations.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant's compensable injury is a producing cause of claimant's heart attack. It asserts that: (1) claimant's preexisting heart disease, and not his work, was a substantial contributing factor regarding the heart attack; (2) the hearing officer should have applied Section 408.008 in determining whether claimant's heart attack was compensable; and (3) Texas Workers' Compensation Commission Appeal No. 92540, decided November 19, 1992, was wrongly decided.

Section 408.008 provides that:

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 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.

Regarding "follow-on" injuries due to medical treatment, "[t]he law is well settled that where an employee sustains a specific compensable injury, he is not limited to compensation allowed for that specific injury if such injury, or proper or necessary treatment therefor, causes other injuries which render the employee incapable of work." Maryland Casualty Co. v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, writ ref'd n.r.e., *per curiam*, 432 S.W.2d 515 (Tex. 1968)). The Appeals Panel has previously considered such cases where a follow-on injury has allegedly resulted from treatment for the compensable injury. See Texas Workers' Compensation Commission Appeal No. 94210, decided March 31, 1994; Texas Workers' Compensation Commission Appeal No. 93861, decided November 15, 1993; and Texas Workers' Compensation Commission Appeal No. 941217, decided October 26, 1994.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant's heart attack took place on (date of injury), while he was hospitalized after having spinal surgery on November 14, 1996, for a compensable back injury. Claimant testified that he had been treated for high blood pressure for a "long period of time," and that he underwent a cardiac catheterization procedure in 1989. He said that, after a later "cardiac cath," he was told he did not have a "problem." Claimant said that after he lost some weight, he did not need blood pressure medication, but also said he takes it "off and on." Claimant said that he was diagnosed with a mild heart attack in 1996 during a cardiac catheterization procedure.

Regarding claimant's heart attack that took place after his spinal surgery for his compensable injury, in a December 9, 1996, letter, (Dr. MAC) stated:

It is my opinion that [claimant's] heart attack is certainly a complication of his work related injury. It is a well recognized potential complication of surgical intervention. It is a greater probability that a patient would have a heart attack with an operative procedure versus not. . . .

In a January 13, 1997, letter, (Dr. EN) stated:

[Claimant] was admitted to [the hospital] on November 14, 1996 . . . and he underwent [spinal surgery]. The claimant tolerated the procedure well, as stated in the operative note, and was transferred to the intensive care unit in normal sinus rhythm and in stable condition.

On (date of injury), he developed progressive shortness of breath and chest discomfort on the floor and was found to be in congestive heart failure . . . with evidence of an acute anterior wall myocardial infarction

[T]he claimant developed congestive heart failure secondary to [a myocardial infarction]. This event is not related to his back surgery in that the heart failure was related to the evolving MI and took some time to clear following coronary bypass surgery. It is obvious that the claimant had longstanding coronary artery disease I could not rule out the possibility that the back surgery under general anesthesia was a tangential contributing factor to the claimant's cardiac event, but with such a degree of stenosis it was inevitable that the claimant could evolve cardiac symptoms at any time.

In a May 13, 1997, letter, (Dr. SC) stated:

[I]t is my hypothesis that this acute coronary event was precipitated by the physiological stress imposed by [claimant's] prolonged orthopedic procedure. It should again be reiterated that indeed he did have a prior history of coronary artery occlusive disease, but was seen by a cardiologist at the request of his orthopedic surgeon and approved by the [Texas Workers' Compensation Commission] and in so doing they acknowledged that his disease was stable and that he was a suitable candidate for a planned orthopedic procedure. His ensuing acute cardiac decompensation which necessitated a cardiac catheterization and ultimately the emergency coronary artery bypass surgery is directly related to his orthopedic procedure, and should therefore be covered [by workers' compensation].

In an April 7, 1997, letter, Dr. SC said:

[Claimant] is a 46-year-old gentleman who sustained a work related lower back injury in (month year). . . . [O]n November 14, 1996, [claimant underwent a discectomy and fusion]. It is my opinion that the physiologic stress imposed by the prolonged surgery (the reported orthopedic procedure took greater than ten (10) hours) as well as the associated blood loss and

hemodynamic changes was directly responsible for the patient's acute cardiac decompensation. It is true that his cardiac history predated his back injury; however, he was asymptomatic during routine activity from a cardiac standpoint and was cleared for surgery by a cardiologist. I do not feel that this acute cardiac decompensation is a result of the natural progression of the patient's previous heart condition, but rather was precipitated by the sudden stimulus provided by prolonged surgery for his back condition This condition should therefore be covered under the Workers' Compensation Act as outlined in section 408.008 subsection 3.

Because of claimant's documented cardiovascular disease, it is probable that if claimant's heart attack had occurred at work, it would not have been a compensable injury under the 1989 Act. However, the issue here is whether the hearing officer could have found from the evidence that the heart attack was caused by the medical treatment for claimant's compensable back injury. In Appeal No 92540, *supra*, we stated that we could not find any intention by the legislature to legislatively overrule precedent regarding the compensability of injuries sustained during medical treatment for a compensable injury. The Appeals Panel said that, if the legislature had intended to overrule this principle, it would have specifically done so. Appeal No. 92540.

Carrier contends that Appeal No. 92540 is wrongly decided, that this case should be analyzed the same way we would analyze a case where the heart attack occurred on the job, and that we should apply Section 408.008. However, as we indicated in Appeal No. 92540, the wording of Section 408.008 indicates that it is concerned with heart attacks that occur due to events that happen on the job. Claimant did not assert that his heart attack took place directly after or due to a specific event at work. He contended that the medical treatment for his compensable injury caused the heart attack. Therefore, the hearing officer properly did not analyze this case under Section 408.008.

In this case, there was medical evidence that the back surgery was a factor that contributed to the subsequent myocardial infarction. The cases that hold that injuries resulting from the treatment of a compensable injury are also compensable do not say that such are compensable only if there is no preexisting condition. Appeal No. 92540 (citing Texas Employers Indemnity Company v. Etie, 754 S.W.2d 806 (Tex. App.-Houston [1st Dist.] 1988, no writ)). The hearing officer weighed the evidence before her and determined what facts the evidence established. We conclude that her determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. There is sufficient evidence to support the hearing officer's determination that the deceased's myocardial infarction of (date of injury), is a compensable complication of his (month year) back injury.

Carrier cites Texas Workers' Compensation Commission Appeal No. 962550, decided January 22, 1997, in support of its assertions. That case is distinguishable, however, because the heart attack in that case took place five weeks after an inhalation injury, and the assertion was that the inhalation injury at work caused the claimant's later collapse at home and death due to chemical pneumonia and a heart attack. Again, in the case before us, the assertion is not that the heart attack took place due to an event at work. Instead, claimant contends that the heart attack took place because of medical treatment for a compensable injury. There was evidence that claimant's heart attack began within 24 to 48 hours after a 10-hour surgical procedure, and that this was a stressful medical procedure with associated risks regarding heart attacks. We believe this case is more factually similar to Appeal No. 92540, *supra*, where the heart attack took place 15 minutes after the completion of surgery. Further, there was more than the mere fact that the heart attack took place near in time to the surgery. The hearing officer could find from the medical evidence that the stress of the surgery, blood loss, hemodynamic changes, and immediate post-surgical hospitalization caused the heart attack.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge