

APPEAL NO. 012157
FILED OCTOBER 31, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 15, 2001. With respect to the single issue before her, the hearing officer determined that the respondent (claimant) sustained a compensable heart attack on _____. In its appeal, the appellant (self-insured) asserts that the hearing officer erred in determining that the claimant's heart attack was compensable under Section 408.008. The appeal file does not contain a response from the claimant to the self-insured's appeal.

DECISION

Reversed and a new decision rendered that the claimant did not sustain a compensable heart attack under Section 408.008.

The undisputed evidence shows that the claimant worked as a firefighter for the self-insured. On _____, the claimant was called to put out a grass fire, which spanned seven miles. The job required the use of a heavy, 300-foot long, fully charged hose, which the claimant was required to carry, sometimes alone and sometimes with the assistance of another firefighter. After working the fire for approximately one-half to one hour, the claimant began to experience pain in the center of his chest beneath his sternum and a feeling of exhaustion. The claimant continued working for approximately another one and one-half hours before he was taken to the hospital, where he was diagnosed with an acute inferior myocardial infarction. He underwent quadruple bypass surgery on February 29, 2000.

Section 408.008 provides that a heart attack is compensable 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 is not triggered solely by emotional or mental stress factors, unless it is precipitated by a sudden stimulus. All of the elements of Section 408.008 must be found in order for a heart attack to be compensable. Texas Workers' Compensation Commission Appeal No. 92555, decided December 2, 1992. In order to prevail, the claimant has the burden to prove, by a preponderance of the medical evidence, that the employee's work was a substantial contributing factor of the attack when balanced against the natural progression of a preexisting heart condition or disease. Texas Workers' Compensation Commission Appeal No. 931003, decided December 16, 1993. We have noted on several occasions that this provision of the statute requires a comparison or weighing between the conditions leading to the heart attack. It is insufficient if the medical evidence indicates that the work was a factor related to the attack. The preponderance of the medical evidence must indicate that the work rather than the natural progression of a preexisting heart condition or disease was a substantial

contributing factor. See Texas Workers' Compensation Commission Appeal No. 93121, decided April 2, 1993, and the cases cited therein. Finally, we have noted that "there can be more than one substantial contributing factor, so long as the work is a greater factor than the natural progression of any underlying heart condition or disease." Texas Workers' Compensation Commission Appeal No. 970148, decided March 12, 1997 (Unpublished), citing Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1991.

The self-insured initially asserts that the claimant's heart attack is not compensable as a matter of law, because it did not occur at a definite time and place. There is no dispute that the claimant's heart attack occurred while he was fighting a fire on _____. The self-insured contends that the claimant must point to a specific event as opposed to the "repetitive duties of fighting a fire" in order to satisfy the first prong of Section 408.008. We find no merit in this assertion. The evidence established that the claimant engaged in heavy exertion over a period of several hours while fighting a fire and that he suffered a heart attack while doing so. That evidence is sufficiently specific to satisfy the requirements of Sections 408.008(1)(A) and (B).

The hearing officer's determination that the "preponderance of the evidence indicated that the Claimant's duties rather than the natural progression of the preexisting heart condition was a substantial contributing factor of the heart attack on _____" is more problematic. At the emergency room, the claimant was treated by Dr. G, a cardiologist, who also performed the cardiac catheterization. Dr. G did not provide an opinion as to causation. At some point during his recovery, the claimant changed to Dr. C as his cardiologist. In a "To Whom it May Concern" letter dated December 1, 2000, Dr. C stated that the claimant "sustained a myocardial infarction in _____, at work. The likelihood [sic] is stress triggered his heart attack." The claimant testified that both Dr. G and Dr. C told him that eventually he would have had a heart attack whether or not he had it fighting the fire on _____. The other doctor to provide a causation opinion was Dr. Z, who performed a review of the claimant's medical records for the self-insured. In his April 17, 2000, report, Dr. Z stated:

In this case I feel the main substantial contributing factor was the [claimant's] underlying preexisting coronary artery disease. Fighting the fire on that particular day may have strongly contributed to the heart attack but it would not have occurred without his preexisting coronary artery disease. His coronary artery disease was caused by multiple factors including his underlying diabetes, history of hyperlipidemia as well as genetic predisposition to heart disease as evidenced by the family history of coronary artery disease with his brother who had coronary bypass graft surgery.

Given the severity of his underlying coronary disease and his lack of treatment of his cardiac risk factors, it was literally only a matter of time before he would have suffered a heart attack or required some type of coronary intervention for symptoms.

Dr. Z concluded his report by stating, “[i]n summary, the preponderance of the medical evidence indicates that [claimant’s] heart attack was more of a natural progression of a preexisting underlying heart disease although certainly the stress that he experienced fighting the fire that day was a strong contributing factor to his heart attack.”

The self-insured contends that the hearing officer failed to perform the required balancing analysis in this case. We cannot agree that the hearing officer failed to perform the analysis in light of her statement acknowledging that she had to do so. Nevertheless, we believe that the hearing officer’s determination does not find sufficient evidentiary support in the record. Although Dr. Z stated that the work was a strong contributing factor, his ultimate opinion was that the claimant’s “heart attack was more of a natural progression of a preexisting underlying heart disease” Based upon that conclusion, Dr. Z’s opinion simply does not support a determination that the work was a greater factor in the claimant’s heart attack than the underlying heart disease. Dr. C’s opinion likewise falls short of establishing the requisite proof to establish the compensability of the claimant’s heart attack under Section 408.008. Accordingly, we reverse the hearing officer’s determination that the claimant sustained a compensable heart attack and render a new decision that the claimant’s myocardial infarction of _____, was not compensable under Section 408.008.

The true corporate name of the self-insured is **(SELF-INSURED EMPLOYER)** and the name and address of its registered agent for service of process is

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge