

APPEAL NO. 100566
FILED JULY 9, 2010

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 March 31, 2010. The hearing officer resolved the sole disputed issue by deciding that the decedent sustained a compensable heart attack on _____.

The appellant (carrier) appealed, disputing the hearing officer's determination of a compensable heart attack. The respondent (claimant beneficiary) responded, urging affirmance.

DECISION

Reversed and rendered.

On _____, the decedent had been working for employer for over 30 years and was 66 years old. In evidence was a letter from the decedent's doctor dated May 15, 2008, which states that the decedent has diabetes, hypertension, diabetic neuropathy and chronic low back problems and is not able to participate in the fire crew or able to fight fires. Additionally, a letter dated May 21, 2008, was in evidence from the same doctor who noted the decedent has many chronic health problems but is able to work full duty without restrictions. The decedent had attended the second half of a firefighting training course on October 23 and 24, 2008. The decedent returned home on the afternoon of (day before date of injury). The claimant beneficiary testified that the following day after running a few errands the decedent spent the majority of the day at home. She further testified that on the evening of _____, she took the decedent to the emergency room after he began having symptoms of pain and sweating. The decedent died at the emergency room on _____. The decedent's death certificate lists sudden cardiac death and presumed coronary artery disease as the immediate cause of death and lists diabetes as a significant condition contributing to his death.

The claimant beneficiary had the burden to prove that the decedent's fatal heart attack was a compensable injury, that is, that the elements of Section 408.008 were met. Under that statute, a heart attack can be compensable only when it is found to be caused by a specific event in the employment and when the preponderance of the medical evidence indicates that the work, rather than the natural progression of a pre-existing heart condition or disease, was a substantial contributing factor of the heart attack. See, e.g., Appeals Panel Decision (APD) 91081, decided December 31, 1991; APD 93948, decided December 3, 1993; APD 94327, decided April 28, 1994; and APD 001817, decided September 12, 2000.

Section 408.008. COMPENSABILITY OF HEART ATTACKS. 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 pre-existing heart condition or disease was a substantial contributing factor of the heart attack; and
- (3) the attack was not triggered solely by emotional or mental stress factors, unless it was precipitated by a sudden stimulus.

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 heart attack. The preponderance of the medical evidence must indicate that the work, rather than the natural progression of a pre-existing heart condition or disease, was a substantial contributing factor. See APD 93121, decided April 2, 1993, and the cases cited therein. Finally, we have noted that "[t]here can be more than one substantial contributing factor, so long as the work is a greater factor than the natural progress of any underlying heart condition or disease." APD 970148, decided March 12, 1997, citing APD 91009, decided September 4, 1991.

The hearing officer found that the decedent's heart attack was caused by a specific event occurring in the course and scope of his employment and that the preponderance of the medical evidence regarding the attack indicates 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 heart attack. In her discussion of the evidence, the hearing officer notes the narrative report from (Dr. S) dated March 10, 2009, that stated in his opinion based upon a reasonable degree of medical certainty, the claimant's participation in fire training directly and immediately precipitated an episode of progressive coronary thrombosis, myocardial infarction, and cardiac death. However, Dr. S does not explain how the decedent's work was a greater factor than the natural progression of any underlying heart condition or disease to the decedent's heart attack, nor does he explain how the fire training caused the decedent's heart attack.

(Dr. W), a cardiologist who has been practicing for 25 years testified he had reviewed the decedent's medical records and medical literature. He testified that the decedent had risk factors that would predispose him to sudden cardiac arrest such as his age, gender, diabetes, a history of dyslipidemia, a distant history of tobacco use and hypertension. Dr. W opined that the activities performed on October 23 and 24, 2008, were not substantial contributing factors to the decedent's fatal heart attack. Dr. W testified that the decedent's risk of a heart attack versus the general population was 2 to

3 times greater. Dr. W testified that he did not see anything in the records or in his discussion with one of the decedent's co-workers that the training on October 23 and 24, 2008, was any different or more strenuous than his normal job as an operator for his employer.

In a written report dated December 28, 2009, Dr. W opined that the claimant's myocardial infarction occurred in the late morning or early afternoon of _____, based on enzyme analysis. Dr. W opined that the preponderance of the medical evidence is consistent with the natural progression of his pre-existing heart condition serving as the substantial contributing factor for his presentation with myocardial infarction as opposed to work related activities. Dr. W noted that the decedent's multiple risk factors for a heart attack provide an easily understood milieu in which such events commonly occur.

The hearing officer's decision that the decedent sustained a compensable heart attack is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Accordingly, the hearing officer's determination that the claimant sustained a compensable heart attack on _____, is reversed and a new decision is rendered that the claimant did not sustain a compensable heart attack on _____.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge