APPEAL NO. 950820
FILED JULY 6, 1995

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 5, 1995. Addressing the sole disputed issue, the hearing officer determined that the deceased's death was not the result of the compensable injury he sustained on _____. The beneficiary appeals arguing that this decision is contrary to the great weight and preponderance of the evidence. The respondent (carrier herein) replies that the beneficiary failed to meet his burden of proving the death resulted from the compensable injury and that the decision and order of the hearing officer denying death benefits should be affirmed.

DECISION

We affirm.

The deceased was a car salesman. It was not disputed that on _____, when he was 51 years old, he sustained a compensable back injury (lumbar herniation). He first sought treatment for his back condition from Dr. O who referred him to Dr. B. In office notes of a visit on July 18, 1991, Dr. B noted back pain extending into the right leg of about a month's duration and referred to another problem of "transient episodes of numbness on his left side" over the prior three months. He also described the claimant as "quite obese" and a smoker. His proposed course of treatment was to determine, first, what was causing the transient episodes of numbness and after that "we will attend to his low back."

The claimant was admitted to the hospital on (date of admission), for a cerebral angiogram and lumbar myelogram. The angiogram disclosed a complete occlusion of the right internal carotid artery with poor collateral circulation via the left carotid artery and the vertebral system. The myelogram and a CT scan of the lumbar spine showed a disc rupture at L4-5 with marked edema of the nerve roots. Dr. B wrote in the discharge summary of (date of discharge), that it was his preference to defer treatment of the back for a few weeks to address the carotid artery occlusion which he treated primarily with aspirin therapy. Over the succeeding weeks, the claimant's back pain became more severe and Dr. B referred the claimant to Dr. G, a neurosurgeon. In a letter of August 9, 1991, Dr. G wrote that the claimant's vascular status would have to be re-evaluated prior to proceeding with back surgery because claimant was again experiencing transient ischemic attacks (TIA's). In a neurology consultation report of August 14, 1991, Dr. C wrote that in light of the claimant's "tenuous right cerebral circulation" he was reluctant to place him under general anesthesia necessary for back surgery. He considered the claimant a possible candidate for an extracranial/intracranial (EC/IC) bypass procedure. After further tests, Dr. G agreed on August 23, 1991, that the claimant "is in some danger without additional cerebral protection should he have a much needed lumbar laminectomy. Furthermore, even

without the need for further surgery, he is continuing to have TIA's without relief." (Emphasis added). The bypass was done without apparent complications on August 29, 1991.

On September 19, 1991, Dr. G performed a right L4-5 lumbar laminotomy, discectomy and foraminotomy. Post-operatively, the claimant's lumbar condition did not improve. Facet injections to relieve the pain were unsuccessfully tried in June 1992. On (second date of admission), the claimant was re-admitted to the hospital for a "redo" of the laminotomy, discectomy and foraminotomy and was discharged on (date of discharge). Within a month, the claimant was again having severe back pain. Fusion stabilization was considered likely. The claimant was again admitted to the hospital on (third date of admission), complaining of lumbar pain and fever and "was felt to presumptively have [possibly infectious] lumbar discitis." He was afebrile for 30 hours and discharge was planned for (date of discharge). On the evening of (date of event), the claimant had a sudden ictus and was found to have an intracerebral hematoma on the right side consistent with pseudoaneurysm formation. He was taken the next morning to surgery and underwent a right frontotemporal craniotomy and evacuation of the hematoma. He progressively worsened and was declared dead at 4:34 p.m. on _____.

The immediate cause of death listed by Dr. G on the death certificate was increased intracranial pressure. Underlying causes were massive middle cerebral artery infarct, intracerebral hematoma and subarachnoid hemorrhage due to pseudoaneurysm.

The hearing officer alternatively defined the issue as whether the above listed causes of death were the naturally flowing effects from the deceased's low back injury on _____; or whether the compensable injury of _____, resulted in his death on _____. The beneficiary's theory of recovery was that the ictus suffered by the deceased in _____ was the cause of the pseudoaneurysm that in turn was a complication of the vascular surgery in August 1991 which was reasonable and necessary medical care to enable Dr. G to treat the deceased's compensable lumbar condition. The carrier's position is the deceased died from an ordinary disease of life which pre-existed his compensable injury; that the cranial bypass operation was medically indicated regardless of the back injury and that his death was not the result of his back injury.

It is well established that workers' compensation benefits, including death benefits, are payable "for a condition brought about by reasonable or necessary medical treatment for a work-related injury." Texas Workers' Compensation Commission Appeal No. 93612, decided September 3, 1992. Also, under the 1989 Act the definition of injury includes damage or harm to the physical structure of the body and a disease or infection "naturally resulting from the damage or harm." This latter concept is also described as the "naturally flowing consequences" of an original injury. *See* Texas

Workers' Compensation Commission Appeal No. 94844, decided August 15, 1994, and Texas Workers Compensation Commission Appeal No. 92553, decided November 30, 1992. Under either theory of recovery, the beneficiary had the burden of proving the causal connection between the original injury or reasonable and necessary medical care for it and the deceased's death. Whether such a causal connection exists is a question of fact for the hearing officer to decide and requires proof by expert medical evidence. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.).

Dr. G wrote in his discharge summary on the date of death that the "[c]ause of death appears to have been rupture of pseudoaneurysm. Although it is within the perioperative period, it does not appear related to his lumbar disc surgery nor the subsequent discitis." In a letter of September 28, 1993, to the beneficiary's attorney, Dr. G wrote that the bypass was undertaken after a thorough evaluation of the deceased's intracranial vascular situation. Without this bypass to increase the blood supply to the brain, the deceased was not considered a candidate for lumbar surgery. Dr. G said that a "byproduct of this" was improved chances for avoiding a stroke. He also said that the pseudoaneurysm formation, which was the cause of death, "was not directly related to the recent lumbar disc surgery . . nor the subsequent discitis." (Emphasis in original). He nonetheless said "it remains true that it was necessary for him to have . . . [a bypass] in order to safely treat his lumbar disc problem 14 months prior to that. Although a pseudoaneurysm formation is an unusual complication of an EC/IC bypass, especially 14 months later, it is nonetheless related to the EC/IC bypass which was necessary in order to treat the lumbar spine disease 14, months prior to his death." Dr. G concludes "I do not find evidence of any relationship between his intracerebral hematoma and his myelogram, disc aspiration or "`other spinal canal invasion.'"

At the carrier's request, Dr. T reviewed the deceased's records and concluded that the deceased's

> severe arteriosclerotic cardiovascular disease, and all the consequences of its diagnosis and treatment, is in no way related to the alleged on-the-job injury. . . . It is obvious that this patient needed and required treatment for his arteriosclerotic right carotid vascular disease and resultant cerebral ischemia from the time of onset, and that such treatment was inevitable, whether or not he had the incident alleged _____.

A second opinion, based on a records review, was provided by Dr. O who wrote on March 1, 1995:

> The condition of severe vascular insufficiency and occlusion of the middle, cerebral artery pre-dated the back injury as the patient had episodes of

> "transient ischemic attacks" for a period of at least two months before the reported back injury. The condition of severe vascular insufficiency is totally unrelated to the back injury.
>
> The condition of severe vascular insufficiency . . . placed [claimant] in grave danger of experiencing a catastrophic stroke, the type that eventually caused his death. . . . It is quite clear that the operation for bypass was necessary and should have been performed whether or not the patient had any problem with the proposed surgery to his back.
>
> The hematoma and the stroke were not caused by the back disorder in any way.
>
> The . . . bypass was not necessary because the patient had an elective back surgical procedure recommended, although it was appropriate to deter that elective operation until after the needed correction had been performed. The back condition did not pose any risk to the life of [deceased] and did not threaten immediate paralysis or other major neurologic deficit.
>
> It is quite erroneous and misleading to speak of the injury occurring in ____ as a fatal injury. The facts revealed in these records, placed in the light of current medical concepts, do not support a contention that [deceased's] death was causally related to the injury and subsequent back surgery in question.

Based on this evidence, the hearing officer found that the deceased died as the result of a "`sudden ictus' or stroke" and that his compensable back injury of _____, did not result in his death.

The medical evidence at the CCH clearly supports the conclusion that the claimant's vascular condition pre-existed his back injury of _____, and thus one would be hard-pressed to conclude, based on any reasonable medical probability, that the back injury had a causative role in the occlusion of the right carotid artery. Recently, in Texas Workers' Compensation Commission Appeal No. 950455, decided May 9, 1995, the Appeals Panel, citing Jacoby v. Texas Employers' Insurance Association, 318 S.W.2d 921 (Tex.Civ. App.-San Antonio 1958, writ ref'd n.r.e.), a case involving cancer, discussed the principle that an injury which does no more than weaken one's physical resistance to disease is insufficient to constitute a producing cause of that disease. We are thus satisfied that the medical evidence was sufficient to support a finding that the back injury on _____, did not result in an occluded artery or cause the stroke from which the deceased died on _____.

The beneficiary relies primarily on the contention that the deceased died of a stroke which was caused by the bypass surgery which he contends was reasonable and necessary medical treatment for the lumbar condition. Considering the medical

evidence, quoted extensively above, the hearing officer could have determined that this theory of causation was attenuated at best or that the bypass was medically indicated regardless of the need for treatment of the back. That position is generally consistent with the evidence that there was no connection whatsoever between the claimant's back condition and the stroke. The only possible exception is Dr. G's statement to the claimant's attorney that the stroke was related to the bypass done 14 months previously. This statement loses some of its persuasive force in light of Dr. G's other conclusions and the opinions of other medical doctors. *See* Texas Workers' Compensation Commission Appeal No. 94754, decided July 18, 1994. In any event, it was the responsibility of the hearing officer as fact finder to determine if the evidence established that the bypass surgery was reasonable and necessary medical treatment of the lumbar spine and whether the lumbar injury in any way caused the stroke which resulted in the claimant's death. The Appeals Panel does not normally substitute its judgement for that of the trier of fact. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse it only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and 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). The evidence presented genuine questions of fact for the hearing officer to decide, made even more difficult by the tragic nature of the case. We cannot say that his resolution of the disputed issues was not supported by sufficient evidence.

The decision and order of the hearing officer are affirmed.

Alan C. Ernst
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Elaine M. Chaney
Appeals Judge