

Industrial Claim Appeals Office

State of Colorado

*1 IN THE MATTER OF THE CLAIM OF JEFFREY ALLISON, CLAIMANT,

v.

CITY OF COLORADO SPRINGS, EMPLOYER,

AND

SELF-INSURED, RESPONDENT.

W. C. No. 4-325-885

June 18, 1998

FINAL ORDER

The self-insured respondent (City) seeks review of a final order of Administrative Law Judge Wheelock (ALJ), awarding the claimant medical and temporary total disability benefits as a result of a heart attack. We affirm.

The claimant was employed by the City to install traffic lights at intersections. The ALJ determined that this job involved heavy labor requiring use of jack hammers and shovels. On August 6, 1996, the claimant was diagnosed with hypothyroidism. The claimant's cardiologist testified that this condition rendered the claimant vulnerable to heart attacks because the absence of thyroid hormone reduces the heart's capacity to process oxygen during periods of increased physical activity. (Dr. Taylor depo. pp. 11-12). Because of this diagnosis, one of the claimant's physicians issued a letter recommending that the claimant be taken off work for one week pending examination by a cardiac physician.

However, the ALJ found that the claimant's supervisor required the claimant to continue performing heavy labor during a period of time when temperatures were unusually hot. Additionally, the claimant was required to train another employee, which increased the claimant's physical work load. These circumstances continued throughout August and September 1996. Early in October, the claimant sustained an injury to his ankle. When the claimant returned to work, he was placed on light duty requiring him to operate "laser speed test equipment." Although this duty was not as physically demanding as the installation work, it was stressful because it subjected the claimant to "traffic dangers" when placing a cable across the road. During October the claimant experienced two "cardiac events" prior to sustaining the heart attack on October 28, 1996. Relying principally on the testimony of Dr. Taylor and Dr. Hall, the ALJ concluded that the physical exertion required of the claimant in August and September, and the mental stress experienced in October, were proximate causes of the heart attack. In addition, the ALJ found that these circumstances constituted "unusual exertion" because the claimant was required to work in hot weather, train a co-employee, and undergo stress when exposed to traffic.

In addition, the ALJ found the claimant is entitled to temporary total disability benefits as a result of the heart attack. However, the ALJ declined the City's invitation to "apportion" these benefits on the theory that the claimant's hypothyroidism constituted a "preexisting disability."

I.

On review, the City first contends the ALJ erred in finding the claimant experienced "unusual exertion," and that the unusual exertion was a "proximate cause" of the heart attack within the meaning of § 8-41-302(2), C.R.S. 1997. The City reasons that the claimant did not suffer an "unusual exertion" because his activities in August and September constituted the ordinary duties of his employment. Moreover, the City reasons that at the time of the heart attack the claimant was performing light duty which was not as physically demanding as his usual job. We are not persuaded by these arguments.

*2 When determining whether an employee has suffered unusual exertion, the ALJ must examine the claimant's duties at the time of the heart attack in comparison to the claimant's job history. However, there is no definitive unit of time during which the claimant's activities must be considered. To the contrary, the courts have examined activities over extended periods of time depending on the circumstances of the case. See *Wackenhut Corp. v. Industrial Claim Appeals Office*, P.2d (Colo. App. 97CA0726, December 11, 1997) (considering decedent's increased physical activity in preparation for physical fitness tests); *Carr v. Industrial Commission*, 709 P.2d 52 (Colo. App. 1985) (considering decedent's increased physical activities and mental stress during month of July 1982).

Moreover, an exertion need not be different in kind from the claimant's ordinary activities in order to be considered "unusual" for purposes of § 8-41-302(2). To the contrary, an ALJ may consider whether the claimant's usual activities were performed in unusual circumstances, as where the claimant is required to work increased hours or under greater stress than usual. See *Apache Corp. v. Industrial Commission*, 717 P.2d 1000 (Colo. App. 1986).

Ultimately, the question of whether the claimant experienced an unusual exertion is one of fact for determination by the ALJ. *Wackenhut Corp. v. Industrial Claim Appeals Office*, supra. Consequently, we must uphold the ALJ's determination if supported by substantial evidence in the record. Section 8-43-301(8), C.R.S. 1997. This standard of review requires that we defer to the ALJ's resolution of conflicts in the evidence, her credibility determinations, and the plausible inferences she drew from the record. *Metro Moving & Storage Co. v. Gussert*, 914 P.2d 411 (Colo. App. 1995).

The City's argument notwithstanding, the record contains substantial evidence that the claimant experienced unusual exertion at and near the time of the heart attack. It is true that during August and September the claimant was performing heavy work which was customary for his position. However, the record contains ample evidence that the circumstances were unusual because of

particularly hot weather. Moreover, the claimant was required to perform more physical labor than usual because of the need to train a new employee. (Tr. pp. 10-11, 14, 52, 55, 83, 102). Thus, although the claimant's duties were not different in kind from his usual duties, the circumstances resulted in unusual exertion.

Moreover, we see no error in the ALJ's consideration of the claimant's activities during the months of August and September. In light of the medical evidence that physical exertion may have a prolonged effect on the claimant's heart, the ALJ did not err in concluding that these months were relevant to the issue of unusual exertion.

Similarly, there is substantial evidence the claimant experienced unusual exertion in October while performing the laser speed tests. The evidence indicates these duties subjected the claimant to traffic hazards which were unusual for him, and were particularly stressful. (Tr. pp. 20, 26, 43-44). Moreover, these duties were different than those the claimant ordinarily performed when installing traffic signals.

*3 It is true the ALJ might have reached different findings and conclusions. However, the mere possibility the evidence could support a different result affords no basis for relief on appeal. *May D & F v. Industrial Claim Appeals Office*, 752 P.2d 589 (Colo. App. 1988). The City next contends the evidence does not support the ALJ's finding that the usual exertion was a proximate cause of the claimant's heart attack. It argues that the "totality of the circumstances" demonstrates the claimant's heart attack was the natural consequence of his preexisting "risk factors." We disagree.

It is certainly true that § 8-41-302(2) required the claimant to prove that the unusual exertion proximately caused the heart attack. *Kinninger v. Industrial Claim Appeals Office*, 759 P.2d 766 (Colo. App. 1988). Ordinarily, causation is a question of fact for determination by the ALJ. *City of Durango v. Dunagan*, 939 P.2d 496 (Colo. App. 1997). Insofar as there was medical evidence of causation, it was the ALJ's province to assess its weight and credibility. *Rockwell International v. Turnbull*, 802 P.2d 1182 (Colo. App. 1990). Moreover, even if the testimony of a particular medical expert was internally inconsistent, the ALJ was free to resolve the inconsistency by believing only part of the testimony. *Colorado Springs Motors, Ltd. v. Industrial Commission*, 165 Colo. 504, 441 P.2d 21 (1968).

Here, the medical testimony of Dr. Taylor and Dr. Hall fully supports the ALJ's determination that the exertion which the claimant experienced in August and September, as well as the stress experienced in October, contributed to the occurrence of the heart attack. The City's argument notwithstanding, we perceive no inherent contradiction in Dr. Taylor's testimony that a heart attack occurs due to a sudden occlusion of an artery, but that physical exertion over a period of time may contribute to that result. In fact, there is evidence that the claimant experienced two cardiac "events" prior to actually suffering the heart attack. The ALJ's decision to resolve any possible inconsistency in Dr. Taylor's testimony in favor of the claimant affords no basis for relief on appeal. Similarly, the ALJ's decision to credit Dr. Taylor's and Dr. Hall's opinions over those of Dr. Blonder affords no basis for appellate relief.

II.

Relying on *Askew v. Industrial Claim Appeals Office*, 927 P.2d 1333 (Colo. 1996), the City next argues the ALJ should have apportioned the claimant's temporary total disability and medical benefits between the industrial heart attack and the claimant's preexisting hypothyroid condition. We reject this argument, although for slightly different reasons than those given by the ALJ. In our view, the City's reliance on *Askew v. Industrial Claim Appeals Office* is misplaced. *Askew* interpreted § 8-42-104(2), C.R.S. 1997, as permitting apportionment of permanent partial disability, but only where the preexisting condition constituted a "medical impairment" which was independently "disabling" prior to the industrial injury. Similarly, § 8-42-104(2) has been interpreted as permitting apportionment of permanent total disability benefits under the conditions established by *Askew*. See *Colorado Mental Health Institute v. Austill*, 940 P.2d 1125 (Colo. App. 1997); *Baldwin Construction, Inc. v. Industrial Claim Appeals Office*, 937 P.2d 895 (Colo. App. 1997).

*4 However, § 8-42-104(2) makes no reference whatsoever to temporary total disability benefits or medical benefits. To the contrary, the statute expressly limits apportionment to permanent total and permanent partial disability benefits. Consequently, *Askew* does not support apportionment of temporary total disability or medical benefits based on preexisting conditions.

In fact, disabling aggravations of preexisting conditions constitute compensable events. E.g. *H & H Warehouse v. Vicory*, 805 P.2d 1167 (Colo. App. 1990). Once compensability is established, as it was here, our courts have held that an employer is obligated to pay temporary total disability benefits if the claimant's wage loss is, to some degree, attributable to the industrial injury. See *PDM Molding Co., Inc. v. Stanberg*, 885 P.2d 280 (Colo. App. 1994); *Horton v. Industrial Claim Appeals Office*, 942 P.2d 1209 (Colo. App. 1996). Moreover, the medical benefits which the ALJ ordered paid appear reasonable and necessary to treat the claimant's heart attack, not hypothyroidism per se. See § 8-42- 101(1)(a), C.R.S. 1997.

We specifically note that this is not a case in which the ALJ apportioned temporary total disability and medical benefits between two insurers responsible for two separate industrial injuries, both of which contributed to the disability. The court has sanctioned apportionment between insurers in such cases. See *State Compensation Insurance Fund v. Industrial Commission*, 697 P.2d 807 (Colo. App. 1985). However, we know of no authority which would sanction apportionment of temporary benefits and medical benefits between an insurer and a claimant based on the existence of a preexisting condition.

IT IS THEREFORE ORDERED that the ALJ's order dated August 11, 1997, is affirmed.
INDUSTRIAL CLAIM APPEALS PANEL

David Cain

Bill Whitacre

NOTICE

This Order is final unless an action to modify or vacate the Order is commenced in the Colorado Court of Appeals, 2 East 14th Avenue, Denver, Colorado 80203, by filing a petition to review with the court, with service of a copy of the petition upon the Industrial Claim Appeals Office and all other parties, within twenty (20) days after the date the Order was mailed, pursuant to §§8-43-301(10) and 307, C. R. S. 1997.

1998 WL 401265 (Colo.Ind.Cl.App.Off.)