

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-60665

Summary Calendar

GRAY INSURANCE COMPANY,

Petitioner,

v.

DIRECTOR, OFFICE OF WORKER'S COMPENSATION PROGRAMS,
U.S. DEPARTMENT OF LABOR; AETNA CASUALTY & SURETY
COMPANY; JOSEPH H GROS,

Respondents.

On Petition for Review of a Final
Order of the Benefits Review Board
(94-2413)

June 2, 1997

Before KING, STEWART, and DENNIS, Circuit Judges.

PER CURIAM:*

An administrative law judge found that Gray Insurance Company is responsible, pursuant to the Longshore & Harbor Workers' Compensation Act, for the disability benefits due to Joseph H. Gros because of his heart condition, and the Benefits

*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Review Board affirmed. Gray Insurance Company appeals this determination of responsibility. Finding no error, we affirm.

I. BACKGROUND

The basic facts of this case are simple and undisputed. Joseph H. Gros was employed by Dixie Machine Welding & Metal Works ("Dixie") on September 14, 1989, when he suffered a heart attack. At that time, Aetna Casualty & Surety Company ("Aetna") was Dixie's insurance carrier, covering benefits under the Longshore & Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. §§ 901-950. Gros continued working for Dixie, and he suffered another heart attack on May 21, 1993, while working. At the time of Gros's second heart attack, Gray Insurance Company ("Gray") provided Dixie's coverage for LHWCA liability. After this second heart attack, Gros has not return to work and has been determined to be disabled.

Gros brought a claim for benefits under the LHWCA against Dixie, Aetna, and Gray. The administrative law judge ("ALJ") held a formal hearing and determined, in part relevant to this appeal, that Gray was responsible for Gros's disability benefits because the evidence showed that Gros's work at Dixie accelerated and aggravated his preexisting heart condition, leading to his second heart attack and resultant disability. The ALJ's decision was automatically affirmed by the Benefits Review Board ("BRB"), pursuant to the provisions of Public Law 104-134, 110 Stat. 1321

(Omnibus Appropriations for Fiscal Year 1996) because it had been pending before the BRB for more than one year. The ALJ's final decision is considered the final order of the BRB for purposes of review by this court.

Gray appeals, arguing that Aetna should be responsible because the second heart attack and resultant disability was the direct and natural result of or a natural progression of the compensable prior injury (the first heart attack).

II. ANALYSIS

This court reviews the decision of the BRB for errors of law and applies the same substantial evidence standard that governs the BRB's review of the ALJ's factual findings. *Mendoza v. Marine Personnel Co.*, 46 F.3d 498, 500 (5th Cir. 1995). We must affirm the BRB's decision if the ALJ's findings are supported by substantial evidence and are in accordance with the law. *Id.* Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951).

The law applicable to this case is well settled. As the BRB, affirmed by the Fifth Circuit, concluded in a case nearly identical to this case involving a dispute between two carriers over responsibility for a subsequent injury and disability,

if the disability . . . resulted from the natural progression of [a prior] injury and would have occurred

notwithstanding the [subsequent] injury, then the [prior] injury is compensable and accordingly, [the prior carrier] is the responsible carrier. If, on the other hand, the [subsequent] injury aggravated, accelerated, or combined with claimant's prior injury, thus resulting in claimant's disability, then the [subsequent] injury is the compensable injury, and [the subsequent carrier] is the responsible carrier.

Crawford v. Equitable Shipyards, Inc., 11 BRBS 646, 649-50 (1979) (citations omitted), *aff'd sub nom. Employers Nat'l Ins. Co. v. Equitable Shipyards*, 640 F.2d 383 (5th Cir. 1981). This rule is also referred to as the aggravation rule, see *Strachan Shipping Co. v. Nash*, 782 F.2d 513 (5th Cir. 1986), or the two-injury rule, see *Foundation Constructors, Inc. v. Director, Office of Workers Compensation Programs*, 950 F.2d 621 (9th Cir. 1991).¹

The ALJ relied on the testimony of Dr. Vorhoff, Gros's treating physician, who provided the only medical expert testimony. Dr. Vorhoff testified that while the second heart attack (and resultant disability) was "related to" and "a late sequela" of the first heart attack, he thought performing strenuous work in a hot environment (such as Gros performed) and the stress of working could exacerbate a preexisting heart condition and that the exertion at work precipitated Gros's second heart attack. Gray emphasizes Dr. Vorhoff's testimony that the second heart attack was a sequela of the first one to

¹ Gray agrees with this statement of the law, but asserts that the ALJ did not apply it. After reviewing the final order, we conclude that the ALJ clearly applied the correct law.

argue that the subsequent disability was a natural progression of the prior injury, but this ignores Vorhoff's further testimony about the relationship between working and the aggravation of Gros's condition. Based on Dr. Vorhoff's testimony, reasonable minds could conclude that the disability did not result from the natural progression of the first heart attack but was aggravated, accelerated, or exacerbated by working. Thus, there is substantial evidence to support the conclusion that Gray is responsible for Gros's disability benefits.

III. CONCLUSION

For the foregoing reasons, we AFFIRM the final order of the Benefits Review Board.