

FINAL AWARD DENYING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 02-086584

Employee: Nianguo Zhang, deceased

Dependent: Yeping Sun, Spouse

Employer: Dierbergs Markets, Inc.

Insurer: Self-Insured

Date of Accident: August 26, 2002

Place and County of Accident: St. Louis County

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated September 22, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Matthew D. Vacca, issued September 22, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 28th day of June 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Nianguo Zhang (Deceased)

Injury No.: 02-086584

Dependents: Yeping Sun (Spouse)
Employer: Dierbergs Markets, Inc.
Additional Party: N/A
Insurer: Self-Insured
Hearing Date: July 13, 2006

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: MDV:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: August 26, 2002
5. State location where accident occurred or occupational disease was contracted: St. Louis County
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? N/A
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? No
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: N/A
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Nianguo Zhang (Deceased) Injury No.: 02-086584

17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: \$275.00
19. Weekly compensation rate: \$133.39/\$133.39 (\$183.33/\$183.33)
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: None
22. Second Injury Fund liability: No

23. Future requirements awarded: None

Said payments to begin N/A and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Nianguo Zhang (Deceased)	Injury No.: 02-086584
Dependents:	Yeping Sun (Spouse)	Before the Division of Workers' Compensation
Employer:	Dierbergs Markets, Inc.	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Additional Party:	N/A	
Insurer:	Self-Insured	Checked by: MDV:tr

ISSUES

The issues presented for resolution by way of this hearing were accident/occupational disease, medical causation, and the liability of the Employer/Insurer for death benefits.

STIPULATION

The parties agreed that the Decedent died August 26, 2002 and that Decedent's dependent expended burial and medical expenses in the amount of \$10,608.02. The parties agreed that the average weekly wage is \$275.00 and the rate is \$133.39. I note the discrepancy but will honor the stipulation.

FINDINGS OF FACT

1. Claimant is the wife of Employee Nianguo Zhang. They had been married forty years having wed in Shanghai, China. Claimant was married to the Deceased at the time of his death. She speaks poor English.

The Zhang's traveled to the United States in 1994 and stayed three years. They returned in 2001 and the Claimant, the Decedent and their son, Dr. Min Zhang, all lived together.

2. In 2001 Employee went to work for Dierbergs. The Employee's son, Dr. Min Zhang, is a pediatrician and Dr. Zhang's wife is a surgeon. He went to medical school in Oklahoma. He trained in the ICU at the Washington University Neonatal Clinic and is board certified as a pediatric ICU physician.
3. The Employee had no prior heart disease, high blood pressure, diabetes, hypertension and had normal cholesterol.
4. In 2001 he had an official comprehensive exam before entering the United States. He quit smoking in 1998. He has no family history of heart disease and does have a family history of low blood pressure. Employee rode his bicycle everyday, swam, performed gymnastics and ran. He often rode his bicycle to work.
5. Tracy Terry testified by way of deposition. He is the assistant store manager at the Manchester Dierbergs store where the Employee worked. The Decedent worked there as a courtesy clerk and would bag groceries and round up shopping carts. The temperature on August 26, 2002 was in the high 80s according to Witness Terry's testimony. The temperature in the store was kept much cooler. The Decedent did not ride his bike to work on August 26.
6. Employee was on cart duty around 3:50 or 4:00 p.m. By 5:20 p.m. Employee was bagging groceries at Register 6 when, while in the process of filling a customer's grocery bag, he collapsed and suffered a myocardial infarction. Employee was pronounced dead forty-five minutes later.
7. Dr. Min Zhang is the son of the Decedent. He testified Employee lived in China for almost his entire life. He obtained employment at Dierbergs in 2001 where he remained until his death. The Decedent married Yeping Sun in Shanghai, China and she remained his wife at the time of the Decedent's death. The Decedent and Claimant originally moved in with Dr. Min Zhang upon their arrival in the United States. He testified that the Decedent regularly rode his bike to work and that shortly before his death he had moved into his own senior citizen apartment which required him to ride the bus to work due to the increased travel distance. Decedent was 63 years old at the time of his death.
8. Decedent generally worked at Dierbergs four or five days a week and averaged twenty-five hours per week of work. After clocking in on the date of his death, Decedent performed one round of cart duty. After his cart duty, Employee took a break and then shifted to bagging groceries. According to the checker with whom the Decedent worked, he seemed fine. He didn't bag anything unusual or heavy and at about 5:20, two hours after his work began, Employee leaned over the register and started gasping for breath. He was given CPR, emergency services were called and he was pronounced dead at St. Luke's Hospital. The Decedent's wife, Yeping Sun, declined an autopsy. The Certificate of Death lists the cause of death as natural causes.
9. Dr. Lipede finds that the heart attack was work related based on several criteria. He relied on the fact that there was no evidence of any warm-up activities prior to the Decedent arriving at work and beginning cart duty and a lack of any significant contributing factors in the health history. He believes that because the Decedent went from warm temperatures outside to cooler temperatures inside he was susceptible to ventricular arrhythmia. Dr. Lipede believes the Decedent was participating in exertional activity at the time of his death.
10. Dr. Poetz also testified on behalf of Decedent. Dr. Poetz believes that the Decedent's activities were a substantial and contributing factor to his death. He believes Decedent's death was caused by acute myocardial infarction. He bases his opinion on the fact that acute attacks such as this one result from and occur during times of stress or physical activity, that the Decedent had a relatively clean medical history, and that he was in a demographic range rendering him more susceptible generally to sudden cardiac attack.
11. Decedent's son, who is a pediatric ICU physician, testified that he believes Decedent's exertional activities at the time of his death certainly are causally related to the myocardial infarction. He combines a lack of other contributing factors with the activities performed at the time of the death so as to opine work was contributory.
12. Dr. Mankowitz testified on behalf of Employer. He was unable to form a diagnostic impression of the cause of Mr. Zhang's death within a reasonable degree of medical certainty.
13. Dr. Mankowitz believes that because a post mortem examination was never performed it was impossible to determine the specific cause of death. He concluded that without evidence of Employee doing something more than taking and bagging groceries, as described by the checker at the time of collapse, it was highly unlikely that exertion caused the Employee's death. Dr. Mankowitz explained that Employee probably had a sudden cardiac arrest and that one cause for cardiac arrest is arrhythmia, which is either a very fast or very

slow heart rhythm. This type of abnormality comes from: 1) coronary artery disease with myocardial infarction or sudden occlusion of a blood vessel of the heart; 2) pulmonary embolism which is a blood clot that usually travels from the legs to the artery of the lungs and causes a sudden blockage of the blood vessels resulting in lung tissue death; 3) a ruptured aneurism which is enlargement of a blood vessel that suddenly bursts causing loss from the vascular system into the rest of the body which would then cause the heart to stop; 4) a primary electrical disturbance - some patients have an underlying congenital electric vulnerability or are born with a susceptibility to develop very fast or very slow heart rhythms which occur spontaneously and without precipitation; and 5) cardiomyopathy which is a heart muscle abnormality which can include thickening of the heart muscle and an infiltrative process into the muscle or an intrinsic weakness of the muscle. Because of the multiple possibilities, it was Dr. Mankowitz' opinion it was vital to ascertain the specific cause of death and only then could you attempt to work out the mechanism by which the substantial factor in causing that arrest could be determined.

RULINGS OF LAW

Claimant has failed to satisfy her burden of proof that the Decedent sustained a work related injury. The fact that an employee dies while at work does not establish the death arose out of the employment or that the dependents are entitled to relief. Boos v. Grey Eagle Distributors, Inc., 745 S.W.2d 837, 838 (Mo.App. E.D. 1988). The burden of proof is on the claimant. Id. Where the evidence is that the heart attack is just a spontaneous event in the employee's life his dependents are not entitled to relief. Id. The death certificate does not list the cause of death. See, Wagner-Jones v. Harper Joergen Construction Co., 145 S.W.2d 511 (Mo.App. S.D. 2004). Without an autopsy, the cause of death in this case is merely conjecture.

Claimant's experts assume facts not in evidence. They assume exertional activity which is contradicted. They also assume heart attacks cannot happen if a person has a "clean" medical history. This is clearly not true. The opinions are speculative. We will never know why Mr. Zhang died.

Date: _____

Made by: _____

Matthew D. Vacca
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation

Employee: Nianguo Zhang (Deceased)

Injury No.:

02-086584