

APPEAL NO. 92189

This appeal arises under the provisions of the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). A contested case hearing was held in (city), Texas, on April 10, 1992, with (hearing officer) presiding as hearing officer. The hearing officer found that respondent experienced a mental trauma injury in the course and scope of her employment for (employer), which arose from a sudden and stressful incident on (date of injury), during which respondent was severely chastised by her immediate supervisor. He determined this incident caused collapse and hospitalization for chest pain eventually attributed to mitral valve prolapse in the heart, but which the hearing officer determined did not constitute a "heart attack." The appellant requests review of the hearing officer's determination, arguing that the evidence and case law on mental trauma injuries do not support compensability. (Essentially, this is a point of appeal for "insufficient" evidence). Appellant also argues that the evidence does not support a finding of a definite time, place, or cause of the mental trauma injury. The respondent asks that this decision be upheld, and further raises, for the first time on appeal, an assertion that the appellant has not timely contested compensability within 60 days of written notice of injury as required by Art. 8308-5.21, and asks that this panel so find.

DECISION

Finding the evidence sufficient to support the decision of the hearing officer, and finding no reversible error, we affirm.

The parties agreed at the outset that the issue before the hearing officer was "whether claimant sustained an injury in the course and scope of her employment, or if any disability is related to some other condition." Appellant conceded that respondent suffered a heart attack while working. Appellant's theory was, however, that respondent either had a preexisting disease or that her attack was caused by medication taken for treatment of other physical conditions, and not related to the episode on (date of injury). During the testimony, the appellant and the hearing officer referred to the episode as a "heart attack." Respondent's position was that the chest pain episode and subsequent inability to work were caused by the abusive behavior of her supervisor, (CM), but she noted that she had been told by her doctor that her chest episode was not a heart attack. In summary, the evidence presented was based primarily upon a theory of "heart attack," and, notwithstanding the fact that the unresolved issue, as indicated by the benefit review conference report, appears to include a question about the cause of "disability" as that term is defined in Art. 8308-1.03(16), nearly all evidence brought forward at the hearing relates to the "course & scope" issue. There are no specific findings and conclusions adjudicating an issue of whether any disability relates to the compensable injury, but neither party has appealed this, so the appeals panel will not address it.

(Claimant), the respondent, was employed by the employer in January 1991 as associate manager of one of its stores; she worked and got along with (CM), the store manager, fairly well, until April 1991, when she was promoted to the assistant manager

position. The respondent described the relationship with CM from the April promotion through the date of injury as nearly continuously stressful and acrimonious. On (date of injury), she described in great detail an incident in which CM, upset over an error by someone under respondent's supervision, and respondent's reporting of this to the District Manager (JM) before she reported it to CM, berated her loudly, with the use of foul language, and admonished her in threatening tones that she would learn the chain of command before the day was out. Respondent was able to eat little lunch, and, after briefly waiting on some customers, eventually collapsed with chest pains and became disoriented. She was hospitalized for a few days for treatment and testing.

Respondent acknowledged that she had been under treatment for depression (dysthymia) since 1986. She stated she had not been treated prior to (date of injury), for heart problems. She had two prior work related injuries and compensation claims, for an accidental injury to her neck and shoulder, and a carpal tunnel syndrome claim, within this time period. Her treating physician was (Dr. F). Dr. F, on August 27, 1991, wrote in a general letter "To Whom It May Concern" that respondent's "final diagnosis was mitral prolapse, a problem that is clearly exacerbated by stress." He notes that respondent attributes her stress to conflict with her immediate supervisor, and "it is clear that she will not be able to return to work until this conflict is resolved." A letter dated March 19, 1992, from Dr. F to the Texas Rehabilitation Commission notes that he has treated respondent since March 1992 for some problems, including prior work injuries and "dysthymia problem with secondary anxiety depression and panic disorder." The letter makes no mention of the mitral valve problem or the (date) disagreement with respondent's supervisor as the reason for difficulty to rehabilitate for normal work.

Cardiology reports relating to respondent's hospitalization note that she reported a similar occurrence the year before; that an echocardiogram documented "thickened mitral valve leaflets with mild mitral valve prolapse;" that other cardiac aspects appeared normal; and that the primary diagnosis of the cardiologist was: "1. chest pain which is atypical for cardiac ischemia with no evidence or objective testing for a cardiac source; 2. possible exercise induced bronchospasm; and, 3. probable anxiety syndrome with panic attacks."

The appellant's sole medical evidence in support of its contention that mitral valve prolapse was not related to work was an excerpt from the Merck Manual. Appellant also submitted pages from the Physicians Desk Reference on two medications taken by respondent around the time of the incident (Elavil and Desipramine), but neither shows cardiac side effects that correspond with the conditions diagnosed in respondent.

A letter from JM, the district manager, speaks well of respondent but is very critical of CM's conduct as a supervisor in general and toward respondent in particular. The letter notes efforts to relocate respondent to another store away from CM. JM is no longer employed by the employer's headquarters.

Article 8308-4.02(a) provides that "[i]t is the express intent of the legislature that

nothing in this Act shall be construed to limit or expand recovery in cases of mental trauma injuries." Article 8308-4.02(b) then provides that "[a] mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury for the purposes of this Act." It should be noted that an aggravation or worsening of a previously-existing condition, which aggravation arises from the course and scope of employment, is itself considered an "injury"; this is true even if the prior condition is not itself job-related. Gulf Insurance Co. v. Gibbs, 534 S.W.2d 720 (Tex. Civ. App.-Houston [1st Dist.] 1976, writ ref'd n.r.e.). Thus, a carrier who attributes disability to a preexisting condition has the burden of showing that such condition was the sole cause of incapacity. Texas Employers' Insurance Co. v. Page, 553 S.W.2d 98, 100 (Tex. 1977).

It has been observed that most of the statutory provisions of the 1989 Act pertinent to the matter of mental trauma injury are substantially similar to those in the predecessor statute and, therefore, most of the Texas case law interpreting such provisions is probably applicable under the 1989 Act, except for that involving trauma caused by personnel actions. 1 Nations & Kilpatrick, Texas Workers' Compensation Law, Chapter 13, page 13-1. The Texas Supreme court has held that mental trauma can produce a compensable accidental injury, even without an underlying physical injury, if it arises in the course and scope of employment and is traceable to a definite time, place, and cause. Bailey v. American General Insurance Company, 154 Tex. 430, 279 S.W.2d 315 (1955); Olson v. Hartford Accident and Indemnity Company, 477 S.W.2d 859 (Tex. 1972); Transportation Insurance Company v. Maksyn, *supra*. Some incidents, however, have been determined not to be accidental injuries and thus not compensable. See, e.g., Williams v. Texas Employers' Insurance Ass'n, 663 S.W.2d 94 (Tex. App.-El Paso 1983, writ ref'd n.r.e.) where an employee had a "misunderstanding" with a coworker and concluded the coworker was inciting other employees against her. After noting the salient requirements of Bailey, Olson, and Maksyn concerning mental trauma resulting from an accidental injury, the El Paso court concluded that the "misunderstanding" between the two employees didn't qualify as a compensable mental trauma injury.

Similarly, the mental trauma resulting to an employee who was reprimanded and transferred to another position in the business was held to be noncompensable. Duncan v. Employers Casualty Company, 823 S.W.2d 722, 725-726 (Tex. App.-El Paso 1992, n.w.h.). The Duncan Court observed that "[b]eing reprimanded, deserved or undeserved, for one's job performance may well be, from both the employer's and the employee's standpoint, a natural part of any job causing mental stress but the resulting injury, if any, is not suffered in or about furtherance of the affairs of the employer." The El Paso court went on to cite its comment in Marsh v. The Travelers Indemnity Company of Rhode Island, 788 S.W.2d 720, 721 (Tex. App.-El Paso 1990, writ denied) that "[d]isappointment in job expectations, worry and anxiety over job loss, failure to be promoted, and the like have long fallen outside the ambit of 'injury sustained in the course of employment' simply because such emotional or mental states are not connected with the employer's business."

The hearing officer found that appellant experienced mental trauma leading to chest pains and exacerbated mitral valve syndrome, as a result of the episode with her supervisor, and that this was not action arising principally from a legitimate personnel action. Although the record could lead another fact finder to conclude that no "injury" occurred, we cannot say there is not sufficient evidence to support the hearing officer's finding that stress exacerbated her mitral prolapse condition (bringing about chest pains, collapse, and hospitalization) and we thus affirm such a finding since it is not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Further, although the action of CM occurred as a work-related reprimand, there is evidence from CM's own supervisor that the manner in which this was done violated the employer's standards of supervision, such that the hearing officer could conclude that the exception under Art. 8308-4.02(b) did not apply to the facts of this case. Finally, under the evidence developed in this case, his refusal to find a "heart attack" is supportable.

We will not substitute our judgment for that of the hearing officer if the decision is supported by some evidence of probative value and is not against the great weight and preponderance of the evidence. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865, 868 (Tex. App.-Texarkana 1989, no writ).

As to the respondent's contention that appellant waived defense to this claim, this issue was not raised in either the benefit review conference or the contested case hearing, and we will not consider it on appeal. See Texas Workers' Compensation Commission Appeal No. 91057 (redacted Docket No.) decided December 2, 1991.

The decision and order are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge