

APPEAL NO. 92210

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp 1992). On April 28, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He did not find that a specific event caused claimant's (appellant herein) mental trauma injury and determined that it was not compensable. Appellant contends that her injury was caused by a specific event.

DECISION

Finding sufficient evidence to support the hearing officer's decision, we affirm.

Appellant is a personnel administrator for the City of (city) with approximately 17 years of service. On (date of injury), she left work after a meeting with her supervisor and (AV), The Assistant Director of Personnel for the City of (city). She did not return to work until February 10, 1992. (Dr. D) in a letter dated April 18, 1992, said that appellant had been cared for from (date) to the present for post-traumatic stress disorder, major depression, generalized anxiety disorder, and panic attacks. He added, "[p]atient states that the abuse is long running and range from sexual to humiliation, and patient states the most abusive thing accrued on (date of injury)."

AV began work for the respondent in 1990. In January 1991, he issued a reprimand to appellant which was successfully appealed. Appellant, on February 25, 1991, alleged sexual harassment against the "Personnel Department" in a letter to the City Manager's Office. A memorandum dated March 6, 1991, from the Assistant City Manager to appellant states that an investigation was conducted in response to her allegation and found no discrimination. In appellant's claim for workers' compensation dated August 16, 1991, appellant specified (date of injury), as the date of injury but added the words, "continuing harassment and discrimination by (AV)" in item 12 of the form. On February 14, 1992, appellant wrote to the Director of Personnel that her illness was due to discrimination, but also referred to the (date of injury) incident. Appellant then refers to "problems of discrimination and assault" in the same letter.

In her testimony, appellant stated that harassment and discrimination by AV did "contribute some" to her problems but that the (date of injury) incident caused her to leave the office sick on that day. She also alluded to hypnosis by Dr. D in which she pointed to being sexually assaulted (later described to have been in 1985 while with the City of (city)) and to the (date of injury) incident as being the reason why she was off work as long as she was.

Appellant stated that on (date of injury), AV wanted an activity report and an action plan from her in regard to an affirmative action assignment. She acknowledged that the overall assignment had been given to her some time in the past and that on April 30, 1991, AV wrote a memo to her immediate supervisor, (TC), saying that appellant needed to

provide the requested material. Appellant also stated that she did not get the April 30 memo until (date of injury). Appellant said she needed to take off a half day on (date of injury), but AV demanded that she provide the requested material before she left that day. Appellant said that she could not do in one day what he was asking of her. AV, appellant and appellant's supervisor were in her supervisor's office, which is a space enclosed by movable partitions five feet high; there is no door to be open or shut. Appellant said that AV during the meeting got louder and berated her for having represented that she could do a certain level of work when hired and then not doing it--he said if she could not do the work, that she had lied about her capability. At the end of the meeting, AV followed her into her office. There was no threat of bodily harm, no physical intrusion, and she felt herself to be in no physical danger. There was no cursing. She then described her physical reaction, including pain in her stomach, chest pain, and legs shaking. She did not feel capable to drive right away but later did drive herself home. During the time in the supervisor's office, they all were seated. After they separated, appellant said she could hear her supervisor and AV laughing.

The first witness for appellant was (KC) who is an employee in the personnel department and knows appellant. From about 10 feet away, she could easily hear AV and appellant's voices on (date of injury). She characterized the tone as "unusual" and heard AV say that the work must be done that day. She agreed that she had been told also at various times to complete work before leaving for the day but said it depends on how it is said. She observed appellant shaking as she left the office. She had heard of appellant's ongoing problem with AV, but appellant did not appear stressed. She did say appellant had said it (the ongoing problem) was "nerve wracking" and that she had lost sleep.

(JQ) identified herself as a counselor for the City of (city) in the employee assistance program. She said that appellant had not come to her for guidance, but rather, since appellant had more longevity, she sought advice from time to time from appellant. She was surprised at how well appellant was able to function with all she went through. She heard more from others than she did from appellant. She believed that the stress in appellant's job had encompassed January 1991, past (date of injury).

AV testified that he did not threaten appellant; he was not abusive; and he did nothing to intimidate her. He said he could have simply ordered her to do the action plan but tried to show her why she should agree with his position. He agreed that the (date of injury) meeting took place and said it lasted about 15 to 20 minutes. He acknowledged the reprimand he gave appellant and the claims she had filed. He states he never sexually harassed her. In his opinion he dealt with appellant in the traditional way on (date of injury) in an attempt to get the work done. In response to the hearing officer, he said he had never raised his voice to appellant.

The hearing officer referred to University of Texas v. Schieffer, 588 S.W.2d 602 (Tex. Civ. App.-Austin 1979, writ ref'd n.r.e.), and respondent referred to Transportation Ins. Co. v. Maksyn, 580 S.W.2d 334 (Tex. 1979). In addition, Brown v. TEIA, 635 S.W.2d 415 (Tex.

1982), Dir. State Emp. Workers' Comp. Div. v. Camarata, 768 S.W.2d 427 (Tex. App.-El Paso 1989, no writ) and Duncan v Employers Cas Co, 823 SW2d 722 (Tex App-El Paso 1992, no writ his'y) were reviewed. These cases require that a definite time, place, and cause be found in order to determine that an accidental injury was due to mental trauma. Conversely, no recovery has been allowed when an occupational disease was due to mental trauma.

The hearing officer found that appellant suffered no harm to the physical structure of her body. That finding is sufficiently supported by the letter of appellant's doctor which described post-traumatic stress disorder, depression, anxiety disorder, and panic attacks. The other dispositive finding stated that a gradual buildup of stress, not a specific event, caused the mental trauma injuries. This finding is sufficiently supported both by appellant's own testimony, her doctor's letter of April 18, 1992, her claim, and her letter of February 14, 1992, in which she ascribed her illness to discrimination. The hearing officer did not make a finding as to whether the meeting of (date of injury), constituted a legitimate "personnel action" under Article 8308-4.02(b) of the 1989 Act, and that question is not considered in this decision on appeal.

The findings and conclusions of the hearing officer are based on sufficient evidence of record and the decision is affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge