

APPEAL NO. 92502

A contested case hearing was held on August 24, 1992, in (city), Texas, (hearing officer) presiding. The single issue was whether the appellant (hereinafter "claimant") sustained a compensable injury in the course and scope of her employment on (date of injury). Claimant's contention was that the irregularity of her work hours, coupled with the imposition of mandatory overtime, resulted in circadian desynchronization or arrhythmia which caused her collapse at work on (date of injury) and her inability to return to her job subsequently.

The hearing officer found, in short, that the claimant did not specify the physical injury that she claims to have sustained, and there was no evidence to show that she sustained an injury, or an occupational injury, in the course and scope of her employment on the above date. Claimant argues on appeal that the definition of "injury" should be read expansively pursuant to the Texas Supreme Court's decision in Bailey v. American General Insurance Co., 279 S.W.2d 315 (1955), and contends that the hearing officer should not have ignored the record's *bona fide* and uncontradicted medical opinions without sufficient basis.

DECISION

We affirm the decision and order of the hearing officer.

Claimant worked for respondent, a self-insured city (hereinafter "employer"), as a stores specialist for the police department. Since the time she was hired in December 1990 she had worked the swing shift, with the following hours: 7:00 a.m. to 3:00 p.m. Tuesday, 3:00 p.m. to 11:00 p.m. Wednesday and Thursday, 11:00 p.m. to 7:00 a.m. Friday and Saturday, and off Sunday and Monday. She was first hired by employer as a jailer in 1984, a job in which she worked evening and night shifts. She said when she was hired as a stores specialist she did not fully understand what the swing shift entailed, and that when she did she was not in a position financially to do anything about it, although she tried unsuccessfully to get her schedule changed.

The claimant testified that during the work week beginning January 7, 1992 she was required on three occasions to come in four hours earlier than her regular starting time to fill in for the person on the previous shift. On Tuesday, January 7th, she came in at 3:00 a.m. rather than 7:00 a.m. Because she had finished all her duties by 11:00 a.m., she asked for and received permission to leave early because she felt so tired. She worked her usual schedules Wednesday through Thursday. On Friday she came in four hours early and worked a 12-hour shift. On (date of injury), a Saturday, she checked in at work at 7:00 p.m., four hours prior to the beginning of her regularly scheduled shift. She said she had slept all that day and the day before, and that she came to work extremely fatigued, but that she had done nothing out of the ordinary for the 72 hours prior. Except for when she was on her feet giving out equipment, she said she sat at a desk and filled out paperwork. Around 8 p.m., as she was handing a set of keys to a police sergeant, she began to feel dizzy and faint. She said her vision went out "like snow on a TV screen," and she blacked out. When

she came to, she was lying on the floor in the office disoriented and not sure where she was or what had happened. She was taken by ambulance to a local hospital, and she testified that she has not returned to work since that evening. She said for three or four months she suffered significant after-effects from her collapse, including dizziness, intense fatigue, lethargy, forgetfulness, menstrual problems, and loss of appetite. She said except for normal bruising, she was not injured by the fall itself.

In October 1991 claimant suffered a severe major depressive episode for which she had been hospitalized. She continued to be under the care of a psychiatrist, Dr. J. (Dr. W), and was taking medication (Prozac) at the time of her collapse. On January 10, 1992, she went to see Dr. W, who on that date wrote a letter to a representative of employer which stated in part as follows:

It is my recommendation that [claimant] be given a regular daytime work schedule. She needs a stable work environment that is less stressful and not constantly changing it's [sic] times. A shift change is also necessary in order for [claimant] to see her therapist on a consistent basis during regular business hours. It is my opinion that if she is not transferred to a day shift, her mental status might deteriorate and she might have a relapse of her depression.

On cross-examination, claimant denied that the symptoms after her collapse were the same as those she experienced during the depressive episode.

The claimant was also seen by (Dr. C). On January 13th, Dr. C wrote as follows:

[Claimant] has had an enormous amount of difficulty with her scheduling and has reached a point of intense fatigue from her erratic sleep, habits that have been forced on her by her job. I feel unequivocally she should be given a work pattern to benefit her general health. Otherwise I feel that she will have to go ahead and have some type of correction from Worker's (sic) Compensation to help her overcome the intense fatigue and exhaustion that she has had as a result of the present scheduling of her job - not the stress of the job, but from the scheduling of the hours.

On February 13th Dr. C signed a form releasing claimant to no work of any nature until her schedule was changed.

A June 15th affidavit of Dr. C was made part of the record at the hearing. In that affidavit Dr. C stated that medical sciences recognize the circadian timing system, a physiological system responsible for measuring time and synchronizing an organism's internal process with the daily events in its environment.

The affidavit also said, "[t]hough many people are able to maintain schedules that vary constantly from day-to-day, such constantly changing schedules conflict with the

establishment of an internal and stable circadian rhythm. As to a particular person's ability to adopt (sic) to such changes, 'there are major differences in the tolerances of different individuals to chronically shifting schedules.' However, 'it is clear that such schedules . . . can be tolerated only by a certain segment of the population.' [citation omitted]

"It is the conflict between external time requirements and cues such as found in rotating shift work and the body's need for homeostasis which results in deleterious health consequences to certain individuals who, according to the International Classification of Sleep Disorders, may suffer from 'Shift Work Sleep Disorder' or other consequences of circadian arrhythmia." Dr. C's affidavit summarized the claimant's work history, then stated as follows:

[Claimant's] injury is not mental or psychological in nature. It involves an interference with biochemical and electrical regulations of the body caused by the superimposition of a constantly changing external time system over internal circadian rhythms without sufficient resynchronization being allowed to occur.

Based upon my examinations of [claimant], my medical training, accepted medical positions in this area of injury, and the facts of this case, I believe that [claimant's] inability since (date of injury), to work at her job at the (city) Police Department or perform any swing shift or rotating shift work is a direct consequence of her prior rotating shift work and the exacerbation of circadian desynchronization brought about by the mandatory overtime. I believe that her collapse and subsequent disability would have not occurred without these work place events since no physical explanation was discovered.

In conclusion, it is my testimony that the producing cause for [claimant's] injury (defined as a cause which, in a natural and continuous sequence, produces an injury or incapacity, and without which such injury or incapacity would not have occurred) and subsequent inability to return to work or any rotating shift work, is traceable to [claimant's] work place and identifiable as the rotating shifts upon which was superimposed the mandatory overtime. Though some people might have been capable of such, [claimant] was not and is not. This opinion, as are all opinions throughout this affidavit, is held to a reasonable degree of medical probability.

Attached to Dr. C's affidavit was one page from a study entitled "Self-reported health and well-being amongst night security guards: a comparison with the working population," 34 Ergonomics No. 5, p. 525, which stated that "a considerable body of data has demonstrated that shift work, particularly during the night, is detrimental to health and well-being."

Also attached and referenced in the affidavit was a 1978 technical report from the National Institute for Occupational Safety and Health entitled "Health Consequences of Shift

Work." The report contained the results of a 30-month study of 1,200 nurses and 1,200 food processors, each group containing approximately equal numbers of day, afternoon, night, and rotating shift workers. The report stated, in part,

The results of the study seem to support the view that there is a tendency for shift work to have a deleterious effect on the physical and psychological well-being of some shift employees, particularly on their sleep patterns, digestion, mood, and personal, social, and domestic activities . . . Rotators seem to consistently fare the worst, followed closely by night shift workers. They tend to have more serious physical complaints, more accidents, more clinic visits, more digestive problems, worse sleeping problems, more fatigue, more menstrual problems, to use alcohol more, to encounter more interference with their sex lives, and to find less satisfaction in their personal and domestic pursuits than do other shift workers. Our findings tend to identify rotation as being a scheduling system that imposes excessive physical and psychological costs on shift workers.

Also in the record was a July 16, 1992 letter from (Dr. J), Sleep Medicine Associates of Texas, which stated he examined the claimant on June 16th, reviewed medical documentation from Drs. C and W, and concluded:

To a degree of reasonable medical probability it is my impression that the producing cause of [claimant's] collapse at work and inability to return to her position . . . working her shift requirements is indeed found in her work place. The rotating shift work combined with the mandatory overtime of the week in which the collapse occurred produced a circadian desynchronization resulting in collapse. Additionally, Dr. C was acting within good medical judgment in refusing to return [claimant] to that work schedule inasmuch as she was at risk of additional or increased injury.

Medical science characterizes this type of injury (i.e. pathological level of circadian desynchronization) as physical in nature and this is accurate in [claimant's] case, her injury and inability to work is a physical condition as opposed to a "mental" or psychological injury." (emphasis in original)

The 1989 Act defines "compensable injury" as an injury that arises out of and in the course and scope of employment for which compensation is payable under the Act. Article 8308-1.03(10). "Injury" is defined as damage or harm to the physical structure of the body and those diseases or infections naturally resulting from the damage or harm; the term also includes occupational diseases. Article 8308-1.03(16). A compensable injury thus is either the result of an accident or of conditions existing over a period of time.

We agree with the hearing officer that the evidence does not support a claim of accidental injury from a particular work-related event. An accidental injury is defined as an

undesigned, untoward event traceable to a definite time, place, and cause. Olson v. Hartford Accident and Indemnity Company, 477 S.W.2d 859 (Tex. 1972). By claimant's own testimony, no single, sudden external event or occurrence triggered her collapse. Rather, claimant's position is that it was the result of cumulative conditions of the work place, i.e., her hours of employment.

The Act defines occupational disease as a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body. The term includes repetitive trauma injuries but does not include ordinary diseases of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease. Article 8308-1.03(36).

"Repetitive trauma injury" is defined as damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment. Article 8308-1.03(39). The Texas Supreme Court has held that repetitious mental traumatic activity, as distinguished from physical activity, does not constitute an occupational disease for purposes of workers' compensation. Transportation Insurance Company v. Maksyn, 580 S.W.2d 334 (Tex. 1979). See also Article 8308-4.02(a), which expresses legislative intent that nothing in the 1989 Act be construed to limit or expand recovery in cases of mental trauma injuries.

The hearing officer found that the claim in this case was for damage or harm caused by repetitious mental traumatic activities, which does not constitute a compensable injury. Claimant argues that the evidence shows her injury was of a physical nature, and was a physical condition as opposed to a mental or psychological injury. First, the cause of her injury was clearly not of a physically repetitive nature. Case law has held that a compensable repetitive trauma injury is one arising out of traumatic activities that are physical. University of Texas System v. Schieffer, 588 S.W.2d 602 (Tex. Civ. App.-Austin 1979, writ ref'd n.r.e.). This case is thus distinguishable from those in which compensation was awarded for injuries arising from physical stimuli.

Second, courts in denying compensation for mental trauma injuries have nevertheless recognized that repetitive mental and emotional events can result in physical manifestations. See e.g. Maksyn, *supra* (hypertension and vertigo); Schieffer, *supra* (esophageal spasm). This fact alone has made those injuries no more compensable.

Third, the record contained evidence to support the hearing officer's determination, as Dr. W indicated that claimant's work environment was stressful and could cause her mental condition to deteriorate. By contrast, Drs. C and J stated that claimant's injury was physical in nature. The hearing officer as fact finder is entitled to weigh the medical evidence in the record and may give one doctor's opinion more weight than another's. Atkinson v. U.S. Fidelity & Guaranty Co., 235 S.W.2d 509 (Tex. App.-San Antonio 1950, writ ref'd n.r.e.). The opinion evidence of expert medical witnesses is but evidentiary and is

never binding on the trier of fact. Hood v. Texas Indemnity Ins. Co., 209 S.W.2d 345 (Tex. 1948).

Claimant cites Bailey v. American General Insurance Co., *supra*, for the proposition that the Act's phrase, "physical structure of the body," must be read expansively. We do not disagree that that case requires that the concept of physical structure of the body embrace an entire, interrelated and interdependent system. However, Bailey must be read in conjunction with the Act's clear directive with regard to mental trauma.

We conclude that the record contains no evidence that claimant's injury was the result of accidental injury that arose out of and in the course and scope of her employment which is traceable to a definite time place, or cause. Nor is there evidence that the claimed injury was the result of repetitious physical trauma that occurred over time and arose out of and in the course and scope of claimant's employment. Because claimant's claimed injury resulted from other than physical stimuli, it is more in the nature of a repetitive mental trauma and is thus not compensable. We therefore conclude that the hearing officer was correct in determining that the claimant did not suffer an occupational injury, and thus did not sustain a compensable injury in the course and scope of her employment on (date of injury).

The decision and order of the hearing officer are accordingly affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Joe Sebesta
Appeals Judge