

APPEAL NO. 92554

On August 3 and September 21, 1992, a contested case hearing was held in (city), Texas with (hearing officer) presiding as the hearing officer. The hearing officer determined that the employer's change of appellant's job assignment was a legitimate personnel action and that appellant's mental trauma injury that resulted from the legitimate personnel action was not a compensable injury under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). Accordingly, the hearing officer denied appellant's claim for workers' compensation benefits.

Appellant, hereafter the claimant, filed a request for review stating that she disagrees with the hearing officer's decision. The claimant's attorney also filed a request for review on behalf of the claimant which requests review of the hearing officer's decision.

Respondent, hereafter the carrier, responds that both requests for review should be "stricken" as they are insufficient requests, and in the alternative requests that one or the other of the requests should be stricken as both the claimant and her attorney should not be allowed to file separate requests; either the claimant's attorney was without authority to file the request he filed or the claimant's request was an unauthorized supplemental request. Respondent further responds that the decision of the hearing officer is supported by the evidence and asks that the decision be affirmed.

DECISION

The decision of the hearing officer is affirmed.

Both the request for review filed by the claimant and the request for review filed by the claimant's attorney on behalf of the claimant were timely filed and each is sufficient to invoke the jurisdiction of the Appeals Panel. The claimant's request for review, which was filed after her attorney's request for review, is treated as a timely filed supplemental request for review. See Texas Workers' Compensation Commission Appeal No. 92406, decided September 23, 1992.

After a review of the record, we find that the hearing officer's statement of the evidence as set forth in her decision is a fair and accurate summary of the evidence and is repeated herein with minor additional references to the record.

The employer, (WP's), is in the retail clothing business, and the carrier was the employer's workers' compensation insurance carrier on (date of injury). The claimant testified that she worked as the accounts payable manager for the employer and had been employed by the employer for 37 years. She testified that at approximately 4:45 p.m. on Friday, (date of injury), the employer's vice president, (MN), called her into his office and told her that her job position had been changed from accounts payable manager, a supervisory position, to auditor, a nonsupervisory position, and that her salary would be reduced from \$12.00 per hour to \$8.00 per hour. (DG), the employer's assistant controller, told the

claimant that he would assume her duties as accounts payable manager. The claimant said that she was given no reason for the change in positions and that she was shocked and disappointed when told of the change. The claimant said that she immediately went to the president of the company who explained to her that the company had lost a lot of money and that he hoped she would accept the new position and stay with the employer. The claimant acknowledged that she had had a previous discussion with the employer's vice president concerning the need to reduce part-time employees in her department.

The claimant and her husband testified that during the following weekend she experienced depression, rapid heartbeat, and sleeplessness. The claimant's husband took her to a hospital emergency room on Sunday, (date) because he was concerned about her rapid heartbeat. The claimant said she was discharged from the hospital on (date).

In a letter to the claimant's attorney dated May 20, 1992, (Dr. B), M.D., stated that after about one day of shock and numbness (following the (date of injury) meeting), the claimant became emotionally upset and experienced physical symptoms that raised concern about a possible cardiovascular incident. The claimant had had open heart surgery in 1990. (Dr. B) related that the claimant was hospitalized, her cardiac medications were adjusted, and she was started on anti-anxiety and anti-depressant medication. (Dr. B) diagnosed claimant as having an adjustment disorder with mixed emotional features, and arteriosclerotic cardiovascular disease with treated hypertension and a history of triple coronary artery bypass procedure in 1990. He opined that the claimant was essentially back to her normal functional capability, but he recommended that she not attempt to work in the situation where she experienced the "traumatic incident." (Dr. B) stated that the claimant's psychiatric symptoms and treatment followed the emotional trauma that the claimant experienced by the unexpected announcement of the major change in her employment status at the employer's. The claimant did not return to work after (date of injury).

The vice president and the assistant controller testified that the employer changed the claimant's job position and salary because the employer was experiencing financial problems and management had determined that cost reductions had to be made. These witnesses testified that to reduce costs, another supervisor in the business office was also reassigned to a position with a lower salary, and two clerical employees were terminated. In addition, the employer made substantial reductions in its alteration department, closed three retail stores, and opened two discount clothing stores. These witnesses also testified that at the meeting with the claimant on (date of injury) they explained to her the employer's financial difficulties and the need to reduce costs and that they wanted her to stay with the company in her new position. The assistant controller testified that he assumed the claimant's duties as accounts payable manager in addition to his other responsibilities as assistant controller in an effort to reduce costs.

Article 8308-4.02 of the 1989 Act provides as follows:

Policy Statement on Mental Trauma Injuries.

(a) It 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.

(b) 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.

The hearing officer made the following pertinent findings of fact and conclusion of law:

Findings of Fact

No. 5. Claimant suffered an adjustment disorder with mixed emotional features as a result of [the employer's] change of her job assignment and salary on (date of injury).

No. 6. [The employer] changed the claimant's job assignment and salary as a part of a cost reduction plan developed in response to employer's economic problems.

No. 7. [The employer's] change of claimant's job assignment and salary on (date of injury) was a legitimate personnel action.

Conclusions of Law

No. 4. Claimant's mental trauma injury is not an injury for which compensation is payable pursuant to Article 8308-4.02(b) of the Texas Workers' Compensation Act.

Having reviewed the record, we conclude that the hearing officer's findings of fact and conclusion of law as set forth above are sufficiently supported by the evidence, and are not against the great weight and preponderance of the evidence. See Texas Workers' Compensation Commission Appeal No. 92149, decided May 22, 1992, and Texas Workers' Compensation Commission Appeal No. 92266, decided August 3, 1992. We believe that there is ample evidence in the record to show that the claimant was demoted as a result of a cost saving program and that she suffered a mental or emotional injury as a result of her demotion. The evidence supports a finding that the demotion was a legitimate personnel action, and thus the mental or emotional injury suffered by the claimant as a result of that legitimate personnel action is not a compensable injury under Article 8308-4.02(b).

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge