

APPEAL NO. 92607

A contested case hearing was convened on July 21, 1992, and continued to September 29, 1992, at (city), Texas, (hearing officer) presiding as hearing officer. At the original hearing it became apparent that the appellant (claimant) was attempting to assert two different claims instead of just the claim understood by the hearing officer and the respondent (carrier). A continuance was granted to resolve the matter and when the hearing reconvened on September 29, 1992, it was announced that the two separate injuries would be considered at the hearing, but would be treated separately, and a distinct decision would be rendered on each. This appeal involves only that part of the contested case hearing concerning the matter of whether or not the claimant suffered a compensable mental trauma injury (major depression) in the course and scope of her employment on (date of injury). The hearing officer determined the claimant did not suffer a compensable mental trauma injury in the course and scope of her employment, did not give timely notice, and does not have disability. Accordingly, she denied benefits under the Texas Workers' Compensation Act, TEX.REV.CIV.STAT.ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). Claimant appeals the hearing officer's decision urging that she did sustain a compensable mental trauma injury and that she "was never trained for position," that she did give timely notice and that she does "have a disability." Carrier urges that the hearing officer's decision is correct in all respects and asks that it be affirmed.

DECISION

Finding the evidence sufficient to support the decision and a correct application of the law, we affirm.

The hearing officer set out the pertinent evidence in this case fairly and adequately in her Decision and Order and we adopt it for purposes of this appeal. The claimant and five other witnesses appeared at the hearing and numerous exhibits were offered in evidence. Briefly, the claimant, apparently with the help of the Texas Employment Commission, had found a position as a manager/bookkeeper with the (employer) in May 1991. She was told on (date of injury) that she would be removed from this position at the end of August because, according to the Executive Director, the employer's CPA had complained about her work and it was decided she could not fulfill the requirements of the job. The claimant was hospitalized on (date) and (date), apparently because of stress and depression, but returned to work on August 12th and left employment on August 13, 1991. She returned to employment with employer in a position of executive secretary as a result of a negotiated settlement on an EEOC discrimination complaint filed by the claimant against the employer. Claimant testified that the job situation was very stressful, that she needed some training for the position of executive secretary, which she undertook on her own, and that she was notified on March 5, 1992 that her hours would be reduced. The supervisor testified that the reduction in hours was driven by budgetary constraints and realigning of functions and that claimant had agreed in writing to the reduction.

Two witnesses called by the claimant worked for the Texas Employment

Commission. One had dealt with the claimant since December 1990 and testified that the claimant had been enthusiastic about her job but that in late May or early June 1991, she started getting down and was not as positive as before. The claimant indicated she did not feel she was getting an opportunity or training with the employer. This witness stated the claimant was depressed and her appearance declined. The other witness dealt with the claimant from May 17, 1992 on and stated that she was not able to handle things too well and was distraught. This witness indicated the claimant said she quit because of stress. The witness opined that the claimant could do clerical work as long as there is no stress. A coworker testified that the claimant was a good worker and diligent and became unhappy and depressed after her hours were reduced. The Executive Director testified that there were times when the claimant would work under some stress and that she was enthusiastic, tried hard, attempted to learn and was punctual. He testified that she was removed from the position of manager/bookkeeper because she could not handle the duties as indicated by the CPA. He stated he had heard the claimant had gone to the hospital in (month year) but had no idea she was subsequently going to make any claim under workers' compensation. (The claimant's Notice of Injury, TWCC Form 41, setting forth the depression/stress injury is dated "(date)" and sets forth an injury date of "(date)" with a date of "(date)" as when it was first known the "disease was work related.") He also testified that the claimant left the employer in early March 1992. The claimant subsequently had a hearing with the personnel committee and she was again offered the job of executive secretary with back pay and additional training but she refused to return unless she would not be working for the Executive Director. The testimony of the claimant was somewhat confusing at times but it became apparent that she was basing her claim for the mental trauma injury on her job stress relating back to the (month year) time period.

Medical records admitted into evidence included a Consultive Report dated "4/14/92" from (Dr. M) which indicated under history of present illness the claimant "was admitted to the hospital for treatment of depression that she has had on and off for over a year," and that "she has a history of multiple problems at work, and home." A letter from a (Dr. M) dated June 30, 1992 indicates that the claimant has been under her care since April 7, 1992 and that the claimant's mental condition does not allow her to seek employment. The medical records also discuss the other claimed injury (to her right side) which is the subject of a separate decision and not considered here.

The hearing officer determined that the claimant did not suffer a compensable mental trauma injury in the course and scope of her employment on (date of injury), did not give timely notice and does not have disability. The hearing officer also concluded that the action of the employer regarding the claimant's termination as manager/bookkeeper in (month year) was a legitimate personnel action. The evidence of record is sufficient to support the hearing officer.

There does not appear to be much doubt that the claimant deemed herself to be under stressful conditions at her place of employment (as well as in her personal life according to notations in some medical records) over a period of time and that she suffered depression resulting in the need for medical care. However, she has not established, as concluded by the hearing officer, that she sustained a compensable injury under the

workers' compensation statute.

Under the 1989 Act, as under previous law, mental trauma can produce a compensable accidental injury but there must be proof of a definite time, place and cause. Transportation Insurance Co. v. Maksyn, 580 S.W.2d 334 (Tex. 1979). While the definition of injury under the 1989 Act includes "occupational diseases," (Article 8308-1.03(27) the court in Maksyn stated "there is no precedent that holds . . . that mental trauma can produce a compensable occupational disease." An occupational disease may develop over a period of time and does not require that a definite time be established. Claimant's own evidence established that she felt stress on the job over a lengthy period of time and that this resulted in debilitating depression for which she is seeking compensation. She did indicate that the stress resulted in her brief hospitalization in (month year) after she had been terminated from her position as Manager/Bookkeeper. However, the hearing officer found, and is supported by sufficient evidence, that this was a legitimate personnel action. Article 8308-4.02(b) 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 purposes of this act." We upheld a hearing officer's determination that a suspension was a legitimate personnel action in Texas Workers' Compensation Appeal No. 92266, decided August 3, 1992, and reviewed the case law in that area in the decision. Similarly, we upheld a hearing officer's determination that a direction to perform duties in a foreign country with another employee was a legitimate personnel action even though the claimant asserted that the resulting stress caused her mental trauma. Texas Workers' Compensation Appeal No. 92149, decided May 22, 1992. That case also reviews Texas case authority in this area. See also Texas Workers' Compensation Appeal No. 92396, decided September 25, 1992, where a transfer to a new position was held to be a legitimate personnel action, although it resulted in emotional and physical upset.

While the matters of timely notice of injury and disability are rendered moot as a result of the determination that no compensable injury was sustained, we find that there is sufficient evidence to uphold the hearing officer on these issues.

We have carefully reviewed the evidence of record in this case and determine that it is sufficient to support the findings and conclusions of the hearing officer. Finding no basis to disturb the Decision and Order of the hearing office, the case is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge