

APPEAL NO. 92665

On November 17, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). The hearing officer found that the appellant, hereafter the claimant, did not sustain an injury in the course and scope of her employment on (date of injury) as claimed by the claimant, that the claimant did not timely report her alleged injury to her employer, and that the claimant does not have disability. The hearing officer denied the claimant's claim for workers' compensation benefits. The claimant disagrees with the hearing officer's decision and requests that we review the decision. No response was filed by the employer, a self-insured political subdivision of this State.

DECISION

The decision of the hearing officer is affirmed.

The parties agreed that the issues to be determined at the hearing were whether the claimant sustained a compensable injury on (date of injury), whether she timely reported her injury to her employer, and whether she had disability.

For sometime prior to (date of injury), the claimant drove a school bus for the employer. On or about March 5, 1992, (Ms. L), a student who rode the bus, had her bus privileges suspended until at least March 23rd for using abusive and vulgar language toward the claimant on February 27th. (Ms. L) was to have her bus privileges restored if she apologized to the claimant. On (date of injury) (Ms. L) boarded the claimant's bus without first having apologized to her and the claimant told (Ms. L) she needed to get off the bus and see "someone in authority." The claimant testified that (Ms. L) refused to get off the bus and leaped up, screamed, shouted, used foul language, "got in my face," and "put her mouth against my mouth." The claimant further testified that (Ms. L) "punched me over and over in my nose with her finger and took her finger and pushed me on the forehead." She said that (Ms. L) was out of control and threatened to kill her at a later date. The claimant said that (Ms. L) backed her up against the steering wheel, that she fell against the steering wheel, and that her head hit a window. She also said that the other students on the bus got excited and started screaming and that the police were summoned. When asked how she was injured in this incident, the claimant responded that "it reinjured my back, it reinjured my neck, it nerved me up real bad."

The claimant continued to work until about May 1, 1992. She said she did not see a doctor until after she stopped working because she went into "denial." However, she also said that she had been seeing a (Dr. B) "right through February." No medical reports from (Dr. B) were in evidence. She said she saw (Dr. R), for her back and neck injuries. (Dr. R) reported in a letter dated May 29, 1992, that he first saw the claimant on May 15, 1992, that she gave him a history of having developed cervical and lumbosacral pain in a bus accident on November 6, 1991 and of having injured her back and neck when she was

attacked by a student on February 3, 1992, and that she had been under the care of a chiropractor. (Dr. R) diagnosed the claimant as having an acute cervical sprain and an acute lumbosacral sprain. In a letter dated June 2, 1992, (Dr. R) stated that the claimant is unable to work due to an injury to her cervical and lumbosacral spine. There is no mention by (Dr. R) of any incident occurring on or about (date of injury).

The claimant testified that on March 25th she gave her supervisor, (Mr. G), a bus conduct report and a letter in which she reported the incident of the previous day. An undated bus conduct report signed by the claimant was in evidence. In it the claimant reported a disturbance caused by (Ms. L) on (date of injury). Also in evidence was a handwritten memo from the claimant to (Mr. G) dated March 25, 1992, in which the claimant recounted the incident of (date of injury) and stated that "she [(Ms. L)] caused me to rejury (sic) my back and neck." She further stated in the memo that she had nausea, diarrhea, stomach cramps, headaches, dizziness, and that every bone in her body ached. She went on to state that she was physically, mentally, and emotionally drained, and physically and emotionally ill and afraid. Also in evidence was an undated memo from the claimant to the employer in which the claimant recounted the incident of (date of injury). In this memo the claimant stated, among other things, that "one finger of (Ms. L) hand touch (sic) my nose over and over. One finger of her hand touch (sic) my forehead." In this memo the claimant did not mention any injury to her back or neck. She did state that she was afraid for her life and that she would be pressing charges against (Ms. L). A copy of a Report of Incident/Accident dated (date of injury), signed by the claimant, was also in evidence. In this report the claimant described the incident of (date of injury) without mentioning anything about falling against the steering wheel, but did mention reinjuring her lower back and neck. (Mr. H), the administrator for the employer school district, testified that he did not receive that report until about May 15th and that there was no file stamped copy of the report in the employer's file.

The claimant did file a complaint with the police against (Ms. L) but she never described the complaint. (Mr. H) said that the complaint was for "verbal assault." On March 27th the claimant had a conference with (Mr. G), (Mr. H), and (Mr. L). She said she gave the other conference participants a "copy of the letter." It is uncertain as to which letter or memo she was referring. The tape recording of the conference made by the claimant was in evidence. Portions of the tape are difficult to hear; however, the audible portions revealed that the claimant and school officials discussed several incidents involving the claimant including a bus accident of November 6, 1991, an incident with a student on February 3, 1992, and the incident of (date of injury). Most of the discussion about the (date of injury) incident concerned the propriety of the claimant's having filed a complaint with the police against (Ms. L) without first consulting her supervisors. At one point in the discussion concerning the (date of injury) incident the claimant stated that she was thankful that nothing happened to herself or the children, but at another point stated that she did not want to be physically or mentally abused. As far as can be discerned from the tape recording, no mention is made of a back or neck injury from the (date of injury) incident, although the claimant testified at the hearing that she thought she had said at the conference

that she had hurt her back and neck in that incident.

When the claimant was asked at the hearing what it was from the (date of injury) incident that kept her from going back to work either for the employer or someone else, the claimant responded that:

(date of injury) incident, some of the things that happened previous to that; it just started working on me mentally, which got to me physically, and just drained me. (date of injury) incident, with prior incidents, and what was going on-- what was going to go on, it just drained me--started having nausea, diarrhea, just drained me, just walking around like a zombie.

The claimant also testified that she had not been released to return to work by any of her doctors. Later, the claimant testified that "it was a multitude of things that happened on the job that just burnt me out." The claimant also testified that "what led to my depression was a series of incidents on the job from the November 6, 1991 bus accident." She then recounted several incidents at work, one involving a coworker and three involving students, including the incident of (date of injury).

In a letter dated June 1, 1992, (Dr. A), M.D., a psychiatrist, stated that the claimant was seen for initial psychiatric evaluation on May 22, 1992 for the evaluation of depression and that the claimant reported her chief complaint as "emotionally, mentally and physically tired." In progress notes of the same date (Dr. A) recited that the claimant told him that she felt depressed and that her problems stemmed from injuries she sustained at work. The doctor recorded several incidents starting with the bus accident of November 6, 1991. An incident of February 3, 1992 is mentioned as is an incident of February 24th or 27th. The description of the latter incident corresponds to the (date of injury) incident testified to at the hearing. (Dr. A) diagnosed the claimant as having major depression. On June 9, 1992, (Dr. A) wrote to the claimant expressing his concern that she had ignored his recommendation that she go for inpatient treatment at the (Hospital). He also wrote that he was unable to comply with her request to write letters to the Texas Workers' Compensation Commission (Commission) on her behalf until she had an inpatient evaluation. On June 23rd (Dr. A) wrote the claimant stating that he would no longer be able to provide her with psychiatric care because she had ignored his recommendation to get hospitalized; however, progress notes showed that he continued to treat the claimant in August, September, and October 1992. In a progress note dated October 15, 1992, (Dr. A) noted that the claimant had brought letters to his office which were on his letterhead, contained his forged signature, and were addressed to the Commission. (Dr. A) stated in the progress note that none of the letters came from his office and that the matter had to be reported immediately. At the hearing the hearing officer took official notice of a letter dated October 20, 1992 from the claimant to the Commission in which the claimant admitted that certain medical reports which were exchanged at the September 30, 1992 benefit review conference were not generated by her physicians, specifically naming (Drs. R and A), along with (Dr. M), who had performed foot surgery on the claimant in July 1992.

(Mr. H) testified that at the March 27th conference the claimant did not mention a physical injury occurring on (date of injury), but that the claimant was visibly upset. He said that to the best of his recollection he first became aware on November 6th that the claimant was claiming she was injured in the incident of (date of injury).

The claimant introduced into evidence a videotape of a news program in which it was reported that school administrators said that a student verbally assaulted a bus driver, the bus driver was not physically assaulted, and that the student allegedly touched the driver's face.

The hearing officer found that the claimant did not sustain a physical or psychological injury as a result of her altercation with (Ms. L) on (date of injury). The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Article 8308-6.34(e). In this case, the claimant testified that she injured her back and neck on (date of injury) and was treated by (Dr. R) for those injuries. However, according to (Dr. R)'s reports, the claimant only gave a history of back and neck injuries from a November 6, 1991 accident and a February 3, 1992 incident with a student. No mention is made in his reports of the (date of injury) incident. The claimant's claim relating to mental injury stemming from the (date of injury) incident was, by her own testimony and the reports of (Dr. A), shown to be depression from a series of events at work extending over a five month period from which she felt "burnt out, drained, or tired." Repetitive mental trauma is not recognized as a compensable injury under the Texas Workers' Compensation Law. See *generally*, Transportation Insurance Company v. Maksyn, 580 S.W.2d 334 (Tex. 1979). Having reviewed the record, we conclude that the hearing officer's finding that the claimant did not sustain an injury on (date of injury), and her conclusion that the claimant did not sustain a compensable injury on that date are sufficiently supported by the evidence and are not against the great weight and preponderance of the evidence.

Under the 1989 Act, disability is defined as the inability to obtain and retain employment at wages equivalent to the preinjury wage because of a compensable injury. Article 8308-1.03(16). Having concluded that the hearing officer's determination of no compensable injury on (date of injury) is sufficiently supported by the evidence, it follows that the hearing officer's determination of no disability was in accordance with the facts and law as the claimant can not have disability without a compensable injury.

The evidence was conflicting on whether the claimant notified the employer of her alleged injury from the (date of injury) incident within 30 days of the injury as required by Article 8308-5.01(a). While (Mr. H) basically denied receiving such notice within 30 days, there was no testimony contradicting the claimant's testimony that she notified her supervisor, (Mr. G), in a letter the day after the incident that she had sustained back and neck injuries. However, even if the hearing officer erred in determining that the claimant did not timely notify her employer of her alleged injury such error, if any, does not amount to

reversible error because a finding of timely notice would not change the hearing officer's decision that the claimant is not entitled to benefits since we have sustained the hearing officer's determination of no compensable injury.

The claimant requests that medical records of (Drs. R and A) be resubpoenaed because "important medical fact concerning my medical health was left out." The claimant did not offer any medical records from (Drs. R or A) at the hearing. Medical records of these doctors were subpoenaed by the employer and were introduced into evidence by the employer. The claimant offered no objection to the introduction into evidence of these records and gave no indication that the records were not complete. Moreover, the claimant has given no indication as to what, if any, "important medical fact" was not in the documents introduced into evidence by the employer. Under these circumstances, we find no merit in the claimant's request.

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge