

APPEAL NO. 92666

On November 20, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer determined that the appellant, claimant herein, did not sustain a compensable injury on or about (date of injury), and denied benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art 8308-1.01 *et seq.* (Vernon Supp. 1991) (1989 Act).

Claimant contends that the hearing officer failed to consider previous incidents and job-related stress, and requests that we reverse the hearing officer's decision and render a new decision in her favor. Respondent, an independent school district, self-insured herein, filed no response.

DECISION

The decision of the hearing officer is affirmed.

The claimant herein is variously referred to in the medical records, letters, exhibits and testimony as (JHS), (JHS), (JH), (JHS), (JS), (JMSH) and (JSH). All the names refer to the same individual, namely the claimant.

The issues under consideration at the contested case hearing (CCH) were:

- (1) whether or not Claimant sustained a compensable injury on (date of injury),
- (2) whether Claimant timely reported her alleged injury, and
- (3) whether Claimant suffers disability.

Claimant was employed by the self-insured as a school bus driver for the school year 1991-1992. During the latter part of 1991 and early 1992 claimant was involved in a number of incidents, some of which led to several workers' compensation claims. These included neck and back injuries allegedly suffered in a bus accident on November 6, 1991, injuries allegedly sustained when a coworker allegedly attempted to run her down in a school bus on December 12, 1991, injuries allegedly sustained on (date) when claimant was allegedly assaulted by a student and injuries allegedly sustained when a student allegedly verbally abused and physically assaulted claimant on March 24, 1992. Claimant testified that her job was made more difficult because her supervisor had failed to support her or to take action against the various individuals who claimant perceived had wronged her. Claimant testified that on (date of injury), while claimant was in a conference room with her supervisor, "it all just came down--everything that happened to (claimant) that eight or nine months just came down on (claimant)." Claimant testified she then became "dysfunctional." Claimant also testified that although there was no separate injurious event on (date of injury), the combined effects of all prior incidents overcame her and she was unable to work. It is not clear from the record whether claimant reported her breakdown on

(date of injury) or not. Claimant did write a 26 page letter, dated May 4, 1992, to her supervisor with copies to her employer, the self-insured, listing her past and present complaints and the alleged injustices inflicted on her. Although no specific reference is made to the (date of injury) incident, claimant does recite "on May 1, 1992, (claimant) went into (the supervisor's) office and stated to (the supervisor) that this day would be (claimant's) last day on the job for a while because of physical illness due to unfair, needless job stress. (Supervisor) at the time, had a sinus headache, so (claimant) stated (claimant) would give (supervisor) a letter stating the cause of (her) illness and (her) possible 1992-1993 resignation as Auxiliary Bus Driver." The self-insured does not dispute that letter was received within 30 days of (date of injury).

There are medical reports from (Dr. A), M.D., (Dr. M), DPM, and (Dr. R), M.D., documenting physical injuries and acute depression. (Dr. A) recommended inpatient psychiatric care and wrote claimant "The severity of your condition is such that optimum treatment can only be provided in a hospital." (Dr. A) subsequently wrote claimant on June 23, 1992 that he would no longer be able to provide claimant psychiatric care" . . . based on the fact that you have ignored my recommendation to get hospitalized twice so far." The self-insured does not dispute claimant is unable to work.

The hearing officer found that claimant "timely notified her employer of her alleged injury of (date of injury)" and that "Since May 1, 1992, claimant has been unable to obtain and retain employment at wages equivalent to the wage she was earning prior to (date of injury)." The hearing officer however, found that claimant did not sustain a compensable injury on (date of injury). Claimant's appeal recounts claimant's previous bad experiences, points out she has been under a doctor's care "since May 92" and states "It was job stress that has place (sic) me physically & mentally unable to work."

Under the 1989 Act mental trauma can produce a compensable injury if it is the result of an untoward event traceable to a definite time, place and cause. Transportation Insurance Company v. Maksyn, 580 S.W.2d 334 (Tex. 1979). Further, in support of this proposition, Texas Workers' Compensation Commission Appeal No. 92210, decided June 29, 1992, cites Director, State Employees Workers' Compensation Division v. Camarata, 768 S.W.2d 722 (Tex. App.-El Paso 1989, no writ) and Duncan v. Employers Casualty Company, 823 S.W.2d 722 (Tex. App.-El Paso 1992, not writ his'y). Duncan, *supra* states "mental trauma is not by itself compensable unless it is traceable to a definite time, place and cause and produces an accidental injury." In Director, State Employees Workers' Compensation Division, *supra*, a case which extended the concept of physical injury from mental trauma to its outer limit, a false and derogatory memo which had been circulated caused a mental trauma which in turn produced a physical injury which was deemed to have occurred in the course of employment. In Duncan, *supra*, a reprimand and demotion was not such mental trauma which results in an injury sustained in the course of employment. In Texas Workers' Compensation Commission Appeal No. 92210, *supra*, the employee claimed sexual harassment, abuse and discrimination leading to mental trauma. The hearing officer in that case found the claimant to have ". . . suffered no harm to the physical

structure of her body." The post-traumatic stress disorder and depression, in that case, were held to be ". . . a gradual buildup of stress, not a specific event, [which] caused the mental trauma injuries."

In the instant case, claimant clearly testified regarding a series of real or perceived bad experiences going back to November 1991. The bad experiences plus her inability to get along with her supervisor, the perceived lack of support by her supervisor and "repeated unpleasant interaction" with her supervisor "all just came down" on claimant on (date of injury). As discussed above, although there may have been a definite time and place, there was no event which caused claimant's mental trauma. As in Appeal No. 92210, *supra*, the claimant's inability to work was caused by a gradual buildup of stress due to bad experiences and repeated unpleasant interaction with her supervisor. Accepting as completely credible and truthful everything claimant stated as fact, claimant's own testimony fails to establish the specific event necessary to be an untoward event traceable to a definite time, place and cause. The hearing officer did not err in finding there was no compensable injury.

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge