APPEAL NO. 93022

On December 3, 1992, a hearing was held in (city), Texas, (hearing officer) presiding, to determine whether the appellant (claimant) had a compensable mental trauma injury on or about (date), pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act). The hearing officer concluded that claimant did not suffer a compensable mental trauma injury as a result of her employment with respondent (employer). Employer urged at the hearing that it was not liable for payment of workers' compensation benefits pursuant to the Article 8308-3.02 exception for injuries to an employee intentionally caused by a third person for personal reasons. In its response, however, employer contends that claimant failed to prove she sustained an accidental mental trauma injury, as distinguished from an occupational disease type mental trauma injury which employer says is not compensable; and, that employer's action in assigning claimant certain additional duties on (date of injury), was a legitimate personnel action and thus mental trauma ensuing therefrom is not compensable under Article 8308-4.02(b).

DECISION

Finding the evidence sufficient to support the challenged factual findings and legal conclusions, we affirm.

At the outset of the hearing, claimant stated that the actual date of her injury was (date of injury), and not "on or about (date)" as the hearing officer recited from the disputed issue page of the Benefit Review Conference (BRC) report. The hearing officer then pointed out that such a discrepancy as to the claimed date of injury was accommodated by the phrase "on or about" (date). In his first two factual findings, the hearing officer found that claimant was employed by employer "on or about (date), the time of the alleged incident," and that "the alleged incident occurred on (date of injury) and is encompassed by the term `on or about'." Claimant asserts error stating that her notice of injury specified her injury date as (date)and that the (date) date and prefatory "on or about" originated with the BRC report. We have previously observed that Article 8308-6.31 does not require that any issue as to the time of injury be restricted to the date on the notice of injury when examined in the adjudication process, and have noted that pleadings, as such, are not required by the 1989 Act, nor is the specificity which is required of pleadings. Texas Workers' Compensation Commission Appeal No. 91123, decided February 7, 1992. *And see* Texas Workers' Compensation Commission Appeal No. 92022, decided March 11, 1992.

Claimant introduced a number of lengthy and detailed memoranda of events and information which essentially tracked her testimony at the hearing. Claimant's evidence (testimonial and documentary) stated that she had been employed for some number of years as a legal secretary in the office of the Liberty County Attorney, Ms L was the supervisor of secretaries in that office and the administrative assistant to Mr. H. During the December 1986 - March 1987 period, claimant and the other secretaries were assigned on a rotational basis to perform some additional work in the "hot check department" to cope

with a backlog. This action upset claimant who felt her workload became too heavy and her other duties were not being performed. At that time, claimant developed a spastic colon condition with persistent diarrhea which she eventually came to believe was caused by her stressful working conditions. She said it took about one year to control the condition with medication. She described the excessive workplace stress during that period as being "intentionally generated" by Ms. L and Mr. H. She described Ms. L as "intentionally badgering or harassing her" but said such conduct eventually abated when Ms. L turned her attention to other employees. Claimant sought medical attention again on April 22, 1992, when Ms. L "excessive intimidation, dehumanizing, degrading, harassing behavior became unbearable." She said she told the doctor her illness was due to job stress.

According to claimant, "[t]he initial act, which was the overall basis of the stress related situations occurred September 1990," when Mr. H assigned claimant to become the secretary to a new assistant county attorney, JC, and told claimant her current duties would be assigned to others. Claimant then became Ms. C secretary from September 1990 until June 30, 1992 when Ms. Cain resigned. According to claimant, Mr. H and Ms. L not only "refused to comply with the verbal contract" and assign her prior duties to others, but "forced" her to perform additional duties including one-half of the jail "in-custody work" on certain dates (10-30-91), protective orders (2-1-92 through 8-31-92), and petitions to revoke probation (PTRs) (8-11-92), which other secretaries had previously performed. According to claimant's evidence, this situation (which claimant repeatedly referred to as Mr. H and Ms. L breach of the agreement) reached a crescendo on (date of injury) (claimant's claimed date of injury) when Mr. H assigned claimant the PTRs and "was so insensitive as to tell [claimant] he was insisting that [claimant] do the PTRs because he was hiring another assistant, and Carol would be the secretary to the new assistant and he was disbursing some of her duties to [claimant] so she wouldn't be overworked."

Claimant also presented evidence of what she described as Ms. L course of conduct in "badgering and harassing" claimant over the period from July 3, 1991 through July 17, 1992. Claimant's itemized list of incidents falling into this category included such items as going through employees' desks, requiring claimant to assist Ms. C with trial preparation work in addition to claimant's other duties when she was already overworked, asking a part-time employee if she would work full-time should a full-time employee quit (intimating such full-time employee was claimant), limiting claimant's overtime work, changing the vacation scheduling procedures, moving certain files from claimant's office into storage, locking the back door to Mr. H office which claimant had customarily used for egress for seven and one-half years, and so on.

Claimant also said that in June 1992 she sent a grievance letter about Mr. H to the Texas Attorney General who responded that that office lacked jurisdiction over claimant's employment problems. On July 17, 1992, claimant sent a grievance to the State Bar of Texas, and said she had also contacted the Texas Commission on Human Rights and the

U.S. Equal Employment Opportunity Commission. The essence of claimant's grievances dealt with what she regarded as Mr. H failure to assign her duties to others after she became secretary to Ms. Cain in September 1990, as he had agreed to do, and the manner in which Ms. L exercised her supervisory authority. She said that after filing such grievances, "all actions of [Mr. H and Ms. L] from that period until [claimant] resigned 08-31-92 were retaliatory."

On the morning of (date of injury), Mr. H told claimant he wanted her to work on some PTRs and said he did not want just one employee in the office knowing how to perform any particular task. He also said that another employee was to become the secretary to a new assistant, that he did not want that employee overworked, and that he was going to assign some of her duties to claimant. Claimant testified that she "nearly exploded at that point," and that "it was just overwhelming." She told him she had been begging him for one and one-half years to honor his commitment concerning the redistribution of her own workload and he responded that there had been no such agreement. Claimant said that Mr. H "told me I was paranoid and inflexible and that I was going to do the PTR's," and added that he could not tolerate an employee refusing to perform an assigned task. Claimant rejoined that she regarded Mr. H assigning her the PTRs as retaliation, and that she could not do them as she had too much other work to do. Claimant said she tried to work the rest of the day but began to cry and could not function so she left early. The next day she saw Dr. M who prescribed medication for spastic colon, took her off work for a week, and advised her to find other employment. The doctor's slip stated "gastritis, spastic colon, stress - work related." Claimant returned to work on (date). On August 24th, claimant said Mr. H "badgered" her about her work for two and one-half hours, "stalking" her and repeatedly checking on her activities. She hyperventilated, fainted, and returned to her doctor who again advised her to find another job. Dr M's report of August 27th stated that claimant was seen on (date) with "with complaints of severe stress and anxiety which were work related for approximately two years duration." This report recounted claimant's revelation of being "harassed by an overbearing and threatening supervisor" and stated that "[e]vidently her supervisor's inappropriateness has been worsening over the last six to eight months which has caused this patient to develop an anxiety syndrome." The report also said that claimant was advised to seek other employment "as she has gone to extreme measures to complain of her immediate supervisor however working a government job, very little attention had been paid to her complaints." In a follow-up report of November 12, 1992, Dr M indicated he advised claimant to find other employment because "her job at that time was causing her a great deal of stress and anxiety resulting in numerous physical medical problems, some of which were, abdominal pain and episodic diarrhea associated with a condition known as spastic colon or irritable bowel syndrome; heartburn, indigestion, bloating, nausea caused by gastritis and fainting resulting from hyperventilation."

Claimant resigned from her employment on August 31st. In her letter of resignation, she told Mr. H that "[o]ver the last couple years I have resisted substantial intentional abusive

treatment by you and your office supervisor and administrative assistant [Ms. L]," and that "[a]s a direct result of the constant intentional infliction of stress and anguish, my health is suffering and I have had to consult a physician over the past several months for stress related symptoms." In another of claimant's exhibits, she stated that "[m]y medical problems are a direct result of two years of lies, deceit, schemes, badgering, harassment and retaliation intentionally inflicted by A.J. H and Ms L." In a letter to Mr. H, dated September 8, 1992, claimant, after recounting a number of traumatic, stressful situations which had occurred in her personal life, said, "[t]here has been nothing that affected me as profoundly and damaging as the treatment I have received in your office over the last two years. . . . It is amazing what a daily subjection for a two year period of badgering and harassment will actually do to your health and attitude."

PT, a coworker, corroborated several particular details of claimant's grievances concerning Ms. L actions. In Ms. T opinion, Ms. L was "verbally abusive" during a meeting in Mr. H office on October 31, 1991 regarding claimant's being required to do one-half the "in-custody" work. Ms. T also said she felt claimant experienced "badgering and harassment" by Ms. L and that Mr. H never did anything about it.

Ms. C testified that when claimant became her secretary she understood that certain of claimant's duties were to be redistributed, but said, "they never did it and instead added more including Mr. H private work and some County work." Ms. C, in an affidavit, stated that Ms. L disliked Ms. C because she was the only female in the office Ms. L could not supervise, and said she (Ms. C) resigned on June 30, 1992, because the office situation was intolerable. She also stated, "I really do not know how [claimant] lasted as long as she did under the stress placed on her by [Mr. H and Ms. L]." Ms. C also stated she felt Ms. L targeted claimant, at least in part, because claimant worked for Ms. Cain. She described Ms. L as manipulative, conniving, and incompetent, saying she treated Ms. C "like a peon" and claimant "shabbily" as well. She felt Ms. L had an obvious dislike of claimant and believes her mistreatment of claimant was intentional and motivated not by dissatisfaction with claimant's work but by personal animosity. She corroborated certain of claimant's grievances against Ms. L saying Ms. L "went through [claimant's] desk, phone messages, books, and private disks," listened in on her conversations, and talked badly about her around the office.

Employer introduced an affidavit from Mr. H in which he denied harassing claimant or instructing Ms. L to do so.

Claimant challenges Finding of Fact No. 5 wherein the hearing officer found that claimant "felt" that Mr. Hl had promised to relieve her of many of her duties and did not do so, and Finding of Fact No. 6 wherein the hearing officer found, in part, that claimant "perceives" she has been unfairly treated by the office administrator over the past two years. In these challenges claimant, in effect, quarrels with the use of the verbs "felt" and "perceive"

as somehow derogating her testimony and she reargues her evidence. We find no merit in those challenges. Article 8308-6.34(e) provides that the hearing officer is the sole judge not only of the relevance and materiality of the evidence, but also of its weight and credibility. These findings do no more than state the essence of claimant's evidence on those matters. Claimant also challenges the following findings and conclusions and essentially argues her evidence to the contrary:

**FINDINGS OF FACT**

7.Claimant was instructed to learn how to prepare "PTR's." This was a legitimate personnel action. She felt that she was too busy to do this. Claimant was told to do as she was told.

8.For two years claimant has been aggrieved by conditions in the office. These complaints include poor allocation of workload, poor management by her boss, both of the office and his calendar, locking the back door, snooping by the office administrator, moving her files, arresting people in the office, private practice of law from the office, placement of her desk, and treatment of people.

9.Claimant suffered no physical trauma on or about (date) or August 24, 1992.

10.Claimant suffered a recurrence of spastic colon on or about (date) or August 24, 1992.

11.August 24, 1992 is not "on or about" (date).

12.Claimant fainted on August 24, 1992 while preparing "PTR's." This work had been assigned to her by her supervisor and constituted a legitimate personnel action.

13.Claimant resigned her position with [employer] on August 31, 1992 upon the suggestion of her doctor who had determined that job stress caused her physical complaints.

14.There was no specific mentally traumatic event which triggered claimant's spastic colon condition or led to her resignation.

**CONCLUSIONS OF LAW**

2.Claimant did not suffer a compensable mental trauma injury as a result of her employment with [employer].

3.This claim is not compensable under the Texas Workers' Compensation Act.

Claimant challenges Finding of Fact No. 7 concerning the legitimacy of the personnel action directing her to prepare the PTRs, first because it was relayed by a coworker, and second because of Mr. H having been motivated by his desire to retaliate against claimant for having filed grievances against him. However, the evidence showed that when claimant questioned the instruction, Mr. H himself specifically directed her to prepare the PTRs. Claimant does not take the position that the preparation of the PTRs was not a legitimate function of her office, but rather she questions Mr. H motive in assigning her the duty. However, the hearing officer, as the finder of fact, could believe from the evidence that Mr. H assigned claimant to work on PTRs because he did not want only one person in his office able to prepare them and because he wanted to relieve another employee of some duties so she could commence work as secretary to a new assistant county attorney.

Claimant also asserts that Finding of Fact No. 7 has the effect of casting the episode over the preparation of the PTRs on (date)as just another in a series of disputes over a work assignment when, in fact, her dispute with Mr. H on that day "was like no other." We find that challenge to be meritless also and the evidence sufficient to support the finding. In the discussion portion of his decision, the hearing officer commented that "[d]espite the efforts of the claimant to establish the events of (date of injury) as a time and place for a specific cause of mental trauma, this case almost perfectly describes the gradual build-up of emotional distress over a period of time," and further noted that "claimant's own exhibits establish the gradual build-up of her frustration over a period of years." The hearing officer also recognized "the distinct possibility that the entire operation is managed casually and that the administrator does not demonstrate a model for good management." The hearing officer went on to comment as follows:

> It is not for this hearing officer to determine whether the county attorney's office in Liberty County is well managed or whether its work is done efficiently. It is my responsibility to determine whether or not there was any event on or about (date) which precipitated mental trauma resulting in claimant's physical distress. Nothing in the record suggests that the morning of August 11 was much different from the previous two years. Work and priorities were being redistributed and reordered. That is one of the traditional responsibilities of a manager. Assignation of work is a basic and legitimate personnel action.

We agree with the hearing officer's observations and find the evidence sufficiently supportive of all the challenged findings and conclusions.

Claimant's challenges to Findings of Fact Nos. 9, 11 and 12 appear to assert that her date of injury was August 11th, and not August 24th, but that she adduced evidence of

"another injury due to the same circumstances" occurring on August 24th to show that the combination of both injuries led to her August 31st resignation. Claimant also distinguishes between those injuries by stating that the August 24th injury involved hyperventilation and fainting in addition to the gastritis, spastic colon, and anxiety she suffered on both injury dates.

Article 8308-1.03(27) defines injury as follows: "damage or harm to the physical structure of the body and those diseases or infections naturally resulting from the damage or harm. The term includes occupational diseases." The 1989 Act does not define "mental trauma injury." However, Article 8308-4.02(a) expresses the legislative intent that the 1989 Act not be construed to limit or expand recovery in mental trauma injury cases. 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 the purposes of this Act." In this case, the hearing officer made two dispositive findings, namely, that claimant's being instructed to learn how to prepare PTRs on (date of injury), was a legitimate personnel action; and, that there was no specific mentally traumatic event which triggered claimant's spastic colon condition but rather her condition resulted from a two year accumulation of work place grievances. Either of these findings, both being sufficiently supported by the evidence, would support the conclusion that claimant did not suffer a compensable mental trauma injury as she claimed.

In Texas Workers' Compensation Commission Appeal No. 92149, decided May 22, 1992, we observed that the Texas Supreme Court has held that mental trauma can produce a compensable accidental injury, even without an underlying physical injury, if it arises in the course and scope of employment and is traceable to a definite time, place and cause. In Texas Workers' Compensation Commission Appeal No. 92210, decided June 29, 1992, the employee alleged May 3, 1991 as the date of her claimed mental trauma injury. In a meeting on that date, the employee had a confrontation with employer's assistant personnel director regarding the employee's failure to have finished a certain report. The employee's doctor, in a letter, referred to the employee as providing a history of long running abuse, ranging from sexual to humiliation, with the most abusive event occurring on May 3, 1991. The employee had also referred in her claim to the "continuing harassment and discrimination" by the employer's assistant personnel director. The hearing officer found, with sufficient support in the evidence, that there was no harm to the physical structure of the employee's body. The hearing officer further found, dispositively, that a gradual build-up of stress, not a specific event, caused the mental trauma injuries, and concluded that the injury was not compensable. The hearing officer did not make a finding as to whether the May 3rd meeting constituted a legitimate personnel action; however, in affirming, we cited several Texas cases and said: "These cases require that a definite time, place, and cause be found in order to determine that an accidental injury was due to mental trauma. Conversely, no recovery has been allowed when an occupational disease was due to mental trauma."

In Texas Workers' Compensation Commission Appeal No. 92266, decided August 3, 1992, the Appeals Panel affirmed the hearing officer's determination that the employee did not sustain a compensable mental trauma injury. There the employee was suspended at a meeting on April 25, 1991 when she refused to sign a memorandum acknowledging that the employer's room inspectors would themselves be assigned room cleaning duties on a rotational basis. The meeting to sign the work memorandum was a legitimate personnel action and we affirmed the case on that basis noting, however, that had Article 8308-4.02(b) not controlled the fact situation in that case, we would have had to reverse and render on the issue of whether a mental trauma event caused injury.

In Texas Workers' Compensation Commission Appeal No. 92189, decided June 25, 1992, we considered a case involving a severe reprimand followed by the employee's collapse with chest pains, where the evidence showed the employer's reprimand violated the employer's standards of supervision. There the hearing officer determined that the Article 8308-4.02(b) exception did not apply to the facts and we affirmed.

In Texas Workers' Compensation Commission Appeal No. 92311, decided August 24, 1992, we had the converse situation where the "legitimate personnel action" exception was not raised but the hearing officer determined that the employee's claim was based upon "repetitious mental trauma" and thus was not compensable and we affirmed. In that case, a paralegal employee got into a verbal altercation with her supervisor on July 23, 1991, concerning her written reply to her supervisor's memorandum. The employee said she had had disagreements in the past with her supervisor and had experienced workplace problems over the past several years, but none like her July 23rd encounter which resulted in migraine headaches, painful joints, insomnia, and anxiety. We again noted the Texas Supreme Court cases holding that a mental trauma can produce a compensable injury, even without any underlying physical injury, if it arises in the course and scope of employment and is traceable to a definite time, place, and cause, but that damage or harm caused by repetitious mental trauma activity, as distinguished from a physical activity, cannot constitute an occupational disease. While the employee related her injuries to the altercation on July 23rd, her medical records showed she had been treated for migraine headaches periodically since 1988 and the hearing officer found, and we affirmed, that the employee was not injured on July 23rd in the verbal confrontation. *See also* Texas Workers' Compensation Commission Appeal No. 92337, decided August 21, 1992.

We are satisfied that the evidence is sufficient to support the challenged findings and conclusions which are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986). We do not substitute our judgment for that of the hearing officer where, as here, the challenged findings are supported by sufficient evidence. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865 (Tex.

App.-Texarkana 1989, no writ).

The decision of the hearing officer is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge