

APPEAL NO. 931073

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq.*) A contested case hearing was held on October 14, 1993, in (city), Texas, (hearing officer) presiding. Three issues were before the hearing officer: whether the appellant (hereinafter claimant) sustained any compensable injury in the course and scope of her employment; whether the claimant timely reported a work-related injury to her employer; and whether the claimant has disability as defined by the 1989 Act. The claimant in her appeal objects to the hearing officer's conclusions determining these issues against claimant, citing evidence in support of her position. The respondent, hereinafter carrier, basically contends that the hearing officer's decision is supported by the evidence and should be affirmed.

DECISION

We affirm the hearing officer's decision and order.

The claimant was employed as an assistant banquet manager by (employer). Her position at the hearing was that she suffered mental trauma injuries on six separate occasions, which were caused by events at work; that her symptoms, which included chest pain, sweating, and difficulty breathing, were initially thought by her doctors to be a heart condition and were not immediately diagnosed as panic disorder; that she did not learn that her condition was work related until December of 1992, and that afterwards she timely reported her injury.

Claimant said her first injury occurred on (date of injury), in connection with an event scheduled in one of employer's banquet rooms; she stated that a customer began making changes and yelling at her, and that she was the only employee present to deal with the situation. She suffered severe chest pains as a result, went to her family doctor, (Dr. D), and was admitted to (Hospital) on (date of injury) on suspicion of a heart attack. The claimant said she was re-admitted to a hospital several days later; the medical records show an admission date of March 31st by (Dr. R), who recorded a six-month history of progressive chest pain.

The claimant returned to work on August 30th, and the second incident for which she claimed injury occurred on (date of injury). This incident also concerned a customer who was dissatisfied with the setup for an event, including the fact that one of the food stations could not keep up with the guests' demands. (The claimant acknowledged that part of the customer's dissatisfaction concerned the service provided by the decorator, which was not claimant's or employer's responsibility.) On that occasion, claimant said she experienced a choking sensation, sweating, shaking, and chest pains. Two days later, on September 23rd, the claimant said she had three rooms to prepare and inadequate staff. The claimant suffered chest pains and had to go to the office to take medication.

A confrontation occurred during an event at the hotel on October 10, 1992, when

several guests were told they could not bring liquor into the banquet room. The claimant called the beverage manager to confiscate the liquor and, because some guests became abusive, security was called. The claimant contended she was threatened by a guest, and that the event resulted in the worst attack she had had.

On November 10th, the claimant said guests at a luncheon kept making changes and were rude, and that her supervisor yelled at her. She said she began sweating and shaking, and had to go to the office to take medicine and calm down. The claimant suffered the same symptoms on December 17th, when no one from the kitchen staff showed up for an event and she had to quickly find help in order to get the event done on time.

Medical records in evidence show that the claimant was re-admitted to (hospital) on June 9th and then transferred to Hospital where a cardiologist, (Dr. M), was called in for consultation. She underwent a cardiac work-up, including angiogram and stress test, but was diagnosed with esophageal spasm. (As Dr. M wrote on August 3, 1993, claimant suffered from chest pain syndrome due to esophageal spasm and anxiety.) Her medical records reflected on August 13th that she continued to have esophagus and throat problems despite the fact that she was off work and not under stress.

Because of the nature of her problem Dr. M suggested that she seek psychiatric help. The claimant saw (Dr. G), a psychiatrist, on August 12, 1992. Dr. G said the claimant reported panic attacks since June, and that they came at unusual times and did not seem to be triggered by anything. Claimant was also seen by a psychologist, (Ms. F), beginning in August of 1992. On May 12, 1993, Ms. F wrote that "as treatment progressed it became apparent that stress at work exacerbated the frequency and duration of her panic attacks." Claimant contended, however, that it was not until on or about December 1, 1992, that she first knew her problems were work related. She said that on December 14th she had a conversation with employer's human resources director, (Ms. E), in which she discussed her concerns about her job and whether there had been complaints about her performance, and discussed her psychiatric treatment and her panic disorder. Claimant said she specifically told Ms. E that her problems were caused by her work; claimant's mother testified that at claimant's request she called Ms. E about claimant's disability benefits, and that claimant said Ms. E would remember their December 14th conversation. Ms. E testified that she remembered that she and claimant discussed her seeing a psychiatrist on that date and the fact that due to the stressful nature of the work she might have to seek other employment, but she denied that claimant told her that her condition was caused by work.

Ms. E said that to the best of her knowledge the employer first knew of claimant's claim in about February of 1993. Claimant's last working day for employer was February 8th; she had been called in to discuss scheduling mistakes she had made due to blurred vision, and was asked to provide a doctor's note verifying that the medication she was taking would not create a hazard in the work place. Claimant said she was unable to do so, and she was put on medical leave of absence as of that date. She said she has not returned to work, and has been told by her doctor that she is unable to work. She was still treating with Ms. F and a psychiatrist at the time of the hearing.

Claimant's supervisor, (Mr. A), was called as a witness and denied remembering some of the incidents at work which caused claimant's stress. He did remember some of the instances, such as those on (date of injury) and October 10th, but said claimant told him clients were upset but not that they had yelled at her. He denied yelling at her himself, and said that following the October 10th incident he told her she had done the right thing.

In her appeal the claimant challenges the following conclusions made by the hearing officer:

CONCLUSIONS OF LAW

- 2.The Claimant did not sustain any compensable injury in the course and scope of her employment.
- 3.The claimant did not timely report an injury to her employer.
- 4.The claimant does not have disability as that term is defined by the Workers' Compensation Act.

In support of her appeal, claimant contends that the hearing officer equated claimant's esophageal spasm with her panic disorder illness, the latter of which she said did not arise until (date of injury). The claimant testified at the hearing as to her belief that the two conditions were different and, while both produced chest pain, the pain associated with panic disorder was more severe and (unlike the pain from the esophageal spasm) did not exist prior to (date of injury). However, claimant's medical records of that date from (hospital) give claimant's chief complaint as "[c]hest pain x approximately two days." Other medical reports, including one dated April 2, 1992, state "episodic chest pressure over the last several months," and a June 15, 1992, report from Dr. M says, "[t]he patient states that she began having chest discomfort in the fall of 1991." Further, Dr. G's report indicates claimant's panic attacks came at unusual times with no particular trigger.

In addition, the claimant contends that her own testimony as to timely reporting of injury was clear and concise concerning the date she knew the injury was work related and the date she subsequently reported such fact to Ms. E; she claims her testimony was confirmed by her mother, and that the issue was acknowledged by Ms. E although she latter testified she was not aware that claimant's problems were work related.

The hearing officer, as sole judge of the relevance and materiality of the evidence and of its weight and credibility, see Section 410.165(a), was entitled to reconcile the foregoing conflicts in the evidence and make a determination that the claimant's condition was, in essence, a chronic one and not one caused by her job. See Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.) (stating that it is within the fact finder's province to judge the credibility of witnesses and the weight to be given their testimony; to resolve conflicts and inconsistencies in the testimony of one witness as well

as different witnesses; to believe one witness and disbelieve others; or to believe part of the testimony of one witness and disbelieve any other part). Accordingly, the hearing officer was also entitled to credit the testimony of Ms. E over that of claimant (and that of her mother). As an interested party, a claimant's testimony only raises issues of fact for the determination of the fact finder. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). We will not substitute our judgment for that of the hearing officer where, as here, his decision is supported by the evidence and is not against the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175 (1986).

Finally, the claimant contends she does have disability, referencing her six specific incidents of injury which she says are corroborated by notes from employer's log book. However, the 1989 Act defines disability as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage." Section 401.001(16). As this panel has held, a finding of no compensable injury will preclude a finding of disability. Texas Workers' Compensation Commission Appeal No. 92217, decided July 13, 1992. Having found no error in the hearing officer's determination of the issue of injury, we find no error in his determination of the issue of disability.

The decision and order of the hearing officer are affirmed.

Lynda H. Neseholtz
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge