

## APPEAL NO. 931108

This appeal arises under 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.*). On November 8, (year), a contested case hearing was held in (city), Texas, with (hearing officer) presiding as hearing officer. The issues to be resolved at the CCH were:

1. Whether the Claimant sustained a compensable occupational disease;
2. What is the Claimant's correct date of injury;
3. Whether the Claimant's injury was reported in a timely manner; and
4. Whether the Claimant has had disability as the result of an occupational disease.

The hearing officer determined that the appellant, claimant herein, did not sustain a compensable mental trauma injury in (month) or ((month) year). Although claimant had stress-induced neuro-dermatitis, claimant has not had disability based on her mental trauma injury of early (month year).

Claimant contends that she did sustain a compensable injury, timely reported that injury and "has been disabled" since (date of injury). Respondent, carrier herein, responds that the decision is supported by the evidence and requests that we affirm the decision.

### DECISION

The decision of the hearing officer is affirmed.

Claimant testified that she has been subject to stress induced hives in the past, once in 1982 and on another occasion in connection with her divorce in 1986. She stated that "life threatening" hives had caused her to be hospitalized on those occasions. Claimant testified she was employed by (employer),, employer herein, in the purchasing department and that (GM) was her immediate supervisor, (BB) was the operation's manager, and (CR) was employer's human resource person. Claimant testified that sometime before (month year) (all dates will be (year), unless otherwise noted) claimant had authorized withholding a portion of her pay for bills pertaining to her car, but later had a disagreement about stopping the withholding. This situation is herein referred to as the wage dispute. Claimant testified that beginning around the first of (month), BB and CR began to put her "under a lot of pressure" because of the wage dispute. Claimant stated she began to have hives on her legs but did not consider it serious at that time. Claimant's testimony is somewhat inconsistent as to the severity of the hives, when they began and whether a specific incident had caused the eruption. According to claimant, she was confronted by BB on Friday, (month) and told that she would be fired if she did not drop her wage dispute regarding the car withholding and she was told that she would have to redo her time card due to improper reporting of lost time. Claimant testified this incident caused great stress and worsened her hives. She stated that she took Benadryl that weekend and saw her

doctor on Monday (month) 24th. On cross-examination, claimant conceded she had made the doctor's appointment some time prior to (month). Claimant testified she reported the work-related outbreak of hives to BB on (month) 24th after speaking with her doctor. Claimant maintains that she has severe hives caused by stress over her body and that this stress-induced condition makes it impossible for her to work. Claimant testified that when she called her employer on (month) 25th to obtain workers' compensation claim forms, she was terminated. Claimant is claiming a mental trauma injury, which caused her hives, due to the (month) confrontation with BB.

(Dr. M) is claimant's treating doctor and by report dated (month) , stated that claimant "was seen with stress induced neuro-dermatitis with life-threatening 'hives'. This is directly related to her work related stress which became effective (month) 24th, (year)." Dr. M took claimant off work. Dr. M in a brief note dated 11-8-93 stated: "[Claimant] was seen in the office today. She has multiple skin lesions of hives & general erythema 'redness' consistent with allergic reaction or neuro-edema, due to nerves."

Carrier's position was that claimant initially was claiming a repetitive mental trauma injury due to "nit picking" and "harassment" which had been building up since early (month). Carrier also pointed out that there was no evidence to indicate that claimant was incapable of working at a less stressful position. BB, the operations manager denied he had threatened to fire claimant because of the wage dispute or time sheet disagreement. BB testified he did not recall anything significant occurring on (month). According to BB, claimant was terminated on June 3rd, because of absenteeism prior to (month) and because she failed to return to work on or after (month) 24th.

The hearing officer determined, in pertinent part:

#### FINDINGS OF FACT

- 3.The Claimant sustained a stress-related injury at work based on the repetitive trauma of a wage dispute that continued over an extended period of time.
- 4.The wage dispute involved monies deducted from the Claimant's wages without the Claimant's written permission and which did not involve a legitimate personnel action.
- 5.The Claimant did not sustain a mental trauma injury as a result of a conversation with her supervisor, [BB], on (month), (year).
- 6.The Claimant knew in early (month) of (year) that stress based on her wage dispute was causing her to break out in hives.
- 7.The Claimant condition was not serious enough to warrant medical intervention until late (month) of (year).

8. The Claimant did not report her injury to her Employer until (date of injury), and the Employer did not have actual knowledge of Claimant's injury until (date of injury).
9. The Claimant had good cause for not reporting her injury to her Employer not later than thirty (30) days after her injury allegedly occurred because she believed that her injury was not serious until late (month) of (year) when she made an appointment to see a doctor concerning her condition.
10. The Claimant reported her injury to her Employer within seven days of making an appointment with a doctor concerning her condition.
11. The Claimant's mental trauma injury has not caused her to be unable to obtain and retain employment at wages equivalent to her preinjury wage.

#### CONCLUSIONS OF LAW

2. The Claimant did not sustain a compensable mental trauma injury in (month) or (month) of (year).
3. The Claimant developed a stress-induced neuro-dermatitis in early (month) of (year).
4. The Claimant did not timely report her injury to her Employer but had good cause for her failure to do so.
5. The Claimant has not had disability based on her mental trauma injury of early (month) of (year).

Claimant appealed the hearing officer's determination that she had not sustained a compensable mental trauma injury, and contended that her stress-induced neuro-dermatitis occurred in (month), that she had timely reported the stress-related injury in (month), and that she "had been disabled" since (month) as a result of the stress-related injury.

First, we would note that the portions of claimant's appeal contending she had timely reported her injury and specifying how and when she had reported the injury, although an issue at the hearing is effectively moot at this point. Although the hearing officer found claimant did not timely report her injury (presumably within 30 days of "early (month) of (year)" when claimant knew that wage dispute stress was causing her to break out in hives), he found good cause for not doing so, based on claimant's belief the condition was not serious. Basically this determination is favorable to claimant and the key issue is whether the stress-induced neuro-dermatitis was compensable under the 1989 Act.

A "compensable injury" means an injury that arises out of and in the course and

scope of employment for which compensation is payable. Section 401.011(10). The claimant has the burden to prove that she was injured in the course and scope of employment. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Carrier, both at the CCH and in its response to claimant's appeal, emphasizes the inconsistencies in claimant's testimony at the CCH and a recorded statement claimant gave to carrier's adjustor on June 4th, regarding whether claimant was claiming a repetitive mental trauma injury beginning in (month) over alleged harassment and nit picking over a wage dispute and her testimony at the CCH of a specific event on (month), when she was allegedly confronted by BB. The Appeals Panel has consistently held that a repetitive mental trauma injury is not compensable and that to be compensable, a mental trauma injury must be "traceable to a definite time, place and cause." Texas Workers' Compensation Commission Appeal No. 93596, decided September 26, (year); Texas Workers' Compensation Commission Appeal No. 931016, decided December 16, (year); Texas Workers' Compensation Commission Appeal No. 92337, decided August 21, (year), citing Transportation Insurance Co. v. Maksyn, 580 S.W.2d 334 (Tex. 1979). Claimant acknowledged she had been having hives on her legs in early (month) due to what she perceived as harassment and nit picking about her wage dispute. Claimant apparently made a (month) 24th appointment to see her doctor some time before (month), when the alleged confrontation with BB occurred. Carrier also points out that claimant's Employee Notice of Injury or Occupational Disease and Claimant for Compensation (TWCC-41) dated 5/26/93 states in response to how the accident happened: "Constant pressure and gross harassment from upper management" and does not refer to a specific incident on (month). Claimant on the TWCC-41 gives a date of injury of "approx (date)" and states in response to the question of when did you first know disease was work related? "(date) (Began (date) but wasn't seen by a doctor until (date) due to worsening condition.)" Claimant had no explanation for the variance in those statements and her testimony at the CCH about the confrontation with BB on (month) causing the "stress induced neuro-dermatitis with life-threatening 'hives'." The hearing officer apparently concluded that this evidence constituted a repetitive mental trauma injury.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts and inconsistencies in the testimony of any one witness and (month) believe one witness and disbelieve another, or (month) believe part of the testimony of a witness and disbelieve any other part. Cobb v. Dunlap 565 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.); Taylor v. Lewis , 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). The hearing officer obviously believed that claimant's stress induced hives were caused by the ongoing conflict involving claimant's wage dispute. The hearing officer found the hives began manifesting themselves in early (month) and that claimant was aware that stress caused the hives. The hearing officer apparently believed claimant's testimony that initially the hives were not serious enough to warrant medical attention but in (month) became more serious. The hearing officer obviously did not believe an incident on (month) was the precipitating factor for the stress-induced condition, rather it was the continuing stress over the wage dispute. As previously noted, a repetitive mental trauma injury is not compensable. Appeal No. 93596, *supra*. The hearing officer determinations are

supported by the evidence, including claimant's own testimony.

We note that the hearing officer specifically found that the repetitive mental trauma injury was the result of the wage dispute "which did not involve a legitimate personnel action." The 1989 Act 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 the Act. Section 408.006(b) While not specifically appealed by the claimant, we would note that evidence supports the hearing officer's finding in this regard. However, regardless of whether legitimate personnel action is an issue in a mental trauma case, in order to recover a claimant must still establish that such injury was traceable to a definite time, place, and cause (Bailey v. American General Insurance Company, 154 Tex. 430, 279 S.W.2d 315 (1955)), which the hearing officer determined not to have been the case.

Disability is defined in Section 401.011(16) (1989 Act) as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage." In other words, a compensable injury must first be found, and then it must be determined to cause an inability to obtain and retain employment at the preinjury wage. Because the hearing officer found that there was no compensable injury, he could not find disability in favor of the claimant. See Texas Workers' Compensation Commission Appeal No. 931045, decided December 28, (year). Incidentally we would note there is some merit to carrier's argument that claimant has provided no evidence that she would be unable to obtain and retain employment in some other less stressful position.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not so find and consequently the decision of the hearing officer is affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Gary L. Kilgore  
Appeals Judge