

## APPEAL NO. 931140

This appeal is considered in accordance with the Texas Workers' Compensation Act (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq.* (formerly TEX. REV. CIV. STAT. ANN. Article 8308-1.01 *et seq.*). On November 29, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing officer determined that the appellant GF, the claimant herein, did not suffer a compensable mental trauma injury resulting from a legitimate personnel action on (date of injury), and thus did not have disability. He denied claimant benefits under the Texas Workers' Compensation Act.

Claimant timely appealed, disputing certain factual inaccuracies and the hearing officer's decision. He argues that the action leading to his emotional trauma and resulting hypertension was not legitimate, and that a purported reorganization of his division was used as a pretext to investigate his background. The carrier responds that the decision of the hearing officer should be upheld.

### DECISION

The decision of the hearing officer is affirmed.

Claimant has attached additional evidence to a timely-filed supplemental appeal. However, as we have stated before, the Appeals Panel does not take new evidence but must review only the record created below; new evidence submitted on appeal will not be considered. See Section 410.203(a); Texas Workers' Compensation Commission Appeal No. 92272, decided August 6, 1992.

Claimant testified that he was employed for eight years as (employer), which shall be referred to in this decision as either employer or carrier, depending upon its function. Claimant stated that on (date of injury), he was given a "shocking" letter by his supervisor (Mr. F) which indicated that he would be terminated. The letter in question indicated that discrepancies had been found in claimant's personnel file relating to his experience and educational background, and his supervisor wrote that he would recommend termination by August 27, 1993, if claimant were not able to produce supporting information about his credentials by August 20th. Claimant said that he cancelled his planned vacation as a result. That night, he began to feel dizziness and numbness. He initially saw (Dr. L), on August 2, 1993, according to the documents in the record, who treated him for hypertension and returned him to work effective August 9, 1993. Thereafter, he consulted (Dr. O). A letter from Dr. O dated September 1, 1993, noted that he treated claimant for hypertension and numbness following "apparent stress" from work. Dr. O stated that it was "very possible" that claimant's symptoms were related to stress at work. Dr. O released claimant back to work effective November 19, 1993.

Claimant's resume states that he has a B.S. degree in Engineering from (university). Claimant stated that the name of his degree is B.S. in Occupational Education and he

majored in engineering design. It was claimant's opinion that, based upon what he had been told by persons at (university), that his degree was "equivalent to" a B.S. in Engineering.

Claimant stated that he was interviewed and hired by (Mr. S), to whom he disclosed the specifics of his degree and experience. He stated that he never represented to anyone that he was a professional engineer. He pointed out (and a description of the degree in Occupational Education confirms) that the degree is not just based upon course work but upon credit for life experience. He had worked most of his life for engineering concerns.

(Mr. B) stated that he was asked to verify claimant's educational and experience credentials in (month year) after a management study had recommended that the department be reorganized. Because the reorganization would eliminate claimant's position, it was determined to upgrade that position to a professional architect level and offer it to claimant. Mr. B said that because the architect position called for some enhanced qualifications, it was determined to see if claimant met those qualifications before definitely offering the position. Mr. B testified that claimant's personnel file did not include a transcript.

Mr. B said that when he called (university) to verify the B.S. degree in Engineering that appeared on claimant's resume, he was told verbally (and it was subsequently confirmed in writing) that claimant had a B.S. degree in Occupational Education. Mr. B stated that he considered this to be "essentially a teaching degree". He identified what he felt was another discrepancy: that claimant had not worked for (employer) for over \$17,000 in a position which indicated that he originated designs, but that a letter from (employer) said claimant worked as a draftsman doing technical drawings for \$6.00 per hour, and drew what was given to him, with no supervisory responsibilities. Mr. B stated he used the hourly rate to compute an annualized salary of \$14,000. Mr. B also identified discrepancies with regard to claimant's teaching experience.

Mr. B detailed his findings and concerns in a July 16, 1993, memo to CG, Director of Human Services for the employer, who forwarded it to JP, the director of claimant's department. These were attached to the (date of injury), letter from Mr. F to claimant.

An ombudsman of the employer, working to assist claimant, wrote a memo basically supportive of claimant's viewpoint. It pointed out that there is no commonly understood definition of what constitutes an engineer.

Mr. F stated that he gave the (date of injury), letter to claimant and read it to him at the same time. He stated that it was his desire not to definitely terminate claimant but to allow him to gather supporting information. Mr. F said that claimant did not appear to be emotionally upset, but did state that he would have to cancel his vacation.

A sworn statement from Mr. S stated that claimant was interviewed on referral from the employer's personnel office as a candidate meeting minimum posted requirements. Mr. S stated that he did not recall asking if claimant was an engineer, or claimant stating that he was. The record indicates that a posted requirement for claimant's position at that time was a Bachelor's degree in Engineering or Architecture.

There was much testimony about the substance of the alleged discrepancies in claimant's credentials, and argument from the claimant about the true motives behind the employer's inquiry. The hearing officer went so far as to make some fact findings on claimant's degree. Much of the appeal is also devoted to justifying claimant's credentials. However, we do not regard as critical to the compensability issue in this case whether claimant's position was correct or incorrect so far as his credentials are concerned. The real issue is whether an employer who requests an employee to substantiate educational and experience credentials is undertaking a legitimate personnel action. We believe the answer is plainly yes.

Under the 1989 Act, as under previous law, mental trauma that occurs at a definite time and place can produce a compensable accidental injury. Section 408.006. See also Texas Workers' Compensation Commission Appeal No. 92607, decided December 18, 1992 citing Transportation Insurance Co. v. Maksyn, 580 S.W.2d 334 (Tex. 1979). Article 8308-4.02(b) states "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 . . ." under the Act. Section 408.006(b). We have upheld a hearing officer's determination that an investigation of a theft, even though alleged to have been conducted in threatening manner, was a legitimate personnel action. Texas Workers' Compensation Commission Appeal No. 92635, decided January 15, 1993. We have also previously held in Texas Workers' Compensation Commission Appeal No. 92396, decided September 25, 1992, a transfer to a new position was held to be a legitimate personnel action, although it resulted in emotional and physical upset. We have held that an emotional reaction to a reprimand or an evaluation that is a legitimate personnel action is not compensable. Texas Workers' Compensation Commission Appeal No. 92149, decided May 22, 1992. In our opinion, an employer who undertakes a review of an employee's credentials, especially when considering that employee for a transfer, is engaged in a legitimate personnel action analogous to the examples set out in the statute. The fact that an employee objects or is distressed by the manner in which a personnel action is conducted does not make such action a compensable action. See Duncan v. Employers' Casualty Co., 823 S.W.2d 722, 725 (Tex. App.-El Paso 1992, no writ).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak, or so against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Texas Workers' Compensation Commission Appeal No. 92598, decided December 23, 1992, citing Atlantic Mutual

Insurance Co. V. Middleman, 661 S.W.2d 82 (Tex. App.-San Antonio, 1983, writ ref'd n.r.e.).

The decision and order of the hearing officer are affirmed.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Lynda H. Neseholtz  
Appeals Judge