

APPEAL NO. 931176

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (formerly V.A.C.S., Article 8308-1.01 *et seq.*) (1989 Act). A contested case hearing was held in (city), Texas, on November 23, 1993, with (hearing officer) presiding. In response to the single contested issue, the hearing officer determined that the appellant, hereinafter claimant, did not sustain a compensable injury on (date of injury). Claimant contends in his appeal that he sustained a mental trauma injury resulting from his employer's non-legitimate personnel actions, and that the repetitive mental stresses he suffered culminated in an emotional breakdown on (date of injury). The respondent, hereinafter carrier, basically contends that the hearing officer's decision is correct and should be affirmed.

DECISION

We affirm the hearing officer's decision and order.

The claimant testified that he had worked for (employer) since 1984, first as a consultant, then as a full-time employee. In 1990, when employer was closing regional offices in C and consolidating their functions into a central office in (city), claimant, who was a systems project manager, was given the opportunity to transfer to the (MIS) department of the (city) office by a vice-president, (Mr. M). Claimant said not all employees were given the option to transfer, although he said in accepting the transfer he had to give up his right to severance benefits. He said, however, that Mr. M told him that the move would enhance his career with employer and that he would be getting "significant training" as part of the new job. As a result of the transfer the claimant sold his home, his wife gave up her job, and they bought a house in (city).

On October 26, 1990, the day claimant reported for his job in the (city) office, Mr. M told claimant that his supervisor, (Mr. L), had decided that he had weaknesses in his professional skills and needed to undergo testing before he received any training. The claimant, who had 17 years of experience in data processing, was temporarily assigned to manage a microfilming project. The record reflects numerous memoranda during that time from claimant, inquiring about the testing, the training he had been promised, and his future with employer. At the completion of the microfilm project in April 1991, instead of being returned to the MIS Department, Mr. L told him he did not have a position in MIS, and that he had been permanently transferred out of MIS when he came to (city). Claimant said he spent the first eight months of his association with the (city) office talking to various people and being given promises of a job that did not materialize. Among other things, he met with (Mr. A), employer's head of human resources, who claimant said told him that a training and career plan would be developed for him, only to deny that in a later memorandum. Claimant said he felt he was the brunt of jokes as a result of the situation, and that he and his family were under extreme stress. On (date of injury), he broke down and began crying during a meeting with a coworker; thereafter, he was taken off work by his doctor due to stress anxiety and nervous breakdown. He continued to be treated by a psychologist, who diagnosed major depression, and by a psychiatrist; an internist also treated him for physical

problems such as hypertension, gastritis, and headaches. He was also hospitalized and treated with psychotropic drugs. In March of 1993 the claimant entered into a compromise settlement with employer to resolve a lawsuit claimant had filed.

The hearing officer found claimant's injury noncompensable on two grounds: that any job duty changes claimant experienced after his transfer were the result of a changing business environment and were legitimate personnel actions, and that claimant's (date of injury), mental trauma was the result of repetitive mental stress built up over a period of time.

The 1989 Act in Section 408.006(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 under this subtitle. This panel has previously noted that the list of personnel actions in the statute is not exhaustive, Texas Workers' Compensation Commission Appeal No. 92710, decided February 16, 1993, and we have quoted commentary on the provision to the effect that "reasonable interpretation should also exclude mental or emotional trauma injuries arising principally from reprimands, evaluations, and changes in compensation," Texas Workers' Compensation Commission Appeal No. 92149, decided May 22, 1992 (citations omitted). While this provision of the 1989 Act did not exist under the prior workers' compensation statute, Texas courts have denied compensation in similar situations. In Marsh v. Travelers Indemnity Company of Rhode Island, 788 S.W.2d 720 (Tex. App.-El Paso 1990, writ denied), the court stated that "[d]isappointment in job expectations, worry and anxiety over job loss, failure to be promoted, and the like have long fallen outside the ambit of 'injury sustained in the course of employment' simply because such emotional or mental states are not connected with the employer's business." See also Duncan v. Employers Casualty Company, 823 S.W.2d 722 (Tex. App.-El Paso 1992, no writ) (compensation denied over a reprimand and job transfer); Texas Workers' Compensation Commission Appeal No. 92396, decided September 25, 1992 (elimination of prior position and transfer to new position held noncompensable).

We cannot say that the evidence in this case was insufficient to support the hearing officer's determination that the sequence of events which led to claimant's alleged injury of (date of injury), including his transfer and subsequent reassignment to other duties, was a legitimate personnel action. This is not to say that employer's supervisory personnel may not have dealt with claimant in an insensitive or even unprofessional manner, or that claimant did not experience very real upset and stress as a result. The 1989 Act makes clear, however, that employees such as claimant must seek an avenue of relief other than workers' compensation in such situations.

Even where a legitimate personnel action defense is not raised in a mental trauma case, a claimant in order to recovery must establish that his injury arose in the course and scope of employment and was traceable to a definite time, place, and cause. Bailey v. American General Insurance Company, 154 Tex. 430, 279 S.W.2d 315 (1955). The evidence in this case shows that claimant experienced escalating stress beginning with his transfer in October 1990 and continuing over the ensuing months. Indeed, the medical evidence shows claimant was treated for "chronic stress" as early as March of 1993. While

claimant did begin crying on (date of injury), while talking with a coworker, there was no evidence of a triggering, work-related event which caused claimant's distress. To the contrary, the evidence indicates claimant was talking to a sympathetic coworker at the time. We are satisfied that the hearing officer's finding on this point is supported by the evidence.

Finding no error in the hearing officer's decision and order, it is affirmed.

Lynda H. Neseholtz
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge