

## APPEAL NO. 93785

On August 2, 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, RC, claimant herein, did not sustain a mental trauma injury on (date of injury), in the course and scope of her employment with (employer). The hearing officer determined that claimant experienced repeated stress over a period of several days, and that she failed to prove a single incident occurring at work on (date of injury). Because the hearing officer did not find a compensable injury, the further issue of disability was moot.

The claimant appeals and contends that she carried her burden of proof, and states that any evidence that indicates she experienced stress prior to (date of injury), was not intended to reflect mental trauma existing before that date. The claimant asks that the decision be reversed. The carrier responds by citing all evidence in the record in support of the decision, and asks that it be affirmed.

### DECISION

The decision of the hearing officer is affirmed.

Claimant worked for the employer, a health maintenance organization, for two years prior to her claimed injury. She was a member services representative. She stated that one of the employer's health provider clients, (clinic), had decided to terminate its relationship with the employer effective April 12, 1993. Claimant was selected for a temporary on-site assignment at the clinic to answer patient or provider questions relating to the termination. Claimant testified that it was part of her usual job to field questions from the public, but this was done over the telephone with only about five percent face-to-face contact. The job description in evidence indicates that public relations skills and liaison with client groups, members, prospective members, and employer groups is the primary focus of the job. Claimant testified that stationing someone at a provider clinic was a "first" for the employer. She said she was chosen because she was both experienced and bilingual.

Claimant indicated that the transfer occurred on March 28, 1993, and when she arrived at the clinic, she was told to use the waiting room area for the purpose of doing her job. She said she was given no direction or instruction about what to do, and was furnished no assistance or support by employer. She stated that one thing she was called upon to do by various providers during the assignment was to authorize surgery (which she speculated was motivated by the impending termination of the relationship with the employer). Claimant said she had no authority to do this, and was treated rudely when she replied she could not authorize such services. Claimant said that doctors at the clinic would "throw charts" at her and expect her to do paperwork. She stated that the clinic nurses would tell her that she was in the way. Claimant said that while she would usually deal with the patients on the phone at work, she was now required in the temporary assignment at the clinic to deal with them face-to-face.

On (date of injury), claimant said she felt ill when she arrived at work at 8:00 a.m.

She found 10 patients, three doctors, and 25 charts awaiting action. She called Dr. C, (Dr. P), with the (Group) at around 9:00 a.m., and she saw her later that day, and for the next week to two weeks later, at which time she was referred to (clinic), and (Dr. E). Dr. P took claimant off work; an off-work slip from the (clinic), covering the period from April 12 through 23, 1993, indicated a diagnosis of "acute anxiety stress stemming from work." According to a lengthy letter dated May 18, 1993, written by Dr. E, claimant related a history of feeling overwhelmed by the temporary assignment over a period of days, culminating in a headache and fatigue by (date of injury).

In a transcribed statement given by claimant to an adjuster for the carrier on May 6, 1993, claimant described that she had a headache prior to (date of injury) but had an "anxiety attack" that day. Claimant also stated that she had talked with her supervisor on April 5th about alternating with another person because of the stress. In her testimony, claimant stated that she was "out of it" when the statement was given because of medication she was taking, although she agreed she had talked with her supervisor. Claimant said that references to ongoing stress cited in doctor's letters would have been a misinterpretation of her intent to stress that dealing with doctors on (date of injury) was different than dealing with the public.

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 under this Act. Section 401-011(10). An "injury" means damage or harm to the physical structure of the body and those diseases or infections naturally resulting from the damage or harm, and it includes occupational diseases. Section 401.011(26).

Mental trauma is not compensable if it results from repetitious stress. In Transportation Insurance Company v. Maksyn, 580 S.W.2d 334 (Tex. 1979), the Supreme Court of Texas held that damage or harm caused by repetitious mental traumatic activity, as distinguished from physical activity, does not constitute an "occupational disease" for purposes of the workers' compensation statute. We note that Section 408.006(a) of the 1989 Act provides that "[i]t is the express intent of the legislature that nothing in this subtitle shall be construed to limit or expand recovery in cases of mental trauma injuries." In Maksyn, the claimant was a long-time employee of a publishing company who had succumbed to the pressure, mental strain, overwork, and exhaustion from his duties which culminated in hypertension, nervousness, vertigo, anxiety depression, and disability to perform his work. The court stated that the Texas Legislature drew its line for compensability for occupational diseases by limiting coverage to those cases in which physical activities cause harm or injury and by denying coverage when mental activities cause the harm or injury, and that the legislature very well reasoned that physical activities are identifiable and traceable whereas such factors as worry, anxiety, tension, pressure, and overwork are not. See *also* Texas Workers' Compensation Commission Appeal No. 92210, decided June 29, 1992.

The hearing officer in this case determined that the claimant was unable to connect her claimed mental trauma injury to any particular event occurring in the course and scope

of her employment on (date of injury), and this finding is sufficiently supported by the evidence. The most that claimant could testify to as to how (date of injury) differed from every other day in the temporary assignment was that when she arrived in the morning, there were 10 patients, three doctors, and 25 charts waiting for her attention. She said that before this there might be one or two members to see her, and no doctors. However, the claimant had earlier testified on direct that part of her stress related to treatment by the nurses and the doctors who, she stated, would just "throw" charts at her. Moreover, the medical evidence submitted indicated that claimant had related her stress as attributable to the temporary assignment, and not any incident or series of incidents specifically on (date of injury). As the carrier pointed out in its response, claimant also testified that she already felt bad when she came to work at 8:00 a.m. on (date of injury), and she called the doctor by 9:00 a.m.

Although not raised directly in the hearing or in the decision, we would note that the carrier also disputed the payment on the claim by contending that any mental trauma injury arose from a legitimate personnel action and was not compensable, under Section 408.006(b) (previously Art. 8308-4.02(b)). One of the examples given in that statute is a transfer. We have earlier affirmed a holding of a hearing officer that a reassignment is a legitimate personnel action for purposes of this statute. See Texas Workers' Compensation Commission Appeal No. 92554, decided November 30, 1992. The temporary reassignment to the clinic arguably falls within this same exception, and would preclude compensability even if claimant had been able to prove a stressful event to the hearing officer. Because the threshold requirement of compensable injury wasn't established, the disability issue was moot. Texas Workers' Compensation Commission Appeal No. 92217, decided July 13, 1992.

The decision of the hearing officer is affirmed.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge