

APPEAL NO. 93840

This appeal arises under the Texas Worker's Compensation Act, TEX.LAB. CODE ANN. § 401.001 *et seq* (1989 Act) (formerly V.A.C.S. Article 8308-1.01 *et seq.*) On August 23, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The sole issue to be determined at the CCH was whether claimant sustained a mental trauma injury in the course and scope of her employment. The hearing officer determined that the appellant, claimant herein, had not established that she suffered a mental trauma injury in the course and scope of her employment and that claimant's job stress resulted from a legitimate personnel action and is not compensable.

Claimant contends that she had suffered a mental trauma injury traceable to a definite time, place and cause and that her transfer was not a legitimate personnel action because it reversed a previously approved personnel action. Claimant requests that she be granted three (3) days workers' compensation benefits. Respondent, a self-insured political subdivision, City herein, request that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

The evidence set out in the hearing officer's Statement of Evidence is a fair and accurate statement of the facts, and accordingly we adopt it for purposes of this decision. Briefly, claimant testified that prior to her marriage she was in a supervisory position in City's parking section at Intercontinental Airport (Airport A). Claimant testified that she discussed employer's policy on working with one's spouse and was told that it would be permitted provided that they worked in different sections. Claimant then transferred to administrative services (admin) at Airport A. Claimant stated that some months after her marriage it was determined by the City's personnel department that the City's written employment policy prohibited married employees from working in the same division and the entire airport was considered a division. Claimant testified that on October 16, 1992, claimant's supervisors told her of the determination and told her that she was being transferred to Hobby Airport (Airport B) in the same job classification and at the same pay, effective the following week. Claimant testified that this transfer, after assurances that both she and her husband could work at the same airport, caused her to become very upset. Claimant apparently saw a doctor on November 1, 1992, who records that claimant complained of "Job-stress." A doctor took claimant off work from November 1, to November 3, 1992, for "medical reasons" and prescribed an antibiotic and an analgesic.

Claimant alleges that she "suffered a mental trauma injury under Article 8408 (sic)-4.02, V.T.C.S." (should be Article 8308-4.02 which has since been codified as Section 408.006), that it was traceable to a definite time, place and cause, and that it occurred in the course and scope of employment.

First of all we note that becoming upset and crying at work, in and of itself, probably does not constitute an injury as defined by Section 401.011(26), as it did not do damage or

harm to the physical structure of the body. Neither the medical notation nor the prescription for antibiotics and analgesics (pain killer) would indicate a mental trauma injury which claimant alleged to have occurred on October 16th, when she was told she was being transferred.

Secondly, Section 408.006 states:

Sec. 408.006. MENTAL TRAUMA INJURIES.

(A) It 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.

(b) 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. (V.A.C.S. Article 8308-4.02.) (Emphasis added)

By the very terms of the statutory definition, a transfer is clearly considered a legitimate personnel action and does not constitute a compensable injury. We have so held on a number of occasions. See Texas Workers' Compensation Commission Appeal No. 92554, decided November 30, 1992; Texas Workers' Compensation Commission Appeal No. 93785, decided October 18, 1993. There is no evidence that the complained of action was anything other than an involuntary transfer of claimant from one airport to another airport. In any sense of the word this constitutes a transfer as contemplated by the statute.

Claimant argues that the transfer to Airport B reversed a previously approved personnel action and therefore "definitely exceeds permissible action." The workers' compensation disputes resolution process does not pass on the efficacy, wisdom or implementation of an employer's personnel policies. "Legitimate personnel action" means only that the complained of action was done in accordance to some type of personnel policy. Claimant's contention is totally without merit.

Finding no reversible error and finding that the decision of the hearing officer was not so against the great weight and preponderance of the evidence as to be manifestly, wrong or unjust (In re King's Estate, 244, S.W.2d 660 (Tex. 1951)), the decision of the hearing officer is affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge