

## APPEAL NO. 93844

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.*) A contested case hearing was held in (city), Texas on August 25, 1993, (hearing officer) presiding. The appellant, hereinafter claimant, appeals the hearing officer's determination that the claimant did not sustain a compensable mental trauma injury on (date of injury), and that accordingly she did not have disability. The respondent, hereinafter carrier, argues that the hearing officer's decision should be affirmed.

### DECISION

We affirm the hearing officer's decision and order.

The facts of this case are set out with great thoroughness in the hearing officer's decision and will not be repeated in detail here.

The claimant had been employed by (employer) for nearly twenty years, most recently as a production coordinator. She stated that this position often required her to work 10 to 12 hour days, starting at 6:30 a.m. On (date of injury), she injured her neck and shoulder when her chair slipped at work and she fell. She was off work due to this injury for two and one-half months.

When claimant returned to work in early December of 1992, she met with the plant supervisor, (Mr. R), and the plant accountant, (Ms. MR), concerning employer's cross-training program whereby employees would be trained in a variety of jobs. Pursuant to that program, claimant was instructed to report to the trucking section because the trucking coordinator, (Ms. W) was going to be trained in accounting. Conversely, another person was assigned to train in claimant's position as production coordinator, although when that person went out of town Ms. W took over the job. Claimant continued to be paid her usual salary while training in the trucking job, even though that job normally was done by an hourly employee and although the position was a lesser one than that of production coordinator. Another difference in the assignments was that claimant, who previously had worked late hours, was able to go home at 5:00 p.m. to be with her husband, who was ill.

On (date of injury), while Ms. W was in the production coordinator job, she came to claimant's desk at 4:00 p.m. and gave her a stack of load sheets to complete. Claimant contended this would take several hours, and that it was a job that Ms. W should have been doing as production coordinator. Claimant became upset, began to cry, and went to talk to Ms. MR who she said told her, "I know it's wrong, but [Mr. R] is making me do this to you." Claimant said that statement made her feel "like I'd been shot." Ultimately Ms. MR told claimant to go home at the usual time, and the work was completed by someone else.

Claimant contended that she was not upset by the cross-training program, which had been implemented before her September 1992 accident and which she thought was a good

idea. Rather, she said, her depression was triggered by the way the work was presented by Ms. W and by what Ms. MR said to her, and the fact that she believed that employer was trying to get rid of her. Claimant continued to work the following day, a Friday, and also the following Monday and Tuesday, although she said she continued to cry during that time. She had her regular doctor's appointment (for her neck injury) on Wednesday, then the next day went to see employer's doctor, Dr. O, who recommended she get psychiatric help. She was hospitalized for 15 days in hospital under the care of (Dr. B). Medical reports indicate that the claimant was treated for major depression which Dr. B opined stemmed from the incident at work on (date of injury). Claimant briefly returned to work in February 1993, but as of the date of the hearing was still off work and under Dr. B's care.

Ms. MR, who had been with the employer for 40 years, and who was claimant's supervisor for purposes of the cross-training assignment, recalled the incident of January 21st but denied that she said that anything was wrong or that Mr. R was making her do this to claimant. Rather, she said, she told claimant that she had not put claimant anywhere that Mr. R had not told her. Ms. MR also said it was usual and customary for the orders (which required the load sheets to be completed) to come in in the afternoon, and that the work was heaviest on Wednesdays through Fridays. She also said that there was nothing out of the ordinary involved in Ms. W's giving the work in question to claimant, as portions of the load sheets were to be filled out by the transportation coordinator.

The hearing officer, in determining that the claimant's injury was not compensable, reasoned that "It is difficult to conceive how claimant's being requested to perform a task which was so clearly in furtherance of her employer's business, even if overtime work was to be required, would constitute anything other than a legitimate personnel action." The hearing officer further wrote that claimant had not shown by a preponderance of the credible evidence that her employer was trying to get her to resign her job because of her previous compensable injury.

The 1989 Act in Section 408.006(a) (formerly Article 8308-4.02) states the express legislative intent that "nothing in this subtitle shall be construed to limit or expand recovery in cases of mental trauma injuries." However, Section 408.006(b) goes on to provide 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. It is clear that the list of personnel actions in the statute is exemplary only and not exhaustive. See 1 Montford, Barber & Duncan, A Guide to Texas Workers' Comp Reform, Part 4A.02b, 1991. See also Texas Workers' Compensation Commission Appeal No. 92149, decided May 22, 1992 (decision to send the claimant on a business trip); Texas Workers' Compensation Commission Appeal No. 93150, decided April 13, 1993 (directing the claimant to work at her regular task).

Our review of the record below convinces us that the hearing officer's decision is sufficiently supported by the evidence and is not so against the great weight and preponderance of the evidence as to be manifestly unjust and unfair. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Testimony by both claimant and Ms. MR indicated

that the cross training program had been implemented before claimant's original injury and that many employees had been moved around because of it. Claimant, indeed, testified that the change in assignments did not upset her. Regarding the events of January 21st, the hearing officer could choose to credit the testimony of Ms. MR that claimant had not been asked to do anything out of the ordinary within the confines of her position, and that she did not indicate to claimant that she was being treated in an unfair manner. As this panel stated in Texas Workers' Compensation Commission Appeal No. 93137, decided April 7, 1993:

Concluding that the claimant did not show that the communication of a personnel action in this case was contrary to law, employer's policies, or any other requirement that would render illegitimate the underlying personnel action, the provisions of [Section 408.006(b)] apply . . . .

The hearing officer's decision and order are affirmed.

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Lynda H. Neseholtz  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Robert W. Potts  
Appeals Judge