

APPEAL NO. 93940

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq.* (formerly V.A.C.S., Article 8308-1.01 *et seq.*). On September 23, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) had a mental trauma injury that was caused by stress over a period of weeks and was not compensable. Claimant asserts that the 1989 Act is unconstitutional and that the decision to demote claimant precipitated the events that caused the mental trauma. Carrier replied that the hearing officer should be upheld.

DECISION

We affirm.

Claimant worked as a store manager for (employer) since 1989. She is 56 years old. She testified that she had been manager of three stores prior to leaving her employment in November 1992 after she was told that she was being reassigned to another store in a different position. On July 16, 1992, claimant testified that she felt numb and left work earlier than normal. She saw (Dr. G) who referred her to (Dr. E), a psychiatrist. Dr. E had her admitted to Charter Hospital on August 14, 1992; she was discharged on September 1, 1992, but continued at "Day Hospital" from September 2 to October 30, 1992. Her diagnosis by Dr. E was Conversion Disorder and Major Depression. Claimant was noted to have a burning sensation, weakness and spasms of the right arm, stiff neck, and anxiety. She lost weight, cried, and lost sleep; she felt hopeless, worthless, and helpless. As cited by the hearing officer, Dr. E described the onset as follows:

All of the symptoms were precipitated immediately after an incident that occurred at her work during which her co-workers started to harass and make fun of her, indicating that she was too old to do her job and as a result, the manager was going to fire her and replace her with a younger employee. She attempted to discuss this with her supervisor but the supervisor kept putting her off and did not get back to her. This situation caused stress and she developed acutely the above mentioned symptoms. . . . (emphasis added)

An entry in claimant's records of her problem made on August 20th (while in the hospital) states, "(r)eports the symptoms began a month or so ago following several negative interpersonal interactions at work and the threat of her demotion to a position at about half her current salary."

Claimant testified that (IR), her assistant manager at the store, in June told her that employer was going to cut back and get rid of older people. She added that a prior employee, (RR), came into the store and told her that he knew she would not continue as manager in this store. (RR's sister worked in the employer's corporate office.) She tried to talk to her boss, (Mr. P), but he was too busy to talk to her. She stated that in "the last month or so, I was -- everybody was making some kind of comments." In describing the

"harassment," "disrespect," and "insubordination" she encountered, claimant stated that it happened on more than one day. She agreed that she was "sick" on July 17, 1992, and it was because of "stress that built up over the previous six weeks." She also said that the stress gradually built up. She agreed that the employer had not told her at that time that she would be demoted.

Carrier's Exhibit D indicates that on November 11, 1992, claimant was offered a position as sales associate at \$7.00 an hour at another of employer's stores. At the end of 30 days, in which certain training would be provided, she would be reviewed and could be offered an assistant manager position in a store. Carrier's Exhibit E was the statement of IR who said that claimant had him do most of the work; he said she was not capable of completing some invoices and had trouble balancing figures. IR felt that claimant took advantage of him.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. In his "Discussion of the Evidence" in the decision, he pointed out that Dr. E described the harassment as occurring at one time, but that claimant testified that it occurred over a period of four to six weeks. In Texas Workers' Compensation Commission Appeal No. 93364, decided June 24, 1993, a doctor's understanding of time periods was shown to be confused and affected the weight attributed to him in regard to whether a definite time and cause of mental trauma was shown.

The testimony of the claimant herself sufficiently supports the hearing officer's findings of fact that claimant's mental trauma was caused by stress of four to six weeks duration and not a specific event. A mental trauma injury is not compensable if it is not tied to a specific time, place, and event. See Texas Workers' Compensation Commission Appeals No. 92210, decided June 29, 1992; Texas Workers' Compensation Commission Appeal No. 92311, decided August 24, 1992; and Texas Workers' Compensation Commission Appeal No. 93150, decided April 14, 1993.

Questions on appeal as to the constitutionality of the 1989 Act will be left to the courts to decide. The Appeals Panel will consider appealed cases on their merits as if the 1989 Act is constitutional until a controlling court decision indicates otherwise. See Texas Workers' Compensation Commission Appeal No. 92124, decided May 11, 1992.

The decision and order are sufficiently supported by the evidence and are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge