

APPEAL NO. 941551

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 13, 1994, to determine whether the claimant suffered a compensable injury on (date of injury). The hearing officer determined that the claimant suffered a compensable mental trauma injury on (date of injury). The appellant (self-insured) appealed urging that the hearing officer erred in finding that the claimant suffered a compensable mental trauma injury because the evidence shows that his condition is the result of stress built-up over time and is not traceable to a definite time, place, and cause. The respondent (claimant) argues that the evidence is sufficient to support the determinations of the hearing officer and requests that we affirm her decision and order.

DECISION

We reverse and render a decision that the claimant did not sustain a compensable injury on (date of injury).

The claimant testified that he became a police officer for the self-insured on August 29, 1975. He said that early in his police career he enjoyed his work. Claimant described some things that he did as a police officer starting in about 1980 or 1981 that caused stress. He talked about his desire to do a good job and the anxiety associated with his job. Claimant had an anxiety disorder. He testified about an arrest of a person that had avoided arrest on several occasions. Claimant said that in January 1993 when the arrest was made, a gun was pointed at the suspect's head and his hands were cuffed behind him. He testified that some of the arresting officers threw the arrested person over a fence that was five or six feet tall and also threw him in the back of a truck. Claimant said that he was upset by the action of the officers, but he did not report them. He said that he had been working with the flu, but called in sick on (date of injury). He testified that he felt anxious before that, but did not know that he had panic attacks until he was told by a doctor. On cross-examination the claimant mentioned anxiety attacks after an earlier arrest of another suspect. He also said that he did not report the treatment of the suspect in January 1993 because he, the claimant was already sick.

On February 26, 1993, (Dr. M), a psychiatrist, stated that the claimant was evaluated for his mental condition and reported that he "suffers from Panic Disorders without Agoraphobia related to job stress." On March 4, 1993, Dr. M reported that the claimant continues to suffer from Panic Disorder without Agoraphobia and recommended that he be admitted for treatment on Monday, March 8, 1993. The claimant was hospitalized. In a report dated March 13, 1994, (Dr. F), who as a PhD in psychology, reported "[h]e indicated that he primarily entered the hospital because of a build-up of stress over time, and some recent events that had happened as a police officer." In a note dated March 17, 1994, Dr. M reported "[claimant] also gave me a form for workman's comp and I do not believe that panic attacks and anxiety disorder is under the rules and regulations of workman's comp and is not caused by work, although stress at work can exacerbate it, but not cause it." In a note dated March 18, 1994, Dr. M wrote:

I talked with [claimant] at length as he has been signing the release of information to Workers' COmp (sic) and he believes that his panic disorder and anxiety is caused by his stress at work.

I mentioned to him that it is not job-related. He could have felt anxious and have had panic disorder, and I believe that at the beginning, he ahd (sic) the panic disorder and the stress at work can bring more work (sic) can bring more panic out, but cannot cause this. I told him that I would not agree with him to apply for Workers' Comp.

The claimant was released on March 26, 1993, with a recommendation that he return to work in an office job on Monday, March 29, 1993. Dr. M further recommended that he work a day shift so that he could attend an aftercare program from 6:00 p.m. to 8:00 p.m., Monday through Friday. On May 14, 1993, Dr. M recommended that the claimant again be hospitalized. In an undated report (Dr. G), a psychiatrist, states that the claimant's chief complaint is "recurring anxiety and flashbacks of traumatic episodes, evidence of ongoing depression with tinnitus." Dr. G also reports:

The patient has reported in documentation identified in this document as the Biographical Report of job related stress, dated from 1975 to the current time. The patient has stated ongoing stressful events which had a cumulative effect in terms of brings about ongoing flashbacks, memories, nightmares and agitation which has seriously complicated his life. As a result of this cumulative stress over a period od time, the patient has experienced ongoing regression, symptoms of flashbacks, anhedonia, difficulty in establishing a stable sexual relationship with his wife, ongoing anxiety, tinnitus, preoccupation with traumatic events and near-misses of disease and serious injury and possible fatal harm, all consequent of his position as a police office (sic).

The hearing officer made the following Findings of Fact:

FINDINGS OF FACT

4. CLAIMANT has been a police officer in [self-insured] for over 19 years.
5. CLAIMANT has a pre-existing anxiety disorder.
6. In early to mid-January, 1993, CLAIMANT took part in a particularly traumatic arrest of a criminal suspect in downtown [self-insured] which aggravated his pre-existing anxiety disorder and led, on (date of injury), to his hospitalization and treatment for anxiety disorder.
7. An aggravation of a pre-existing condition is an injury.

8. CLAIMANT'S mental trauma injury was caused by the arrest of criminal suspect [Mr. E] in downtown [self-insured] in early to mid-January, 1993.

The self-insured does not dispute that the claimant suffers from an anxiety disorder. It argues that Dr. M opines that the claimant's panic disorder and anxiety is not job related and if it is job related it is not a compensable injury because none of the doctors relate it to the January 1993 arrest of a suspect.

Section 408.006(a) provides "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." The Texas Supreme Court has held that mental trauma can produce a compensable injury if it arises in the course and scope of employment and is traceable to a definite time, place, and cause. Bailey v. American General Insurance Company, 279 S.W.2d 315 (Tex. 1955); Olson v. Hartford Accident and Indemnity Company, 477 S.W.2d 859 (Tex. 1972). The Texas Supreme Court has also held that damage or harm caused by a repetitious mental traumatic activity, as distinguished from a physical activity, cannot constitute an occupational disease. Transportation Insurance Company v. Maksyn, 580 S.W.2d 334 (Tex. 1979). Texas Workers' Compensation Commission Appeal No. 94785, decided July 29, 1994.

The existence of an injury may be established through the testimony of the claimant alone, and the finder of fact may believe a claimant's testimony over expert medical evidence. However, when a subject is one of such technical nature that a fact finder could not have or be able to form opinions of his or her own based on the evidence presented, only the testimony of experts skilled in the subject has any probative value. The cause, progression, and aggravation of mental disease is such a subject. Appeal No. 94785, *supra*. In this case the claimant testified concerning stressful situations at work starting in 1980 or 1981. Dr. F reported that the claimant entered the hospital because of a build up of stress over time and some recent events that happened as a police officer. Dr. G reported job related stress from 1975 to the current time which had a cumulative effect on the claimant. None of the doctors report that the arrest of the suspect in January 1993 caused the claimant's condition on (date of injury), and his hospitalization. Repetitive mental stress over a period of time does not constitute a compensable mental trauma injury. Nor does one event, among many similar events, constitute a causal connection for a compensable injury where there is a complete lack of medical evidence establishing such a link. Appeal No. 94785, *supra*. We view the claimant's experience during the arrest of the suspect in January 1993 to be another event in the stressful work situation of the claimant as a police officer.

In Texas Workers' Compensation Commission Appeal No. 92189, decided June 25, 1992, this panel affirmed the finding of a hearing officer that stress exacerbated her mitral valve prolapse heart condition that brought on chest pains, collapse, and hospitalization. We have not been cited authority for, nor are we aware of authority for, a

determination that the last of a series of stressful work-related events can be the basis for a finding of a compensable mental trauma injury even if it is traced to a specific time, place, and cause. Even if one were to accept the finding that the arrest in January 1993 aggravated a pre-existing condition, it would follow from the testimony of the claimant and the reports of the doctors that the pre-existing condition resulted from job related stress. The result is that the January 1993 arrest is the last in a series of job-related stressful events.

The claimant also argues that the self-insured has an obligation to provide for him because he was injured at work and that the workers' compensation laws should be changed. In Section 408.006 the legislature expressed its intent not to change the workers' compensation law concerning mental trauma injuries. At the hearing the self-insured commented on other programs of the self-insured to assist the claimant. An effort to have the workers' compensation law changed is a matter to be addressed by the legislature rather than this Appeals Panel.

Determining that the hearing officers decision and order are against the great weight and preponderance of the evidence, we reverse that decision and order and render a new decision that claimant's mental trauma resulted from ongoing continued stress from his job and does not constitute a compensable mental trauma injury.

Tommy W. Lueders
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Alan C. Ernst
Appeals Judge