

APPEAL NO. 94209

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), a contested case hearing was held in (city), Texas, on January 6, 1994, (hearing officer) presiding as hearing officer. He determined that the appellant's (claimant) mental trauma injury is the result of a legitimate personnel action and, therefore, not a compensable injury. Claimant urges error in several findings of fact and a conclusion of law, and argues that the evidence establishes that he sustained a compensable mental trauma injury. Respondent (carrier) urges that the evidence is sufficient to support the decision of the hearing officer and asks that it be affirmed.

DECISION

Finding the evidence sufficient to support the findings and conclusions of the hearing officer, the decision and order are affirmed.

The single issue in the case was whether or not the claimant sustained a compensable mental trauma injury. Not contested was the fact that the claimant suffered depression, anxiety and stress related disorders and that he had sought medical and therapeutic treatment since sometime in (month year), when he resigned his employment with the employer. The claimant had worked for the employer for some 14 years and according to his testimony, he had been an assistant manager for about five years. In (month year) here had been an explosion which ruptured a natural gas pipeline. (Mr. A), a close friend of the claimant and the supervisor of safety (the "non-production" side of management as opposed to the "production side" in which the claimant worked) asked the claimant to investigate the incident and prepare a written report. The claimant did so and sent the report to Mr. A and at about the same time provided a copy to his direct supervisor. Apparently, the report generated some controversy at the upper management levels. In any event, on January 10, 1993, the claimant received what he considered to be a devastating phone call from his second level supervisor and was advised that he would not be going to a course in (city), that he was not considered upper mobility management material, that he would not be moved up from the assistant managers position and that he could transfer to a "technical" position. Although not clear, this technical position appears to have been a lateral transfer and involved the same wage although a company car was not included. The claimant worked in this position for four to five months and gave two weeks notice of his resignation. He states that he had severe stress problems, anxiety, occasional sexual dysfunction and twitching from (date) on and that it progressively worsened. Although not one to go to a doctor easily, his wife convinced him to do so and to get into a therapy program. His emotional state was evident at the hearing during his testimony.

Mr. A testified that he was no longer with the employer and was terminated when he declined a transfer although it was listed as a reduction in force. He indicated he had some safety disagreements with other elements of management which led to his eventual departure. He stated the claimant, a good friend of his, had always been a good employee, that he accomplished a very good report on the explosion incident and that he had been

treated wrongly by elements of the employer's management. He had seen the claimant's condition deteriorate after the (date) phone call.

Claimant's position, in essence, is that what happened to him by the action and words of the unjustified traumatic phone call on (date) was not a legitimate personnel action and that the phone call had its genesis in the report he submitted genuinely expressing his concern for safety and making valid recommendations to preclude a recurrence. He emphasized his prior good record and that certain members of upper management took inexcusable action against him. He considers the phone conversation to be unethical behavior, under the circumstance, involving the report he submitted, and that it, combined with the transfer, was not a legitimate personnel action. Although not calling any witnesses or presenting any evidence other than the cross examination of the claimant and Mr. A., the carrier's position is that the case clearly falls within the provisions of Section 408.006(b) which provides 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."

As indicated, it was not contested that the claimant is suffering from an emotional or stress related disorder. It is indeed unfortunate that his relationship with his employer deteriorated so significantly that he ultimately resigned from his employment under these circumstances. He believes that his concern for safety as reflected in his report was the basis for his down turn in his relationship with his employer and that this cannot result in a legitimate personnel action. The hearing officer did not find any illegitimacy to the phone call or the transfer, under the circumstance, to take this case outside the specific statutory limitation. It is only speculation that any illegitimate or improper retaliatory action was taken, contrary to the important interests of safety in the work place, through the phone call and accepted transfer. While a transfer, demotion, reprimand or other adverse action can certainly be devastating, this does not fulfill the requirements for a mental trauma injury to be compensable. See Texas Workers' Compensation Appeal No. 92396, decided September 25, 1992, where an employer's decision to transfer an employee to a new position was held to be a legitimate personnel action and Texas Workers' Compensation Commission Appeal No. 92149, decided May 22, 1992, where an employer's requirement that an employee, against her wishes and which caused her mental trauma, travel and work with another employee was held to be a legitimate personnel action. Other cases where employees have been terminated or threatened with termination resulting in mental trauma but upheld as legitimate personnel action are Texas Workers' Compensation Commission Appeal No. 931140, decided January 28, 1994, and Texas Workers' Compensation Commission Appeal No. 93867, decided November 10, 1993. See *also* Texas Workers' Compensation Commission Appeal No. 92210, decided June 29, 1992. Compare Texas Workers' Compensation Commission Appeal No. 92189, decided June 25, 1992. We find no basis in fact or law to disturb the determinations of the hearing officer that the claimant's mental trauma injury is the result of a legitimate

personnel action and, therefore, not a compensable injury under the 1989 Act. Accordingly, the hearing officer's decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge