

APPEAL NO. 94332
FILED MAY 4, 1994

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 10, 1994, a contested case hearing was held in [City], Texas, [hearing officer] presiding, to determine whether the compensable injury sustained by the appellant (claimant) on [date of injury], was a producing cause of her subsequent psychological problem. The hearing officer found that on [date of injury], claimant fell at work injuring her lower back and left ankle, that for several years prior to that date she suffered from depression, and that her compensable injury of that date "was not a producing cause of the worsening, if any, of Claimant's preexisting depression." Based on these findings, the hearing officer concluded that claimant did not sustain a compensable psychiatric injury as a result of the compensable injury of [date of injury]. In her request for review, claimant essentially challenges the sufficiency of the evidence to support those findings and the conclusion. Claimant asserts that while she had periods of depression before [date of injury], she had not suffered from depression for some time before [date of injury], and that her injury at work on that date resulted in her subsequent bout of depression because of her concern over being off work because of the injury, her concern over being her own sole support, and her concern about returning to work. Claimant also argues that the carrier submitted no probative medical evidence that claimant's pre-existing condition was "the sole cause of her disability," that the hearing officer was required but failed to make a finding respecting claimant's prior condition being the sole cause of her disability, and that absent such a factual finding the hearing officer's conclusion that claimant did not sustain a compensable psychiatric injury is against the great weight and preponderance of the evidence. The response filed by the respondent (carrier) contends that the evidence showed that claimant's allegedly worsened depression, if any, resulted from events which occurred both before and after the [date of injury], injury and that these events and claimant's concerns over them were clearly not compensable pursuant to Section 408.006(b).

DECISION

Affirmed.

Claimant testified that on [date of injury], she slipped on some water while working at a [Employer] cafeteria where she had been employed for nine years, fell on her tail bone and hurt her back and left ankle. She said she completed her shift and the next morning sought medical treatment at a hospital emergency room (ER) where she was treated and taken off work for three days. She returned to the ER and was referred to [Dr. T], who treated her conservatively and kept her off her leg for a few days. Dr. T's diagnosis included a torn lateral ligament, sacroiliac pain, and lumbar strain. Claimant

said Dr. T some time later referred her to [Dr. A], a psychiatrist, who first saw her on July 23, 1992, and who thereafter saw her several times a month treating her for depression. Claimant was admitted for hospital treatment of her depression in December 1992 and again in January 1993, and said she continues to see Dr. A monthly. Claimant acknowledged a family history of depression, her own history of prior emotional problems including suicide attempts, the last being in 1985, and prior psychiatric treatment including electroshock therapy. She maintained at one point that she had recovered and had not had further mental illness after the 1985 episode and before her fall at work. At another point, however, when questioned about the history she provided for her hospitalization in January 1993, claimant acknowledged having referenced the onset of depression about 14 months earlier, saying she did begin to get depressed then but that it was not serious. She also said her work environment changed and became more stressful when a new manager took over in January 1990 because of declining sales. She said the employees came under a lot of pressure to perform their jobs at optimal capacity and that it was stressful, but no more so for her than for the others.

Claimant said she has not returned to work since her fall, that she took two three-month leaves of absence, and that into December 1992 she still had a job. Claimant testified that after her fall at work she became depressed when she started thinking about not having a pay check and insurance; that she became concerned about how she was going to take care of herself; that she did not understand employer's leave of absence program; that she felt like she was being harassed, intimidated, and not being treated fairly by employer after her fall; that she was concerned about losing her job; and that it was the injury at work that caused her to become depressed since she had nothing to be depressed about before her fall. She said she handled her stress before the fall but that the accident created a stressful problem she could not handle.

Claimant's daughter testified that she had worked for the employer until 1985, that she, too, had been stressed there in terms of job performance and the new manager coming in, and that most of her mother's depression "was just basically pressures on the job."

Dr. T's letter to carrier of August 26, 1992, indicated his awareness that Dr. A had diagnosed claimant with depression and he stated that claimant had seemed "very distraught" about being able to return to work and the possibility of back pain if she did return to work. He also stated: "I am not familiar with her pre-injury psychological status, but it does seem that the injury if not caused it (sic), has definitely aggravated her depressed state."

In evidence with hospital records of claimant's admission from January 31 to February 12, 1993, was an unsigned consultant's report of January 27, 1993, which described claimant as "a good historian" and which recited that she said she "started getting depressed about 14 months ago and eight months ago she fell down on her job and also she had a lot of pressure on the job, and all of this made the depression worse since eight months ago. For the last three months, the depression has been getting so severe. Since she lost the job in November of 1992, the depression is getting very severe and bad to the point of the patient becoming very hopeless and attempting suicide about a month ago" As mentioned, claimant testified she still had a job in December 1992. This report went on to note that claimant had her first nervous breakdown at the age of 21 and was admitted to the hospital for depression, that since then she has twice been admitted for depression, once 15 years ago with a suicide attempt, and again seven years ago. This consultant diagnosed major depression, severe degree, with melancholic features.

In a report of March 25, 1993, [Dr. P], a clinical psychologist, noted that Dr. T had described claimant's lumbar strain and ankle strain as "superficial," had determined that she had reached maximum medical improvement and had given her "0% disability," and had described a "significant functional (emotional) component to her complaints." Dr. P's report further stated: "She was unable to complete physical therapy program due to anxiety and agitation about returning to work. This was apparently due to long-term conflict with work, suspiciousness and the delusion that her supervisor set the accident up to punish her." Dr. P opined as follows:

This lady's depression is pre-existing and recurrent and is not caused by her superficial injury of [date of injury]. Her claims of physical injury are also not supported by objective evidence. She became agitated by the prospect of returning to work and facing a conflicted relationship with her boss. . . . See no causal relationship between accident and depression. . . . Overall, she is a suspicious woman who was creating trouble at work long before the accident and who remained paranoid about her boss. With no objective evidence for her continued pain, it is unlikely that this minor injury either aggravated or exacerbated her psychiatric condition.

Dr. A reported on April 26, 1993, that claimant's present episode is a major depression which began after her fall at work, that although her injury was reported by Dr. T as "superficial," her back pain has been severe, and that "the fall and subsequent pain has served as an `exit event' causing depression."

In the history portion of a psychiatric evaluation report of May 17, 1993, [Dr. F] notes that claimant complained of her memory not being good due to electroshock

therapy and also complained of "a lot of abuses from the management" and of supervisors cursing and making sexual comments. Dr. F, who apparently performed the evaluation in connection with claimant's application for Social Security disability benefits, also stated that claimant said she has had prior mental problems and "problems with chronic depression" which involved periods of hospitalization and electroshock treatments. She complained of hearing voices telling her to kill herself and that a male voice has kept her awake and bothered her for years. Dr. F's psychiatric diagnosis included major depression, severe recurrent, with psychotic features; multiple physical problems including her lower back injury in [date of injury] with recurrent pain; various surgeries; and the severity of psychosocial stressors including living alone, unemployment and financial problems, chronic pain, treatment from the management, and a history of physical abuse as a child.

In hospital records pertaining to claimant's hospitalization from May 5 to June 15, 1993, Dr. A mentioned that claimant became violent, apparently following an adverse determination on her application for Social Security benefits. Dr. A stated that claimant's first nervous breakdown and admission was 20 years ago, that her second breakdown was about 10 years ago, that subsequently she was doing well, was working for employer, was not receiving any psychiatric treatment, and that "[h]er problems began following an on-job injury she received while working at [employer]."

In a September 24, 1993, letter to the carrier stating the results of his August 4, 1993, psychiatric evaluation of claimant, [Dr. G] related her history of job stress at her employment and of her feeling she was being "harassed" about returning to work after her injury and running a risk of termination if not back at work by a certain date. With regard to these concerns, Dr. G's report stated: "I mentioned that because this was actually the predominant focus of this lady's complaint. She stated to me that, in actual fact, it was the `way she was treated' after the accident that created the emotional problems that she has experienced since that time." Dr. G's report further stated that claimant's diagnosis "appears to be a rather chronic Depressive Disorder with significant associated anxiety." Dr. G noted her feeling that she was "unfairly treated" while working at employer's, and of being "subjected to intimidation, coarse language, constant pressure to increase her work product, etc." and stated: "It appears as though her major distress, at this time, is secondary to her anger at her former employer over what she feels was unfair treatment after her injury." Respecting causation, Dr. G stated:

I do not feel that her current depressive disorder is directly a result of this injury. It is difficult, obviously, to separate the injury from the way this lady might have been managed or `treated' by her employer. I have only heard one side of this story; however, it is obvious that this lady is predominantly

upset over the way her case was managed by her former employer and her ultimate termination. It appears as though that is the major focus of her anxiety and depressive symptoms at this time, and certainly not anything that is directly, causally related from the accident itself.

Obviously, the accident `started the ball rolling'; however, it certainly does not appear as though this particular matter, at this time, is a direct result of that injury. . . .

Claimant's attorney wrote Dr. G on October 20, 1993, concerning the latter's letter report to the carrier of September 24th, stating, among other things, that claimant "worked for [employer] for ten years prior to her accident date without any emotional or depressive problems," and that "her onset of depression coincides with the date of her on-the-job injury." In a November 2, 1993, letter responding to that letter, Dr. G stated that he felt claimant's injury at work was "a producing cause of her problems at this time," "a strongly positive contributing cause," and "a proximate cause" of her current depressive disorder. Dr. G also stated that her "'treatment' by her employer after this accident has certainly contributed to the depression and this course would not have even occurred had it not been for the injury itself. In actual fact, the mental health field does not allow itself to be split into such simple causal aspects." He spoke of the accident as being the "straw that broke the camel's back" and stated that "the combination of her work related accident and the treatment that she received emotionally from her employer following the accident contributed to the problem she was experiencing."

In his deposition upon written questions of January 11, 1994, Dr. A stated that claimant was in her "usual state of health" when she had the fall, and that the injury disrupted her routine and caused severe back pain resulting in major depression whose onset directly followed the injury.

According to Section 408.006(a), the legislature intended that the 1989 Act not be construed to limit or expand recovery in cases of mental trauma, and Section 408.006(b) 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" In Texas Workers' Compensation Commission Appeal No. 91122, decided February 6, 1992, a case in which a store clerk was assaulted with a pistol during a robbery and later diagnosed with post-traumatic stress disorder with depression, the Appeals Panel observed at the outset "that a mental ailment occasioned in the course and scope of employment under conditions like those in the instant case is a compensable injury. [Citations omitted.]" And in Texas Workers' Compensation Commission Appeal No. 92432, decided October 5, 1992, where the employee

sustained a compensable injury to her neck as a cook, the Appeals Panel found there was "sufficient medical and lay testimony that is uncontroverted that the respondent's depression is a direct result of her compensable injury; as such, it could appropriately be considered by the hearing officer as part of her injury as a cause of continued disability. [Citation omitted.]"

Texas Workers' Compensation Commission Appeal No. 92189, decided June 25, 1992, involved an employee found by the hearing officer to have experienced a compensable mental trauma injury which arose from a sudden, stressful incident at work when the employee was severely chastised by her immediate supervisor. In affirming, the Appeals Panel made several observations that are pertinent to the case we here consider. That decision stated that "an aggravation or worsening of a previously-existing condition, which aggravation arises from the course and scope of employment, is itself considered an `injury'; this is true even if the prior condition is not itself job related. [Citation omitted.] Thus, a carrier who attributes disability to a preexisting condition has the burden of showing that such condition was the sole cause of incapacity. [Citation omitted.]" The decision went on to review mental trauma cases involving incidents at work determined not to be compensable including a misunderstanding with a coworker, and an employee who was reprimanded and transferred to another position. The decision cited Marsh v. The Travelers Indemnity Company of Rhode Island, 788 S.W.2d 720, 721 (Tex. App.-El Paso 1990, writ denied) which stated that "[d]isappointment in job expectations, worry and anxiety over job loss, failure to be promoted, and the like have long fallen outside the ambit of injury sustained in the course of employment simply because such emotional or mental states are not connected with the employer's business."

In Texas Workers' Compensation Commission Appeal No. 94284, decided April 22, 1994, the hearing officer determined that the employee's major depression was related to problems she had with coworkers and was not the result of the injury she sustained when she slipped and fell at work. As in the instant case, there were differences of medical opinion on the causation issue concerning the employee's mental condition. In affirming, the Appeals Panel noted that the issue was one of fact for the hearing officer to resolve as the fact finder, citing Section 410.165(a) which provides that the hearing officer is the sole judge of the relevance and materiality of the evidence as well as its weight and credibility. It is for the hearing officer to resolve the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)) and such is also true of conflicting medical evidence. (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)).

We are satisfied that the evidence sufficiently supports the hearing officer's findings and conclusions in this case. The hearing officer could credit the report of Dr. P and the first report of Dr. G that there was not a nexus between her relatively minor physical injury at work and her subsequent major depression, and could conclude that it was not the accident at work that either resulted in a new major depression or aggravated her pre-existing depression but rather the difficulties she either encountered or perceived with her employer after the injury which related to her return to work, her leaves of absence, and, apparently, her ultimate job termination in late 1992. The hearing officer could also have concluded from the evidence that claimant's depression resulted from legitimate personnel actions such as the employer making an effort to determine when she would return to work, arranging for her two three-month leaves of absence, and undertaking her ultimate termination. The hearing officer could also have concluded from the evidence that claimant's depression resulted from a protracted history of conflict with supervisors which preceded her fall. The Appeals Panel has held that repetitive mental trauma is not compensable. See e.g. Texas Workers' Compensation Commission Appeal No. 93596, decided August 26, 1993.

We will not disturb the hearing officer's findings unless they are so against the great weight and preponderance of the evidence as to be manifestly unjust and we do not find them so in this case. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 244 S.W.2d 660 (Tex. 1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge