

APPEAL NO. 94349

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 15, 1994, in (city), Texas, (hearing officer) presiding. The two issues before the hearing officer were whether the claimant sustained a compensable mental trauma injury, and whether the claimant's alleged compensable mental trauma injury has caused disability. The hearing officer ordered that the claimant take nothing as a result of this claim, and the claimant appeals, citing evidence from the record of the hearing. The carrier did not file a response.

DECISION

We affirm.

The claimant was employed as a bookkeeper/cashier by (employer) from August 15, 1991 to December 12, 1992; she had previously worked for the same employer from 1984 to 1986. Claimant was the only woman working in an office with five men; it was her testimony that her supervisor, (Mr. W), and other co-workers harassed her the entire time she worked there. According to a lengthy document claimant wrote which detailed events at work, such harassment included sexual innuendoes, use of profanity in her presence, ridiculing her husband, and otherwise showing her disrespect.

Claimant said that for a few weeks prior to (date of injury), Mr. W's wife had surgery and he stopped harassing her. She said that during that time the office atmosphere was normal, and she even prepared dinner for Mr. W and his wife. On (date of injury), however, claimant said Mr. W handed her a piece of paper to sign, telling her she had been given a raise. When claimant wanted to read the paper first, she said Mr. W became angry, grabbed the paper from her hand, banged his fist on her desk and ordered her to sign. (Mr. W testified at the hearing that on the date in question he gave her both verbal and written notice of her raise, and denied that he raised his voice, pounded his fist, or grabbed the paper from her.) Claimant said she was in shock as a result of this incident, and that she became hysterical the next morning as she was preparing to leave for work. Claimant's daughter took her to an emergency room on December 21st because she was suffering from stomach, head, and chest pains, and crying spells. She was ultimately referred to a psychiatrist, (Dr. T).

Dr. T diagnosed claimant with major depression and stated that her illness was characterized by preoccupation with her treatment at work. A February 14, 1994, letter from Dr. T described claimant's situation at work and her subsequent reaction to it. He wrote:

From a medical standpoint, her condition represents a version of depression complicated by limited ego resources. The long build up of anger over a protracted period could be handled partially by her coping mechanisms. But when her defenses were relaxed, and she was suddenly confronted with behavior that provoked rage she was unable to deal effectively with it.

Claimant was also sent by the Commission to see another psychiatrist, (Dr. G), who on November 12, 1993, gave a diagnosis of major depression, single episode, with psychotic features which he said "was precipitated by the stressful situation at her work." Dr. G recorded claimant's statement that "primarily because of verbal harassment by her supervisors and coworkers that her work situation became more and more difficult and stressful, finally becoming untenable which resulted in an acute depressive episode which required emergency care and continuing care with" Dr. T.

The claimant stated at the hearing, and documents in evidence attest to this fact, that she has filed a discrimination claim against her employer with the Equal Employment Opportunity Commission.

The hearing officer found that stress at claimant's workplace caused her mental trauma and that her mental trauma has caused continued disability. However, he concluded that claimant had not sustained her burden of proving that her illness was caused by a specific event. The 1989 Act states in Section 408.006(a) the express legislative intent that nothing in that subtitle "shall be construed to limit or expand recovery in cases of mental trauma injuries." The Appeals Panel has previously observed that much of Texas case law concerning mental trauma injury continues to be applicable under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92189, decided June 25, 1992. Texas courts have held that, in order to prevail in a workers' compensation case, a claimant must establish that a mental trauma injury arose in the course and scope of employment and was traceable to a definite time, place, and cause. Bailey v. American General Insurance Company, 154 Tex. 430, 279 S.W.2d 315 (1955). Repetitious mental trauma injuries have been held not to be compensable. Transportation Insurance Company v. Maksyn, 580 S.W.2d 334 (Tex. 1979).

In this case, the claimant testified to a single, upsetting event occurring on (date of injury) which she said triggered the depression she has since been suffering. However, she also freely acknowledged (both in her testimony and in the documents in evidence which chronicle events at work) harassing and abusive behavior "all the time I was working there." Despite the fact that the claimant said the (date of injury) incident occurred following a period of calm, the hearing officer obviously could and did believe that her mental trauma was the cumulative result of her coworkers' behavior over the entire period of her employment. We note that the reports of Drs. T and G, while alluding to the (date of injury) event, also mention the pattern of events at the workplace as a causative factor. As with any work-related injury, it is necessary in the case of a mental trauma injury not only to establish a definite time and place, but also the causal relationship between the event and the ultimate condition. Garcia v. Texas Indemnity Insurance Company, 209 S.W.2d 333 (Tex. 1948).

Because the hearing officer has held, and we find no error in such holding, that the claimant did not sustain a compensable injury, we will strike as surplusage his finding and conclusion that claimant had disability as a result of mental trauma. The 1989 Act defines "disability" as the inability because of a compensable injury to obtain and retain

employment at wages equivalent to the preinjury wage. Section 401.011(16). In all other respects, the decision and order of the hearing officer are affirmed.

Lynda H. Neseholtz
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge