

APPEAL NO. 94361

On February 15, 1994, a contested case hearing was in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issue at the hearing was whether the appellant (claimant) sustained a mental trauma injury on (date of injury). The hearing officer found that the claimant did not sustain a mental trauma injury on (date of injury), in the course and scope of her employment, and decided that the claimant is not entitled to workers' compensation benefits. The claimant disagrees with the hearing officer's decision. The respondent (carrier) requests that the decision be affirmed.

DECISION

Affirmed.

The carrier contends that the claimant's appeal, which expresses disagreement with one of the hearing officer's findings, is not adequate to invoke our jurisdiction. We hold that it is an adequate appeal. See Texas Workers' Compensation Commission Appeal No. 92292, decided August 17, 1992. The carrier also objects to the claimant's appeal because it asserts that it did not receive a copy of the appeal until the (city) office of the Texas Workers' Compensation Commission (Commission) provided it with one. While the failure of the claimant to send a copy of her appeal to the carrier may extend the time for the carrier's response, it does not affect the timeliness of the appeal or otherwise prevent its consideration. Texas Workers' Compensation Commission Appeal No. 92397, decided September 21, 1992.

On (date of injury), the claimant was working as an interoffice mail router for the employer, (employer). In the report of the Benefit Review Conference (BRC) held on August 9, 1993, the benefit review officer (BRO) reported that the issue was whether the claimant suffered a mental trauma injury on or about (date of injury), and the parties agreed at the hearing that that was the issue to be resolved by the hearing officer. The BRO also reported that the claimant's position was that she suffered a psychotic episode when her supervisor told her she could not speak or smile while making her rounds. The carrier's position at the BRC was that the mental trauma was associated with a legitimate personnel action and was not compensable. The BRO recommended that the claimant did not sustain a compensable mental trauma injury.

At the hearing, the claimant testified that the morning of (date of injury), an unknown woman, or a man dressed as a woman, asked her if she had any money while she was in a bathroom at work and that when she said she didn't have any, the person grabbed her by the throat and threw her against the wall. At this point, the claimant said that she suggested to her attacker that he or she let her go and wait for the next person to enter the bathroom.

The claimant further testified that she was in a state of shock when she left the bathroom and that she pushed her mail cart towards her supervisor, (DI) with the intention of telling her supervisor about the incident in the bathroom. However, the claimant said

that she never got a chance to report the incident to DI, because when she reached DI, DI told her "you can't speak or smile while you're pushing your cart." The claimant testified that DI did not scream or yell at her.

The claimant said that she was dazed and confused and went to call her mother to come pick her up at work. The claimant was uncertain whether she actually called her mother, but she said that she, the claimant, started screaming and hollering "get me out of here" and "I can't take it anymore." The claimant said that a coworker took her from work to a hospital. The claimant related that since (date of injury) she has been treated by (Dr. B) and by several psychiatrists.

The claimant further testified that prior to the February 15, 1994, hearing, she had never reported the bathroom incident to her employer. She also said that she never reported the bathroom incident to the police or to any of her doctors. She said she has not had a chance to report the incident and that no one has ever asked her about the incident. The claimant said she has not worked since (date of injury), because her psychiatrists have told her not to go to work.

DI testified that on the morning of (date of injury), the claimant was visiting with a coworker while picking up the coworker's mail, when DI told the claimant to please keep her visiting to a minimum because her visiting was distracting the employees. She said she did not yell or scream at the claimant and that the claimant did not appear upset. She also said that the claimant did not report the bathroom incident to her. DI said that about 20 minutes later, the claimant told her that she had a headache and wanted to see a doctor so DI said to do so. Again, the claimant did not appear to be upset and did not report the bathroom incident. A few minutes later, DI said she heard banging against the cubicle walls and heard the claimant screaming and shouting "I've got to get out of here. They say I can't talk. They're making me crazy." DI said the claimant then left the building. DI further testified that she heard about the bathroom incident for the first time at the hearing. Personnel records showed that the claimant had been advised in writing on at least three occasions prior to (date of injury) to keep her visiting with other employees to a minimum while routing the mail.

(GO) testified that she was a group leader in the claimant's section and that on (date of injury) the claimant came to her and told her that DI had cautioned her about visiting with other employees. She said the claimant appeared to be a little upset but then calmed down. She also said that the claimant did not mention anything about an incident in the bathroom. GO testified that the claimant then called the claimant's mother and that after the telephone conversation the claimant started yelling, crying, stomping, and hitting the walls. She said a coworker then took the claimant outside.

The only medical reports in evidence were from Dr. B. In a medical report dated May 19, 1993, Dr. B stated that he had obtained all of the history of the illness or injury from the claimant. He stated that the claimant told him that when she was at work on (date of injury), she was told that she was ugly, that she had monster fingernails, that she could not

talk to anyone, and that she needed to do better work. There is no mention of an incident in the bathroom. Dr. B diagnosed an "acute psychotic incident." Dr. B stated that "if it is a truly psychotic episode such as paranoid schizophrenia she may never achieve status that she was in prior to this." Dr. B referred the claimant to a psychiatrist. In a subsequent report dated June 9, 1993, Dr. B noted that the claimant was getting counseling and was on antipsychotic medications.

Section 408.006 provides as follows:

- (a) 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.
- (b) 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.

In the discussion of the evidence section of his decision, the hearing officer stated, in part, that the verbal reminder to the claimant to limit her visiting was a legitimate personnel action by the employer, and that the restroom incident did not occur.

Among other things, the hearing officer found that the verbal reminder to the claimant to control her visiting was a reasonable and necessary action by the employer to conduct its office affairs in a businesslike manner, and that no other incident occurred in connection with the claimant's employment on (date of injury), which resulted in an injury to the claimant. The hearing officer concluded that the claimant did not suffer a mental trauma injury on (date of injury), in the course and scope of her employment with the employer.

The claimant appeals only the hearing officer's determination that the restroom incident did not occur.

Whether the claimant sustained a compensable mental trauma injury in the course and scope of her employment was a factual determination to be made by the hearing officer who is the judge of the weight and credibility of the evidence and who determines what facts have been established by conflicts and contradictions in the evidence. Texas Workers' Compensation Commission Appeal No. 92396, decided September 25, 1992; and Texas Workers' Compensation Commission Appeal No. 92311, decided August 24, 1992. Having reviewed the record, we conclude that the hearing officer's findings are supported by sufficient evidence and are not against the great weight and preponderance

of the evidence, that the findings support the hearing officer's conclusions, and that the conclusions support his decision. The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst
Appeals Judge