

APPEAL NO. 950046
FILED FEBRUARY 21, 1995

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), a contested case hearing was held on December 15, 1994. The hearing officer determined that the appellant (claimant) did not sustain a compensable mental trauma injury and did not have disability due to a compensable injury. The claimant appeals urging error in several of the hearing officer's findings, principally her findings that the actions of the employer were legitimate personnel actions, that claimant's stress was not a result of an illegitimate action rather it was from ongoing stressful conflicts with his supervisor resulting from different management styles, that he suffers from a stress disorder resulting from cumulative stress, and that no specific event occurred in the course and scope of employment causing claimant's stress disorder. Claimant also disagrees with the hearing officer's conclusions that his disorder is not a compensable injury and that he has no disability as a result of a compensable injury. No response has been filed.

DECISION

The decision is affirmed.

The claimant worked as the chemical stockroom supervisor for (Employer). In September, his supervisor who was a close friend passed away, and shortly before that a new Chair of the Chemistry Department was named, (Dr. T). The claimant, who had filled in for his supervisor on previous occasions, was given the responsibility to fulfill both that position and his own on a temporary basis while an upgraded position was being created. This new position was delayed, apparently until sometime in May 1994, because of funding and administrative problems according to the testimony of Dr. T. In any event, it became clear that the new position would be posted and that the claimant would be given the opportunity to compete rather than being automatically promoted into the position. Apparently, the claimant withdrew his application for the position before being interviewed. The claimant testified that the stress of performing both functions, the conflicts with Dr. T, the lack of training, the lack of help and requested assistance, the requirements for new reports, etc. caused him great anxiety, sleep and stomach problems, and stress resulting in the necessity of professional help. He was ultimately diagnosed with Post Traumatic Stress Disorder (PTSD) and Adjustment Disorder. A report of a psychologist seen by the claimant states that:

Following the death of his previous supervisor and friend, the patient reported that he began experiencing increased feelings of frustration and agitation. However, his complaints and frustration appeared to focus on his increased responsibilities and conflicts with his current supervisor, rather than the death of his previous supervisor. He also reported that he had progressive difficulty accomplishing the tasks required of him.

In his testimony, the claimant indicated that Dr. T "failed to do what she needed to do" and that this caused illegitimate personnel actions. He stated that Dr. T made constant demands that violated his "morales" such as leaving students in an area not frequently visited by the public and where they would not know what to do in case of a fire or chemical accident or where they could be raped. He felt that he has been psychologically abused for six months although he did not point to a specific event or particular time when his injury occurred other than the date of June 28, 1994, when the above diagnosis was made. His position was that it was cumulative or repeated conduct. He stated that on June 22nd he was put on sick leave by his doctor but that it was changed by the employer to administrative leave which the claimant considered to be an illegitimate personal action. He was terminated from employment on June 30, 1994.

Dr. T testified about a number of problems she had with the claimant, about threats and other misconduct he engaged in and about the attempts she had made to have meaningful discussion with the claimant to alleviate the problems. She stated the claimant resisted any authority she had over him. She stated he was ultimately terminated because he was disrupting the department.

It is abundantly clear that there was considerable conflict between the claimant and Dr. T. And, while there is some evidence to suggest there may have been fault to be shared by both sides, this is not a sufficient basis to make out a claim for a compensable mental trauma injury under the Workers' Compensation Act. Regarding mental trauma injuries, Section 408.006 provides:

- (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.

Mental trauma injuries under the law prior to the 1989 Act to be compensable had to be traceable to a definite time, place and cause, and repetitious mental traumatic activity did not cause a compensable mental trauma injury. Bailey v. American General Insurance Co., 279 S.W.2d 315 (Tex. 1955); Transportation Insurance Company v. Maksyn, 580 S.W.2d 334 (Tex. 1979); Texas Workers' Compensation Commission Appeal No. 94975, decided September 2, 1994. That law has carried through the 1989 Act under the provisions of Section 408.006. Texas Workers' Compensation Commission Appeal No. 94694, decided July 8, 1994. Clearly, there was sufficient evidence for the hearing officer to determine that the claimant's PTSD and Adjustment Disorder (which she referred to as stress disorder) was the result of cumulative stress over a period of time on the job and was not a result of a specific cause or event occurring at a specific time and place. The claimant's own testimony lends sufficient support to this determination. There is no basis

to hold that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer also stated in her discussion of the evidence that the claimant failed to establish that an illegitimate personnel action of any kind occurred and found that the delay in posting and filling the job vacancy because of administrative and fiscal reasons was a legitimate personnel action. Our review of the record does not lead us to conclude that any illegitimate personnel actions were established. We find the evidence sufficient to support the hearing officer on this point. While there may have been less than optimal working conditions or relationships, this does not equate to illegitimate personnel actions that would support a recovery under the 1989 Act for a mental trauma injury. Texas Workers' Compensation Commission Appeal No. 94573, decided June 15, 1994; *Compare* Texas Workers' Compensation Commission Appeal No. 92189, decided June 25, 1992.

For the foregoing reasons, the decision and order of the hearing officer are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge