

APPEAL NO. 950788
FILED JUNE 29, 1995

On April 18, 1994, a contested case hearing was held. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The appellant (self-insured) appeals the hearing officer's decision that the respondent (claimant) sustained a compensable mental trauma injury on (date of injury). The claimant requests affirmance.

DECISION

Affirmed.

The claimant, who is 46 years of age, began teaching emotionally disturbed children in the self-insured's school on August 4, 1994. She had previously taught emotionally disturbed children in another school for two years. On August 23, 1994, a 13-year-old student named (IM) was assigned to her class. The claimant described IM as being a 5' 10" thin male who is "amazingly violent and strong." She also said IM is "bipolar, psychotic, and paranoid." She testified that at the beginning of the school year IM threatened to kill her but she was not afraid of him at that time. She said that IM also threatened to kill another student and that student was taken out of school by his parents for five days. She also testified that at the beginning of the school year another student threatened to kill her and that she was not afraid of that student, although she filed some type of criminal charges against the student to which the student pled guilty. She said she had "discipline problems" with her students every day because they were very defiant and didn't want to do what they were told to do.

The claimant testified that on (date of injury), IM acted like a tyrant, screamed obscenities, called her names, and destroyed the exhibits and projects of other students. She said she took the rest of the class to the library and left IM with (FP), a teacher's aide assigned to the claimant. She said that at about 10:00 a.m. FP came to the library and gave her a note that stated that IM had said he was going to "poke out her eyes, bash in her skull, strangle her with two fingers, and break the bone in the center of her chest." The claimant said that when she read the note she did not feel safe anywhere in the school because she didn't think there was anyone who could physically help her. She also said that after she read the note from FP she felt like she had "lost" herself and that she believed that IM "would have and could have taken me out of this world." She said that (date of injury) was the first day she was ever afraid of IM and that that was the first day that she ever thought that IM could kill her. She said FP took IM to the cafeteria but then FP came to her and said that IM had gotten away from her. She said IM came to the library and "just looked at me." She said IM began "stalking" her, but did not strike her. The claimant further testified that a "mobile crisis psychiatric team" was called and after the team talked to IM they asked her if she would "let him [IM] come back if he says he's sorry," and the claimant said she would not.

The claimant further testified that (NM), an assistant principal, called the police who came to the school and said that they could not do anything since IM had not directly threatened the claimant. She said the police took IM home. The claimant said she continued to work after (date of injury) because she had to support her children. She said she went to (Dr. J), a psychiatrist, on November 4, 1994, and told Dr. J "what happened" and on November 17th Dr. J diagnosed her as having post-traumatic stress disorder (PTSD). She said Dr. J told her not to go back to work but that she went back to work, with the exception of November 7th, because of the need to provide for her family. The claimant also testified that on November 8, 1994, IM "punched and shoved her." She said the last day she worked was November 28, 1994.

FP testified that IM had threatened the claimant on several occasions. She said that on (date of injury) IM was very upset and told her that he was going to kill the claimant, that he was going to poke her eyes out, and hit her in the chest. She said IM had never given such details in his previous threats. She testified that she did not take IM seriously but that she did tell claimant about the threat. She said that on (date of injury) she struggled with IM over a walkie-talkie she had and that that day was IM's worst behavior day. In evidence was a note from FP dated (date of injury). In the note FP states that IM was very upset and that IM said he knew ways to kill the claimant and that he was going to crush her skull, poke out her eyes, and hit her in the chest. FP testified that she didn't remember if she gave the note to the claimant.

NM, the assistant principal, testified that on (date of injury) or (day after date of injury) he was made aware that IM had threatened to kill the claimant and he called the police. He said that earlier in (month/year) the claimant informed him that she was having problems with IM and that he had had several conferences with the claimant about IM. He said the claimant was concerned that IM was not taking his medication and he explained to the claimant that the self-insured could not legally require IM to take his medication but could only recommend that he do so. He said that early in the school year the claimant had also expressed concern about the behavior of two other students.

Journal entries kept by the claimant and notes she made for the police reflect that the claimant was concerned about IM's placement in her classroom on a non-medicated basis from his first day of school. The journal entries and notes reflect that from August 23, 1994, the claimant described IM as a danger in the classroom, destructive, and disruptive. They also record that on September 15, 1994, IM threatened to "pound" the claimant, that on September 30, 1994, the claimant overheard IM threaten to kill her, and that on October 11, 1994, IM's psychiatrist informed her that IM "described in detail" how he would kill her. Also recorded are the events of (date of injury) and IM's death threat that was communicated to her by FP. In an undated injury/accident report the claimant described her injury as "before (date) & ongoing from (date)," and that "this is not an incident but an evolution."

In a report dated November 23, 1994, Dr. J stated that he initially saw the claimant on November 3, 1994, that he diagnosed her as having "[PTSD], acute," and that he

recommended that she take an extended leave from work and begin psychotherapy to deal with her trauma. He further stated:

She presented with symptoms of severe anxiety, fearfulness, insomnia, increasing depression, irritability, and hypervigilance, all of which had begun to manifest at approximately mid-(month); these symptoms were precipitated as a result of repeated harassment and threats, both verbal and physical, made on her life since September 1, 1994, by a boy (IM) in her Behavior Adjustment class at [self-insured] who is diagnosed with Bipolar Disorder.

However, in a subsequent report to the claimant's attorney dated March 20, 1995, Dr. J noted that IM's psychiatrist had warned the claimant on October 11, 1994, that IM had threatened her life, noted the death threat by IM of (date of injury), and the events of that day, and stated:

In response to your questions, (date of injury), was indeed the date that the event occurred that precipitated the trauma and thereby lead [sic] to a diagnosis of [PTSD].

* * * *

Although she experienced stress and threats prior to this event, [claimant] has [PTSD] due to the events that occurred on (date of injury). These events were the precipitators of her current condition; and due to the PTSD, other subsequent events have been therefore magnified.

The claimant testified that she has been off work because of her PTSD and that since seeing Dr. J she has been on medication and has been taking therapy.

The issues at the hearing were: (1) whether the claimant sustained a compensable mental trauma injury on or about (date of injury); (2) whether the claimant has had disability; and (3) what is the claimant's average weekly wage (AWW). The parties stipulated that the claimant's AWW is \$480.75. The self-insured contends that the hearing officer's finding that the claimant suffers PTSD as a result of IM's threat to kill her on (date of injury), and his conclusion that the claimant sustained a compensable mental trauma injury on (date of injury), are not supported by sufficient evidence and are against the great weight and preponderance of the evidence. The self-insured asserts that the claimant's PTSD did not result from a specific incident at work, but rather was caused by repetitive mental stress and is not compensable for that reason.

Mental trauma can produce a compensable injury if it arises in the course and scope of employment and is traceable to a definite time, place, and cause. Texas Workers' Compensation Commission Appeal No. 950011, decided February 15, 1995. However, damage or harm caused by repetitious mental traumatic activity does not constitute an occupational disease for purposes of compensability under the workers' compensation

statutes. Appeal No. 950011, *supra*. The evidence in this case was conflicting as to whether the claimant's mental condition is traceable to IM's threat of (date of injury), or whether it resulted from repetitious mental traumatic activity. The claimant worked in a stressful environment with threats against her life being made prior to (date of injury). However, the claimant testified that the prior threats did not cause her to be fearful. Her testimony reflects that it was not until IM's graphic and detailed death threat of (date of injury) was conveyed to her and IM began stalking her at work on that day that she became fearful for her life and realized that IM could and would kill her. Dr. J first related the claimant's mental condition to repeated harassment and threats at work, but he later reported that the events of (date of injury), precipitated the claimant's trauma and led to the diagnosis of PTSD. In Texas Workers' Compensation Commission Appeal No. 94925, decided August 23, 1994, we affirmed a hearing officer's decision that the claimant in that case sustained a mental trauma injury as a result of a specific incident at work and in doing so we observed that "even though there was evidence of stress in the claimant's employment, we do not believe these conditions, as a matter of law, made her depression the noncompensable result of repetitive mental trauma."

The hearing officer is the trier of fact in a contested case hearing and is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). The hearing officer can believe all, part, or none of the testimony of any witness, and resolves conflicts in the evidence, including the medical evidence, and determines what facts have been established. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. An appellate level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Appeal No. 950084, *supra*. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence to be clearly wrong and unjust. Appeal No. 950084, *supra*. We conclude that the hearing officer's decision is supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's determination that the claimant had disability on November 4, 1994, November 7, 1994, and from November 28, 1994, through the date of the hearing, April 18, 1995, has not been appealed, except to the extent that the self-insured's appeal of the determination of a compensable injury can be considered an appeal of the determination of disability. Consequently, having determined that sufficient evidence supports the hearing officer's determination of a compensable injury, we find no basis to disturb the hearing officer's determination on the disability issue.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Lynda H. Neseholtz
Appeals Judge

Gary L. Kilgore
Appeals Judge