

## APPEAL NO. 960966

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 29, 1996, with the record left open until April 22, 1996, with a hearing officer. The issues at the CCH were whether the claimant sustained a compensable mental trauma injury; the date of such injury; whether the claimant timely report such injury or, if not, whether there was good cause; and whether the claimant had disability and for what periods. The hearing officer determined that the claimant did not sustain a compensable mental trauma injury; that the date of the claimed injury was \_\_\_\_\_, that the claimant failed, without good cause, to timely report the injury; and that the claimant did not sustain disability. The appellant (claimant) urges error in the hearing officer's finding the date of injury to be \_\_\_\_\_, rather than (allegeable injury date); that the hearing officer erred in finding that the claimant failed to report her mental trauma injury of \_\_\_\_\_; that the hearing officer erred in failing to find the employer had actual notice of two mental traumas suffered by the claimant on both \_\_\_\_\_, and (allegeable injury date); that the hearing officer erred in finding that the claimant did not suffer a compensable mental trauma; that the hearing officer erred in failing to find that claimant suffered two compensable mental trauma injuries. The claimant urges that the evidence is so one sided in her favor that the decision of the hearing officer is hard to rationalize. The respondent (carrier) points to evidence that it urges sufficiently supports the determinations of the hearing officer and asks that the decision be affirmed.

### DECISION

Reversed and remanded in part and reversed and rendered in part.

The claimant, a youth activities supervisor at the (employer), worked with troubled youth. She had worked for the employer for a total of some seven years, with a break of two years and the current period starting in July 1993. She stated that she had never had psychological or psychiatric problems or sought treatment prior to 1994. According to her testimony, in July 1994, she had started giving extra effort to a particular difficult youth called (C) and became somewhat close to him as she and others attempted to work on C's negative attitude. C apparently had no family support. Because of an infraction by C, the claimant imposed a disciplinary restriction on C on the 12th or 13th of September. Following this, C had an altercation with a staff member and was put into isolation. That was the last the claimant saw C and she was informed on the 13th that he had committed suicide by hanging himself. Claimant stated that it "floored me," that she was not able to sleep, that she had panic attacks and that she was not satisfied with the way it was being handled, including the employer's investigation and that she made it known to her supervisor.

The claimant was given a disciplinary action on October 24, 1994, and placed on a 90-day probation for giving misleading and incorrect information in another, unrelated investigation. The notice also indicated a lack of knowledge of policy and procedures as

well as counseling techniques. Although, claimant continued working after September 13th, apparently with some time off in October and November, she states, she was not handling it well and went to a doctor in October, who referred her to (Dr. D), whom she saw in 1994. Claimant states that she saw C in her mind and that she was having difficulty coping.

A report of Dr. D dated November 15, 1994, indicated that the claimant was first seen on \_\_\_\_\_, and lists a diagnosis of: (1) major depression, (2) PTSD, and (3) job stress. He recommended "leave" from "\_\_\_\_\_" thru 12-8-94." The claimant stated she talked to (CC) (employer's human resources director), and tried to file a workers' compensation claim at the employer on the 15th or 16th of November, but asserts she was told job stress is not claimable under workers' compensation. The claimant states that she filed under her group health and applied for family leave. The claimant returned to work on December 8, 1994, and experienced some problems with assignments, and after filing and succeeding in a grievance, got her job back. She continued to experience problems and states that she found some contraband and "shut down" a dorm. Claimant went to her supervisor, who indicated she did not want the claimant to work the "shut down" and assigned her other duties. This upset the claimant and at that point, she said her son called and indicated he did not feel well so she asked her supervisor if she could go home. The supervisor indicated that the claimant was off too much. The claimant also indicated that she hallucinated and saw visions of C. She states she went to personnel and objected to what had been said. Apparently, claimant then had a nervous breakdown and was hospitalized.

A lengthy psychological evaluation of the claimant on May 31, 1995 and June 1, 1995, reports a extensive history of emotional conflict including "alcoholism and abuse throughout the family system" and suicidal attempts/threats by her mother. Claimant has experienced several difficult marriages and has a teenage son who has experienced a major suicidal crisis. The report notes diagnoses of (PTSD). The summary also states:

"Interview and test data suggest her rigidity, isolation, dependency, and overinvolvement with others are characteristic maladaptive methods this patient has used to cope with life. This patient has recently experienced a highly traumatic situation whereby current coping strategies proved ineffective. Past abuse has vastly contributed to the development of these ineffective skills. Suicidal ideation is indicated in her test responses.

In her hospital admission report of (allegeable injury date), Dr. D notes the claimant's conflicts at work over a period of time from various causes and that the day before, the claimant "broke down" after one of her colleagues's supervisors said that she was "nothing." The report indicates that the claimant stated she could not take it anymore, started to cry and had to leave work immediately.

A coworker, (Mr. N), was called as a witness and testified that the claimant was greatly affected by C's suicide, it devastated her, that she "went to pieces" the very next day, and that she would cry at the mention of C's name and could not focus on anything. He felt that claimant was not able to handle her work or do her share of work as she had before C's death.

Psychologist (LT), in answers to written questions, indicated that he felt the claimant had a emotional/mental injury in 1994 and in 1995, and had difficulty accepting the death of C. He stated that the PTSD diagnosed is a distinct manifestation which develops secondary to trauma and that claimant "appears to have a delayed onset of this disorder it does not appear that the full effect of the disorder manifested itself until 1995."

Dr. D's answers to questions indicated his diagnosis of Major Depression Recurrent, PTSD, and Generalized Anxiety Disorder. He opined that she had an mental/emotional injury in 1994 and 1995, caused by the death of C, which resulted into development of symptoms of PTSD. Dr. D stated that PTSD is a psychiatric disorder resulting from exposure to traumatic events.

CC was called as a witness and denied that the claimant came to her in November wanting to file a workers' compensation claim or discussed workers' compensation in any way with her or that the claimant discussed an injury or indicated any work-related injury. Rather, CC stated that the discussion involved the family leave program. She indicated it was not until 1995, that any workers' compensation claim was asserted and that an employer's report of injury was filed in June 1995.

The carrier recalled the claimant to the stand. Claimant stated that she found out about her son's suicide fixation in 1995, after C's death, and acknowledged that she had a poor relationship with her father, that she had experienced problems as a teen with alcohol and drugs, that there was stress on the job and that she was not able to perform her work in November 1994. She stated that she had had problems before, but was able to deal with them.

Although the hearing officer left the record open, pursuant to the carrier's request, to permit the carrier to ask cross-written questions of Dr. D and LT, this was apparently not done. The carrier did not present medical evidence other than that presented by the claimant.

Regarding the issue of a compensable mental trauma injury, it is apparent that the hearing officer concluded that the notations in the medical records as well as the testimony of the claimant established that her mental and emotion problems arose from different causes related to numerous events, both at work and not at work. While it is clear that the claimant faced difficult personal problems in her life prior to the suicide incident, it was only after that incident that she was diagnosed with PTSD, directly related by Dr. D,

psychologist LT, and the coworker Mr. N to that specific incident. The claimant acknowledged the various personal problems she had faced and was able to cope with without any psychiatric or psychological treatment. There was no contrary evidence to suggest that the claimant was not fully functional prior to the suicide incident of September 1994. According to the testimony of Mr. N, the serious effects of the suicide on the claimant were immediate, that a down hill progression started at that time. The expert medical opinion, not countered by any other medical opinion, of Dr. D clearly states that the claimant's PTSD was directly cause by the trauma of the suicide of the patient that the claimant had worked closely with. Psychologist LT's opinion is in full accord with that of Dr. D. There is nothing in the evidence that the PTSD related to anything other than the suicide incident of September 1994. And, the fact that the claimant may also have depression does not necessarily negate a compensable mental trauma injury.

As the hearing officer states in his Decision and Order, pointing to the October 24, 1994, letter of reprimand, a legitimate personnel action cannot be the basis for establishing a compensable mental trauma injury. Section 408.006(b). Texas Workers' Compensation Commission Appeal No. 952073, decided January 22, 1996. However, none of the expert medical evidence or, for that matter, other evidence linked any personnel action to the claimant's PTSD. Rather, the only evidence in the record regarding the claimant's PTSD linked it to the trauma of the suicide. The hearing officer also correctly observed that repetitive metal trauma injuries occurring over time are not compensable. Transportation Insurance Co. v. Maksyn, 580 S.W.2d 334 (Tex. 1979); Appeal 952073, *supra*. While there was evidence tending to show that the claimant had "mental and emotional problems" related to numerous events both on an off the job, there was nothing to suggest that the claimant was not able to cope with these matters, at least up to the September suicide, without resort to any professional treatment. To the contrary, the great weight and preponderance of the evidence was that the claimant's injury of PTSD stemmed directly from the suicide incident of September 1994. Clearly, the expert medical evidence made that direct connection. And, expert medical evidence is essential to made the necessary causal connection under circumstance as presented in this case. See Houston General Insurance Co. v. Pegues, 514, S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.).

The Texas Supreme Court has stated that 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. Bailey v. American General Insurance Company, 154 Tex. 430, 279 S.W.2d 315 (1955). See also Olson V. Hartford Accident and Indemnity Company, 477 S.W.2d 859 (Tex. 1972). From our review of the complete record in this case, we conclude that the great weight and preponderance of the evidence in this case establishes a compensable injury and that the hearing officer's determination on this issue is so against the great weight and preponderance of the evidence as to be wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Employers Casualty Co. v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). We find the facts of this

case to be close to the situation in Texas Workers' Compensation Commission Appeal No. 950475, decided May 11, 1995. In that case, we reversed the hearing officer's determination of no compensable injury where the claimant suffered a mental trauma injury following his close friend being electrocuted after he had taken over an electrical task for the claimant. And, in that case there was conflicting expert medical evidence unlike the case now under review. The fact that the claimant in Appeal 950475, *supra*, had experienced and been treated for prior moderate to mild depression did not preclude recovery or show that his condition was merely a continuation of any preexisting emotional distress. See *also* Texas Workers' Compensation Commission Appeal No. 950788, decided June 29, 1995 and Texas Workers' Compensation Appeal No. 951237, decided September 11, 1995. Compare Texas Workers' Compensation Commission Appeal No. 960026, decided February 12, 1996. For the reasons stated, we reverse the determination that the claimant did not sustain a compensable injury and render a new decision that the claimant sustained a compensable mental trauma injury.

The hearing officer, apparently applying the concept of an occupational disease, found that the date of injury was \_\_\_\_\_. This is the date the hearing officer mentions in his discussion of the evidence as the date the claimant knew or should have known that she had the claimed injury (apparently the first time her doctor diagnosed PTSD). As we indicated, and the hearing officer noted, repetitive mental trauma injuries are not compensable, and our disposition of the issue above removes this case from a repetitive trauma type injury. The mental trauma injury here is predicated on having arisen in the course and scope of employment and traceable to a definite time, place and cause. Therefore, the date of injury found is erroneous and not supported by the evidence. The later manifestation and diagnosis of the PTSD would not change the date of injury although it would likely affect such matters as good cause, the required giving of notice of injury and the timely filing of any claim. Appeal 950475, *supra*. See *generally* Texas Workers' Compensation Commission Appeal No. 94121, decided March 11, 1994, regarding delayed manifestation. Accordingly, we reverse the determination that the date of injury was \_\_\_\_\_, and remand this issue for further consideration. Because of the erroneous date of injury, together with our holding of error in the hearing officer's determination of the injury in course and scope issue which may well have affected his determinations on the other issues of timely notification, good cause and disability, we necessarily reverse and remand those issues for further consideration and development of evidence as deemed appropriate and necessary by the hearing officer.

For the foregoing reasons, we reverse that part of the decision that the claimant did not sustain a compensable mental trauma injury and render a new decision that the claimant did sustain a compensable mental trauma injury. We reverse and remand the remaining issues for further consideration and development of evidence as deemed appropriate by the hearing officer.

Pending resolution of the issues on remand, a final decision on those issues has not been made in this case. However, since reversal and remand necessitate the issuance of

a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's division of hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR

Thomas A. Knapp  
Appeals Judge

Gary L. Kilgore  
Appeals Judge