

APPEAL NO. 980171
FILED MARCH 11, 1998

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 December 12, 1997 with hearing officer. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, had disability, and gave timely notice of the injury. The hearing officer determined that the claimant did not sustain a compensable injury, consequently did not have disability, and that timely notice was given. The claimant appeals urging that several findings of fact are contrary to the great weight and preponderance of the evidence and are supported by no evidence or a misinterpretation of the claimant's testimony and requesting that the decision be reversed and that a new decision be rendered that the employment was the precipitating cause of her stroke, that it was a compensable injury, and that she had disability. The respondent (carrier) urges that the decision on the issues appealed is sufficiently supported by the evidence, is correct in law, and should be affirmed.

DECISION

Affirmed.

The Decision and Order of the hearing officer fairly and adequately sets forth the evidence in the case and will only be briefly summarized here. The claimant, the assistant accounts manager for the employer with a staff of about 25 under her management, testified that her job situation was very demanding and highly stressful. Her supervisor was prone to tirades and outbursts when things were not going right which included throwing paper work at her on some previous occasions. On _____, the claimant stated that after she came to work she gave her supervisor a report that was not good and that the supervisor reacted by stating they were "going to hell in a handbasket" (a phrase he had used on previous occasions), that "you and I are both gonn'a be out of a job" and that he threw the report back to her. She testified that the supervisor(s) stated she was not getting the job done and that he would not let her get a word in edgewise. She further stated that she began to feel dizzy, thought to herself that this is silly, and that she was not going to take it any more. As the supervisor walked back to his office, the claimant called her husband to come get her, and that was all she remembered. The claimant stated that when she arrived in the office on _____, she was very tired but did not remember having a headache that morning but that at the office she did have nausea and felt like she had to vomit prior to talking with the supervisor.

Medical records show that the claimant sustained a stroke. Emergency room medical notes concerning the claimant from the late morning of _____, state that the claimant awakened at about 5:30 a.m. with a right retro-orbital headache and indicate that she vomited because of the headache. Medical records also indicate a history of hypertension, for which the claimant was on prescribed medication, and stress at work.

An unsigned report from an unidentified "Neurologist Physician" Advisor dated September 26, 1997, was in evidence and states that the claimant's medical records were reviewed and opines that there is no indication of a causal relationship between the work and the stroke, and relates the condition to intrinsic disease of the blood vessels of the brain, developmental defect of the artery or blood clotting disorder.

The hearing officer found that the claimant's mental stress began to manifest itself earlier in (year), that the "outburst" by the supervisor on _____, was one of a long series of such outbursts and was not so unique as to be considered different from others, and that because the claimant's mental stress and stroke was caused by a culmination of repetitive mental trauma, the resulting injury did not arise out of and was not in the course and scope of employment. These findings, the claimant urges, are against the great weight and preponderance of the evidence.

The burden to prove a compensable injury is on the claimant (Reed v. Aetna Casualty & Surety Company, 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.), and in a case concerning a claimed mental trauma injury, such is not compensable if it results from repetitious stress. Texas Workers' Compensation Commission Appeal No. 93785, decided October 18, 1993. *Compare* Texas Workers' Compensation Commission Appeal No. 91064, decided December 12, 1991, involving physical activity. In a case not dissimilar from the case under review, the Appeals Panel affirmed the denial of benefits where the hearing officer found from the evidence that the claimed stress on two cited occasions was not of such a nature as to cause the claimant to have a stroke. Texas Workers' Compensation Commission Appeal No. 92076, decided April 3, 1992. See also Texas Workers' Compensation Commission Appeal No. 941551, decided December 23, 1994, where the Appeals Panel held that repetitive mental stress over a period of time does not constitute a compensable mental trauma injury. From our review of the evidence, we conclude that it is sufficient to support the findings of the hearing officer. For that matter, the testimony of the claimant is supportive of the findings reached, although she urged that the occurrences involving her supervisor on _____, were somewhat different and amounted to a particular event at a particular time and place, thus being compensable under the mental trauma injury standard. We do not conclude that the findings and conclusions of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We further note that Section 408.006 provides that a mental or emotional injury that arises principally from a legitimate personnel action is not a compensable injury. That provision would also appear to apply under the circumstances as developed in this case. See Texas Workers' Compensation Commission Appeal No. 960026, decided February 12, 1996.

Finding sufficient evidence to support the decision and order of the hearing officer and no reversible error, we affirm.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge