

APPEAL NO. 980264  
FILED MARCH 26, 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 was held on January 13, 1998, in (City), Texas, with (hearing officer) presiding as hearing officer. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable wrist injury on \_\_\_\_\_; that she also sustained a compensable mental trauma injury on \_\_\_\_\_; that she timely notified her employer of her injuries; and that she had disability from July 11, 1996, through the date of the hearing. In its appeal, the appellant (carrier) argues that the hearing officer's determinations that the claimant had compensable wrist and mental trauma injuries and that she had disability are against the great weight and preponderance of the evidence. In her response, the claimant urges affirmance. The carrier did not appeal the timely notice determination and it has become final under Section 410.169.

DECISION

Affirmed.

The facts in this case are largely undisputed. The claimant testified that on \_\_\_\_\_, she was employed as a receptionist with (employer). She stated that, on that date, she had been assigned to clean an office, when (Junior), a coworker, came up behind her and grabbed her arm, twisting it behind her back. The claimant testified that Junior used his other hand to fondle her breasts and in between her legs, while he attempted to kick her legs out from under her to get her down to the floor. She stated that Junior stopped before he was able to rape her because he heard another employee coming down the hall. The claimant said that Junior pushed her away and told her he would be back later. She testified that she reported the incident to her supervisor the next day and that about a week later Junior was fired. Subsequently, Junior was arrested for the assault.

The claimant testified that on January 10, 1996, she sought medical treatment from Dr. Z for her wrist, which she stated had been injured in the assault. She testified that she attempted to file a workers' compensation claim at that time but was advised by a human resources employee of the employer that she could not file a claim "because she had not been injured on a machine." She stated that she only saw Dr. Z on one occasion because she did not have the money to pay for treatment. She stated that she did not miss any time from work, but her hand and wrist were badly bruised and painful. She further testified that, immediately after the assault, she became "paranoid" and "scared" and that she began to have difficulty sleeping because she had recurrent nightmares about the assault.

The claimant acknowledged that (Senior) was also employed by the employer. She stated that, after Junior was fired, Senior confronted her and was abusive to her because she had reported the incident, which led to Junior's termination. She also testified that Senior harassed her on a daily basis, using abusive language and threatening her. The claimant stated that she had a bad nightmare on July 10, 1996. She testified that she went to work on July 11th and again was confronted by Senior. She stated that she broke down and started to cry and had to leave work. She stated that she has not returned to work since that date. On cross-examination, the claimant testified that she left work on July 11, 1996, because she just "couldn't stand it anymore," noting that Senior was giving her a hard time and that she was also having continuing nightmares about the assault. (Mr. E), the claimant's husband, testified that the claimant had bad dreams immediately following the assault; however, he stated that they got worse after Senior began harassing her.

On July 18, 1996, the claimant was admitted to an outpatient program at the (health center). She was diagnosed with major depression, single episode. The assault at work was identified as a cause of the depression. At the center, the claimant was treated by Dr. B. A progress note of July 18th diagnoses major depression and post-traumatic stress disorder (PTSD) secondary to sexual assault. The claimant stated that she was treated with medications and had individual and group therapy sessions. The claimant's current treating psychiatrist is Dr. L. In a "To Whom it May Concern" letter dated November 11, 1997, Dr. L stated that the claimant is suffering from severe major depression, panic disorder with agoraphobia and PTSD. He noted that the claimant's symptoms had started when she was sexually attacked at work. In addition, he noted that the claimant had been harassed by another employee after the attack, "which made the symptoms that had already started become worse." Dr. L also stated:

In my opinion, both the sexual attack sustained two years ago and the harassment that followed were precipitants for the patient's current symptoms.

In September 1997, the claimant had arthroscopic surgery on her wrist, which was performed by Dr. B. In a progress report of November 13, 1997, Dr. B's diagnosis is wrist sprain/strain, which he states was caused by the \_\_\_\_\_, sexual assault at work.

Initially, we will consider the carrier's challenge to the hearing officer's determination that the claimant sustained a compensable wrist injury on \_\_\_\_\_.

The carrier maintains that the claimant did not sustain a compensable injury because "[t]he definition of injury is not only damage to the physical structure of the body but also requires a disease or infection that results from the particular damage to the physical structure." We find no merit in this assertion. The carrier argues that because the term injury is defined in Section 401.011(26) as "damage or harm to the physical

structure of the body and a disease or infection naturally resulting from the damage or harm," damage or harm to the physical structure of the body without accompanying disease or infection is insufficient to establish injury under the 1989 Act. We do not so read Section 410.011(26). The phrase "and a disease or infection naturally resulting from the damage or harm" expands the definition of injury under the 1989 Act to include disease and infections that naturally flow from the damage or harm to the body. The phrase is not, as the carrier maintains, a qualifier on the terms damage and harm.

The carrier argues that the hearing officer erred in determining that the claimant sustained a compensable mental trauma injury, because her injury was the result of repetitive mental stress and, therefore, is not compensable under the 1989 Act. It is well settled that mental trauma that is traceable to a definite time, place and cause can produce a compensable injury. Texas Workers' Compensation Commission Appeal No 950788, decided June 29, 1995; Texas Workers' Compensation Commission Appeal No. 94925, decided August 23, 1994. However, repetitive mental trauma does not constitute an occupational disease for purposes of establishing compensability. *Id.*; Transportation Ins. Co. v. Maksyn, 580 S.W.2d 334(Tex. 1979). In this instance, as in Appeal Nos. 950788 and 94925, *supra*, there was conflicting evidence on the issue of whether the claimant's mental condition is traceable to a specific incident, the assault, or whether it resulted from repetitious mentally traumatic activity, the assault and Senior's subsequent harassment of the claimant. In his November 11, 1997, letter, Dr. L stated that the assault caused the claimant's depression, anxiety attacks with agoraphobia and PTSD. He noted that Senior's harassment "made the symptoms that had already started become worse." Dr. L also opined in that letter that both the sexual assault and the harassment "were precipitants for the claimant's current symptoms."

In Appeal No. 94925, *supra*, there was evidence that the claimant had been grabbed by a coworker and sexually propositioned and there was also evidence that "almost from the day she was hired, the claimant confronted stress both on and off the job." Despite that evidence, the Appeals Panel affirmed the hearing officer's determination that the claimant had sustained a compensable mental trauma injury, noting 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." Appeal No. 94925, *supra*, emphasized that although the treating doctor had identified numerous other stressful incidents in the claimant's life, "he concluded they were aggravating circumstances and had no bearing on the initial onset of the claimant's depression." Similarly, in Appeal No. 950788, *supra*, the Appeals Panel affirmed a hearing officer's determination that the claimant had sustained a compensable mental trauma injury based upon a death threat she received from a student on a specific date, even though that student and others made prior and subsequent threats against the teacher. In that case, as in this case, the treating doctor made conflicting statements that the claimant's depression, anxiety and PTSD were precipitated by repeated harassment and threats and that the events on the single day precipitated those conditions. The hearing officer in this case

acknowledged that repetitive mental trauma is not compensable. She determined that the claimant had sustained her burden of proving that "[t]he \_\_\_\_\_, assault is a producing cause of Claimant's mental condition." That issue presented a question of fact for the hearing officer to resolve. Appeal Nos. 94925 and 950788, *supra*. The hearing officer is the sole judge of the relevance, materiality, weight and credibility of the evidence. Section 410.165(a). As noted above there was conflicting evidence on the issue of whether the claimant's mental conditions were caused by the assault or the assault in combination with the repeated harassment. The hearing officer resolved that conflict in favor of a determination that the claimant sustained a compensable mental trauma injury. Under the guidance of Appeal Nos. 94925 and 950788, *supra*, we cannot agree that the evidence of harassment after the assault establishes, as a matter of law, that the claimant's injury is not compensable. Our review of the record does not demonstrate that the hearing officer's determination that the claimant sustained a compensable mental trauma injury is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for our reversing the hearing officer's decision and order on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier's challenge to the disability determination is premised upon the success of its arguments that the claimant did not sustain compensable wrist or mental trauma injuries. Given our affirmance of those determinations, we likewise affirm the hearing officer's disability determination.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Christopher L. Rhodes  
Appeals Judge