

APPEAL NO. 990238

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 11, 1999. He (hearing officer) determined that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_, and had disability. The appellant (carrier) appeals these determinations, contending they are neither factually nor legally supported by the evidence. The appeals file contains no response from the claimant. The determination of average weekly wage has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant worked as an electrician. She testified that she had gotten caught up with her assigned work and was told by the supervisor to go to another workstation where she was to install junction boxes. She did so. While there, she was approached by Mr. M, a coworker, who asked her what she was doing there. She said that she told him she was trying to get ahead in her work and he walked off. The claimant said Mr. M went to ask somebody about it and returned to her and asked, "Are y'all behind?" She replied that they were behind at one time, but she was now trying to get ahead. He then called her a "smart m\*\*\*\*\* f\*\*\*\*\* " and she responded by saying, "I wasn't trying to be smart, I was just telling you." The claimant said he laughed and walked off. He then came up to her from behind and, she said, pressed against her saying, "I'm going to get some of that." He reiterated this comment and, she said, she told him, "You don't have any say-so over me, you may your wife, but you don't me." The claimant said that Mr. M called her a "bitch" and "you don't say anything about my wife." The claimant responded that she did not say anything about his wife. The claimant then turned to resume working, when Mr. M hit her on the head with a hammer. She fell to the floor and asked why he hit her. He said because of what she said about his wife. The claimant said she felt blood coming from her wound, but Mr. M would not let her leave. She said she managed to break away, but he chased her and hit her again and a third time when she fell down some stairs. She was eventually taken to the hospital. It was not disputed that the claimant sustained injuries as a result of this assault. The claimant further testified that she did not know the claimant or associate with him outside of the workplace.

Section 406.032(1)(C) provides that a carrier is not liable for compensation if the injury "arose out of an act of a third person intended to injure the employee because of a personal reason and not directed at the employee as an employee or because of the employment." This is the so-called "personal animosity" exception to liability. The purpose of this exception to liability is to deny compensation for injuries caused when a dispute outside the workplace is moved to the workplace. Texas Workers' Compensation Commission Appeal No. 962146, decided December 9, 1996. In Texas Workers' Compensation Commission Appeal No. 951223, decided September 8, 1995, we commented that the critical question was whether the incident causing the injury "was

connected with the employment" and the fact that the injury was intentionally and deliberately inflicted does not take it outside the course and scope of employment. In Nasser v. Security Insurance Company, 724 S.W.2d 17 (Tex. 1987), the Texas Supreme Court stated that "[w]hen conditions attached to the place of employment or otherwise incident to the employment are factors in the catastrophic combination, the consequent injury arises out of the employment."

The hearing officer made the following findings of fact and conclusion of law which have been appealed by the carrier:

### **FINDINGS OF FACT**

3. The attack upon Claimant was preceded by a verbal exchange between Claimant and [Mr. M] concerning Claimant's presence on the ceiling mezzanine and [Mr. M's] perception that Claimant was being rude when she responded to his demand to know why she was there.
4. After the initial exchange between Claimant and [Mr. M], [Mr. M] left but returned, again demanded to know why Claimant was there, and made unwanted sexual advances to Claimant.

### **CONCLUSION OF LAW**

3. The claimed injury did not arise out of an act of a third person intended to injure the Claimant because of personal reasons and not directed at the Claimant as an employee or because of employment, and Carrier is not relieved from liability for compensation in this matter.

The carrier correctly points out on appeal that the mere fact that the claimant was injured by a coworker at work does not necessarily result in a compensable injury. See Texas Workers' Compensation Commission Appeal No. 94845, decided August 11, 1994. It argues that "the sequence and timing of events as described by the hearing officer did not occur." Rather, it asserts that there was no evidence from Mr. M as to his perception of the claimant as being "rude" and that, most importantly, the confrontation or conversation about why the claimant was present on the mezzanine had essentially ended. Only thereafter, as a separate incident, did the sexual advance and a sexual assault, which led to the hammer attack, occur. In other words, the claimant's reference to Mr. M's wife precipitated the assault, not any discussion about why she was on the mezzanine in the first place.

Whether there was a personal motivation for this assault was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 971051, decided July 21, 1997. Although there were statements of coworkers who were at best marginal witnesses of the confrontation between Mr. M and the claimant, the only witness to testify and give an account of what happened before, during, and after the

assault was the claimant. The hearing officer considered this evidence and concluded that the confrontation was essentially part of one more or less continuous sequence of events that began with Mr. M's questioning of the claimant as to why she was working where she was and ended in the assault. As the sole judge of the weight and credibility of the evidence pursuant to Section 410.165(a), the hearing officer was not compelled to conclude from this evidence that after Mr. M's initial questioning of the claimant he simply walked away only to return for a completely new reason and with the sole motive of initiating a sexual assault. Were this simply a case of a sexual assault on the job, or perceived rudeness on the part of the claimant, the hearing officer may well have considered the assault to have arisen from personal reasons. See, e.g., Texas Workers' Compensation Commission Appeal No. 982583, decided December 17, 1998, and Texas Workers' Compensation Commission Appeal No. 94805, decided August 5, 1994. The hearing officer believed it was not this simple. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find that the testimony of the claimant, considered credible by the hearing officer, was sufficient to support his determination that the injury arose out of the employment, specifically, Mr. M's dissatisfaction with the presence of the claimant working on the mezzanine installing junction boxes.

The carrier appeals the finding of disability based on its contention that the claimant's injuries were not compensable. Having affirmed the finding of a compensable injury, we also affirm the finding of disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Joe Sebesta  
Appeals Judge