

APPEAL NO. 990908

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 April 1, 1999. The issues concerned whether the appellant, who is the claimant sustained a mental trauma injury in the course and scope of employment on _____, and whether she had disability as a result of that injury. There was also an issue as to whether she had good cause for the failure to timely report a mental trauma injury to her employer. (It was stipulated that she reported the injury to her employer on November 19, 1998.)

The hearing officer found that the claimant's alleged mental trauma injury was not compensable because it arose from a legitimate personnel action, and his decision also indicated that her emotional situation arose from several similar events. The hearing officer further found that the claimant did not have good cause for the failure to timely report her injury, and that, while she could not work from August 17, 1998, through April 1, 1999, this did not constitute disability because there was no compensable injury.

The claimant has appealed, arguing that she has proven a mental trauma injury. She says that she was unable mentally and physically to report the injury within 30 days. The claimant also says that the "atmosphere at the hearing was somewhat inimical." She disputes that the nature of the request to clean up her room was a legitimate personnel action. The respondent (self-insured) responds that the disputed findings of fact and conclusions of law are supported by the record.

DECISION

Affirmed.

The claimant was hired as a language arts sixth grade teacher on July 31, 1998, by a middle school operated by the employer, (a self insured political subdivision, which shall be referred to herein as the employer or carrier, depending upon the context of the reference). She said that on (a day before the date of injury), her principal, Mr. L, took her to show her the classroom. According to the claimant and her mother, who also testified, the room was in "horrendous" condition, with numerous boxes and extra furniture contained therein. Mr. L joked that the room needed "a little TLC." According to the claimant, who came back later to work an hour toward cleaning up the room, she was shocked and trying to take in the task before her. She agreed that Mr. L did not demand or order her to clean up the room, and, in fact, advised her to do the best she could at straightening up by August 10th. Mr. L said that it was unlikely that custodial help would be available (although the claimant later testified she had about an hour's worth of help from one custodian). He advised her to go through the boxes left by the previous teacher (about 25 boxes) to see if

there was anything she could use. The claimant testified that after going through a few boxes, it was apparent there was nothing she could use because it was out of date.

The claimant said she came in to work on the room the next day, after a morning orientation meeting, and brought her mother to help. She said that her mother wished to come home, having seen her demeanor change the day before in response to the stress. The claimant cleaned her room through that Saturday, when her mother also came in to help out and clean desk tops. The claimant said she felt the room was now in fairly good shape, under the circumstances, although boxes remained stacked in the room, out of the way. The claimant began her first day of teaching on August 12th, and continued teaching through the 14th. The claimant testified that she did not have time to prepare lesson plans, but knew from her previous junior college and substitute teaching experience that the first few days were consumed with administrative and paperwork tasks, and that she could devise projects to occupy the students' time. She later, in the CCH, identified the lack of lesson plans as a significant stressor.

The claimant also said that she felt physically exhausted because her air conditioning unit was not working right and it was extremely hot. In any case, August 14th turned out to be her last day of work. According to the claimant, she was unable to go to work Monday. She saw her family doctor, Dr. B, on Tuesday, August 17, 1998, and he asked her if she had to return to the job. She could not recall what his diagnosis was. On August 17th, the claimant called to speak to Mr. L but instead spoke to Ms. M, and told her that she had to resign due to health concerns. She did not identify the job as the reason for her problems. Part of the reason, according to the claimant, was that she was thinking ahead and wanted the employer to consider her for employment in the future.

The claimant was asked several times during the CCH to identify the cause and nature of her injury. She stated that she felt it to be a combination of mental and physical, although she did not identify any physical diagnosis, such as back strain or heat stroke, which constituted injuries. The claimant asserted that she had respiratory problems since _____, but that she had also been bitten by a brown recluse spider a few months prior to the CCH. She also stated that the initial stressor leading to mental trauma was seeing the room on (a day before the date of injury) and being overwhelmed with the considerable task ahead of her, but that the date of injury was _____, the date she first spent several hours cleaning her room. The claimant also indicated that the nature of the request that she clean was one she thought a professional teacher should not have to perform but then also stated that she realized preparing her room was part of her job.

According to the claimant, she called a teachers' association in early October 1998, and spoke to an attorney, who told her they could not assist because she had not been a member at the time she resigned. However, he suggested that she contact the Texas Workers' Compensation Commission (Commission) about filing a claim. The claimant had

not worked since the last day she was employed by the employer, although she speculated that she might be able to do a desk job.

The hearing officer indicated that when he reviewed a medical note written by Dr. B, the family doctor, on August 17th, he was concerned that it stated that the claimant had felt depression coming on over the last four to six weeks. The claimant responded by saying she felt she told Dr. B that it came on over the last two weeks. She denied any preexisting emotional problems, including any stemming from her father's accidental death in 1994.

A letter from Dr. W, to whom the claimant was referred, dated September 9, 1998, noted that the claimant had depression, panic disorder, and prolonged grieving. He noted that she had encountered a series of situational stresses including starting a new job and dealing with the wrongful death trial of her father. The claimant said she was especially excited about her job because she had sought employment for over a year. She lived with her mother in part to assist her financially.

The claimant's assertion that the hearing was "inimical" may have stemmed from the fact that her witness, Ms. O, was put under the "rule" and asked to wait outside the hearing room for her testimony. The hearing officer, when the witness was called, said that he had been advised by some Commission employees that the witness had been listening at the door during the CCH. He asked Ms. O if this had occurred, and Ms. O denied that it had, and that she had stood up merely to let others past and may have been standing near the door to the hearing room as a result. The hearing officer accepted this testimony and indicated that he had a need to develop this in light of complaints made to him. Ms. O's testimony basically supported that of the claimant as to the state of the room and the claimant's state of mind.

We agree that the hearing officer's decision as to the lack of a compensable mental trauma injury is supported by the record. First of all, Section 408.006(b) specifically precludes compensability for mental trauma injuries arising from legitimate personnel actions. The claimant herself identified cleaning of one's room as part of her job, and could not unequivocally state in her testimony that Mr. L had been demanding or harsh in his direction, in fact he had advised her to do the best she could. Although she said he indicated his preference that she not seek custodial help because they were occupied doing some other tasks, there was no evidence that such assistance would have been flatly unavailable if requested and the claimant in fact received some assistance. Moreover, the Appeals Panel has adopted case law which precludes compensability for repetitious mental trauma. Texas Workers' Compensation Commission Appeal No. 952073, decided January 22, 1996; Texas Workers' Compensation Commission Appeal No. 94975, decided September 2, 1994; and Texas Workers' Compensation Commission Appeal No. 93596, decided August 26, 1993, following the direction of Transportation Insurance Company v. Maksyn, 580 S.W.2d 334 (Tex. 1979). The essence of the claimant's testimony was that a series of events each bore a role in her stress and resignation from work. It was for the

hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.- Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ).

Finally, Section 409.001(a)(1) requires that a work-related injury be reported to the employer within 30 days. In this case, there was evidence that the claimant had discussed the role of her new job with Dr. W in early September, and she further had a conversation with a lawyer at the teacher's association who advised her to file a claim. We cannot agree that the hearing officer's finding that there was no good cause for not reporting until November 19, 1998, is against the great weight and preponderance of the evidence. As the requirement for a finding of "disability" requires a threshold finding of compensable injury, not found here, we also affirm the holding that there was no disability. Finally, we cannot agree that the atmosphere of the CCH was prejudicial in any way to presentation and consideration of the claimant's case. For all these reasons, we affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge