

## APPEAL NO. 991332

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 990545, decided April 28, 1999, we reversed and remanded the determinations of the hearing officer that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and did not have disability. The claimant did not appear at the contested case hearing (CCH) originally set for February 22, 1999. The purpose of the remand was for the hearing officer to determine if there was good cause for the claimant's request for a continuance. The claimant appeared for the hearing on remand on June 2, 1999. Thereafter, the hearing officer, issued a decision and order in which she found that the claimant did not have good cause for his failure to appear at the first CCH, that he did not sustain a compensable injury, and that he did not have disability. The claimant appeals these determinations, expressing his disagreement with them. The respondent (self-insured) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

### DECISION

Affirmed in part and reversed and rendered in part.

As set out in Appeal No. 990545, we construed a January 7, 1999, letter to the hearing officer to be a request for a continuance of the CCH then set for February 22, 1999. On remand, the hearing officer was to determine if good cause existed for a continuance. If a continuance was not granted, the hearing officer was to further determine if the claimant had good cause for not appearing at the CCH. In her decision on remand, the hearing officer implicitly determined that no good cause existed to grant a continuance. She also found that the claimant did not have good cause for not appearing at the February 22, 1999, CCH. The claimant appeals this determination, asserting that his illness (depression) and medication prevented his attendance at the CCH.

In Texas Workers' Compensation Commission Appeal No. 941680, decided January 31, 1995, we stated that the standard of review of a good cause determination for failure to appear is one of abuse of discretion and that the test for the existence of good cause is that of ordinary prudence. To determine if the hearing officer abused her discretion, we look to whether the hearing officer acted without reference to any guiding rules and principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). In Finding of Fact No. 2, the hearing officer determined that the claimant failed to appear at the February 22, 1999, CCH, "without good cause." Nowhere does she discuss the claimant's contention that his illness prevented his appearance or disclose what principle or principles guided her in arriving at this determination. In its response to the claimant's appeal of the good cause determination, the self-insured asserts only generally its agreement with the hearing officer's decision. Because the hearing officer did not say why she resolved the good cause question the way she did, we assume she was rejecting illness as a basis for good cause. We believe illness constitutes good cause for a nonappearance. We reverse

Finding of Fact No. 2 and render a decision that the claimant had good cause for his failure to appear at the February 22, 1999, CCH.

With regard to the substantive merits of the case, the claimant testified to a 10-year history of problems and pressures in the work environment, beginning in July 1987 when he sustained a serious burn injury. It was his belief that the self-insured did not give him reasonable time to recover and, in effect, forced his premature return to work in November 1989. In 1991, he said, he became a superintendent which entailed much greater job responsibilities over a larger plant. He then had to work significant overtime. He said he was faced with tight deadlines and budgets, demands for increased production, and a boss who "wasn't reasonable . . . he was stupid," did not know what he was talking about, and made him do unnecessary work. Shortly after he became a superintendent, a water tank burst and flooded the work area. Anyone in the shop at the time, he felt, would have been killed. He also said he had to work around leaking diesel tanks which made him uncomfortable. When he told management officials, according to the claimant, they did not want to hear about the work conditions. In January 1997, the claimant undertook a major overhaul or "turnaround" of a unit. He said the repairs went badly and he got more and more frustrated. He was diagnosed with depression and on \_\_\_\_\_, he attempted suicide. He blamed his depression on "all those things."

The claimant's position was that he sustained "an occupational illness in the form of major depression" on \_\_\_\_\_. In Texas Workers' Compensation Commission Appeal No. 950011, decided February 15, 1995, the Appeals Panel wrote:

It has long been held in Texas that mental trauma can produce a compensable injury, even without an underlying physical 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); Olson v. Hartford Accident and Indemnity Company, 477 S.W.2d 859 (Tex. 1972). Further, the Texas Supreme Court has held that damage or harm caused by repetitious mental traumatic activity does not constitute an occupational disease for purposes of compensability under the workers' compensation statutes. Transportation Insurance Company v. Maksyn, 580 S.W.2d 334 (Tex. 1979). *And see* Aetna Casualty & Surety Company v. Burris, 600 S.W.2d 402 (Tex. Civ. App.-Tyler 1980, writ ref'd n.r.e.), in which the court held that where the evidence demonstrated repetitious mental trauma activities, the diseases or infirmities complained of (which included headaches, hypertension, chest pains, and depression) were ordinary diseases of life to which the general public is exposed and thus were not compensable.

While a specific stressful incident of sufficient magnitude occurring on the job can result in a compensable mental trauma injury, repetitive mentally traumatic activity or stressful events does not constitute a compensable injury. Texas Workers' Compensation Commission Appeal No. 981423, decided August 10, 1998; Appeal No. 950011, *supra*. Whether the

activity or incident amounts to a specific traumatic event to cause a subsequent mental condition is a question of fact for the hearing officer to decide. Appeal No. 981423, *supra*. Where the evidence is insufficient to establish a definite and specific event that caused the asserted mental trauma and condition, a compensable injury is not proved. Texas Workers' Compensation Commission Appeal No. 950633, decided June 7, 1995. In the case we now consider, the evidence from the claimant himself was that his depression developed over time and he attributed it to numerous stresses on the job and dissatisfactions with management. The hearing officer, consistent with this testimony, found that the claimant's mental trauma injury was "the result of a series of traumatic experiences." Finding of Fact No. 8. The claimant in his appeal concedes as much. Thus, the facts of his case as he presented them did not support recovery for a mental trauma injury under existing law.

The carrier also asserted as an additional defense to liability that the stress on the job was caused by legitimate personnel practices and, for this independent reason, the claimant did not establish a compensable injury. Section 408.006 provides that "[a] mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury . . . ." The hearing officer found the "[e]mployer's assignment of hours to be worked, deadlines to be met and promotion practices were legitimate personnel actions." Finding of Fact No. 9. The claimant argued both at the hearing and on appeal that the self-insured "was not practicing legitimate personnel actions, hours kept increasing dramatically over the years, deadlines on projects were not realistic and purposely set to get employees to work harder and longer hours." The amount of work assigned and deadlines for completing it are legitimate personnel actions. Texas Workers' Compensation Commission Appeal No. 93022, decided February 24, 1993. Similarly, mismanagement or the creation of "less than optimal working conditions or relationships . . . [do] not equate to illegitimate personnel actions that would support a recovery under the 1989 Act for a mental trauma injury." Texas Workers' Compensation Commission Appeal No. 950046, decided February 21, 1995 (Unpublished). The claimant clearly disagreed with the wisdom and fairness of the work he was assigned. His opinion does not take these actions of the self-insured outside the scope of legitimate personnel actions.

Having reviewed the record of this case, we find no legal error and sufficient evidence to support the determinations of the hearing officer that the claimant's mental trauma injury was the result of repetitious traumatic experiences and that the complained of conduct of the self-insured constituted legitimate personnel actions. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Under these circumstances, the claimed injury was not compensable.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

For the foregoing reasons, we affirm the decision and order of the hearing officer that the claimant did not sustain a compensable mental trauma injury or occupational

illness in the form of major depression and that the claimant did not have disability. We reverse the determination that the claimant did not have good cause for his failure to attend the first CCH on February 22, 1999, and render a decision that he did have good cause.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Judy L. Stephens  
Appeals Judge