

## APPEAL NO. 991675

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 June 30, 1999. He (hearing officer) determined that the appellant (claimant) did not sustain a compensable mental trauma injury and that she did not have disability. Claimant appeals these determinations on sufficiency grounds. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

### DECISION

We affirm.

Claimant contends the hearing officer erred in determining that she did not sustain a compensable mental trauma injury at work and that she did not have disability. She asserts that the hearing officer's injury and disability determinations are against the great weight and preponderance of the evidence.

Claimant testified that she sustained a compensable mental trauma injury due to an assault that occurred while she was working as a resident assistant at a school on \_\_\_\_\_. Claimant said that she awakened during a lunch break to find a coworker, Mr. E, touching her breasts and genitals. She said she jumped up, but was pursued by Mr. E, who continued the alleged unwanted sexual contact. There was medical evidence that claimant was taken off work and treated for post-traumatic stress disorder.

Mental trauma, even without an accompanying physical injury, can produce a compensable injury if it arises in the course and scope of employment and can be traced to a definite time, place and cause. Bailey v. American General Insurance Co., 279 S.W.2d 315 (Tex. 1955); Olson v. Hartford Accident and Indemnity Co., 477 S.W.2d 859 (Tex. 1972). The 1989 Act provides that the hearing officer is the sole judge of the relevance, materiality, weight and credibility of the evidence. Section 410.165(a). Such conflicts or inconsistencies in the evidence are to be reconciled by the hearing officer. Burelsmith v. Liberty Mutual Insurance Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). In so doing, the hearing officer may believe all, part or none of any witnesses's testimony or any other evidence. Bullard v. Universal Underwriters Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). The hearing officer's decision will be overturned on appeal only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In this instance, claimant maintained that she had sustained a compensable mental trauma injury due to the alleged assault at work. The hearing officer noted that claimant was not credible, that any contact was consensual, that claimant was not injured at work, and that she did not sustain a compensable mental trauma injury. Many of claimant's complaints regarding the evidence go to the credibility of the evidence. The hearing officer is the sole judge of the credibility of the evidence and we will not disturb his determinations

because they are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Regarding the complaint that the hearing officer misstated the facts in the decision and order, our review of the record and the decision indicates that none of the complained-of errors constituted reversible error. In this case, the hearing officer simply did not find claimant's testimony credible and the complained-of errors regarding the details in the evidence were not critical to the issues in this case. Because claimant did not sustain a compensable injury, the hearing officer also did not err in determining that claimant did not have disability.

Claimant contends the hearing officer erred in determining that she was not in the course and scope of her employment "while engaged in sexual activity with [Mr. E]." The hearing officer determined that any sexual contact between claimant and Mr. E on September 27, 1998, was consensual. This complained-of finding was not necessary to the decision in this case. However, the hearing officer could have found from the evidence that claimant deviated from her duties and was not in the course and scope of her employment at the time of any sexual contact. We perceive no error.

Claimant complains that the hearing officer did not permit claimant to take a break while she was crying during closing argument. Claimant's specific complaint is that the hearing officer abused his judicial authority. The hearing officer was present at the CCH and was in a better position to view the parties and decide whether a break was needed. The request for a break came during closing argument. The hearing officer could have decided that it would be best to conclude the proceedings rather than prolong them. We perceive no abuse of judicial authority or reversible error in this regard.

We affirm the hearing officer's decision and order.

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Judy Stephens  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Alan C. Ernst  
Appeals Judge