

## APPEAL NO. 991798

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 21, 1999, a contested case hearing (CCH) was held. The issues disputed at the CCH were whether the respondent, who is the claimant, sustained a mental trauma injury on \_\_\_\_\_, and whether the appellant, referred to as self-insured or employer, was relieved from liability for claimant's failure to notify the employer within 30 days after her injury. The self-insured's defense on this last issue was based upon its assertion that the date of injury was November 23, 1998.

The hearing officer held that claimant sustained a mental trauma injury on \_\_\_\_\_, when she was arrested and taken to jail, pursuant to charges that were later dismissed. She gave her employer notice of her injury on January 18, 1999, within 30 days after her injury.

The self-insured appeals. It first argues that the claimant's claim is really one for repetitive stress and therefore not compensable stemming from an incident of negligence that occurred on November 23, 1998. Then, because it considers the date of injury to have been November 23, 1998, it argues that there was no timely notice given within 30 days of this date. Claimant does not respond.

### DECISION

Affirmed.

The claimant in this case was a 12-year employee of the self-insured. She was employed as a bus monitor on a bus for special education students. She forthrightly admitted that on November 23, 1998, she was negligent in performing all of her duties with the result that one student was left asleep on the bus for an hour and one-half before he was located, unharmed. The context of this was as follows.

The claimant and the bus driver both assumed the new route on that day. They picked up the students at their homes and took them to one of a few elementary schools. These students were nine and 10 years old, and were "acting up" that day, with the result that the ride was somewhat chaotic. In addition, one parent called the claimant to the door of the bus to complain about her daughter coming home using "bad words." The claimant pointed out that the kids were new to her and she had not been given much in the way of instruction about the children. The bus driver was also new and could not be of assistance. At one school, a teacher was waiting and helped identify the children. However, at the last stop, no teachers were waiting. The bus driver called into the school and was informed that two children were typically delivered at this school. The two children that appeared to be left on the bus got off. The claimant said she was standing up and could see no more children. She admitted that neither she nor the bus driver walked up and down the aisle, as they were supposed to do. Later that day, she found out that three children were supposed to be delivered at the last school, and the missing child had been sleeping down in one of

the seats. He was discovered an hour and one-half later and delivered to the school. The student was still asleep when found and was unharmed.

The claimant and the bus driver were reprimanded, verbally and then in writing, by the employer. While there was understandable stress resulting from this, the claimant agreed it was not undeserved and the stress and worry was nothing she could not handle. The claimant said she was primarily upset that she had failed in her job duties in this regard, because she liked her job and the children involved. She was transferred after November 23rd to another special education bus.

The parents of the child were apparently somewhat unrelenting in their anger over the incident, as the claimant said she was informed by the employer in December that they did not know what the parents intended to do and that they had hired a lawyer. This too was worrisome to the claimant, but she again emphasized that this worry neither interfered with her ability to work nor caused her to seek medical treatment.

The claimant returned, after Christmas break, to the school on January 7, 1999, and said she felt good and rested after the break. On the morning of \_\_\_\_\_, when she arrived at work around 6:00 a.m., the bus driver who had also been reprimanded approached her and indicated he had been arrested the night before, as a result of the child's parents filing criminal charges against him. He had gotten out, and told claimant he thought she would be arrested as well. She indeed had detectives waiting for her in the employer's office. She was handcuffed, taken to jail, booked, searched, and held for nine hours until bail was arranged. When released, she asked her husband if she could go to the doctor; she was extremely emotionally upset and felt like she had high blood pressure (a condition for which she had not been treated before).

The doctor who was available for claimant to see was Dr. A, who was treating her for breast cancer. The claimant was given medication, and then referred to a psychiatrist. Dr. A took claimant off work pending her appointment with the doctor. The psychiatrist, Dr. B, wrote on March 9, 1999, that he was treating her for major depression, single episode, severe without psychotic features, and post-traumatic stress disorder. She was receiving medication, and psychotherapy was recommended. Dr. B kept claimant off work as of April 7, 1999.

The claimant was unable to return to work after January 14th, stating that she felt she could not get onto a bus again at that point. The claimant said that the arrest was especially upsetting because she has been a person who has tried to do right, and that she did not intentionally mean to hurt or harm the child. She understood that the charges had something to do with child endangerment. However, they were dismissed. Claimant had hired an attorney to assist her and his letter conveying the dismissal is in evidence, although the specific charges are not detailed. No further prosecution is expected by the claimant because of this, nor was evidence brought forward that any lawsuit has resulted. The charges were not brought as the result of action by the employer.

We cannot agree with the self-insured that the claim entails a repetitive mental

trauma claim. We affirm the determination that the claimant sustained a mental trauma injury as a result of her arrest, which occurred at a definite time and place. The events of \_\_\_\_\_, of extraordinary magnitude, are comparable to the type of incident giving rise to a claim in the case of Bailey v. American General Insurance Company, 279 S.W.2d 315 (Tex. 1955). There is a discernable difference between the stresses that can arise at work when one does not perform to one's own, or the employer's, expectations, and the experience of being removed from the premises in handcuffs.

As we review the evidence, it is clear that the genesis of the injury in this case stemmed from the actions of a third party that occurred on \_\_\_\_\_, from events that initially arose out of the claimant's employment and did not involve importation of a personal dispute into the workplace. The self-insured has not disputed that the events leading to claimant's arrest originated in the work performed for the employer. The context was not one of a legitimate personnel action; the employer was not involved in nor did it initiate the arrest. We would note that had one of the parents of the child come onto the school premises and assaulted the claimant, for the manner in which she performed her duties, this would be a compensable injury. See Nasser v. Security Insurance Company, 724 S.W.2d 17 (Tex. 1987). The date of that injury would be the date of the assault. From the claimant's standpoint, the unexpected arrest, arising from an unintentional albeit negligent act, and being hauled away in handcuffs, was no less an assault than a slap would have been. This took place on \_\_\_\_\_, which is properly the date of injury (and not the date of the incident which set events in motion). The hearing officer's finding that timely notice was given was thus supported by the record and the date of the traumatizing event.

We, therefore, affirm the hearing officer's decision and order as to the appealed issues, finding sufficient support in the record for challenged findings of fact and conclusions of law.

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Susan M. Kelley  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Robert W. Potts  
Appeals Judge

\_\_\_\_\_  
Dorian E. Ramirez  
Appeals Judge