APPEAL NOS. 000344
AND 000345

These appeals arise pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) consolidating these two dockets was held on December 7, 1999, with the record closing on December 31, 1999. The hearing officer determined that appellant (claimant) did not sustain a compensable injury on _____, to three fingers of the left hand (Docket No. _____) and that the claimant did not sustain a compensable mental trauma injury on _____, and did not have disability as a result of the claimed mental trauma injury (Docket No. _____). The claimant appeals these determinations contending that venue in (city 1) was improper; that a subpoena duces tecum served on the employer was improperly ignored; and that the substantive determinations are against the great weight and preponderance of the evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

We address the venue matter first. The claimed injuries apparently occurred in the (city 2) area. At some point in time, presumably after _____, which was the claimant's last day at work, she moved to (state). She testified by telephone at the CCH. The parties stipulated that venue was proper in the (city 1) field office. In her appeal, the claimant simply says that venue in (city 1) was not proper, without giving a reason for this assertion or providing an opinion on proper venue. Section 410.166 provides that a stipulation is final and binding. Under these circumstances, we will not relieve the claimant of the effects of this stipulation. Texas Workers' Compensation Commission Appeal No. 92109, decided May 4, 1992.

At an initial hearing on September 2, 1999, the claimant requested subpoenas duces tecum to compel the employer to produce statements from individuals taken, she said, in connection with an investigation of matters pertinent to her claims. *See* Section 402.042(b) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rules 142.2(1) and 142.12(g) (Rules 142.2(1) and 142.12(g)). The subpoenas were signed by the hearing officer on September 7, 1999, and executed on October 11, 1999. The requested documents were never produced, nor does the record contain an explanation of the failure to comply. When the hearing was reconvened on December 7, 1999, the claimant again raised the question of noncompliance. The hearing officer advised the claimant that she, the hearing officer, had no authority to compel compliance and that no further continuances would be granted. She did state at the conclusion of the CCH that she would write the employer and inquire about its intent to comply and would leave the record open until December 31, 1999, pending the results of this inquiry. By the day after the CCH, the hearing officer changed her mind about writing the employer and on December 8, 1999, wrote the claimant that "enforcement

of the matter should be left to the Claimant." The claimant had the right, pursuant to TEX. GOV'T CODE ANN. § 2001.201 (Vernon Pamph. 1999), to bring suit to enforce the subpoenas. No further action was apparently taken by the claimant and we perceive no error in the hearing officer proceeding to a decision on the basis of the evidence before her.

The claimant worked as a cargo handler for the employer. She testified that on _____, she tripped and fell on her left arm and hand. No one witnessed the fall. She said she told a coworker and thought she only had a strain. Because the swelling did not go down, she first saw a doctor on March 3, 1996, and was diagnosed with middle phalanx fractures of the index, middle, and ring fingers.[1] She said she was able to continue working with the pain because she worked with one hand, other employees helped her, and she did not have to lift freight.

The claimant had the burden of proving she injured her left fingers as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did so was a question of fact for the hearing officer to decide and could be proved by her testimony alone if found credible by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. In her discussion of the evidence, the hearing officer commented that while the claimant clearly suffered an injury to her left hand, it was not clear how and when the injury occurred. The hearing officer further found it "very difficult to believe" that the claimant would work her regular duties for 13 days with fractured fingers. From this, she concluded that the claimant failed to meet her burden of proving a compensable left hand injury. In her appeal of this determination, the claimant restates her position at the CCH and contends that she continued to work because she needed the job and is right-hand dominant.

Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. For the reasons stated above, the hearing officer did not find the claimant credible in her assertions of how she fractured her fingers. 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 the evidence sufficient to support the determination that the claimant did not sustain a compensable left hand injury.

The claimant attributes her alleged mental trauma injury to an incident on _____, when she approached a male coworker, whom she did not know at the time, and asked him where she should leave some baggage. According to the claimant, he did not respond, but took her hand and placed it "on his behind." She said that as a result, she started having anxiety attacks, nausea, cold sweats, and developed ulcers from this one

[1]Other records and the hearing officer refer to the third, fourth, and fifth fingers.

incident. She also admitted to multiple other incidents at work, including seeing what she considered to be pornography on a gate; an incident where another male employee was discussing his wife; and an incident with a supervisor about whether she should or should not perform a specific work-related task. Despite these other incidents, she insisted her mental trauma injury was caused by the one incident on _____.

Other evidence includes an October 7, 1998, report by Dr. S in connection with an October 1984 back injury. In this report, Dr. S stated that in 1986, the claimant filed a sexual harassment lawsuit against her employer and that she was taken off work because of a divorce, pain, "and other social issues." The claimant's Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) in connection with this claim reflects that her "illness is related to the sexual harassment/working in a hostile environment causing stomach [pain], anxiety, & nausea and nervousness in the workplace." She attributed causation to "sexual harassment to my person which led to varied related incidents at the work place." The reports of Dr. P and Dr. PN reflect a diagnosis of "severe stress" from the work environment. This includes the comment on December 18, 1996, that her abdominal pain "only occurs with negative interaction with her employer." On March 28, 1997, Dr. P mentioned that he and the claimant "discussed all the stresses of life."

In Texas Workers' Compensation Commission Appeal No. 950011, decided February 15, 1995, we 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 sufficient 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 hearing officer restated Texas law on the compensability of a claimed mental trauma injury and concluded that the claimant did not establish by a preponderance of the evidence that the one event described on _____, caused a mental trauma injury in the face of the other evidence of a series of stressors both off and on the job. In her appeal, the claimant expresses her disagreement with this interpretation of the evidence. As noted above, it was the responsibility of the hearing officer to evaluate the evidence and determine what facts were established. Under our standard of review, we find the evidence sufficient to support the determination that the claimant did not establish a compensable mental trauma injury traceable to a definite time, date, and cause.

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.

Alan C. Ernst
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge