

APPEAL NO. 002872

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 17, 2000, a hearing was held. The hearing officer decided that the respondent (claimant) sustained a compensable mental trauma injury on _____; that the claimant had good cause for failing to report the injury until June 9, 2000; and that the claimant had disability resulting from the mental trauma injury beginning on June 2, 2000, and continuing through the date of the hearing. The appellant (carrier) appealed, asserting that the hearing officer's determination that the claimant had sustained a compensable mental trauma injury was against the great weight of the evidence. The carrier further asserted that the claimant failed to report a mental trauma injury resulting from an incident of _____, until July 10, 2000; that she failed to establish that she had good cause for failing to report the injury; and that she failed to establish that she reported the mental trauma injury within a reasonable time. The claimant responded and requested that we affirm the hearing officer's decision and order.

DECISION

We reverse and render.

The claimant testified that she was off work on _____, but was called to join an investigation on an accident which had occurred at the employer's plant. She went to the hospital to interview one of her coworkers, KS, who had been burned in an explosion of a dryer. The claimant testified that she was shocked by the extent of KS's burns, but was able to complete the interview and other tasks associated with the investigation and that she continued to work. On May 27, 2000, a fire broke out in another section of the employer's plant and the claimant responded to that fire as a member of the response team. The claimant testified that she became disoriented and "everything became dream-like." After the May 27, 2000, fire, someone named Ms. D suggested that the claimant seek counseling and she did.

The claimant first saw Ms. W, a licensed professional counselor, on June 1, 2000. Ms. W believed that the claimant was suffering from post-traumatic stress disorder (PTSD) and, on June 9, 2000, the claimant reported a PTSD injury to the employer. At the time she reported the PTSD to her employer, the claimant reported that the source of her psychological injury was friction with certain coworkers. On July 10, 2000, after what the claimant stated was a breakthrough in her counseling, the claimant mailed an amended report to her employer which identified the event causing the PTSD as the explosion on _____.

In addition to the _____, explosion, the claimant's mental health records are peppered with numerous references to other stressful situations at work. One of the situations mentioned quite often as causing the claimant significant stress is her relationship with a coworker named Mr. B. The claimant also reported that a coworker with

whom the claimant had had an argument had died in a plane crash, that the claimant felt guilty about his death, and that another worker had been burned in fire school.

Some of Ms. W's notes mentioning Mr. B include a report from the claimant to Ms. W that Mr. B had picked the claimant up off the floor by her face; that she was so afraid of Mr. B that she requested that she be assigned to a different shift at work; that she was taking the brunt of Mr. B's anger and yet not reporting him to the company; that she was planning to see a woman who had survived a hostile work environment but the claimant also continued to have compassion for Mr. B; and that she was afraid to talk to anyone at the company because she was afraid that she might hear that something had happened to Mr. B or that he wasn't getting the help he needed. The notes go on to say that a supervisor had told the claimant that Mr. B was just a "fatal attraction" and was showing his love for her; that the claimant had a nightmare that she was trying to get away from Mr. B and KS was not helping her; that she had a catharsis when she thought of Mr. B; and that even after counseling, she was unable to attend a meeting at the plant because of her fear of running into Mr. B. Also included in the treatment notes was a note that the claimant's treating doctor, Dr. J, had called Ms. W on July 25, 2000, stating that the claimant was scared and shaking all over regarding seeing Mr. B. A note by Ms. W dated June 5, 2000, states that the claimant reported that Mr. B has an alternate personality named "George" and that Mr. B would blame his rages on George.

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 do not constitute a compensable injury. Texas Workers' Compensation Commission Appeal No. 981423, decided August 10, 1998; Texas Workers' Compensation Commission Appeal No. 950011, decided February 15, 1995. Whether an 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 from all the evidence before him or her. Appeal No. 981423, *supra*. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As an appeals body, we will not substitute our judgment for that of the hearing officer unless the determination is so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Such is the case before us now. The hearing officer's finding that the cause of the claimant's mental trauma injury is the _____, explosion is so against the great weight and preponderance of the evidence as to be clearly wrong. We find that the claimant's mental trauma injury is the result of repetitive emotional stress occurring at the workplace and is not, therefore, compensable. We, consequently, reverse the hearing officer's decision that the claimant sustained a compensable mental trauma injury on _____.

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id.* Since we reverse the

hearing officer's determination that the claimant sustained a compensable injury, we likewise reverse the determination that the claimant had disability.

The hearing officer found that the claimant had good cause through June 1, 2000, for not reporting the alleged injury within 30 days from the date of the injury, that the claimant report a work-related PTSD injury to her employer on June 9, 2000, and that the reporting of the injury to her employer on June 9 was within a reasonable time after good cause ended on June 1, 2000. The hearing officer states in her decision that the claimant's eight-day delay in reporting her injury was reasonable because of her mental anguish and the unique facts of the case. We do not find support in the record for the hearing officer's determination that the claimant's failure to report her injury until a week after seeing the counselor was reasonable. Furthermore, any good cause for failing to report an injury within 30 days must continue up to the date the injury is reported. The claimant was not at work between June 1 and June 9, nor did she have to go to the workplace to report the injury. The claimant was able to attend counseling sessions during that period. There is nothing in the record to explain why the claimant could not call her employer to report the alleged PTSD on June 1, but could do so on June 9. There is nothing in the record or the hearing officer's decision to indicate what guiding principles, if any, were referenced by the hearing officer in determining that the delay in reporting the injury from June 1 to June 9 was reasonable or that the claimant had good cause for failing to report the injury until June 9, 2000. We, therefore, reverse the hearing officer's decision that the claimant had good cause for failing to report the mental trauma injury to the employer until June 9, 2000.

We reverse the hearing officer's decision that the claimant sustained a compensable mental trauma injury on _____; that the claimant had good cause for her failure to report the injury until June 9, 2000, and that the claimant had disability resulting from the injury beginning on June 2, 2000, and continuing through the date of the hearing. We render a new decision that the claimant did not sustain a compensable mental trauma injury on _____; that she did not timely report the injury to her employer; that she did not have good cause for the untimely reporting; and that she did not have disability resulting from the alleged injury.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge