

## APPEAL NO. 010061

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on December 4, 2000. The hearing officer resolved the disputed issues by concluding that the appellant (claimant) did not sustain a compensable mental trauma injury on or about \_\_\_\_\_, while in the course and scope of his employment with the (self-insured employer); that he failed to timely report a work-related mental trauma injury of \_\_\_\_\_; and that because he did not sustain a compensable injury, he did not have disability. The claimant has appealed, asserting that the self-insured employer did not stay with the position it took at the benefit review conference regarding the existence of rumors having been spread about the claimant and, essentially, that the evidence met his burden of proof on the issues. The file does not contain a response from the self-insured employer.

### DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, when he reported to work as an accountant for the self-insured employer, his hands were shaking from either having taken medication or needing more medication; that his supervisor, Mr. W, saw his hands shaking; that Mr. W immediately thereafter began spreading rumors among the claimant's coworkers that the claimant had no girlfriend and was masturbating; that during the period from September 22, 1998, to \_\_\_\_\_, these rumors became widespread among his coworkers and grew to include rumors that he was a homosexual and a pedophile; that during the period from September 1998 to April 1999, both he and Mr. W were interested in succeeding to the chief accountant's position, which was expected to become vacant on or about \_\_\_\_\_; that he knew that Mr. W did not have the accounting degree Mr. W purported to have and that Mr. W knew that he knew; and that he feels his knowledge that Mr. W did not have the degree threatened Mr. W's prospects for gaining the promotion and motivated Mr. W to spread the rumors which caused his mental trauma injury.

The 1989 Act addresses mental trauma injuries in Section 408.006 and provides in subsection (b) that a mental or emotional injury that arises principally from a legitimate personnel action, including among other things a promotion, is not a compensable injury. The Appeals Panel has repeatedly held that repetitive mental trauma injuries are not compensable. *See, e.g., Texas Workers' Compensation Commission Appeal No. 950834, decided July 5, 1995.* The hearing officer did not have to reach the issue of repetitive mental trauma because she found that the claimant failed to establish that Mr. W ever saw the claimant's hands shaking and that he started rumors about the claimant's sexual proclivities. The hearing officer also found that the claimant did not report the claimed injury until May 7, 1999, when he reported it to another supervisor; that he did not have good cause for not reporting the injury prior to that date; and that his inability to obtain and retain employment at his preinjury wage was not a result of a compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence (Section

410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ) and determines what facts have been proven. We are satisfied that the challenged findings are not so against 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 re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Kenneth A. Huchton  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge