

APPEAL NO. 010274

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 12, 2001. In response to the issues before him, the hearing officer determined that: (1) appellant self-insured ("carrier" herein) waived the right to contest the compensability of the claimed injury; (2) respondent (claimant) timely filed a claim within one year; (3) the date of injury is _____; (4) claimant did not sustain a mental trauma injury "on _____," but did sustain a compensable mental trauma injury; and (5) claimant did not timely report his claimed injury within 30 days. Carrier appealed the determinations regarding compensability, date of injury, and carrier waiver. Carrier also asserted that it could not waive the right to contest a nonexistent injury, citing Continental Casualty Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.). Claimant responded "objecting" to statements made by carrier in its brief. The determination regarding timely reporting was not appealed.

DECISION

We reverse and render.

Carrier contends the hearing officer erred in determining that the date of injury for the claimed mental trauma injury is _____. The hearing officer specifically determined that the date that "claimant knew or should have known that his injury may be work related" was _____. Claimant claimed a mental trauma injury in this case and the hearing officer determined that "claimant's mental trauma, if any, was caused by several events occurring over an extended period of time." Regarding the general background facts, there was evidence that claimant, an investigator for one of the self-insured's offices, tape recorded two public officials as part of an investigation. There was evidence that one of the public officials was recorded saying that claimant was a "loose cannon" and needed to be "silenced." This tape recording was played for claimant and others on April 15, 1994. There was evidence that, subsequent to this, the public official was indicted, but then claimant himself was investigated for wiretapping and other activities, that his employment was terminated, and that he eventually began seeing a mental health professional.

The hearing officer apparently determined that claimant did not have a mental trauma on _____, and said, "claimant did not describe any traumatic occurrences" from the _____, meeting. The hearing officer determined that claimant's mental trauma was caused by "several events" that occurred over time. The hearing officer chose as the date of injury the date of claimant's diagnosis with post-traumatic stress disorder: _____. The hearing officer found this as the date claimant "knew or should have known" that he had an alleged work-related injury.

The date regarding when a claimant "knew or should have known" of an injury has no application in a case involving a mental trauma injury. A mental trauma injury is one

that arises in the course and scope of employment and is traceable to a definite time, place, and cause. Damage or harm caused by repetitious mentally traumatic activity does not constitute an occupational disease for purposes of compensability under workers' compensation law. See Texas Workers' Compensation Commission Appeal No. 950011, decided February 15, 1995. The definite time for the mental trauma injury claimed by claimant was _____, and that is the date of injury in this case. The hearing officer's determination regarding the date of injury is legally incorrect and is also 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). We reverse the hearing officer's determination that the date of injury is _____, and render a decision that the date of injury is _____. We will not address the sufficiency of the evidence regarding the determination of the date claimant knew or should have known of the work-relatedness of the claimed injury, as that fact issue is not applicable in this case.

Carrier next contends that the hearing officer erred in determining that claimant timely filed a claim within one year of the date of injury. There is no assertion that a claim was filed within one year of _____. The hearing officer based his determination on the determination regarding the date of injury, which we have determined was incorrect and reversed. The hearing officer's determination that claimant timely filed a claim is both legally incorrect and is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra. We reverse the determination that claimant timely filed a claim within one year and render a decision that claimant did not timely file a claim within one year of _____.

Carrier contends the hearing officer erred in determining that it waived the right to contest the compensability of the claimed injury. Carrier does not challenge the determination that it contested the claim on June 16, 2000. Carrier contends that the hearing officer erred in determining that it received notice of the claimed injury on April 12, 2000. There was evidence that claimant mailed an April 12, 2000, letter to a supervisor employed by carrier, which claimant asserted was notice to carrier of the claimed injury. The letter is not in the record and there is no evidence regarding the date the letter was mailed or received. Carrier asserts that its June 16, 2000, contest of compensability was timely because it was done within 60 days of the receipt of this letter.

The hearing officer determined that the letter was received on April 12, 2000, the same date that the letter was dated. Even assuming that the letter gave the requisite notice to carrier, the evidence does not support the hearing officer's determination that the letter was received by carrier on April 12, 2000. However, we will need not remand this issue to the hearing officer for findings regarding the date carrier received this letter. After reviewing the record, we conclude that even if carrier did not contest the compensability of the claimed injury within 60 days, carrier is still not liable for another reason.

In this case, the claimed injury was for a specific trauma that was alleged to have taken place on _____. However, the hearing officer apparently found there was no mental trauma injury from the events on that date. The hearing officer found that claimant

had other subsequent life events that caused mental trauma, however, the workers' compensation claim filed was not based on those events. A carrier may waive the right to contest an injury, provided there is some damage or harm to the employee. In other words, there can be no carrier waiver where there is no injury. Williamson, *supra*. In this case, the injury that was alleged was a mental trauma from _____, but the hearing officer apparently found there was no such trauma on that date. Therefore, there was no injury for carrier to be liable for through carrier waiver. It is true that there was evidence that claimant had subsequent mentally traumatic events in his life, including marital difficulties and the termination of his employment. However, carrier would not be liable for any sequelae from any mental traumas claimant sustained after _____. If there were to be a waiver, it would apply only to the claimed injury, which was the alleged damage or harm from the _____, incident. For example, if an employee said he fell down and hurt his knee on May 1, but the hearing officer found there was nothing to support this claim and the doctors said there was no medical evidence of any damage or harm to the knee, there would be no injury that carrier might be liable for through carrier waiver. In that same example, if that same employee fell at home on May 10 and injured his knee at that time, there would be no liability through carrier waiver for that *new* knee injury. Any carrier waiver would apply to the condition that existed *as of the date of injury*. It is true that mental trauma injuries necessarily involve sequelae after the specific trauma of one day. However, we conclude that for there to be carrier waiver regarding a mental trauma injury, there must be an existing mental condition or injury *as of the date of injury*, which is the basis of the carrier waiver. There is nothing in the record to indicate that claimant had any mental problems or condition as of _____. The medical evidence in the record from claimant's doctor states that:

[Claimant's] basic problem had to do with emotional difficulties that evolved from an event several years before, and this event had to do with a [public official] being indicted on a number of serious charges pursuant to [claimant's] investigation of him, and then [claimant] being fired There were many accusations from both sides This resulted in considerable damage to [claimant's] reputation and his career, resulting [in] great difficulty getting hired again

Claimant's doctor then goes on to describe claimant's symptoms, his marital difficulties, and his difficulties with doing his work. There is evidence that claimant had suffered emotional difficulties or conditions that developed as a result of events that took place after _____. However, because the evidence does not show that claimant had a mental condition or injury as of the date of injury, we cannot agree that carrier is liable through waiver in this case. See *generally* Texas Workers' Compensation Commission Appeal No. 001543, decided August 14, 2000 (carrier waiver upheld where the employee had a diagnosed mental condition due to the specific traumatic event). We reverse the determination that carrier waived the right to contest the compensability of the claimed injury and render a decision that carrier did not waive the right to contest the compensability of the claimed injury.

Carrier contends the hearing officer erred in determining that claimant sustained a “compensable” mental trauma injury. Because there was no carrier waiver, the injury is not “compensable” and carrier is not liable regarding this claimed injury. We reverse the determination that there was a “compensable injury” and render a decision that claimant’s alleged injury is not compensable and that carrier is not liable for the claimed injury.

We reverse that part of the hearing officer’s decision and order that determined that carrier waived the right to contest the compensability of the claimed injury and render a decision that carrier did not waive the right to contest the compensability of the claimed injury. We reverse the determination that the date of injury is _____, and render a decision that the date of injury is _____. We reverse the determination that claimant timely filed a claim within one year and render a decision that claimant did not timely file a claim within one year of _____. We reverse the determination that carrier is liable for a compensable injury and render a decision that claimant’s alleged injury is not compensable and that carrier is not liable for the claimed injury. We reform the clerical error in the order in this case to state that claimant “did not notify” the employer of the claimed injury within 30 days. . . .”

Judy L. S. Barnes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O’Neill
Appeals Judge