APPEAL NO. 011025
FILED JUNE 27, 2001

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 April 20, 2001. With respect to the issues before her, the hearing officer determined that the appellant (carrier) is not relieved of liability for the injury because the respondent's (claimant) horseplay was not a producing cause of her injury of _____; the injury was not caused by the claimant's willful intention and attempt to unlawfully injure another person; and the injury did not arise out of an act of a third person intended to injure the claimant because of personal reasons and not directed at the claimant as an employee or because of the employment. The hearing officer further determined that the claimant had disability from _____, through the date of the hearing, April 20, 2001.

DECISION

Affirmed.

The hearing officer did not err in determining that the carrier is not relieved of liability under Section 406.032(2). As the hearing officer noted there was little, if any, evidence presented to support the horseplay defense. Accordingly, we perceive no error in the hearing officer's having found for the claimant on this issue.

The carrier also argued that it was relieved of liability in this instance under Section 406.032(1)(B), asserting that the claimant was the aggressor in the fight between her and Mr. H. Specifically, the carrier contends that the claimant's action of "slamming on the brakes" caused Mr. H to fall and strike his head and that it is that incident that triggered the fight between the claimant and Mr. H. The issue of whether it was the claimant or Mr. H that was the aggressor in the fight between them was a question of fact for the hearing officer. She reviewed the evidence and determined that Mr. H was the aggressor. The hearing officer's determination in that regard is supported by the claimant's testimony and our review of the record does not reflect that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the determination that the carrier is not relieved of liability in this instance under Section 406.032(1)(B). Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer likewise did not err in determining that the carrier is not relieved of liability in this case under Section 406.032(1)(C), the so called "personal animosity" exception to liability. The carrier argues that the fight between the claimant and Mr. H was motivated by longstanding personality problems associated with Mr. H's "bigoted attitude toward women," more particularly, his apparent belief that women should not be truck drivers and "anger claimant provoked by slamming on her brakes." The claimant testified that Mr. H became angry with her after he awoke from sleeping and discovered that she had driven past the designated area where they had agreed to change drivers. In addition,

the claimant stated that Mr. H was yelling and cursing at her because she was uncertain as to the location of a truck stop and had not consulted the truck stop guide, noting that he could not continue to "spoon feed her." The claimant stated that when she put on the brakes, Mr. H fell, that after he got up, he punched her in the face, and that a fight ensued. From this testimony, the hearing officer could, and did, determine that the reason for the assault was a quarrel having its origins in the work in that the fight between the claimant and Mr. H grew out of a disagreement concerning the manner in which the claimant performed her duties. Texas Workers' Compensation Commission Appeal No. 962146, decided December 9, 1996; Texas Workers' Compensation Commission Appeal No. 971051, decided July 21, 1997. As such, we find no merit in the assertion that the hearing officer erred in determining that the carrier was not relieved of liability under Section 406.032(1)(C).

In its appeal, the carrier also contends that the hearing officer erred in finding a compensable injury because no injury was established by the claimant. There was no injury issue before the hearing officer. Indeed, the carrier's theory was that it was relieved from liability and not that an injury did not occur. The hearing officer did not err in resolving only those issues expressly before her. We note that there was also not an extent-of-injury issue before the hearing officer; thus, she did not address any such issue.

Finally, the hearing officer did not err in determining that the claimant had disability as a result of her compensable injury from _____, through the date of the hearing. The carrier's challenge to the disability determination is dependent upon the success of its argument that the claimant did not sustain a compensable injury. However, given our affirmance of the determination that the carrier is not relieved of liability in this instance, we likewise affirm the hearing officer's disability determination.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge