

APPEAL NO. 011367
FILED JULY 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 (CCH) was held on May 22, 2001. The hearing officer determined that the appellant (claimant) had not sustained a compensable mental trauma injury on or about _____; that the claimant had failed to timely report his claimed injury to the employer (self-insured in this case); and that because the claimant did not have a compensable injury, the claimant did not have disability.

The claimant appeals, contending that his supervisor's "act of discrimination and harassment because of [claimant's] genetic medical disability" caused his mental trauma; that he had reported his injury to a personnel specialist, RR; and that he has been unable to work since May 23, 2000. The claimant submitted additional information with his appeal. The respondent (carrier) responds that the additional information should not be considered and, generally, that a legitimate personnel action pursuant to Section 408.006(b) does not constitute a compensable injury. The carrier urges affirmance.

DECISION

Affirmed.

The claimant was employed as a corrections officer at one of the self-insured's facilities. It is undisputed that the claimant was called to the warden's office for a disciplinary action or disciplinary proceeding to address some absenteeism. The claimant alleges that the purpose of the meeting was to harass him about his "genetic medical disability" (apparently narcolepsy, which one of the exhibits defines as "excessive daytime sleepiness"). What happened during the meeting is in dispute. The claimant alleges that the warden verbally attacked him. Other statements, including that of the warden and RR, indicated that the claimant became "insubordinate and uncooperative" and was ordered to leave the meeting. The claimant testified that he was "too scared" to work the following day. The claimant did, however, submit a letter of resignation dated May 24, 2000, giving his reason for resigning as "For fear of my safety per incident on _____." The claimant contends this was notice that he was claiming a mental trauma injury. The claimant filed an Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) dated December 27, 2000, which the self-insured contends was the first notice of the claimed injury.

The Appeals Panel does not normally consider information which is submitted for the first time on appeal. The information submitted with the appeal appears to have been available at the time of the CCH and we hold that it does not require a remand. See Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ).

Section 408.006(b) provides that a mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury. The Appeals Panel has held that this list of personnel actions is not exhaustive. Texas Workers' Compensation Commission Appeal No. 92149, decided May 22, 1992. The hearing officer commented that there was insufficient evidence to show that the incident on _____, "was anything other than a legitimate personnel action." The term "legitimate personnel action" refers to the activity being performed, not whether that action was fair, deserved, or polite. Texas Workers' Compensation Commission Appeal No. 950535, decided May 19, 1995. Further, as the hearing officer notes, there is little medical evidence to establish that the incident in question resulted in an aggravation of the claimant's narcolepsy, cataplexy, and memory loss.

The hearing officer did not err in the application of Section 408.006(b) and her factual determinations are supported by the evidence. Because we are affirming the hearing officer's decision that the claimant did not sustain a compensable injury, the claimant cannot, by definition, have disability.

The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. 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.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge