

APPEAL NO. 011472  
FILED AUGUST 09, 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 June 1, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable mental trauma injury and that the claimant has not had disability. The claimant appealed and the respondent (self-insured) responded.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable mental trauma injury. The claimant testified that she sustained a mental trauma injury, which has been diagnosed as post-traumatic stress disorder, as a result of constant harassment on her school bus route over several months in 1999 and 2000 from people she believes are the parents of the children she transports on the school bus. A "compensable injury" is defined in Section 401.011(10). Section 408.006(a) provides: "It is the express intent of the legislature that nothing in this subtitle shall be construed to limit or expand recovery in cases of mental trauma injuries." The law regarding mental trauma injuries is set out in Texas Workers' Compensation Commission Appeal No. 000445, decided April 12, 2000, which states:

It is well-settled that mental trauma, even without an accompanying physical injury, can produce a compensable injury if it arises in the course and scope of employment and can be traced to a definite time, place and cause. Bailey v. American General Insurance Co., 279 S.W.2d 315 (Tex. 1955); Olson v. Hartford Accident and Indemnity Co., 477 S.W.2d 859 (Tex. 1972). However, the Texas Supreme Court has specifically held that damage or harm caused by repetitious mentally traumatic activity, as opposed to physical activity, cannot constitute an occupational disease. Transportation Insurance Co. v. Maksyn, 580 S.W.2d 334 (Tex. 1979) [additional citations omitted].

In the instant case, the hearing officer found that the claimant was alleging a mental trauma injury due to alleged repetitive harassment occurring on multiple occasions over a period of several months and determined that the claimant did not sustain a compensable mental trauma injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer's decision that the claimant did not sustain a compensable mental trauma injury is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer did not err in determining that the claimant has not had disability. Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge