

APPEAL NO. 012243  
FILED NOVEMBER 7, 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 August 16, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable mental trauma injury on \_\_\_\_\_, and that she did not have disability. The claimant appealed on evidentiary sufficiency grounds. The file does not contain a response from the respondent (self-insured).

DECISION

Affirmed.

The claimant testified that during the course of her employment with the self-insured, she came into conflict with her immediate supervisor's boss. The claimant testified at length regarding a history of supervisory behavior directed at her which she described as harassing and discriminatory. The claimant further testified that she sought treatment and counseling for her on-the-job stress and emotional distress several times prior to \_\_\_\_\_, the claimed date of injury. The hearing officer determined that while the claimant was credible in her testimony, believing that her work environment is the primary cause of her current problems, the claimant's mental condition was caused by a repetitive pattern of events which were legitimate personnel actions, albeit that the claimant perceived them as discriminatory and harassing activities. These determinations are sufficiently supported by the evidence.

Section 408.006 provides for the compensability of mental trauma injuries. Section 408.006(b) provides that a mental or emotional injury that arises principally from a legitimate personnel action is not compensable under the 1989 Act. There is no evidence in the record which suggests that the claimant's immediate supervisor's boss did not have authority to direct the claimant's activities while she was at work or to take corrective action when he felt it was necessary. It is clear that the claimant was told to do things which she did not believe she should have to do, and that she felt singled out, discriminated against, and harassed. The fact that a supervisor's instruction about doing the work is unwelcome or unpleasant does not remove it from the scope of a legitimate personnel action. Texas Workers' Compensation Appeal No. 951777, decided December 12, 1995.

Further, the hearing officer determined that the claimant's mental condition was caused by a repetitive pattern of events, not a single traumatic event. In Texas Workers' Compensation Appeal No. 950011, decided February 15, 1995, the Appeals Panel wrote:

It has long been held in Texas that mental trauma can produce a compensable injury, even without an underlying physical injury, if it arises in the course and scope of employment and is traceable to a definite time, place, and cause. Bailey v. American General Insurance Company, 154 Tex. 430, 279 S.W.2d. 315 (1955);

Olson v. Hartford Accident and Indemnity Company, 477 S.W.2d. 859 (Tex. 1972). Further, the Texas Supreme Court has held that damage or harm caused by repetitious mental traumatic activity does not constitute an occupational disease for purposes of compensability under the workers' compensation statutes. Transportation Insurance Company v. Maksyn, 580 S.W.2d. 334 (Tex. 1979). *And see Aetna Casualty & Surety Company v. Burris*, 600 S.W.2d. 402 (Tex. Civ. App.-Tyler 1980, writ ref'd n.r.e.), in which the court held that where the evidence demonstrated repetitious mental trauma activities, the diseases or infirmities complained of (which included headaches, hypertension, chest pains, and depression) were ordinary diseases of life to which the general public is exposed and thus were not compensable. [See also Texas Workers' Compensation Commission Appeal No. 991332, decided August 5, 1999.]

While a specific stressful incident of sufficient magnitude occurring on the job can result in a compensable mental trauma injury, repetitive mentally traumatic activities or stressful events do not constitute a compensable injury. Appeal No. 991332, *supra*; Appeal No. 95001, *supra*. Whether the activity or incident amounts to a specific traumatic event is a question of fact for the hearing officer to decide. Where the evidence is insufficient to establish a definite and specific event that caused the asserted mental trauma and condition, a compensable injury is not proved. Texas Workers' Compensation Commission Appeal No. 950633, decided June 7, 1995; Appeal No. 991332, *supra*. In the case we now consider, the evidence from the claimant herself was that she experienced a series of stressful events and that her condition worsened over time. The hearing officer, consistent with the testimony of the claimant, found that the claimant's emotional trauma was the result of a repetitive pattern of what the claimant considered to be harassing and discriminatory behavior from a superior. The facts as presented do not support recovery for a mental trauma injury under existing law.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(SELF INSURED EMPLOYER)** and the name and address of its registered agent for service of process is

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Susan M. Kelley  
Appeals Judge