

APPEAL NO. 012483
FILED NOVEMBER 29, 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 September 18, 2001. The appellant (claimant) appeals the hearing officer's determinations that she did not sustain a compensable mental trauma injury on or about _____, and that because she did not sustain a compensable injury she had no disability. The respondent (carrier) responds, urging the factual sufficiency of the evidence and arguing that any mental trauma arose from a legitimate personnel action.

DECISION

The hearing officer's decision is affirmed.

It is undisputed that the claimant had ongoing problems with her employer. The hearing officer determined that while the claimant sustained mental trauma due to a hostile work environment, the claimant did not establish that a specific _____, incident caused her to sustain the claimed mental trauma injury, but instead resulted from a history of several incidents over a longer period of time. Although the claimant propounds several arguments in her appeal, this is essentially an appeal of the sufficiency of the evidence.

An "injury" is "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). A "compensable injury" is "an injury that arises out of and in the course and scope of employment" Section 401.011(10). An employee has the burden of proving, by a preponderance of the evidence, that he sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. An injury may include a mental trauma injury. Section 408.006(a); Texas Workers' Compensation Commission Appeal No. 91122, decided February 6, 1992. However, to be compensable, mental trauma must be caused by an incident at a definite time and place. Texas Workers' Compensation Commission Appeal No. 92210, decided June 29, 1992, citing Transportation Ins. Co. v. Maksyn, 580 S.W.2d 334 (Tex. 1979). Repetitive mentally traumatic activities do not constitute a compensable injury. Texas Workers' Compensation Commission Appeal No. 92311, decided August 24, 1992.

Whether the claimant sustained a compensable mental trauma injury in the course and scope of her employment was a factual determination to be made by the hearing officer, who is the judge of the weight and credibility of the evidence and who determines what facts have been established by conflicts and contradictions in the evidence. Texas Workers' Compensation Commission Appeal No. 92396, decided September 25, 1992; and Appeal No. 92311, *supra*. Having reviewed the record, we conclude that the hearing officer's findings are supported by sufficient evidence and are not against the great weight and preponderance of the evidence, that the findings support the hearing officer's conclusions, and that the conclusions support her decision. We note that the hearing

officer did not make findings that the legitimate personnel action set forth in Section 408.006(b) applied to these facts.

The hearing officer determined that the claimant did not sustain a compensable injury that was supported by case law. Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16). The hearing officer's decision 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's decision and order are affirmed.

The true corporate name of the insurance carrier is **HIGHMARK CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.**

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge