

APPEAL NO. 020080
FILED MARCH 4, 2002

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 November 27, 2001. The appellant self-insured (carrier herein) appeals the hearing officer's determinations that the respondent (claimant) sustained a compensable mental trauma injury on or about _____; that claimant timely reported the injury to her employer; that claimant had disability; and that claimant timely filed a claim with the Texas Worker's Compensation Commission (Commission) within one year that carrier did not waive the right to contest compensability has not been appealed. There is no response to the appeal from claimant contained in our file.

DECISION

We affirm in part and reverse and render in part.

Claimant testified that a psychiatrist diagnosed her with post-traumatic stress disorder resulting from the incident. We have reviewed the complained-of determination regarding the compensable injury and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination that claimant sustained a compensable mental trauma injury at work on _____, is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Carrier contends the hearing officer erred in making the timely notice determination in claimant's favor. We have reviewed the complained-of determination regarding notice of injury and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. If the employer had merely had notice that claimant was attending joint counseling sessions open to all employees, this may have put the employer on notice that there was some emotional impact from the incident, but would not have put the employer on notice of an injury. However, given the testimony of claimant and Mr. we conclude that the evidence was minimally sufficient to support the hearing officer's determination in this regard. We conclude that the hearing officer's determination in this regard is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Carrier contends the hearing officer erred in determining that claimant timely filed her claim. Section 409.003(a) of the 1989 Act provides that a person shall file a claim with the Commission not later than one year after the date of injury. Apparently, the hearing officer determined that the one-year filing period to submit a claim to the Commission was tolled. Section 409.005(a) indicates that an employer shall file a written report with the Commission if an injury results in the absence of an employee from work for more than one

day. Section 409.008 states that, “[i]f an employer or the employer's insurance carrier has been given notice or has knowledge of an injury to or the death of an employee and the employer or insurance carrier fails, neglects, or refuses to file the report under Section 409.005, the period for filing a claim for compensation under Sections 409.003 and 409.007 does not begin to run against the claim of an injured employee or a legal beneficiary until the day on which the report required under Section 409.005 has been furnished.” Claimant testified that she did not miss work due to the incident until March 22, 2001, the date she resigned, which was more than a year after the date of injury. Therefore, the employer had no duty to file a notice of claim and there was no tolling under Section 409.008.¹ Claimant did not file her claim until June 19, 2001. Therefore, she did not timely file her claim.

The hearing officer made no determination concerning good cause for failure to file a claim within one year of the date of injury. Section 409.004 provides, in pertinent part, that failure to file a claim within one year relieves the carrier of liability unless good cause exists for failure to timely file. Good cause for not timely filing a claim must continue up to the date that the claim is filed. Texas Workers' Compensation Commission Appeal No. 960418, decided April 15, 1996. In the case before us, carrier filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) on April 6, 2001, but claimant did not file her Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) until June 19, 2001. Claimant did not offer any excuse for not filing until that date other than ignorance of the law, which we have previously held is not good cause. See Appeal No. 960418. Claimant did not sustain her burden to show continuing good cause in this case. Because claimant did not timely file a claim in this case, the hearing officer erred in determining that the claimed injury was compensable and we reverse that determination.

We have reversed the determination that claimant's injury is compensable. Because there is no compensable injury, there can be no disability (Section 401.011(16)) and we reverse the hearing officer's determination that claimant had disability.

We affirm that part of the hearing officer's decision that determined that claimant sustained a mental trauma injury at work and that she timely reported the injury. We reverse that part of the hearing officer's decision that determined that claimant timely filed a claim within one year and render a new decision that the claimant did not timely file her claim within one year or establish continuing good cause for failure to do so. We reverse that part of the hearing officer's decision that determined that claimant sustained a

¹Mental trauma is not an occupational disease.

compensable injury and that she had disability and we render a decision that claimant did not sustain a compensable injury and that she did not have disability.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge