

APPEAL NO. 061729-s
FILED SEPTEMBER 28, 2006

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 July 24, 2006. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) did not sustain a compensable physical injury on _____; and that the claimant did sustain a compensable mental trauma injury on or about _____. The appellant (carrier) appeals, arguing that the hearing officer erred in finding that the claimant sustained a compensable mental trauma injury. The claimant responded, urging affirmance of the disputed determination. The hearing officer's determination that the claimant did not sustain a compensable physical injury on _____, was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

It is undisputed that the claimant was in the course and scope of employment when the employer was robbed on _____. The claimant testified that she was held at knifepoint by the assailant. At issue was whether the claimant sustained a mental trauma injury. In GTE Southwest, Incorporated v. Bruce, 998 S.W.2d 605, 610 (Tex. 1999), the Texas Supreme Court stated:

This Court has liberally construed the word "injury" in cases involving emotional distress and traumatic neurosis. See Olson v. Hartford Accident & Indem. Co., 477 S.W.2d 859, 860 (Tex. 1972). The phrase "physical structure of the body" refers to the entire body; and emotional distress may constitute an "injury" when it results in malfunctioning of the physical structure of the body. Transportation Ins. Co. v. Maksyn, 580 S.W.2d 334, 336-37 & n. 2 (Tex. 1979); Bailey v. American Gen. Ins. Co. 154 Tex. 430, 279 S.W.2d 315, 318-19 (1955).

In Appeals Panel Decision (APD) 950633, decided June 7, 1995, the Appeals Panel noted that "[g]enerally, the existence of an injury may be established through the testimony of the claimant alone; however, in [APD 941551, decided December 23, 1994,] we noted that the cause, progression, and aggravation of mental disease is a subject of such a technical nature that expert medical evidence is required." APD 960966, decided July 5, 1996, also noted that expert medical evidence was required to make the necessary causal connection between the mental condition and a specific incident at work. In APD 94785, decided July 29, 1994, the Appeals Panel rendered a decision that the employee did not sustain a compensable mental trauma injury where no medical report mentioned the specific event at work that was alleged to have caused mental trauma and the medical reports only mentioned pressure and stress of the job in

general. Although the occurrence of a traumatic event (the robbery) was undisputed, the hearing officer correctly noted that there was no medical evidence in the record supporting a mental trauma injury. Nor do the records contain any diagnosis of a mental trauma injury. The hearing officer in his discussion of the evidence cites to a statement of a doctor who conducted a peer review. The peer reviewer was asked whether or not the claimant suffered from any psychological or mental trauma conditions. He opined that in reasonable medical probability, the claimant did not suffer any psychological or mental trauma. The peer reviewer went on to comment on the treatment of a mental trauma, which included minimizing avoidant behavior and returning to normalize functioning as soon as possible. The doctor who conducted the peer review further commented that “[a]pparently this was done after eight days of being off work. In this case, it appears that that was sufficient to resolve any acute traumatic stress effects that may have occurred.” The hearing officer in his discussion, then concluded that however minimal, the claimant did sustain a mental trauma.

Given that the record does not include any medical evidence of a mental trauma injury of any kind, the hearing officer’s determination that the claimant did sustain a mental trauma injury is not supported by sufficient evidence. Accordingly, we reverse the hearing officer’s determination that the claimant sustained a compensable mental trauma injury and render a new determination that the claimant did not sustain a compensable mental trauma injury.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge