

APPEAL NO. 950286

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 17, 1995, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The issues were:

1. Did the Claimant sustain a compensable mental trauma injury on or about (date of injury)?
2. Did the Claimant have disability resulting from the injury sustained on (date of injury)?

The hearing officer determined that the appellant (claimant) did not sustain a compensable mental trauma injury and consequently does not have disability.

Claimant summarizes the evidence presented at the CCH and argues that a specific event of (date of injury),¹ caused his mental trauma injury. We interpret claimant's appeal to include a request that we reverse the hearing officer's decision and render a decision in his favor. Respondent (carrier) responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision and order of the hearing officer are affirmed.

The facts are essentially not in dispute. Claimant was employed as an auditor by (employer), employer, initially to do field audits of client firms beginning in January 1992. At that time claimant said he had an average of 150 audits pending at any one time. Claimant testified that in January 1993, the employer's workload increased dramatically because they had added a new very large client. Claimant testified the increased workload required him to work virtually seven days a week in order to keep up. In May 1993, claimant testified he suffered what he later learned was a panic attack and phobic symptoms. Claimant was off work three weeks in May 1993 under the care of his family doctor, (Dr. B), and that Dr. B had provided off work slips for this period. (Neither the off work slips or any reports from Dr. B are in evidence.) Upon returning to work claimant was given a non-traveling position in employer's office as an audit reviewer to accommodate his apparent difficulty with travel. Claimant testified that additional field auditors had been hired and he continued to have an ever increasing workload. By the end of 1993, claimant testified that he was advised that a great deal of the workload had to be cleared up by the end of the year. During the first two weeks of (year) claimant testified he suffered a great deal of panic

¹ Although there is reference to a (date of injury) incident and the issues refer to a (date of injury) incident, the evidence and testimony appear to be that the conversation and incident occurred on (date) with claimant not being able to work beginning (date of injury).

and anxiety about the workload, saw a doctor three times and was fearful of losing his job because of lower productivity caused by the anxiety. Claimant testified that on or about (date), he had a meeting with (Mr. R), his supervisor and apparently the owner or part owner of the employer, where claimant told Mr. R that he, claimant, was having difficulty getting to work and that Mr. R replied that claimant was needed at work "and if you can't come in, then we'll do what is fair." Claimant testified that he understood this to be a threat that his job was in jeopardy and as a result he had a severe anxiety attack and has been unable to work since (date of injury).

Claimant presented testimony from (Ms. N), a certified psychotherapist at the CCH. Ms. N testified that claimant has been diagnosed with panic/anxiety disorder, post-traumatic stress disorder and secondary depression, all caused by stress of claimant's employment. Claimant said he had been referred to Ms. N and (Dr. M), apparently a psychiatrist, by Dr. B. Dr. M, in a report dated June 1, 1994, gives a history of claimant's problems beginning January 1993, and concluded:

It is my opinion that this increase of work had resulted to decompensate his physical condition and to contribute to his anxiety. In general I have recommended for [claimant] to remain only partially employed due to possible relapse or the deterioration of his anxiety if he were to return to work full time or overtime as he use [sic] to do at the end of his employment.

Mr. R, in a statement, indicated that he has advised claimant that working part time was not feasible and that claimant should continue his medical treatment and not return to work until medically cleared to do so.

Claimant's position is that the stress and anxiety of his employment, culminated in what he perceived was a threat to his job on (date), by Mr. R, is the direct cause of his mental trauma. Carrier's position is that claimant's condition is the result of a "gradual build up of stress," not a single incident, that the incident of (date) was just the "crowning blow" or "the straw that broke the camel's back." In the alternative carrier argues that the (date) incident, even if it occurred as claimant testified, constitutes a legitimate personnel action of possible loss of claimant's job due to substandard job performance and would not be compensable.

The hearing officer determined that claimant's condition was the result of cumulative stress from an increased workload between January 1993 and (month year) and that "there was no single incident" which caused claimant's mental trauma. Claimant appeals this decision, recites the background discussed previously and contends it was "the specific incident [of (date)] that caused my inability to return to work."

The 1989 Act defines "injury" to mean damage or harm to the physical structure of the body and those diseases or infections naturally resulting from the damage or harm. Section 401.011(26). The governing provision of the law concerning mental trauma is Section 408.006, which states:

Sec. 408.006. MENTAL TRAUMA INJURIES.

- (a) 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.
- (b) A mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury under this subtitle.

First, we note that the Texas Supreme Court has held that mental trauma can produce a compensable injury, even without any 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, 279 S.W.2d 315 (Tex. 1955), and Olson v. Hartford Accident and Indemnity Company, 477 S.W.2d 859 (Tex. 1972). The courts have further held that damage or harm caused by a repetitious mental traumatic activity, as distinguished from a physical activity, cannot constitute an occupational disease. Transportation Insurance Company v. Maksyn, 580 S.W.2d 334 (Tex. 1979). Although claimant attempts to relate his mental trauma injury to a specific time, place and cause, namely the incident involving Mr. R on or about (date), the evidence recited above, which is based largely on claimant's own testimony, supports the hearing officer's decision that claimant had job-related stress beginning in January 1993, had an anxiety/panic attack in May 1993 and had continuing and cumulative stress in getting out the year end workload. In early (month year), claimant was already missing work due to this stress and it was the fact of claimant's missing work that brought about the conversation with Mr. R on (date).

Although no determination was made by the hearing officer regarding the (date) incident being a legitimate personnel action, we note that Section 408.006, quoted above, provides that legitimate personnel actions are not compensable and Section 408.006(b) includes termination as an example of a non-compensable legitimate personnel action.

On the issue of disability, in that disability is dependent on a compensable injury (see Section 401.011(16)), and that claimant did not have a compensable injury, claimant did not have disability.

We are satisfied that the evidence is sufficient to support the challenged findings and conclusions which are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Alan C. Ernst
Appeals Judge