APPEAL NO. 950366

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 30, 1995, a hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) did not have a compensable mental trauma injury as a result of an incident on (date of injury). Claimant asserts that her injury was compensable, citing a medical document which states she reported a threat on (date), and complaining of the assistance provided by the ombudsman. Respondent (carrier) replies that the decision should be affirmed.

DECISION

We affirm.

Claimant worked as a nurse at a school within the (employer). She stated that she sustained a mental trauma injury when she heard of a note addressed to her, but left in a teacher's distribution box. Identical notes were addressed to two teachers in addition to claimant. The note read as follows:

T r o u b l e M a k e r

[C l a i m a n t]

Y o u r [SIC] n o t w a n t e d

h e r e

G e t o u t o r

b e s o r r y

Claimant stated at the hearing that other teachers had rocks thrown at them, tires were slashed, and other threats were made to teachers. While claimant mentioned these other acts occurring, she only referred in general to the underlying event precipitating them which appears from the record to be the replacement of the school principal. Claimant appears to have had input regarding the replaced principal. Beyond these points the record is not clear as to the replacement.

After receiving word of this note, claimant met with a deputy superintendent, (Ms. S), on (date) and also saw her doctor, (Dr. D), on (date), who took her off work. Claimant saw the note when she visited with Ms. S. Claimant said she could not return to work until October 27, 1994, because of the threatening note. Claimant acknowledged that the problems with the principal during the month preceding the note caused stress to her which she had previously discussed with Dr. D and her other doctor, (Dr. C). She also

acknowledged that she was having "so much job stress" before (date of injury), that she was thinking of quitting her job.

Medical documents of Dr. D, offered by the claimant, include a letter dated October 21, 1994, in which Dr. D relates a history of symptoms of major depression since 1992. He stated that Dr. C had also been seeing claimant for psychotherapy. He said when he saw her on (date), "she was having quite a bit of anxiety which appeared to be directly related to a stressful situation at her job." He also said the "main psychological stressor . . . does appear to be the job-related stress." Thereafter on November 30, 1994, Dr. D wrote another letter in which he said that the day before he saw claimant in (month) she had received a threatening letter, with anxiety from that letter rendering her unable to go to work on (date); he then stated that she was unable to work at that time.

Claimant also offered a letter dated November 15, 1994, from Dr. C. He said he had treated her for depression since 1992. He also said:

> During the latter part of July of this year she began to experience some rather significant stress in her work environment. From her account, the stress escalated over the course of several weeks to the point that there was such great conflict that her emotional condition began to deteriorate. Her anxiety level became so high that she was unable to return to her job. [Emphasis added.]

Dr. C then discussed claimant's hospital admission in September 1994. He said she returned to work in October and added, "According to [claimant], the work situation is much improved because of some personnel changes that have been made and she is no longer experiencing the same anxiety symptoms that she had experienced prior to her taking a leave of absence." [Emphasis added.] He concluded by saying that her leave of absence was related to anxiety "about some of the events and conflicts that were a part of her work situation." [Emphasis added.]

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. The documents offered by claimant and her own testimony provided sufficient evidence to support the finding of fact that any mental trauma was not traceable to a specific time, place, and event and was therefore not a compensable injury. Mental trauma injuries resulting from recurring or repetitive events (occupational disease) have been held not to be compensable. *See* Texas Workers' Compensation Commission Appeal No. 92210, decided June 29, 1992, although we add that the hearing officer did not even find mental trauma occurred as an occupational disease.

In addition, the carrier offered medical records that show Dr. C commented on July 26, 1994, that claimant was having a "difficult" time with her principal; on August 8, 1994, she "had a very stressful week" and was reported as trying not to "resort to quitting her job." Then on August 22, 1994, after the news of the threatening note of (date of injury), Dr. C

said, "[claimant] continues to be quite distressed and distraught about her work situation." No entry was made about a threat or a significant incident in the recent past.

Dr. D's entry on (date) is quoted in full, as follows:

> She is having quite a bit of anxiety because of a very stressful situation at her job. She made a complaint about the school principal and that principal has been temporarily suspended. She has encountered a lot of hostility from coworkers and it has gotten to the point where she is having trouble sleeping at night and breaking out in a skin rash and just having trouble coping. I gave her a note saying she is unable to work at the present time. She is going to start looking for another job.

No entry was made about a threat or a single significant incident, although Dr. D did refer to "hostility from coworkers." In addition, Dr. D's comment about "trouble sleeping" may be read as not restricted only to the night before, and therefore as possibly occurring before claimant heard of the note on (date of injury). While Dr. D did not thereafter write of a threat in his October letter, he did write of a threat in his November letter. The hearing officer could reasonably assign more weight to Dr. D's note prepared at the time he saw claimant on (date), than he did to a letter prepared approximately three months later. *See* Texas Workers' Compensation Commission Appeal No. 94905, decided August 26, 1994.

In addition to citing Dr. D's November letter as referring to the threatening note she received, claimant, in her appeal, also complained of the help she received from the ombudsman. Claimant said that the ombudsman did not ask her to "tell the problem of events." Claimant then says in her appeal that she will tell us now, and refers to tires slashed, rocks thrown, and threats made. Contrary to claimant's apparent concern over not providing this information, she did provide it on the record for the hearing officer to consider. She also complains that the ombudsman did not object to markers placed on medical records the carrier offered into evidence. As stated, the medical documents claimant submitted were sufficient to support the decision of no compensable mental trauma injury made by the hearing officer. At any rate, the hearing officer would read all the material admitted without giving added weight to a particular entry just because either party thought it should be given significant weight. While claimant refers to not getting the "best representation," Texas Workers' Compensation Commission Appeal No. 93791, decided October 18, 1993, pointed out that the ombudsman only assists and does not represent a claimant. The record shows that the ombudsman reasonably assisted the claimant in eliciting testimony and assuring that matters were brought before the hearing officer. While claimant also complains that some notes that explained past family matters were not offered into evidence, we point out that family matters had little effect on this case, while the reported school stress of the month prior to the (date of injury) incident most probably was weighed heavily by the hearing officer. In addition, claimant could have chosen to relate any further explanation of family matters she wished when testifying because the claimant chooses how to present the case; the ombudsman then assists that claimant.

Finding that the decision and order of the hearing officer set forth at the conclusion of his opinion are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Alan C. Ernst
Appeals Judge