

## APPEAL NO. 950369

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 3, 1995, a contested case hearing was held in (city), Texas with (hearing officer) presiding as hearing officer. With respect to the issues before her, the hearing officer determined that appellant (claimant) timely reported her alleged mental trauma injury to her employer; that claimant did not sustain a mental trauma injury on (date of injury), in the course and scope of her employment; and, as such, that claimant has not had disability within the meaning of the 1989 Act. Claimant appeals arguing that the hearing officer's determinations that she did not sustain a mental trauma injury and did not have disability are not supported by sufficient evidence. Respondent's (carrier) response urges affirmance.

### DECISION

We affirm.

Claimant testified that on or about (date of injury)<sup>1</sup>, she was employed as accounts payable manager for (employer) and had been so employed for almost two years. She testified that on that date, she had come in to work early to process some credit card charges, because on the previous day the summer intern, whose responsibility it was to process the charges, had not done so. Claimant stated that she volunteered to do the work at home, but she forgot to take a power cord home with her and thus, had not been able to operate the machine at home. Claimant further stated that at about 8:00 or 8:30 a.m., (Mr. P), her supervisor, came to see if she had finished processing the charges. She stated that when she told him it was not finished, he slammed his fist into her wall, knocking pictures in the office next door off the wall. In addition, claimant stated that Mr. P cursed at her and "went off on her." Claimant stated that as a result of the incident, she became "hysterical" because she did not know if he was going to hit her. However, she also stated that he did not touch her and acknowledged that he had turned to walk out of the room before he struck the wall.

Claimant testified that after the incident involving Mr. P, she went to the emergency room at (hospital) in city, Texas, because she was shaken, could not think, had a bad headache, was crying and felt as if she were having a "nervous breakdown." The doctor who examined claimant in the emergency room, excused her from work for 10 days, prescribed Prozac, and referred her to (Dr. S) apparently requested that claimant's leave of absence from work be extended an additional two weeks and referred her to (Dr. M) for treatment. Dr. S admitted claimant for in-patient treatment for "major depression, second episode" on August 25, 1994, and discharged her from the program on September 23, 1994,

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<sup>1</sup>There is some conflicting evidence that the date of the alleged injury was actually (alleged injury). Specifically, claimant testified on cross-examination that if the emergency room report is dated (alleged injury), she would not dispute that that was the date of the work-related incident forming the basis of her claim. However, this discrepancy has no bearing on the resolution of this appeal and we will not further address the apparent conflict.

for failure to attend. In his discharge summary, Dr. M notes that claimant was "initially admitted to the partial program with symptoms of depression of eight months duration and has been progressively getting worse." Dr. M's report also provides that "the precipitating events for this hospitalization appear to be a [sic] relationship difficulties and stressors at work." In a letter of January 12, 1995, directed to claimant's attorney, Dr. M stated:

The patient was dealing with multiple stressors some of which were work related. This patient has a past history of major depressive episodes. I am not in a position to say that her work-related stressors were the cause of her psychiatric disorder. Her work related stressors along with personal stressors precipitated her depressive episodes.

In a letter of February 2, 1995, Dr. M again addressed the issue of causation, as follows:

This patient has been under my care since (month year), for treatment of Major Depression. Her treatment was precipitated by several factors, one of which is the incident which occurred on (date of injury), at her workplace. (This information was conveyed to me recently.) Her supervisor, [Mr. P] reportedly lost control and began shouting and banging on the desk. The patient felt terrified. This incident could have aggravated the pre-existing condition which resulted in the patient's recent hospitalization.

It is undisputed that claimant had a previous major depressive episode in 1991. In addition, it is undisputed that prior to the (month year) work incident, claimant's 17-year-old son had been arrested and jailed, her brother was suffering with a terminal illness, and she had been counseled over a period of several months for poor job performance. Nonetheless, claimant maintained that it was the on-the-job incident, which aggravated her depression. She insisted that she was effectively dealing with the other problems in her life before the work incident.

Mr. P testified that on the day prior to the incident in question he had had a conversation with claimant about the credit card charges not having been processed and he insisted that they had to be completed by the following afternoon. He stated that claimant assured him that she would do the work at home that evening. He further testified that when he saw her on the following morning, he asked her if she had completed processing the charges and she stated that she had not. He stated that as he turned to walk out of her office, he struck the wall once with his fist and said "[D], [claimant]." Mr. P specifically denied that he screamed and cursed at claimant or that he beat on her desk. Instead, Mr. P insisted that he struck the wall once and continued to walk out of the room. Mr. P acknowledged that when he spoke as he was leaving her office on that day, his voice was louder than his normal conversational level and reflected frustration and exasperation.

It is well settled that mental trauma can produce a compensable injury even in the absence of an underlying physical injury, if it occurs in the course and scope of employment

and is traceable to a definite time, place and cause. Bailey v. American General Insurance Co., 279 S.W.2d 315 (Tex. 1955); Olson v. Hartford Accident and Indemnity Co., 477 S.W.2d 859 (Tex. 1972). However, damage or harm caused by repetitious mentally traumatic activity, as opposed to physical activity, cannot constitute an occupational disease. Transportation Insurance Co. v. Maksyn, 580 S.W.2d 334 (Tex. 1979). In addition, in order to prevail on a mental trauma claim, a claimant is required "to establish a causal relationship between the event causing the alleged injury and the ultimate condition." Texas Workers' Compensation Commission Appeal No. 92311, decided August 24, 1992 (citing Garcia v. Texas Indemnity Insurance Co., 209 S.W.2d 333 (Tex. 1948)).

In this instance, the hearing officer determined that the claimant failed to satisfy her burden of proving a causal connection between the on-the-job incident and the aggravation of her depression. While it is true that the existence of an injury may generally be established by the testimony of the claimant alone (Texas Workers' Compensation Commission Appeal No. 94785, decided July 29, 1994 and Appeal No. 92311, *supra*), it is equally true that the testimony of a claimant need not be accepted at face value and "only raises an issue of fact to be resolved by the hearing officer." Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). Finally, we have specifically stated that even if expert testimony of causation is unnecessary, at the very least, the lay testimony must prove that the injury in reasonable probability caused the claimed result. Appeal Nos. 94785 and 92311, *supra* (citing Griffin v. Texas Employers Insurance Ass'n, 450 S.W.2d 59 (Tex. 1970)).

Claimant steadfastly maintained that the (month year) incident where Mr. P slammed his fist on the wall and cursed at her aggravated her pre-existing depression. However, contrary to claimant's assertions on appeal, Dr. M's reports do not establish a causal connection between the work incident and claimant's present mental condition. The most Dr. M said was that the incident "could have aggravated" her depression. Thus, at best there was conflicting evidence on the issue of causation between the work-related incident and claimant's depression, which conflict was for the hearing officer to resolve. Our review indicates that the hearing officer's determination that claimant did not sustain a mental trauma injury is supported by sufficient evidence and is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, there is no sound basis for disturbing that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Because the hearing officer determined that claimant did not suffer a compensable mental trauma injury, she correctly determined that claimant did not have disability within the meaning of the 1989 Act, as the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

Finding that the hearing officer's determinations are supported by sufficient evidence, we affirm her decision and order.

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Lynda H. Nesenholtz  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Joe Sebesta  
Appeals Judge