

APPEAL NO. 950371

On February 3, 1995, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In response to the issues at the hearing, the hearing officer determined that the appellant (claimant) did not sustain a compensable mental trauma injury, that the claimant does not have disability, and that the claimant's average weekly wage (AWW) is \$425.19. The claimant appeals the decision that she did not sustain a compensable mental trauma injury and that she has not had disability. No response was received from the respondent (carrier).

DECISION

Affirmed.

The claimant has worked as a youth activity supervisor at a youth detention facility for about 13 years. It is undisputed that on (date of injury), a special needs student attempted suicide by cutting himself on his arms and legs and that the claimant assisted in stopping the bleeding, calling security, and cleaning up the blood off the walls and floor. She said that when she was cleaning up the blood she slipped and "went down on my knee." The claimant said that before the incident of (date of injury) there had been between five and ten suicide attempts by students, some by cutting themselves and some by hanging themselves, and that she helped out after these incidents, including taking a student down after he hanged himself. She also said that about a week after the (date of injury) incident, three more students attempted suicide while she was working and that she "encountered" these incidents. (Mr. W), who also works at the detention facility, gave a written statement that there were a rash of suicide attempts in (month year). The claimant testified that the (date of injury) suicide attempt was the worst suicide incident she had been involved with and that after that incident she began having nightmares and could not sleep so she went to (Dr. M) on July 26, 1994.

Dr. M diagnosed depression, post traumatic stress disorder, and anxiety, and in a patient note dated August 4, 1994, Dr. M said these conditions were "all work related." In a report dated August 22, 1994, Dr. M stated that the claimant is under a lot of stress at work; that she works on a hall where the criminals frequently cut themselves; that she has decreased sleep, cries frequently, and has stomach aches; and that she has nightmares where she sees bleeding young men including her own son who had died from a gunshot wound. Dr. M took the claimant off work and referred her to (Dr. D), who is a psychologist. In a report dated December 21, 1994, Dr. M described the suicide incident of (date of injury), and noted that shortly after that incident the claimant began to have nightmares about children with blood all over them, and became despondent, depressed, and anxious. He said "she found it impossible to go to work and face the proposition of dealing with more violence and blood." Dr. M also reported that the claimant has severe osteoarthritis of the right knee, neck, and lumbar spine, and that "the night of the incident" she slipped and

reinjured her right knee, neck, and low back. He noted that the claimant had previously had surgery on her right knee and back.

Dr. D reported on August 16, 1994, that he was treating the claimant for "severe depressive episode . . . brought on by intense job stressors." In a report dated November 22, 1994, Dr. D reported that the claimant had had to deal with a number of suicide attempts at work, that she had emotional trauma, that the prospect of no relief from such occurrences created more stress than the claimant can handle, and that the claimant continues to relive these experiences and becomes upset when thinking about them. He also noted that the claimant had witnessed her own son's suicide by gunshot and that that "makes these incidents even more unbearable for her." In a report dated December 15, 1994, Dr. D noted that the claimant asked him to provide clarification regarding her problems from work. He described the claimant's job duties and the incident of (date of injury), noted that the claimant had slipped on the blood on (date of injury), and noted that there had been a number of similar suicide attempts both before and after the (date of injury) incident, but that that incident was the worst. Dr. D stated:

[Claimant] has been bothered by depression, anxiety, intrusive thoughts, and nightmares about this incident and the individual on (date of injury) always has a prominent role in her thoughts. She is experiencing a significant level of distress from post traumatic stress disorder and meets all of the diagnostic criteria for such whether it was due to this one incident or the cumulative effect of the incidents. [Claimant] continues to need medication and therapy and will for an indefinite period of time. With regard to her ability to return to work, she is not able to do so at this time. When she is able it is doubtful that she would be able to work on the same dorm again.

The unresolved issues from the benefit review conference, which the parties agreed where the issues to be determined by the hearing officer, were whether the claimant sustained a compensable mental trauma injury, whether the claimant has disability, and the claimant's AWW. The parties stipulated that the AWW is \$425.19.

The claimant has the burden to prove that she was injured in the course and scope of her employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App. - Texarkana 1961, no writ). The claimant asserted at the hearing that she sustained a mental trauma injury as a result of her involvement with the attempted suicide on (date of injury). The carrier asserted that the claimant's mental condition resulted from repetitious mental traumatic activity at work. The hearing officer found that the claimant's mental problems are not traceable to a date, time, and event certain, and he concluded that the claimant did not sustain a compensable mental trauma injury.

Mental trauma can produce a compensable injury if it arises in the course and scope of employment and is traceable to a definite time, place, and cause. Texas Workers' Compensation Commission Appeal No. 950011, decided February 15, 1995. However,

damage or harm caused by repetitious mental traumatic activity does not constitute an occupational disease for purposes of compensability under the workers' compensation statutes. Appeal No. 950011, *supra*. The evidence in this case was conflicting as to whether the claimant's mental condition is traceable to the (date of injury) incident, or whether it resulted from repetitious mental traumatic activity. The hearing officer is the trier of fact in a contested case hearing and is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). The hearing officer can believe all, part, or none of the testimony of any witness, and resolves conflicts in the evidence, including the medical evidence, and determines what facts have been established. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. An appellate level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgement for that of the trier of fact, even if the evidence would support a different result. Appeal No. 950084, *supra*. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084, *supra*. We conclude that the hearing officer's decision that the claimant did not sustain a compensable mental trauma injury is supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950011, *supra*.

We find no error in the hearing officer's determination that the claimant has not had disability, which is defined in Section 401.011(16) as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage," because the finding of no compensable mental trauma injury is supported by the evidence. See Appeal No. 950011, *supra*.

Finally, the claimant contends in her appeal that she injured her right knee, back, and neck when she slipped and fell while cleaning up blood after the attempted suicide of (date of injury). While the claimant testified that she slipped and went down on her knee while cleaning up blood on (date of injury), she did not assert at the hearing that she suffered any injury other than a mental trauma injury on (date of injury). The parties agreed at the outset of the hearing that the issue in regard to injury was whether the claimant sustained a mental trauma injury. There was no mention of any issue regarding a knee, back, or neck injury, notwithstanding Dr. M's reference to reinjury of the knee, back, and neck in his report of December 21, 1994. Since an issue concerning injury to the claimant other than a mental trauma injury was not raised in prior proceedings, it will not be considered for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 91100, decided January 22, 1992; Texas Workers' Compensation Commission Appeal No. 92716, decided February 16, 1993.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge