

## APPEAL NO. 950384

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001, *et seq.* On February 6, 1995, a contested case hearing was convened in (city), Texas, with (hearing officer) presiding. The issues were whether the appellant, (claimant), who is the claimant, sustained a compensable mental trauma injury, gave timely notice (or had good cause for failure to give notice) of injury to his employer, and had disability from such injury. The claimant contended he sustained a mental trauma injury, with a date of injury of (date of injury), while employed as a wheelchair mechanic at the (city) (employer). The carrier is the administrator of self-insurance for state employees.

The hearing officer determined that claimant had not given timely notice of injury to his employer, but had good cause for such failure, and this determination has not been appealed. The hearing officer found that claimant did not have a work-related compensable mental trauma injury, noting that repetitive mental trauma is not compensable in Texas law, and that there was therefore no disability (as that term is defined in Section 401.011(16)).

Claimant appeals the hearing officer's determinations that were not in his favor. He argues that the finding of fact regarding non-compensability of repetitive mental stress is really a conclusion of law, and renders the decision invalid. Claimant further argues that he did not develop mental trauma because of a legitimate personnel action, and that his mental trauma should, in accordance with the doctrine of liberal interpretation in workers' compensation law, be held compensable. The claimant further notes that the evidence supports a finding that he could not work due to this injury and therefore had disability. No response has been filed by the carrier.

## DECISION

We affirm.

The claimant had been employed as a wheelchair mechanic for the employer since 1988. He stated that around 1989, badgering and harassment from (Mr. H), who later became his supervisor, began. Claimant stated that Mr. H made derogatory comments about his race, his age, and his work. He testified also that he believed Mr. H acted unprofessionally by discussing marital problems at work, and unethically by not disclosing on his application a criminal conviction about which he bragged. In general, claimant's testimony and the transcript of an interview with a coworker, (Mr. V), was to the effect that Mr. H was abrasive and overly critical as a supervisor. When asked about how many instances of harassment occurred, claimant indicated that it was in excess of fifty times, because it would often take place on a daily basis. Claimant said that the most belligerent episode occurred on what turned out to be his last day of work, (date of injury), and that he sought psychiatric help. After this, claimant made an unsuccessful suicide attempt and was hospitalized in the (city) State Hospital. Claimant stated that his memory often failed, up to

the time of the hearing, although he might look and act normal. Claimant testified he had attended college in (city) since May 1994, studying psychology. Claimant testified that he was unable to work in any situation which would require any time pressure.

Claimant stated he was 52 years old and the oldest person in his department. Claimant agreed that he had previous instances and treatment for depression, since 1966. He attributed the development of his depression to exposure to chemicals. Some records of evaluation including claimant's past history cite that he left his prior job as a quality assurance person because of depression resulting from stress on the job.

Notwithstanding the doctrine of liberal interpretation, repetitive mental trauma injuries were not recognized as compensable under the former workers' compensation law. See *generally* Transportation Insurance Co. v. Maksyn, 580 S.W.2d 334 (Tex. 1979); Jackson v. Liberty Mutual Insurance Co., 580 S.W.2d 70 (Tex. Civ. App.-El Paso 1979, writ ref'd n.r.e.); Olson v. Hartford Accident and Indemnity Co., 477 S.W.2d 859 (Tex. 1972). We further note that it has been held that the reaction to even an undeserved reprimand is not compensable because it is not within the course and scope of employment. Duncan v. Employers Casualty Co., 823 S.W.2d 722 (Tex. App.-El Paso 1992, no writ). The 1989 Act did not change this law, and in fact states that nothing in the reform legislation shall be construed to expand or limit compensability of mental trauma under prior law. Section 408.006(a). Consequently, the fact that actions may not constitute legitimate personnel actions under Section 408.006(b) does not confer compensability upon them when they occur repetitively and cause mental trauma.

In the present case, the testimony of claimant clearly showed that his claim was one for repetitive stress and his reaction to what he described as continuous "badgering" from his supervisor. As such, the purported injury was not traceable to a definite time, place, and cause. See Maksyn, cited above; Texas Workers' Compensation Commission Appeal No. 93364, decided June 24, 1993.

While it may be that the hearing officer's conclusion that repetitive mental trauma was not a compensable injury was more nearly a conclusion of law rather than a finding of fact, we do not regard this as fatal to the decision, nor does it render it erroneous. We will reform the decision to resolve any lingering doubts by shifting the conclusion labelled as Finding of Fact No. 9 into the decision as Conclusion of Law No. 6.

Temporary income benefits are due when an injured worker has not reached maximum medical improvement and has disability. Section 408.101(a). Section 401.011(16) defines "disability" as: ". . . the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." A threshold of applying this definition to the facts of a case is the existence of a compensable injury. Because the hearing officer did not find a compensable injury, which we feel is sufficiently supported by the evidence in this case, there was no error in the further finding that claimant did not have disability.

We affirm the hearing officer's decision and order.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge