

APPEAL NO. 980583

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 4, 1998, a contested case hearing was held. She (hearing officer) determined that appellant (claimant) did not sustain a compensable mental trauma injury on \_\_\_\_\_, and did not have disability, but did timely file her claim. Claimant filed several appeals within the 15 day period allowed for an appeal. She asserts that the specific event causing her mental trauma occurred on \_\_\_\_\_, when, she states, she was yelled at and her hand was slapped; she also stated that her termination was based on an illegitimate underlying action; she asserts her injury was compensable. She added that the translation at the hearing was not proper; she provided information about the effect of the termination upon her. She states that she never was on probation and commented about the character of (Dr. B), a principal employee in her termination action. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on \_\_\_\_\_. Claimant testified that she and Dr. B, along with a few other employees, came to employer together from another employer in 1995. Prior to that time, she had worked for over 10 years with Dr. B while employed with the other employer.

Claimant testified that she works in a laboratory. She said that on \_\_\_\_\_, she was terminated, but added that the termination was not the cause of her depression, mental trauma, and inability to work, but rather, it was the manner in which Dr. B terminated her. She described shouting, waving of arms, and a slapping of her hand when she sought to take her rolodex, saying that she became very afraid of Dr. B and ran from the building where employed.

(Ms. B) testified that she is the personnel director for the employer. She was with Dr. B and claimant on \_\_\_\_\_; she said that claimant's performance was not discussed at that time, but that claimant was accompanied by Dr. B and herself to claimant's office to gather her personal items. Ms. B denied any slapping took place. She said that Dr. B asked claimant for the rolodex when she started to take it, and claimant handed it to him. Ms. B said she then offered to make copies so both the employer and claimant could have the information. She said there was no slapping or grabbing. She also said that claimant had asked her (two days before injury date) about the possibility of getting a "second chance" with the employer. She and claimant exited the building with no running; claimant carried one box and got into her car and left.

Dr. B testified that he is a manager for employer. He recommended that claimant come with him and a few others in 1995 when he moved from the previous employer to employer. He alluded to claimant having been a good employee, but said that more recently she had been on probation and had walked off the job. He agreed that he proposed her termination on April \_\_\_\_; claimant had replied on April 10th; and he then initialed a termination notice dated \_\_\_\_\_. He said there was no meeting as such on \_\_\_\_\_, but that he, claimant, and Ms. B went to her office to retrieve her personal effects. He said that when he had presented the recommending letter to her on April \_\_\_\_, he did not shout or wave his arms. He said he did not touch her. He pointed out that she had the opportunity to respond to his proposal.

(Dr. E) testified that he is an employee of employer. He said he has worked for Dr. B since 1979, adding that Dr. B is not hard to work for but "expects a lot." He has not seen Dr. B berate another employee. When he worked in quality control, he saw problems with claimant's work and talked to her about it. He testified that some tests were not being done and some records were not being kept. He stated that she did not take his comments well. This occurred several times in March and April 1996. He agreed that she had been on probation. He said that her past assurances that work would be done by a certain time and her failure to then produce were a big part of the firing.

Claimant provided two statements from 1980 attesting to her outstanding ability. She also provided four statements that address recent events. One statement is a memorandum prepared by (Mr. D), who was investigating an EEOC complaint about the termination; he noted that he talked with a (Mr. S), a former coworker. Mr. S referred to Dr. B as a "little pharaoh" because he was "overbearing and rude," adding that he may not always be truthful and "if he wants to get rid of someone, he'll find a way". (Dr. S) stated that he worked with the principals for several years to 1992. While he worked well with Dr. B, he said that Dr. B did not treat women as equals, professionally. He said that Dr. B would resent having to wait for data from a woman. He added that claimant is "the best chemist" he knows. (Mr. H) wrote two letters, one in 1994 and another in 1996. In 1994, he wrote to Dr. B referring to dissertation research he had done. He referred to the geochemical laboratory and said that claimant was "the most creative geochemist I have ever met." In 1996, Mr. H wrote to Mr. D; he detailed the work he had done with claimant and Dr. B. He described claimant as being "very professional and an extremely hard worker." There was no evidence that the termination was found to have violated the Equal Employment Opportunity Act.

Claimant's medical evidence was primarily from (Dr. C). The first record appears to be dated April 24, 1996, and indicates that claimant was depressed, "under a lot of stress, is being harassed at work". The note indicates claimant reported being "yelled at. Pressured." The assessment was "anxiety/depression situational." On August 16, 1996, claimant was "still very upset and depressed about being terminated." She was reported as not sleeping or eating well. At the end of August she reported an inability to eat. On November 1, 1996, she was admitted to a hospital with a history of being "wrongly

terminated in April"; she had not been eating; "had become paranoid"; and had "shot her four tires claiming that someone wanted to steal it [car]." The history also included that claimant had been harassed by her ex-supervisor since the termination. "Most of her delusions have been geared to the fact that people from the company are coming back to do something to her." The examination reported that she was delusional. She was released on November 8, 1996, against medical advice under a diagnosis of "major depression, single episode severe with psychotic features." In December her sleep was described as better and her appetite was within normal limits. Later in December 1996 she was reported not to be worrying as much.

In April 1997 she again was noted not to be sleeping. In August she was "obsessing about her termination." In October 1997 she was admitted again to the hospital. The history indicated that claimant had not been eating and that she was confused and delirious. Dr. C related that she had been stable until fired. He said she "related a great deal of harassment from her immediate supervisor in a research project and eventually she was fired." Her hospital course was described as "up and down, depressed, rageful." In November 1997, she was still reported to be obsessing about her past job, with an added comment, "she does not want to work for someone else." Dr. C's comments within his progress notes primarily address claimant's reports as to her job and her termination without adding his own comments about causation or manner in which the depression arose. Dr. C does provide a letter dated August 22, 1997, to the Texas Workers' Compensation Commission in which he says that, based on the history provided, claimant did not have mental problems prior to the "harassment and dismissal"; he also said that claimant "vividly remembers the traumatic events of her work experience with the supervisor who would not leave her alone"; and he concluded by saying that claimant has "depression with psychotic symptoms."

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. She could believe Ms. B and Dr. B and conclude that claimant was not slapped. The hearing officer accurately notes that Dr. C's records note no slapping. The hearing officer made no findings of fact that claimant was slapped or yelled at. The evidence from Dr. B and Ms. B was sufficient to support such an absence of findings about slapping or yelling. While the evidence was in conflict as to whether Dr. B berated employees, the hearing officer could believe that Dr. B was rude and overbearing and still find, noting that claimant was provided an opportunity to respond to the recommendation of April \_\_\_ that she be terminated, that the personnel action (termination) was not contrary to law or illegitimate. See Texas Workers' Compensation Commission Appeal No. 950168, decided March 17, 1995. While the hearing officer found that claimant had depression and other maladies "as the result of termination," claimant takes issue with this finding in her appeal. Although Dr. C's letter of August 22, 1997, does not specifically provide medical opinion as to causation being based on a single event, we do not consider claimant to have appealed this issue since it is in her favor; we therefore do not comment about whether the evidence was sufficient to support the determination as to causation. With the evidence sufficiently supporting the determination that claimant's termination was a legitimate

personnel action, the determination as to the basis for claimant's depression is not controlling in this review.

While claimant states that the translation was deficient at the hearing, she did not take issue with the translator at the hearing; on many occasions she answered questions in English without waiting for the translator to function, showing some ability in English. The translator was duly sworn and claimant did not contradict any translating when she waited for the translator to act. In addition, she points to no evidence that was confused by any failure of translation. We do not find that the efforts of the translator, if less than completely accurate, were of a nature to require a reversal of the decision. In addition, claimant in her appeal attached some canceled checks that were not offered or admitted at the hearing. They were all dated in 1996 so could have been offered at the hearing; they do not appear to be of a nature that would cause a material effect on the decision had they been considered by the hearing officer. The checks do not require that the case be returned to the hearing officer on remand to be considered.

With no compensable injury, there can be no disability. See Section 401.011(16).

Finding that the decision and order 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:

Judy L. Stephens  
Appeals Judge

Christopher L. Rhodes  
Appeals Judge