APPEAL NO. 990261

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 13, 1999. The issues at the CCH were: 1) whether the respondent (claimant herein) received a mental trauma injury in the course and scope of her employment on or about _____, and 2) whether, as a result, she had disability, and if so, for what periods. The hearing officer concluded that the claimant did sustain a compensable mental trauma injury while in the course and scope of employment on or about _____, but that the claimant did not have disability entitling her to temporary income benefits. The appellant (carrier herein) files a request for review challenging the hearing officer's finding of injury arguing that the claimant suffered at most a repetitive trauma mental injury and that any injury did not arise from her employment. There is no response from the claimant to the carrier's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer summarizes the evidence in her decision and we adopt her rendition of the evidence. We will only briefly touch on the evidence germane to the appeal. The claimant testified that she was employed as a paralegal and that notarizing documents was part of her duties. The claimant testified that on or about _____, she received a letter from the Office of the Secretary of State informing her that a complaint had been filed with that office alleging that the claimant had notarized a document improperly. The letter is in evidence. In the letter the claimant was given 20 days to respond to the allegation of misconduct. The claimant testified that as a result of the letter she has suffered from anxiety and depression. The claimant presented medical evidence and lay evidence showing that she had suffered anxiety and depression. A further investigation of the matter concerning the complaint with the Secretary of State's office raised the suspicion that a client of the employer had used the claimant's notary seal without the claimant's knowledge.

The hearing officer's findings of fact and conclusions of law included the following:

FINDINGS OF FACT

2. The Claimant became a notary to fulfill the requirements of her employment duties.

3. The Claimant's notary certification was paid for by the Employer as was the required bond.

4. The incident occurred while the Claimant was performing her duties as a paralegal.

5. Claimant was diagnosed with anxiety and depression.

CONCLUSION OF LAW

3. The Claimant did sustain a compensable mental trauma injury while in the course and scope of employment on or about _____.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Applying this standard we find sufficient evidence in the record to support the factual findings of the hearing officer. Mental trauma can produce a compensable injury, even without any underlying physical injury, if it arises in the course and scope of employment and is traceable to a definite time, place, and cause. Bailey v. American General Insurance Company, 154 Tex. 430, 279 S.W.2d 315 (1955); Olson v. Hartford Accident and Indemnity Company, 477 S.W.2d 859 (Tex. 1972). The Texas Supreme Court has held that damage or harm caused by repetitious mental traumatic activity does not constitute an occupational disease for purposes of compensability under the workers' compensation statutes. Transportation Insurance Company v. Maksyn, 580 S.W2d 334 (Tex. 1979). Section 408.006(a) provides that under the 1989 Act it was the express intent of the legislature to neither limit nor expand recovery in cases of mental trauma injuries. In the present case, there is evidence that the claimant suffered mental trauma caused by the receipt of the letter from the Office of the Secretary of State. The fact that she may have suffered

additional stress due to the course of the investigation of the matter raised by the letter does not, as a matter of law, transmute her reaction to the letter into a repetitive mental stress. Thus, we reject the carrier's argument that we should reverse the decision of the hearing officer based upon the fact that the claimant at most suffered from repetitive mental stress because the hearing officer's decision to the contrary was not against the great weight and preponderance of the evidence.

While it would certainly have been better for the hearing officer to have made a specific finding of fact concerning the definitive time, place and cause of the claimant's mental trauma injury, it is apparent from reading the hearing officer's decision that she believed that the event that caused the claimant's mental trauma injury was the receipt of the letter from the Office of the Secretary of State. In fact, the hearing officer states in part as follows in the section of her decision entitled "Statement of the Evidence": "It is this Hearing Officer's finding based on the evidence as a whole that the Claimant established by a preponderance of the evidence that she suffered a mental trauma in the form of anxiety and depression due to the receipt of the letter on _____." Thus, while it would have been preferable for the hearing officer to make a specific finding of fact as such in this regard, we can infer such a finding in light of the above language in her decision.

The carrier argues that the claimant's injury was a result of legitimate personnel action. Section 408.006(b) specifically excludes a mental trauma injury that arises **principally** from a legitimate personnel action. The carrier argues the evidence showed that the way the claimant's employer handled the matter of the misuse of her notary seal contributed to the claimant's mental trauma. While there is such evidence, it was up to the hearing officer to determine what weight to give it. In any case, just as we did not hold that merely because there were stressful sequelae from the receipt of the letter from the Office of the Secretary of State that the claimant's injury was not transmuted into a repetitive mental stress claim, we do not hold that additional stress from the employer's handling of the matter means that the claimant's injury resulted from a legitimate personnel action. The legislature seems to recognize, in fact, by the use of the word "principally," that a legitimate personnel action may contribute to a degree to mental trauma injury without excluding the injury from compensability.

Nor do we find a sound basis for ruling as a matter of law that the claimant's mental trauma did not arise out of her employment. The claimant was a notary for her employer. While the incident did not arise as a result of her notarizing a document for her employer, there was clearly evidence of a nexus between the claimant's employment and the misuse of the notary seal. Under the particular facts of this case, we cannot find that the mental trauma arising out of the use of the seal did not arise out of the claimant's employment as a matter of law. The essential basis for our decision is that the hearing officer's findings in the present case are not contrary to the great weight and preponderance of the evidence.

The decision and order of the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge