APPEAL NO. 000445

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 February 8, 2000. The issues at the CCH were whether the respondent (claimant) sustained a compensable mental trauma injury on _____; whether the claimant timely reported her injury to her employer, and if not did good cause exist for not doing so; and whether the claimant timely filed a claim for compensation with the Texas Workers' Compensation Commission (Commission) within one year of the injury pursuant to Section 409.003, and if not did good cause exist. The hearing officer determined that the claimant sustained a mental trauma injury on _____; that although claimant failed to timely report her injury to the employer, she had good cause for failing to do so; and that although claimant failed to timely file a claim for compensation with the Commission within one year of the date of injury, she had good cause for failing to do so. The appellant (carrier) appeals, contending that claimant had received no medical treatment for the alleged injury for one and one-half years, had returned to work for a time with the same company and that claimant's condition was "the result of a build-up of various stresses." Carrier also contends that any good cause would not have extended to the date of the reporting and filing of the claim. Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The claimant responds, urging affirmance, and attaching an additional medical report from carrier's doctor which was not introduced at the CCH.

DECISION

Affirmed.

Claimant and her husband were employed by (employer) and were assigned to work at (company). On _____, claimant's fourth day on the job, she was working about 15 or 20 feet away from her husband when her husband's right hand got caught in a machine. Claimant testified that she tried to rush over to her husband but felt that someone was holding her back. She described herself as being in shock. It took about 10 minutes for coworkers to extract claimant's husband's hand from the machine while he was "yelling" in pain. When the husband's hand was released "[b]lood spewed" from the hand. Claimant's husband was taken to the hospital where he was hospitalized for two weeks; eventually the little finger was amputated; he had eight surgeries and additional hospitalizations, all of which left claimant's husband's right hand with little or no use other than the thumb. Claimant accompanied her husband to the hospital on _____, stayed with him during his hospitalization and accompanied him on all his doctor's visits. The hearing officer accurately summarized the testimony:

> Over the ensuing time, the Claimant felt that her husband blamed her for standing there frozen rather than helping him. She also developed guilt about going into shock and not being able to help him. From descriptions of the accident, it was almost impossible for the Claimant to have actually done

> anything to help him, but she has not realized this. She accompanied him to his medical appointments and physical therapy sessions. After some time, the Claimant's husband became mentally depressed from not having much, if any, use of his right hand and fingers. He was referred to a psychotherapist, who evaluated him on March 4, 1999.

Claimant testified that she told the employer that she did not want to go back to work at the company and asked if the employer "had anything else for me." Claimant said she was told that "the only thing that was open" was at the company. Claimant testified that she "wasn't comfortable there but [she] had to go back for financial reasons." Claimant worked for the company from March 5, 1998, through May 15, 1998, when she was laid off. Carrier contends claimant was laid off because the job ended; claimant contends she was "fired" because of her inability to concentrate and focus. Claimant has not worked since May 15, 1998.

As noted by the hearing officer, claimant's husband developed mental depression and was referred to Mr. GC, apparently a licensed psychotherapist. In a report dated March 4, 1999, Mr. GC, in commenting on claimant's husband's condition, said "[claimant] was also traumatized as she was the first on scene and forced to watch as the machinery mutilated her husband's hand, and she was unable to disengage the machine. After not being able to go to work as result of this horrifying trauma, she was asked to return to work and fired a short time later." This comment was made in a report regarding the husband's evaluation and the evidence that claimant was aware of that comment is conflicting. Claimant testified that she has a ninth grade education, is not familiar with medical terminology ("didn't know what a trauma was") and has been having nightmares and other symptoms since shortly after her husband's accident. Claimant testified that her husband's psychotherapist Mr. GC told her husband that she (claimant) was also showing signs of post-traumatic stress disorder (PTSD) and that claimant should file a workers' compensation claim because her PTSD was directly related to the effect the husband's accident had on her. Claimant filed an Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) dated May 10, 1999, with the Commission on May 13, 1999. The next day (May 14th), the Commission sent carrier an EE-41 letter (Dispute Resolution Information System note dated May 14, 1999). The hearing officer found that the EE-41 letter to carrier constituted notice of the injury. On June 15, 1999, claimant personally told the employer about her injury.

In a report dated May 24, 1999, Dr. J, the husband's psychiatrist, commented on claimant's nightmares, depression and mood swings saying:

> The patient's wife certainly depressed, and anxious, and agitated. Has PTSD issues as well. And probably could benefit from Serzone along with psychotherapy.
>
> Will convey this information . . . to the insurance company.

In a report dated October 11, 1999, Mr. GC recited that he had seen claimant on June 3, 1999, recited the history of the accident, and commented that claimant had tried to go back to work (in March 1998) but "could not function because of her [PTSD] . . . and the accompanying Major Depression which naturally erupted as a response to such a horrifying incident. The company terminated her employment." Mr. GC diagnosed PTSD and major depression directly caused by the _____, accident to claimant's husband. That opinion was reiterated in another report dated December 3, 1999. Dr. J, in a report dated October 13, 1999, commented:

> What really is hurting him now is the problem that his wife is experiencing. She witnessed a lot of the patient's difficulties. She now loses control. She has violent outbursts with some severe anxiety attacks and fugue-like states. She's also plagued with nightmares, and agitation, and difficulty falling asleep, staying asleep, crying spells; very painful for him to see that. He's trying to get her some help. It's all related to his accident and the dramatic changes that have happened in his life as a result of the industrial accident.

There is no medical evidence that claimant does not have PTSD or that it was not caused by the _____, accident involving claimant's husband.

The hearing officer, in his Statement of the Evidence, commented:

> Both a psychiatrist on May 24 and the psychotherapist on June 3 (and thereafter) concluded to a reasonable medical certainty that the Claimant suffered a mental trauma injury because she witnessed her husband's accident on _____. TWCC Appeal No. 941551 [Texas Workers' Compensation Commission Appeal No. 941551, decided December 23, 1994]. However, the Claimant had no idea that she had a mental trauma injury, or mental depression, or PTSD, until her husband told her in early May 1999 that the psychotherapist said she had a mental trauma injury from the accident. Not knowing she had an injury, nor that such an injury was related to her employment, is definitely good cause for not reporting the injury within 30 days or filing a claim within a year. And she acted within a few days to file the TWCC-41, which then served as notice to the Employer. Section 409.004(1) of the [1989] Act; TWCC Appeal Nos. 950428 and 950470 [Texas Workers' Compensation Commission Appeal No. 950428, decided May 3, 1995; Texas Workers' Compensation Commission Appeal No. 950470, decided May 12, 1995.]
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> The Carrier also contended that the mental trauma was cumulative over the year and a half after the accident, and therefore cannot be compensable. The Appeals Panel rejected this argument in TWCC Appeal No. 990261 [Texas Workers' Compensation Commission Appeal No. 990261, decided March 26, 1999], noting that suffering additional stress after the single

injurious incident of mental trauma "does not, as a matter of law, transmute her reaction to the [event] into a repetitive mental stress."

Carrier appeals, contending that claimant received no medical treatment for over a year, that claimant worked for the company for two months "until the job assignment ended" (a disputed point) and that claimant had other stressors. It is well-settled that mental trauma, even without an accompanying physical injury, can produce a compensable injury if it arises in the course and scope of employment and can be traced 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, the Texas Supreme Court has specifically held that 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); *see also* Appeal No. 941551, *supra*; and Texas Workers' Compensation Commission Appeal No. 94785, decided July 29, 1994. In this case, there was a definite time, place and cause, the _____, accident. While carrier argues claimant received no treatment for over a year after the accident, claimant's testimony and the medical records document symptoms. The hearing officer's comment that claimant "had no idea that she had a mental trauma injury or . . . PTSD" is certainly supported by the evidence and explains the absence of any treatment. As the hearing officer notes, the Appeals Panel had held that additional stress after the traumatic event does not automatically transform the triggering event into repetitive mental stress. In this case, two mental health professionals, to one extent or another, have opined that the December 1997 accident was the direct cause of claimant's condition, and there is no medical or psychological evidence to the contrary, or that the cause for claimant's PTSD and major depression was caused by some kind of repetitive mental trauma.

Carrier argues that claimant had no good cause for the delay in reporting her injury and even if she had good cause it did not continue until the time of reporting. The hearing officer, in his findings and discussion, found that claimant had good cause for not timely reporting her injury because claimant was unaware that she had a mental trauma injury until on or about May 10, 1999, when her husband told her of Mr. GC's and Dr. J's comments. While it is true claimant had nightmares and "continual and worsening emotional disturbances" from shortly after the accident, the hearing officer could, and did, accept the testimony that claimant "had no idea" that this was a mental trauma injury. The hearing officer's finding that claimant had good cause for not reporting her injury until on or about May 10, 1999, and that claimant promptly reported her injury several days later by filing a TWCC-41 on May 14, 1999, is supported by the evidence. We disagree with carrier's contention that a reasonable individual in claimant's position (a ninth grade education), having nightmares of a tragic accident, would understand that that might constitute a mental trauma injury. Further, claimant did not discontinue working in May 1998 because she knew she had PTSD, stress and depression but rather because she "was no longer needed." Carrier contends that claimant began consulting with various medical providers regarding her mental condition as early as March 4, 1999. That contention is not supported by the evidence. Medical providers, in treating claimant's

husband, may have begun noting that claimant also had PTSD symptoms as early as March 4th, but as noted earlier, evidence of whether those early reports were given to claimant is sparse. The significance of claimant's comment on her TWCC-41 that she "realized this injury was related to work on 3/14/99 after talking to [Mr. GC] (psychologist)" was a factual matter for the hearing officer to resolve. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as 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 (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 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). In any event, whether claimant had good cause, and if so until when, was a factual determination for the hearing officer to resolve and he did so by finding good cause until May 10, 1999. That finding is supported by the evidence.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Dorian E. Ramirez
Appeals Judge