

APPEAL NO. 060176
FILED MARCH 30, 2006

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 December 15, 2005. The issues at the CCH were: (1) whether the respondent (claimant) sustained a compensable mental trauma injury on or about (Date of Injury No. 1); and (2) whether the claimant had disability resulting from the claimed injury and, if so, for what period. The hearing officer found that the claimant suffered a mental trauma injury during the course and scope of her employment on (Date of Injury No. 2), and concluded that the claimant sustained a compensable injury on (Date of Injury No. 2). The hearing officer further determined that the claimant had disability on June 14, 2005, and beginning on July 19, 2005, and continuing through the date of the CCH. The appellant (carrier) appeals the hearing officer's determinations that the claimant sustained a compensable injury and that she had disability. The claimant requests affirmance of the hearing officer's decision.

DECISION

Reversed and rendered.

BACKGROUND INFORMATION

At the beginning of the CCH the claimant's attorney explained that the claimed date of injury is (Date of Injury No. 2), not (Date of Injury No. 1), and that (Date of Injury No. 1), is the date the claimant first saw a doctor for her condition.

The claimant worked for the employer as a juvenile correctional officer (JCO). She was the only witness at the CCH. The written job description in evidence for a JCO states that a JCO works under stressful conditions, with possible occurrences of extreme heightened stress. The claimant testified that in February 2004, after having worked for the employer for about a month, she reported to her supervisor that misconduct had occurred between staff and students at the employer's facility and that the misconduct involved sex and drugs. She said that she made a written report of the misconduct to her supervisor in February 2004. She said that the employer did nothing in response to her report. She said that in April (the year was not stated, but it appears to be 2005) she hired the attorney who represented her at the CCH to represent her with regard to a grievance she had filed with her employer on an issue of being placed on leave without pay. The reason the claimant had been placed on leave without pay, the period she was on leave without pay, and the outcome of her grievance proceeding were not developed. Apparently the period of leave without pay was sometime before June 2005 because the claimant was working in June 2005.

The claimant further testified that on June 9, 2005, she met with her attorney at the employer's facility and she told him about her concerns about the employer's failure

to follow up on her report of misconduct and that on that day she and her attorney met with the superintendent. She testified that at the June 9, 2005, meeting she related to the superintendent her concerns about her report of sexual abuse of students not being properly investigated and that her attorney told the superintendent that contact with the claimant should be made through him. The claimant said that after that meeting she was subject to harassment by the staff and the superintendent.

The claimant said that prior to (Date of Injury No. 2), she had retained her attorney for assistance in making sure that the allegations of sexual abuse were properly handled, and that she had gone to law enforcement authorities and provided them with the information.

The claimant said that the morning of (Date of Injury No. 2), the student that her misconduct allegation concerned told her that the superintendent had told the student not to tell anyone about the abuse. The claimant said that on (Date of Injury No. 2), she had a meeting with an assistant superintendent and the superintendent and was asked why she had not turned in a written report of the misconduct to the superintendent. The claimant said that the superintendent said that he had not received any written report. The claimant said that she was unaware that her supervisor had not turned in the claimant's written report to the superintendent. The claimant said that she told the superintendent that she wanted to give a written report to her attorney before giving a written report to the superintendent. The claimant said that the superintendent threatened to charge her with a misdemeanor for not turning in a report in a timely manner and told her that if she gave a copy of the report to her attorney, then there would be a different problem because of the confidentiality of names. The claimant testified that her training at work included training on not discussing the names of the students outside the agency. The claimant testified that the superintendent told her that he wanted a written report that day.

The claimant said that she felt that she was being threatened with a criminal misdemeanor action and that she did not feel that that was a legitimate personnel action. She said she felt she was being harassed, threatened, and retaliated against for bringing allegations of criminal activity to the attention of her employer. She said that after the (Date of Injury No. 2), meeting she received three telephone calls from her superiors, one of which concerned a doctor's appointment, and that she felt threatened being asked about her doctor's appointment. The other calls related to why she had not turned in a report to the superintendent. She said that she eventually provided a written report to the superintendent and that she was not given any "grievance" for failing to submit the report to him earlier. In a recorded statement taken on August 1, 2005, the claimant said that as soon as she had talked to her superintendent, she became the target of extreme harassment and threats of being fired almost daily.

The claimant said that the evening of (Date of Injury No. 2), she had a panic attack, which, she said, she had never had before; that she took off work on June 14, 2005; that she contacted her doctor on June 14, 2005, and the doctor "did call me in something," apparently referring to some medication; and that she was unable to see

her doctor until (Date of Injury No. 1). The claimant said that the point that started her panic attacks was the (Date of Injury No. 2), meeting where she was threatened. The claimant said that she continued to work for the employer after June 14, 2005, until her doctor took her off work on July 14th or 15th, 2005; that her doctor has not released her to return to work; and that she has not worked since then because she is not able to. She testified that she has been medically separated from her employer due to her mental trauma condition.

The claimant testified that after (Date of Injury No. 2), due to the stress, she was a nervous wreck and was having panic and anxiety attacks. She said that she had almost daily panic attacks between June 14th and (Date of Injury No. 1), when she saw her doctor. The claimant said that prior to (Date of Injury No. 2), she did not have problems with her memory, but after (Date of Injury No. 2), she has had memory problems because of the stress and that her condition has not improved. She said her doctor has prescribed medications to help her cope with her mental trauma and is trying to get her a referral to a psychiatrist. The claimant said that she had not sought psychiatric care prior to (Date of Injury No. 2).

The claimant said that she understands from her doctor that her condition is extreme stress and anxiety and that her doctor told her that the condition is work related. She said that when her doctor asked her what was going on at work she told her doctor "what was happening," and told him what had gone on trying to make sure she did the correct thing to turn in the sexual abuse, and her doctor told her that her insomnia, anxiety, and panic attacks were work related.

In a letter dated July 19, 2005, the claimant's doctor stated:

This letter is concerning my patient [claimant]. It is my medical opinion that she is suffering from severe stress related to recent developments at her work. The actions of her employer have lead to severe mental anguish. I believe the best remedy for the current situation is to allow [claimant] to go on extended stress leave, until the current situation has been resolved.

In a certification of health care provider form, the claimant's doctor wrote that the claimant is "suffering from major depression, anxiety, insomnia resultant from work situation." In response to a direction to state the approximate date the condition commenced, the claimant's doctor noted the date of (Date of Injury No. 1), which was the date the claimant said she first went to the doctor for her condition.

In an undated letter, the claimant's doctor wrote:

I have had the pleasure of being [claimant's] physician for the past several months. She recently started having problems with anxiety and depression. To my knowledge and after review of previous medical records, she has had no prior history of this. She developed these

problems after her situation at work deteriorated about 5-6 months ago. I have tried to treat her condition, but have found it to be severe enough to warrant a referral to [psychiatrist] here in [city]. That appointment is on December 22, 2005. It is my opinion that she is suffering from this illness as a direct result of job related issues.

MENTAL TRAUMA INJURY

Section 408.006 provides as follows:

Mental Trauma Injuries.

- (a) It is the express intent of the legislature that nothing in this subtitle shall be construed to limit or expand recovery in cases of mental trauma injuries.
- (b) A mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury under this subtitle.

In GTE Southwest, Incorporated v. Bruce, 998 S.W.2d 605, 610 (Tex. 1999), the Texas Supreme Court stated:

This Court has liberally construed the word "injury" in cases involving emotional distress and traumatic neurosis. See *Olson v. Hartford Accident & Indem. Co.*, 477 S.W.2d 859, 860 (Tex. 1972). The phrase "physical structure of the body" refers to the entire body; and emotional distress may constitute an "injury" when it results in malfunctioning of the physical structure of the body. *Transportation Ins. Co. v. Maksyn*, 580 S.W.2d 334, 336-37 & n. 2 (Tex. 1979); *Bailey v. American Gen. Ins. Co.* 154 Tex. 430, 279 S.W.2d 315, 318-19 (1955).

We have previously considered whether an injury caused by repetitious mental traumatic activity rather than physical activity is compensable under the Act. In *Maksyn*, the employee suffered from "anxiety depression" attributed to long hours and stress. *Maksyn*, 580 S.W.2d 334-35. We held that repetitive mental trauma resulting in injury is not a compensable occupational disease under the Act. *Id.* at 337-39. However, we also recognized that an employee may recover for an accidental injury due to mental trauma (as opposed to an occupational disease) when there is evidence of an undesigned, untoward event traceable to a definite time, place, and cause. *Id.* at 336-37; see also *Brown v. Texas Employers' Ins. Ass'n*, 635 S.W.2d 415, 416 (Tex. 1982); *Olson*, 477 S.W.2d at 859-60.

The Court in *Bruce* at page 611 noted that the allegations established that the injuries were caused by repetitive mental trauma rather than an ascertainable event and stated that “[w]hen there is no evidence of a particular event causing the mental injury, there can be no recovery under the Act.” Thus, the Court held that the injuries were not compensable under the 1989 Act.

In Appeals Panel Decision (APD) 94925, decided August 23, 1994, the Appeals Panel stated that “[t]here must be evidence of a reasonable medical probability that the mental trauma was caused by a specific event.” In APD 941551, decided December 23, 1994, the Appeals Panel stated that “[r]epetitive mental stress over a period of time does not constitute a compensable mental trauma injury” and that “[n]or does one event, among many similar events, constitute a causal connection for a compensable injury where there is a complete lack of medical evidence establishing such a link.” In APD 950633, decided June 7, 1995, the Appeals Panel noted that “[g]enerally, the existence of an injury may be established through the testimony of the claimant alone; however, in Appeal 941551, *supra*, we noted that the cause, progression, and aggravation of mental disease is a subject of such a technical nature that expert medical evidence is required.” APD 960966, decided July 5, 1996, also noted that expert medical evidence was required to make the necessary causal connection between the mental condition and a specific incident at work. In APD 94785, decided July 29, 1994, the Appeals Panel rendered a decision that the employee did not sustain a compensable mental trauma injury where no medical report mentioned the specific event at work that was alleged to have caused mental trauma and the medical reports only mentioned pressure and stress of the job in general.

We note that in Texas court decisions that have found a compensable mental trauma injury, the courts relied in great part on the medical testimony relating the mental condition of the claimant to a specific event at work. See *e.g.*, Travelers Insurance Company v. Garcia, 417 S.W.2d 630 (Tex. Civ. App.-El Paso 1967, writ ref’d n.r.e.); Director, State Employees Workers’ Compensation Division v. Camarata, 768 S.W.2d 427 (Tex. App.-El Paso 1989, no writ). With regard to the employer’s memo as the specific event giving rise to the asserted mental injury in Camarata, *supra*, in APD 941162, decided September 29, 1994, the Appeals Panel stated that it considered that decision to have been legislatively overruled. In Bailey, *supra*, the court noted that no issue was raised concerning the causal relationship between the accident and the mental injury, but the court did rely on medical testimony to establish that the neurosis suffered by the employee was an injury.

The claimant contended at the CCH that her mental trauma is traceable to a specific time, place, and cause, that being the (Date of Injury No. 2), meeting when she was threatened with a misdemeanor charge; that causation was established by the claimant’s doctor’s reports; and that the employer’s actions at the (Date of Injury No. 2), meeting were not legitimate personnel actions. The carrier contended that the employer’s actions at the (Date of Injury No. 2), meeting represented legitimate personnel actions because the claimant was intending to disclose to her attorney confidential information regarding individuals under the employer’s supervision, and that

the claimant failed to prove that her mental condition was traceable to a definite time, place, and cause in the course and scope of her employment.

The hearing officer in the Background Information section of her decision stated as follows:

In the instant case, Claimant has shown, by a preponderance of the evidence, that she sustained a compensable mental trauma injury. Her testimony and the medical records show that the events of the (Date of Injury No. 2), meeting caused her anxiety and subsequent depression. The records of [claimant's doctor] show that she is suffering from major depression, anxiety and insomnia and he relates those conditions to the occurrences at work.

It is clear that there were some ongoing issues between Claimant and Employer herein which caused stress prior to and after the (Date of Injury No. 2), meeting. However, the traumatic events of the (Date of Injury No. 2) meeting were separate, distinct and significant. The meeting on (Date of Injury No. 2), and Claimant's reaction to that meeting was a specific event, traceable to a specific date, place and time. Claimant has shown that she sustained damage or harm to the physical structure of her body, specifically a mental trauma injury, during the course and scope of her employment on (Date of Injury No. 2). There was no evidence presented that Claimant's condition was the result of a legitimate personnel action.

The carrier appeals the hearing officer's finding of fact that "[c]laimant suffered a mental trauma injury, during the course and scope of her employment on (Date of Injury No. 2)," and the hearing officer's conclusion of law that "[c]laimant sustained a compensable injury on (Date of Injury No. 2)." The carrier contends on appeal that the hearing officer's determination of a compensable mental trauma injury is against the overwhelming weight of the evidence because the meeting in question was a legitimate personnel action; the meeting represented only one of a series of on-going stressors, and so it cannot be said that the claimant's stress is traceable to a definite time, place and cause; and that there is no expert testimony or evidence to support a diagnosis of mental trauma. The carrier points out that the claimant's doctor does not refer to the (Date of Injury No. 2), meeting, but instead references "developments" at work and "actions" of the employer.

Section 410.165(a) provides that the hearing officer 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. We hold that there is insufficient medical evidence to relate the claimant's mental condition to a definite time, place, and cause in the course and scope of her employment, and that the hearing officer's determination of a compensable mental trauma injury is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. The claimant's doctor wrote that the claimant "is suffering from severe stress related to recent developments at her work;" that "the

actions of her employer have lead to severe mental anguish;" that the claimant is "suffering from major depression, anxiety, insomnia resultant from work situation;" that the claimant developed anxiety and depression "after her situation at work deteriorated about 5-6 months ago;" and that "she is suffering from this illness as a direct result of job related issues." At most, the doctor's opinion merely relates the claimant's anxiety and depression to "recent developments" at work, "actions of her employer," the claimant's "work situation," and "job related issues." The doctor does not provide an opinion with regard to a particular event in the course and scope of employment that caused the asserted mental injury and makes no reference to the (Date of Injury No. 2), meeting the claimant had with her superiors, which the claimant alleges is the cause of her mental condition. The evidence reflects that the claimant indeed had "job related issues" with the employer as opined by the claimant's doctor, but that fails to satisfy the requirement that the asserted mental injury be traceable to a definite time, place, and cause.

The hearing officer made no finding of fact with regard to whether the (Date of Injury No. 2), meeting represented a legitimate personnel action. In APD 970292, decided March 28, 1997, the Appeals Panel stated that "[a]s stated in many prior decisions, the burden of proof to show a compensable mental trauma injury is on the claimant to show that the injury stemmed from a definite time, place, and event within the scope of employment" and that "[w]hen a mental health injury has been shown, then the claimant must show that it did not emanate from a legitimate personnel action." Because we hold that the claimant has presented insufficient medical evidence to show that her asserted mental condition is traceable to a definite time, place, and cause in the course and scope of her employment, we do not reach the question of whether the (Date of Injury No. 2), meeting was a legitimate personnel action.

DISABILITY

Because we hold that the claimant has not sustained a compensable injury, the claimant has not had disability as defined by Section 401.011(16).

We reverse the hearing officer's decision that the claimant sustained a compensable injury on (Date of Injury No. 2), and that the claimant had disability on June 14, 2005, and beginning on July 19, 2005, and continuing through the date of the CCH, and we render a decision that the claimant did not sustain a compensable injury on (Date of Injury No. 2), and that the claimant has not had disability.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
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For service by mail the address is:

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AUSTIN, TEXAS 78711-3777.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge