APPEAL NO. 111826
FILED JANUARY 30, 2012

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on October 25, 2011, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable mental trauma injury on [date of injury], and the claimant did not have disability from January 31, 2011, through June 24, 2011 (the claimed period of disability). The claimant appealed, disputing the hearing officer's determinations on compensability and disability. The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and rendered.

It was undisputed that the claimant was sent out-of-town on a week-long business trip with her supervisor by the employer during the week of [December 2010], and that the claimant worked with her supervisor at the employer's subsidiary offices in Washington, D.C. on Monday, [date of injury]. After working, the claimant testified that the supervisor drove the employer-provided rental car to a restaurant for the two of them to obtain a meal and drove back to the hotel, at which the employer provided overnight housing for them. The claimant further testified that she was attempting to retire for the night in her hotel room when her supervisor came into her room and sexually assaulted her. It was undisputed that the claimant reported the sexual assault to the Washington, D.C. police and to her employer. The claimant also testified that she did not have a relationship with the supervisor outside of her work with the employer. There was no evidence of a consensual personal relationship between the claimant and her supervisor outside of the work relationship or evidence of a history of ill feelings or animosity between the claimant and her supervisor.

The evidence established that the claimant received care from Dr. M, who diagnosed her with post-traumatic stress disorder (PTSD). In evidence is a letter dated October 5, 2011, from Dr. M, who stated that the claimant's PTSD was precipitated by the sexual assault suffered on her business trip in December of 2010 and that "[p]rior to this trauma [the claimant] had been a highly functioning and emotionally stable individual." It was the claimant's testimony that she was unable to work from January 31, 2011, through June 24, 2011, because of the PTSD resulting from the sexual assault. On June 24, 2011, the claimant resigned from the employer. In the Background Information section of his decision, the hearing officer stated that "[i]f the

injury were compensable, [the] [c]laimant would have had disability from January 31, 2011, through June 24, 2011."

In Finding of Fact No. 3, the hearing officer determined that "[t]he sexual assault of [the] [c]laimant which caused [PTSD] to [the] [c]laimant arose out of an act of a third person intended to injure the employee because of a personal reason and not directed at the employee as an employee or because of the employment." *See* Section 406.032(1)(C) (personal animosity exception).

The claimant contends that the hearing officer's determination on compensability is error because: (1) she was injured during the course and scope of her employment under the continuous coverage doctrine; (2) there was no deviation from her employment at the time of the sexual assault in her room; and (3) the personal animosity exception did not apply to her case. The carrier responded to the claimant's appeal in the alternative that: (1) the carrier is relieved of liability because of the personal animosity exception; (2) the claimant was not in the course and scope of employment because the evidence established a deviation; and (3) there was insufficient expert medical evidence of the causal relationship between the claimant's PTSD and the alleged sexual assault.

The main dispute in this case is whether the carrier is relieved from liability under the personal animosity exception.

In Nasser v. Security Insurance Company, 724 S.W.2d 17 (Tex. 1987), the court reversed the appellate court's judgment that the manager of a restaurant was not entitled to workers' compensation benefits because he was not in the course and scope of his employment when he was stabbed by a customer at work. The carrier's main argument was that the personal animosity defense relieved the carrier of liability. The carrier argued that the manager's customer/attacker was motivated by jealousy when he observed the manager talking to the customer/attacker's ex-girlfriend, who was also a customer at the restaurant but had no personal or romantic relationship with the manager outside the restaurant. In that case, the court stated that:

[T]he purpose of the 'personal animosity' exception is to exclude from coverage of the Act those injuries resulting from a dispute which has been transported into the place of employment from the injured employee's private or domestic life, at least where the animosity is not exacerbated by the employment. Commercial Standard Ins. Co. v. Marin, 488 S.W.2d 861 (Tex. Civ. App.–San Antonio 1972, writ ref'd n.r.e.). Whenever conditions attached to the place of employment or otherwise incident to the employment are factors in the catastrophic combination, the consequent injury arises out of the employment. Garcia v. Texas Indem., . . . 209 S.W.2d 333 (1948). *See also* Williams v. Trinity Universal, 309 S.W.2d 850 (Tex. Civ. App.–Amarillo 1958, no writ) (if the

assault is incidental to some duty of employment, the injuries suffered thereby arise out of the employment). It was part of [the manager's] job to talk to customers. As a result of his performance of this aspect of his job, he was stabbed by [a customer]. The dispute, if any, between [the manager] and [the customer/attacker] was not one that was transported from [the manager's] private life into the workplace. The dispute, if any, arose in the workplace or was exacerbated by, or in the very least, was incidental to, a duty of [the manager's] employment.

In Walls Regional Hospital v. Bomar, 9 S.W.3d 805 (Tex. 1999), several nurses alleged that a doctor had sexually harassed them while at work and brought suit against their hospital employer. However, the court found that the nurses' problems with the doctor were not transported into the workplace from their private or domestic lives; rather, their problems with the doctor only occurred while at work in the hospital. The hospital was the exclusive setting for the doctor's harassment of the nurses. The personal animosity exception did not apply.

In Appeals Panel Decision (APD) 011962-s, decided October 10, 2001, the injured worker had a fight with a co-worker harassing him. In that case, the hearing officer determined that there was no relationship or contact between the injured worker and the co-worker other than at the workplace during work hours. The hearing officer determined that the injury was compensable and that the personal animosity exception did not apply. The Appeals Panel affirmed the hearing officer's decision.

In APD 022091-s, decided October 7, 2002, an employee was the target of "unwelcomed affection" from a co-worker that resulted in the employee filing a formal sexual harassment complaint against the co-worker and the termination of the co-worker. The same day that the co-worker was terminated, the employee was threatened and then stabbed on the employer's premises by the co-worker. The basis of the carrier's denial of the workers' compensation claim was that the injured employee was not in the course and scope of employment and the altercation was over a personal matter and did not arise out of her job duties. Based on the evidence presented, the hearing officer determined that the claimant sustained a compensable mental trauma injury and the Appeals Panel affirmed the decision.

In reviewing a "great weight" challenge, we must examine the entire record to determine if: (1) there is only "slight" evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. *See* Cain v. Bain, 709 S.W. 2d 175 (Tex. 1986).

The evidence established that the claimant was directly supervised by the man who sexually assaulted her while on a business trip required by their employer. The

evidence established the claimant was sexually assaulted by the supervisor in the claimant's hotel room. There was no conflicting evidence that there was a personal dispute between the claimant and her supervisor transported from the claimant's domestic or private life into the workplace. Therefore, the hearing officer's finding of fact that the sexual assault of the claimant arose out of an act of a third person intended to injure the claimant because of a personal reason and directed at the employee as an employee or because of the employment is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

The evidence was sufficient to support that there was no deviation by the claimant from the course and scope of employment. A deviation, if any, regarding the claimant and her supervisor having a drink at the hotel prior to her going to her room, was ended at the time the claimant went to her room. Furthermore, the medical evidence was sufficient to support that the claimant's diagnosed PTSD was casually related to the sexual assault.

Therefore, we reverse the hearing officer's determination that the claimant did not sustain a compensable mental trauma injury on [date of injury], and we render a new decision that the claimant did sustain a compensable mental trauma injury on [date of injury].

Given that we have reversed the hearing officer's determination on compensability, we reverse the hearing officer's determination that the claimant did not have disability from January 31, 2011, through June 24, 2011, and we render a new decision that the claimant had disability from January 31, 2011, through June 24, 2011.

The true corporate name of the insurance carrier is **ILLINOIS NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.

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Cynthia A. Brown
Appeals Judge

CONCUR:

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Thomas A. Knapp
Appeals Judge

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Margaret L. Turner
Appeals Judge