APPEAL NO. 92098
APRIL 27, 1992

This appeal arises under the Texas Workers' Compensation Act of l989 (l989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-l.0l through ll.l0 (Vernon Supp. l992). On February l0, l992, a hearing was held in (city), Texas, with (hearing officer) presiding. He found appellant, claimant herein, was not injured while in the course and scope of employment while driving home from a seminar held in her city of residence. Claimant contends that she was on a special mission.

DECISION

Finding that the decision is not against the great weight and preponderance of the evidence, we affirm.

Claimant is a licensed vocational nurse (LVN) who has been employed by (employer) for three years. As an LVN she has attended in-service training courses in past years and characterized them as "mandatory". Claimant then introduced a memo from the nursing supervisor of the employer dated July 10,1991, which referenced a new law making continuing education mandatory for LVNs. The memo said that as of July l, l993, each LVN would have to show at least 20 hours of such training for the past two years in order to have the license renewed. No evidence was offered to indicate that the employer directed or even requested claimant to go to in-service training on July 31, l991, at the administration building of the employer in a separate area of the same city as her place of employment.

Claimant testified her normal working hours are 4:00 p.m. to l2:00 p.m. and she had worked that shift on July 30, l991. From 8:00 a.m. to l2:00 p.m. on July 31, l991, she attended the in-service training and was on her way home at about l2:25 p.m. when injured in a car accident on a public street. She was driving her own car, was not compensated in any way for so driving, and had no duties to perform for her employer while driving home. The employer paid employees for their time in attending such in-service training. Claimant expected to report for regular work at 4:00 p.m. on July 31, l991.

Article 8308-l.03(l2)&(l2a) of the l989 Act addresses the issue in this case.

Course and Scope of Employment means an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. The term includes activities conducted on the premises of the employer or at other locations. The term does not include:

(A)transportation to and from the place of employment unless:

(i)the transportation is furnished as a part of the contract of employment or is paid for by the employer;

(ii)the means of such transportation are under the control of the employer; or

(iii) the employee is directed in his employment to proceed from one place to another place;

Claimant in this case was not selected to perform a special mission. All LVNs were required by their licensing body to perform continuing education to maintain their license. Employer required all employees who did the work of an LVN to be an LVN. Thus the requirement for continuing education was indirectly a requirement of the job that all LVNs performed for employer. While attendance at a particular training session by all LVNs was not required, all were to attend a sufficient number of scheduled sessions during a two year period to maintain their license. As in Evans v. Illinois Emp. Ins. of Wausau, 790 S.W.2d 302 (Tex. l990), attendance was an integral part of the job.

The employer did not specify the route claimant took to or from the training site, and there was no evidence that it knew or cared to know what route claimant took in either direction. From the evidence presented, it can be inferred that claimant, had she so chosen, could have departed the training site upon completion and travelled in a direction wholly different than that taken toward her home. The evidence does not show that the employer directed any deviation from claimant's personal choice of a route. While an employee may be required to discharge duties of employment either expressly or impliedly, the act must be both in furtherance of the employer's business and in performance of the duty imposed. Jecker v. Western Alliance Ins. Co., 369 S.W.2d 776 (Tex. l963). The employee's duty in Jecker included the servicing of gas ranges sold by his employer. At the time of Jecker's accident, he was returning from servicing a range so it was clear that he had acted both in furtherance of his employer's business and in performance of duties imposed by the employment. Claimant would have to perform a certain amount of continuing education to maintain her LVN status whether she worked for this employer or not. Even had she been impliedly directed to attend the course, she still may not be "furthering the affairs of the employer" because her employer was not in the business of licensing LVNs.

While certain aspects of this case may differ from either Evans, *supra*, or Harris County v. McCoy, 804 S.W.2d 523 (Tex. App.-Houston [lst Dist.] l990, no writ), the circumstances place it within the "coming and going rule". *See* Texas Workers' Compensation Commission Appeal No. 9l078, decided December 20, l99l. The findings of fact and conclusions of law reached by the hearing officer are sufficiently supported by the evidence. The decision is not against the great weight and preponderance of the evidence.

We affirm.

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Joe Sebesta
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Susan M. Kelley
Appeals Judge