APPEAL NO. 93212

Pursuant to the Texas Worker's Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city), Texas, on January 27, 1993 and February 26, 1993, (hearing officer) presiding as hearing officer. She determined that the Respondent/Cross- Appellant (claimant) sustained a compensable left arm injury while in the course and scope of her employment and that the claimant has not had disability as a result of her injury. The Appellant/Cross-Respondent (carrier) urges error in the hearing officer's determination that the injury was sustained in the course and scope of employment, and in its response to the claimant's appeal on the issue of disability, argues that the claimant has neither sustained nor proven any disability and asks that the decision of the hearing officer on this issue be affirmed. In claimant's cross-appeal and response, she claims that the evidence presented establishes that she suffered disability as a result of her injury and requests that the Appeals Panel overrule the hearing officer's decision on this matter. She also states that the evidence establishes that she sustained an injury in the course and scope of her employment and prays for affirmance of the hearing officer's determination on this issue.

DECISION

Determining that the evidence fails to establish that the injury, under the circumstances present, was sustained in the course and scope of the employment, we reverse and render on that issue. Finding the evidence sufficient to support the hearing officer's determination that the claimant did not suffer disability as a result of the injury in issue, we affirm that part of the decision.

The facts in the case are not complex, although they are unique. The issues are straightforward and, as presented at the contested case hearing, were: (1) whether the claimant sustained an injury to her left arm in the course and scope of her employment on (date of injury); and (2) whether the claimant suffered disability as a result of an alleged (date of injury) injury. Briefly, a blood drive was being conducted by (BSA) and the employer participated at least by providing their auditorium for purposes of gathering the blood, by sending memos about the blood drive in the company mail distribution system, by allowing employees to actually give during duty time, and having the company nurse assist in checking the appointment and employees as they came in to donate blood. A bulletin board in an area not generally available to the public also announced the blood drive. According to the claimant, employees would be scheduled for an appointment whenever there was a proper time that was convenient to the work area to be away from the work area. In any event, the claimant elected to participate. She stated she had given blood at various times and places at least 18 times and did so as a Good Samaritan. On (date of injury), she went to give blood and when the blood services technician who worked for BSA started inserting the needle, the claimant felt a rush of cold, was told to relax and the needle was inserted further. The claimant felt pain up to her shoulder and instructed the technician to take the needle out. The claimant first went to a doctor two days later and medical reports tend to establish that some nerve damage was done to the claimant's arm by the

needle when it was inserted. The claimant testified that she continued working but that she was terminated in July because of poor work performance apparently unrelated to the incident of (date of injury). She stated that no doctor gave her a "no work" slip until a referral doctor did so in November 1991, but that she continued to look for work until she found a permanent job in April 1992. In the meantime, she had worked at several part-time jobs in secretarial duties through two different temporary service companies. She stated that prior to the incident, she could type 65 to 70 words per minute but that after the incident she could only type 55 to 60 words per minute and that her inability to reach the higher rate on a test was indicated as a reason she did not get one job she applied for. She stated she had numbness in the surface skin and pain in her wrist and arm, that it affected her typing and ability to lift which were a part of secretarial duties. Her salary at the time of the incident was $28,800 and her new permanent job paid $28,000. She also stated that she anticipated getting more overtime at the original job.

The manager of employee relations for the employer at the time ((date of injury)) testified that the employer's participation was for the convenience of the employees and as a service to the community and to be seen as a good corporate citizen. Employees were not required to give blood and did not get any special treatment. Only 10 to 15% of the employees participated. The manager of employee relations testified that the employer also sponsors or makes available such other things as Toastmaster's and Girl Scout activities, "any number of those types of activities to help out the employees personally." He also indicated on cross-examination that the company generally desired to be seen as doing beneficial things, be a pillar of the community and that, in general, corporate image is important in advertising and business. He indicated that the employer's business was in natural gas and the transportation of it to their customers who were utilities on the east coast. The employer does not have individuals as customers.

To be compensable, an injury must arise out of and be in the course and scope of employment for which compensation is payable under the act. Article 8308-1.03(10). Course and scope of employment is defined in pertinent part in Article 8308-1.03(12) as:

> 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.

In finding that the claimant's activity on (date of injury) was within course and scope, the hearing officer stated that "[t]he sponsoring of the blood drive on (date of injury), was a community service on the part of (the employer), and the activity was in furtherance of (the employer's) business or affairs." In our review of the evidence in this case and juxtaposing it with case law touching on analogous types of situations, we do not find a sufficient basis

in law or fact to sustain the hearing officer's determination.

Our research did not disclose a Texas case directly dealing with a blood donor under the circumstance present in this case. In cases cited by the claimant, where the courts upheld recovery, the situation involved employees injured in good will activities that involved customers of the employer. In one case, Employers Mutual Liability Insurance of Wisconsin v. Sanderfer, 382 S.W.2d 144 (Tex. Civ. App.-Houston 1964, writ ref's n.r.e) the supervisor had ask an employee of the employer to go on a deer hunting outing to help entertain a customer and the employee was injured. The court noted that part of employee's job was "good will" toward customers like the ones on the outing in trying to get business for the employer. In another case, Texas Employers' Insurance Association v Chitwood, 199 S.W.2d 806, (Tex. Civ. App.-El Paso 1946, no writ) the employee who had been requested to assist his supervisor in delivering a large item to a customer was injured after the delivery and on the trip back to the employer's place of business, which trip was also going to take an old customer home. The court observed there was no essential difference in cultivating good will by taking a customer home than in otherwise entertaining the customer.

Another case cited by the claimant involved a truck driver who came upon an accident which blocked the way. The truck driver was allowed recovery for injuries sustained while he was searching for the wallet of one of the accident victims, the court stating that "[a] servant does not cease to be in the course of his employment merely because he is not actually engaged in doing what is specifically prescribed to him, if in the course of his employment an emergency arises, and, without deserting his employment, he does what he thinks necessary for the purpose of advancing the work in which he is engaged in the interest of his employer." The court noted that the evidence supported the notion that the truck driver stopped because the road was blocked and that his helping to look for the wallet was "a continuing part of clearing the road so he could proceed with his employer's business." Texas Employers' Insurance Association v. Thomas, 415 S.W.2d 18 (Tex. Civ. App.-Fort Worth 1967, no writ) at pg. 20.

While the manager of employee relations acknowledged that the employer had an interest in being a good corporate citizen and benefactor to the community, it is clear this case did not involve a situation of good will toward a customer or an emergency type incident as in Thomas, *supra*. Indeed, the evidence shows that the employer's customers were utilities on the East coast and not in the area where the blood drive occurred. We view the situation here as most directly involving a "public service activity" as discussed in Larson, The Law of Workmen's Compensation, Volume 1A, 1992, § 27.34, page 5-418. Larson states that "acts that are nothing more than the discharge of a person's duties as good citizens or members of the community are not within the course of employment, even if they take place on the employment premises and may have been requested by the employer." Cited, among other cases, by Larson on this issue is a Nebraska case (Mauser v. Douglas

& Lomason Co., 192 Neb. 421, 222 N.W.2d 119 (1974)) involving an employee donating blood to the Red Cross, which in Larson's summary involved a claimant, a punch press operator, for an employer who posted a notice stating that those employees who wished to donate blood would be excused for an hour of work but still would be paid, who was injured as a result of complications arising out of his donation of blood. Larson indicates the court denied benefits holding that participation in the program was a civic duty and that the employer gained no benefit because of the employee's participation and had no control over the operation. A later case cited by Larson in this area, Belnap v. Boeing Co., 64 Wash. App. 212, 823 P2d 528 (1992), involved an employee fatally injured in returning to the job site from jury duty (employer paid full salary while the employee performed jury duty), where the court affirmed the denial of benefits notwithstanding the possibility that the employer's corporate image was enhanced as a result of its leave-with-pay policy.

We conclude that the evidence in this case fails to meet the requirements of the definition of course and scope under Article 8308-1.03(12) that the claimant's activity on (date of injury) constituted her being engaged in or about the furtherance of the affairs or business of the employer. Her activity falls more directly in line with the legal authority that indicates a denial of benefits when an injury is sustained while engaged in public service activities. We believe such analysis applies in this case. Not only do we conclude that any tangible benefits to the employer from the claimant's activity is much too attenuated under the circumstances present, there is evidence in the claimant's own testimony that she was acting on her own, as she had on at least 18 previous occasion, in the nature of Good Samaritanship. The evidence clearly indicates that she did not act to assist any customer or business associate or to enhance any business interest of the employer. Therefore, we reverse the hearing officer's decision that the claimant's activities on (date of injury) were in furtherance of the employer's business or affairs and that she therefore sustained a compensable injury. We render a new decision that the claimant did not sustain a compensable injury while in the course and scope of her employment. Accordingly, no benefits under the 1989 Act are awarded.

Although not necessary as a result of our disposition of the first issue, we find there is sufficient evidence to support the hearing officer's determination that the claimant suffered no disability. In this regard, the hearing officer reopened the contested case hearing on her own motion to further develop the record on this issue. After hearing the relevant testimony and considering the added documentary evidence of wage statements, she found as fact that "any periods of unemployment and/or inability to obtain and retain employment at wages equivalent to the preinjury wage sustained by the claimant after July 31, 1991 were due to economic and market conditions, and such were not as a result of the claimant's injury of (date of injury)." There is sufficient evidence to support this finding and the finding is not so against the great weight and preponderance of the evidence as be clearly wrong or manifestly unjust. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992.

For the above reasons, the decision is reversed and a new decision is rendered that the claimant was not injured in the course and scope of her employment and is not entitled to benefits under the 1989 Act.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge