APPEAL NO. 93693

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN § 401.001 *et seq*. On June 10, 1993 and July 9, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that respondent (claimant) was injured in the course and scope of employment after being directed to a client's office. Appellant (carrier) asserts that there were no specific directions to claimant and claimant was on a personal trip. Claimant did not respond.

DECISION

We affirm.

The issues at the hearing were whether claimant was injured in the course and scope of employment and, if so, whether claimant has disability therefrom.

Section 410.204(a) of the 1989 Act states that the Appeals Panel "shall issue a decision that determines each issue on which review was requested."

Carrier asserts on appeal that claimant was under no direction at the time of the accident and argues that course and scope does not arise just because the trip to the injury site would have been made even had there been no personal affairs of the claimant to be furthered.

The Appeals Panel determines:

That the evidence sufficiently supports the finding that claimant was directed to the site of the accident.

That the evidence sufficiently supports the finding that claimant was in route to a client's location at the time of the accident.

That the evidence sufficiently supports the determination that the claimant was in the course and scope of employment when injured.

Claimant is an outside saleswoman for (employer). On (date), she was in vacation status, shopping with her daughter, who was an employee of (motel). Claimant and daughter were shopping at a discount store in north (city) and planned to have lunch at the motel with daughter's secretary at 12:30 that day in central (city). Claimant carried a beeper and frequently got calls from work after hours and on weekends. When she responded to a call at approximately 9:45 a.m., she talked to her supervisor who told her that one of the employer's competitors had just gone out of business. The supervisor told claimant that the (city) regional manager wanted salesepeople to approach clients of the defunct competitor immediately. Claimant inquired if the regional manager knew she was on vacation. The supervisor replied that the regional manager knew that fact but wanted him

to call claimant anyway. The supervisor did not order claimant to proceed to a particular client. Claimant then suggested that she knew a representative of an air conditioning company and would contact him. The conversation with supervisor also included the need for a report to be made.

Claimant testified that she told her daughter she had to go to work. She stated that her visit to the client would not take a great amount of time and she planned to leave the daughter in the car while making it; the plans for lunch with the daughter's secretary were not canceled.

In a statement made before the hearing, the daughter said that claimant told her after the call that she would drop her off at her home on the way to make the call. Claimant testified that the daughter may have inferred that she would be dropped at home, but was not told that. At the time of the accident, at the corner of a cross street and the eastern side of a perimeter loop around the city, the claimant's car could have proceeded either to the client's business or the house to drop off the daughter - the two places were relatively near each other. Neither place, or the accident site, was near the area in which the claimant was shopping with the daughter, the northern part of the city, or the place where the two would meet another for lunch, the central part of the city. There was no issue that the site of the accident was not within a direct route from where the claimant was beeped to the site of the client.

Claimant also testified that the employer was not prospering and both its future and her own therein were in doubt. She looked upon the phone call as one that told her to make contacts that day. Carrier did not provide a statement or testimony of the supervisor. There was no controverting evidence to claimant's that she got such call or that it stated anything different from what she described. The hearing officer was supported by sufficient evidence in finding that the claimant was directed to leave her vacation and see the client. *See* Johnson v. Pacific Employers Indem. Co., 439 S.W.2d 824 (Tex. 1969), which said that the fact finder could infer that a request by a supervisor had the force of a direction, citing Janek v. TEIA, 381 S.W.2d 176 (Tex. 1964) which had said that the direction could be implied.

While the carrier indicates in its appeal that the hearing officer applied the "dual purpose" doctrine (*See* Section 401.011(12)(B) of the 1989 Act.), the hearing officer's discussion indicates that she did not find that doctrine applicable. While she alluded to the fact that requirements for injury in the course and scope of employment would be met under the provisions of (12) (B) "even if her daughter's testimony about going home first is to be believed," the hearing officer then stated, "[n]o evidence was presented that her intended route included a stop at home to drop off her daughter." As stated in Johnson, *supra*, the dual purpose doctrine only should be applied when the travel furthers both the affairs of the business and the personal affairs of the employee. The hearing officer was sufficiently

supported by the evidence in making no finding that the travel to the site of the accident furthered the personal affairs of the claimant. *See* Texas Workers' Compensation Commission Appeal No. 93371, decided June 28, 1993, which remanded a case for determination under the "dual purpose" doctrine when the findings of fact indicated that both the affairs of the employer and the employee were being served; Texas Workers' Compensation Commission Appeal No. 93667, decided September 9, 1993, considered the case after remand and affirmed a decision that the claimant was in the course and scope of employment when injured in an auto accident.

The decision and order that claimant was in the course and scope of employment when injured is sufficiently supported by the evidence and is affirmed.

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Joe Sebesta
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Susan M. Kelley
Appeals Judge