APPEAL NO. 93814

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S. art 8308-1.01 *et seq*.), a contested case hearing was held in (city), Texas, on July 30, 1993, (hearing officer) presiding as hearing officer. She determined that the respondent (claimant) sustained a compensable injury in the course and scope of her employment on (date of injury). Appellant (carrier) appeals on the basis that the hearing officer's key findings of fact and conclusions of law are not based on sufficient evidence and are so contrary to the great weight and preponderance of the evidence as to be manifestly wrong or unjust requiring reversal. Claimant urges that the evidence is sufficient to support the determinations of the hearing officer and asks that the decision be affirmed.

DECISION

Finding the evidence sufficient to support the essential findings and conclusions of the hearing officer, the decision is affirmed.

The claimant was involved in an automobile accident on (date of injury), and the single issue in the case involved whether she was in the course and scope of her employment at the time of the accident or whether the exclusion for transportation to and from the place of employment applied. The claimant performed audits for the employer at various locations in (city) and (city). From the testimony, it appeared that her normally scheduled working hours of 8:00 a.m. to 5:00 p.m. were frequently varied because of finishing up an audit and doing other errands such as going to a mail center. According to the testimony, she was supposed to get prior approval for overtime but that was not always the practice by the claimant and her supervisor. The claimant also received a $200.00 per month mileage allowance for her work related travel. She also had routine duties that required her to go to a mail center in the vicinity of her office and which was in the same general area of her residence. On the (date of injury), she had left a location where she was performing an audit at about 5:30 p.m. and proceeded to the mail center to mail some work related documents that she had been told to mail by her supervisor. She also was to pick up some document stamps that had been ordered earlier. The claimant testified that she had an audit to perform in (city) the following morning and needed to go to the office to get some receipt books which she felt were necessary for her audit work. She stated that when she left the mail center she was proceeding to the office to leave the document stamps and to get the forms she needed for the next day (she apparently was not planning on going into the office the morning of the 10th before she left for (city) because of the time that she needed to be in (city)). She stated that at an intersection on the way to the office (she would use the same route if she were going to her residence from the mail center) she was struck by an automobile, which resulted in injury to the cervical area. She testified that she had previously gone from an audit site and from the mail center back to the office, but that at other times there was no need to go back to the office. The supervisor testified that she did not know of any reason for the claimant to have to go back to the office from the mail center on the occasion in question but indicated it was within the claimant's course and scope of employment to pick up the stamps and bring them to the office. The supervisor

testified that it was possible that the claimant needed to go to the office to get something for the (city) trip but that she, the claimant, could have anticipated it before and gotten it when she left the office to go on the audit earlier that day.

The thrust of the carrier's position is twofold: that the claimant's travel was not in the course and scope of employment as that term is defined in Section 401.011(12)(a), and that the "dual purpose" exception to travel by an employee as provided under Section 401.011(12)(b) was not established by the evidence. Although the hearing officer found that:

> [b]ut for the need to leave the documents at the mail center and to collect the documents stamps, and but for the Claimant's need to deliver the stamps to the office and retrieve the documents she believed she needed for her (city) audit, the Claimant would not have been at the (place of the accident) on the evening of (date of injury), and would not have been struck by another automobile,

her decision is not footed on the "dual purpose" doctrine but rather is, as is evident from her other findings and conclusions, based upon the claimant being in the course and scope of her employment at the time of the accident and not merely traveling to or from her place of employment. Under Section 401.011(12), course and scope does not include "transportation to and from the place of employment" unless one of three express conditions are met: transportation is furnished as a part of the contract of employment, means of transportation are under the control of the employer, or employee is directed to proceed from one place to another. Given the state of the evidence, we do not find that either of the subsections under Section 401.011(12) applicable. Rather, the facts as found by the hearing officer, and as supported by sufficient evidence if the testimony of the claimant is believed by the hearing officer as it must have been, take the case out of the travel to or from place of employment and the dual purpose doctrine. If, as the hearing officer found, the claimant was not on her way home but was merely continuing on her business day by going to the office before quitting for the day and going home, and she continued performing an activity "that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by (the claimant) while engaged in or about the furtherance of the affairs or business of the employer," she would be in the course and scope of her employment. The claimant's testimony was that at the time of the accident she was on the way to the office to perform several work related functions i.e., deliver some stamps and pick up items she considered necessary for the next day's trip to (city). There was testimony that such a trip was not unusual and that she had previously traveled from the mail center to the office and that delivering the stamps and picking up items for an audit were consistent with her employment duties. For that matter, although the supervisor opined that she did not know of any reason the claimant would have to go from the mail center to the office on the evening in question, she stated it was within the course and scope of the claimant's duties to deliver the stamps and that she knew the claimant traveled to and from the mail center regularly and that it was possible for the claimant to have to go to the office for something for (city). The supervisor seemed to reason that the claimant should have anticipated any such need earlier in the day and taken care of it before she left the

office to do the audit.

We find the decision and reasoning of the Texas Supreme Court in Evans v. Illinois Employers Insurance of Wausau, 790 S.W.2d 302 (Tex. 1990) to be instructive in this case. That case discusses the exclusion of travel to and from work from workers' compensation coverage. Basically, coverage does not apply while an employee is on his or her way to or from work since travelling to and from work are risks shared by society as a whole. However, the decision makes clear that once at work and subsequently travelling in the furtherance of the employer's business, there would be coverage. In Evans, what took the deceased employee outside the scope of coverage was that his injury occurred while enroute from his home to a safety meeting. The employee's normal duty location and starting time of 8:00 a.m. was different on Mondays when employees were required to attend a safety meeting that was located a mile and a half from the usual work site and started at 7:30 a.m. On the way to the safety meeting the employee was killed in an accident. The court held that the injuries fell squarely within the "coming and going" rule and noted that had the injured employee been injured enroute from the safety meeting to the primary work site, there would have been coverage. The "going from work" aspect of the case before us applies. The claimant had not, as determined by the hearing officer, ended her work day but was going to the office as a continuing part of her duties and furthering the interests of her employer. Once she had completed her business at the office, she would have embarked on the going from her place of employment provision of Section 401.011(12). *See* also Texas Worker's Compensation Commission Appeal No. 93693, decided September 23, 1993.

While there may be some degree of conflict in the testimony and evidence, this is for the hearing officer as fact finder to resolve. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex.Civ.App.-Amarillo 1974, no writ). The hearing officer was free to believe the testimony of the claimant although she was an interested witness. Highlands Insurance Company v. Baugh, 605 S.W.2d 314 (Tex.Civ. App.-Eastland 1980, no writ). Only were we to determine, which we do not from the record before us, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would there be a sound basis to disturb the decision. Cain v. Bain, 709 S.W.2d 175,

(Tex. 1986); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. Finding the evidence sufficient to support the finding and conclusion of the hearing officer that the claimant sustained a compensable injury in the course and scope of her employment, we affirm the decision.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Thomas A. Knapp
Appeals Judge