APPEAL NO. 980330

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 18, 1997. He (hearing officer) determined that the motor vehicle accident (MVA) in which the appellant (claimant) was injured on _____, occurred on the route to both the drug store that he used for film developing for the employer and claimant's home; that the claimant was not injured in the course and scope of his employment when he was involved in an MVA on _____; and that since the claimant did not sustain a compensable injury, he did not have disability. The claimant appealed, urging that the hearing officer erred in applying the dual purpose doctrine set forth in Section 401.011(12)(B) and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision that he sustained a compensable injury and had disability. The respondent (carrier) replied; cited Texas Workers' Compensation Commission Appeal No. 941569, decided January 5, 1995; urged that the hearing officer properly applied the law to the facts; and requested that the decision of the hearing officer be affirmed.

DECISION

We reverse the decision of the hearing officer; render a decision that the claimant sustained a compensable injury on _____; and remand for the hearing officer to determine whether the claimant had disability, and if so, for what period or periods.

The claimant worked as senior vice president of the eastern division of the employer. He testified that he had film developed for use in the employer's business and that he always had the film developed at a drug store near his residence. On _____, he left work a little early to take film related to the business of the employer to the drugstore that is about four blocks from his residence and to go to his residence to prepare for a business trip the next morning. Before he arrived at the intersection at which he would turn left to go to the drugstore or right to go to his residence, he was involved in an MVA. At the hearing, the carrier argued that Appeal No. 941569, *supra*, applied and that the claimant was not in the course and scope of his employment at the time of the accident. In that decision, the decedent left the office early, planned to obtain supplies for the employer at a store and then go to his residence, and at the time of the accident was on a road at a location prior to the intersection where he could elect to go to the store or to his residence. Section 401.011(12) defines course and scope of employment and provides in part:

The term does not include:

(B) travel by the employee in the furtherance of the affairs or business of the employer if the travel is also in furtherance of personal or private affairs of the employee unless:

(i) the travel to the place of occurrence of the injury would have been made had there been no personal or private affairs of the employee to be furthered by the travel; and

(ii) the travel would not have been made had there been no affairs or business of the employer to be furthered by the travel.

In Appeal No. 941569, the Appeals Panel held that the trip was for a dual purpose that required the application of the two-pronged test in Section 401.011(12)(B) and that applying that standard, the travel was not in the course and scope of employment. In the case before us, the hearing officer agreed with the argument of the carrier and determined that the claimant did not sustain an injury in the course and scope of his employment. After the Appeals Panel rendered its decision in Appeal No. 951569, the beneficiaries sought judicial review, and the district court determined that the decedent was in the course and scope of his employment at the time of the accident. In St. Paul Fire and Marine Insurance Company v. Confer, 956 S.W.2d 825 (Tex. App.-San Antonio 1997, Petition for Review pending, No. 980082), the court affirmed the district court decision and wrote:

> In other words, Dr. Confer's fatal trip consisted of segments including work to business errand and business errand to home. Applying the logic of the cases discussed above, an injury occurring between work and the business errand would be compensable because the employee had not completed work, while an injury occurring between the business errand and home would not be compensable because the employee's work would be finished.
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> The fact that Altex (the business where the supplies were to be purchased) happens to be along the same route as his route home should be of little consequence. Why should the result be any different if Altex had been located somewhere off of Interstate 35, forcing Dr. Confer to travel away from his regular route? The controlling issue should be whether the employee is traveling on behalf of his employer *at the time* of the accident, not on what road he happens to be traveling. [Emphasis in original.]

Because of the decision of the Court of Appeals in Confer, we reverse the determination of the hearing officer that the claimant was not injured in the course and scope of his employment and render a decision that he was injured in the course and scope of his employment on _____. The hearing officer did not make a determination on what days, if any, the claimant was unable to obtain and retain employment at wages equivalent to the preinjury wage as a result of the injuries sustained on _____; a dispute exists as to what those days are; and the Appeals Panel does not have fact finding

authority. We reverse the determination of the hearing officer that the claimant did not have disability and remand for him to make determinations on the issue of disability.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge