

APPEAL NO. 990588

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 8, 1999. With respect to the issues before him, the hearing officer determined that the appellant (claimant) "was injured on _____"; that she "was not injured in the course and scope of employment"; that she "did not sustain a compensable injury to her neck, right shoulder, back, tailbone, and left ankle on _____"; and that she did not have disability. In her appeal, the claimant argues that the hearing officer erred in finding that she did not sustain a compensable injury and that she did not have disability. In its response the respondent (carrier) urges affirmance.

DECISION

Reversed and remanded.

The claimant testified that on _____, she was working as a driver/guard for (employer). She stated that she had returned to a light-duty position on that date after having sustained a compensable left ankle injury on September 12, 1997. She testified that on _____ she stayed in the armored vehicle at a bank, while her two coworkers "were making a drop." She stated that she was sitting on the passenger side of the truck, when it was struck from behind by another armored vehicle that was attempting to leave the parking lot. She explained that a deadbolt lock fell and hit her right shoulder in the impact and that she was "jolted" forward, causing injury to her neck and back and additional injury to her left ankle. On cross-examination, the claimant explained that she braced herself with her feet to keep from falling forward and that, in doing so, she was injured. The claimant testified that she reported her injury when she returned to the station. Thereafter, she attended a meeting where the employees were advised that there was going to be a reduction in force based on seniority.

Ms. R testified at the hearing that at the time of the claimant's alleged injury she was the employer's safety/security supervisor. Ms. R stated that she first learned of the incident on _____, from the dispatcher who advised her that another armored vehicle had "tapped" one of the employer's armored vehicles and that there was no injury or damage to the truck. Ms. R testified that she approached the claimant to ask her what happened and if she was okay and the claimant said she was. Ms. R also stated that she looked for damage on the vehicle and did not find any. Finally, Ms. R testified that she had been involved in an accident where she was sitting in a stationary armored vehicle that was struck by another vehicle. She stated that although there was damage to her vehicle, she did not feel the impact, she only heard it.

The carrier introduced an accident report written by the driver of the armored vehicle that struck the vehicle in which the claimant was sitting. He explained that he was parked between two armored vehicles, that he backed up as far as he could and cut his wheels as far as he could to the right, that he started to let the truck ease forward, without putting his

foot on the accelerator, and that his vehicle "slightly bumped" the truck in front of it. He stated that he got out of the truck and saw that neither vehicle was damaged and that the person in the vehicle he hit did not appear to be injured, so he continued his route.

As noted above, the hearing officer made findings of fact that the claimant "was injured on _____," and that she "was not injured in the course and scope of employment." In addition, the hearing officer made conclusions of law that the claimant "was injured on _____" and that she "did not sustain a compensable injury to her neck, right shoulder, back, tailbone and left ankle on _____." Those findings and conclusions are internally inconsistent; thus, we are somewhat puzzled as to the hearing officer's resolution of the injury issue. In its response to the claimant's appeal, the carrier acknowledges the problems with the findings and conclusions. Specifically, the carrier states:

Even if there are inconsistencies in the Findings of Fact and Conclusions of Law which cannot be reconciled, the Officer leaves no doubt as to his determination in the "Decision" and "Order" that there was no injury at work on 10-6-97 for which compensation is due by Carrier. To the extent the Panel feels it necessary to reconcile discrepancies in the Findings of Fact and Conclusions of Law to conform to the "Decision" and "Order", Carrier would request the Panel to render a decision that does so.

While we agree that the discrepancies in the findings and conclusions cannot be reconciled, we cannot agree with the carrier's assertion that the hearing officer "leaves no doubt as to his determination." We are particularly concerned with the hearing officer's determination that the claimant was not injured in the course and scope of her employment. A course and scope issue was not advanced by the carrier in this case and none is apparent from the record. The hearing officer seems to believe that the claimant, a driver/guard for an armored car company, was sitting in an armored vehicle in a bank parking lot on _____, when the truck was struck by another armored vehicle. Thus, it follows that the claimant was involved in an incident or accident in the course and scope of her employment. However, that does not end the inquiry as to whether the claimant sustained an injury, that is, damage or harm to the physical structure of the body, in that accident. See Section 401.011(26). We have previously recognized that not every incident or accident in the course and scope of employment equates to an injury as that term is defined in Section 401.011(26). Texas Workers' Compensation Commission Appeal No. 93466, decided July 26, 1993; Texas Workers' Compensation Commission Appeal No. 92058, decided March 26, 1992. The hearing officer could believe that the incident or accident in this case, albeit occurring in the course and scope of employment, did not cause injury to the claimant, but that is not the only reasonable interpretation of the evidence. As noted above, the hearing officer made irreconcilable findings and conclusions and, as such, his injury determination is unclear. Accordingly, we reverse the decision and order and remand for the hearing officer to determine, based on the evidence before him, if the claimant sustained a compensable injury on _____, and if she had 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.

Elaine M. Chaney
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Dorian E. Ramirez
Appeals Judge