

APPEAL NO. 990949

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 April 1, 1999. The single issue before the hearing officer was whether the respondent (claimant) was in the course and scope of his employment when involved in a motor vehicle accident (MVA) on \_\_\_\_\_. The hearing officer determined that the claimant was in the course and scope of his employment at the time of the accident and was entitled to benefits. The appellant (carrier) appeals, urging error as a matter of law in three of the hearing officer's findings of fact and one conclusion of law, and arguing that this is a case where the going to and from work rule applies precluding a holding that the claimant was in the course and scope of his employment at the time of injury. The claimant urges that there is sufficient evidence to support the factual findings of the hearing officer, that exceptions to the going to and from work rule has been shown, and that the decision should be affirmed.

DECISION

Reversed and a new decision rendered.

The claimant sustained serious injuries in an MVA at about 6:45 a.m. on \_\_\_\_\_. At the time of his accident, he had left his home in a company-owned truck (his father was the owner of the company and the truck), had stopped to get gasoline, and was subsequently hit in an intersection on the way to the company office. The company office was not the usual place he reported to work or performed his job as a foreman, rather, he would go to one of the work sites where the company was performing sheet metal work. The night before \_\_\_\_\_, the claimant's father had called and told him that he was going out of town early and that he wanted the claimant to come in early to the office to get payroll checks (this was usually done by the father) and materials to distribute to work sites. The claimant said it was not usual for him to do this and he only did so four or five times a year. The claimant also testified that he had a company truck, that the truck was maintained (including the cost of gasoline) by the company, and that he was not to use and did not use it for personal reasons. Claimant stated that but for his father directing him to go to the office, he would have left a little later and gone to a work site. He did not regularly go to the office and stated that he was paid hourly and was "on the clock as soon as I left the driveway." There was also a steel fabrication operation at the location of the office and claimant stated that on rare occasion he would help out there.

The hearing officer's findings and conclusion on appeal are:

**FINDINGS OF FACT**

3. The Claimant's normal duties were that of a job foreman on an air conditioning and heating crew at a particular job-site.

4. On \_\_\_\_\_, the Claimant was not traveling to his normal job-site but rather was directed by his Employer to the home office to carry out tasks that were not part of his regular or routine duties.
5. The Claimant was driving a company truck and was furthering the Employer's business affairs when he was injured in the [MVA].

### **CONCLUSION OF LAW**

3. The Claimant was injured in the course and scope of his employment when he was involved in a [MVA] on \_\_\_\_\_.

Under Section 401.011(12) the term course and scope of employment, in pertinent part, does not include:

- (1) transportation to and from the place of employment unless:
  - (i) the transportation is furnished as a part of the contract of employment or is paid for by the employer;
  - (ii) the means of the transportation are under the control of the employer; or
  - (iii) the employee is directed in the employee's employment to proceed from one place to another place.

The rationale for this transportation to and from work exclusion from course and scope lies in the fact that injuries resulting during such transportation is a hazard that the general public is exposed to on the public highways rather than risks and hazards inherent in or originating in the employment. Texas General Indemnity Company v. Bottom, 365 S.W.2d 350 (Tex. 1963). That the claimant's "normal duties" were as a job foreman does not place this case in the category of a special mission as an exception to the provision of Section 401.011(12). The Supreme Court of Texas held in Evans v. Illinois Employers Insurance of Wausau, 790 S.W.2d 302 (Tex. 1990), that an employee who was killed on his way to a special safety meeting was not in the course and scope of his employment, as a matter of law, notwithstanding the fact that the safety meeting started earlier and at a different location than the employee's regular work. An employer may direct an employee to begin work (or the work may end) at a different location other than the normal work location without thereby creating a "special mission." Texas Workers' Compensation Commission Appeal No. 961503, decided September 16, 1996; *compare* Texas Workers' Compensation Commission Appeal No. 93814, decided October 26, 1993. The findings that the claimant's normal duties were that of a job foreman and that he was not performing his regular duties or traveling to his normal job site does not place this case in a category as an exception to the "coming and going" rule. Evans, supra; Texas Workers' Compensation Commission Appeal No. 941340, decided November 10, 1994.

While the evidence showed that the claimant drove a truck owned by the company (no indication it was a part of the contract of employment) and was driving it at the time of the accident, this is not a sufficient basis to hold that he was thereby in the course and scope of his employment at the time of the accident. As was stated in Texas Workers' Compensation Commission Appeal No. 950361, decided April 24, 1995, a finding that transportation is furnished or controlled by the employer does not end the inquiry into compensability. The Appeals Panel cited Rose v. Odiorne, 795 S.W.2d 210 (Tex. App.-Austin 1990, writ denied), where the court stated "proof of this fact does not entitle appellant to compensation but only prevents his injury from being excluded from coverage simply because it was sustained while he was traveling to or from work. . . . Appellant was still required to prove that his injury satisfied the (statutory) requirements" that the injury was sustained in the course and scope of employment. In Wausau Underwriters Insurance Co. v. Potter, 807 S.W.2d 419, 421-422 (Tex. App.-Beaumont 1991, writ denied) the court stated that "the mere furnishing of transportation by an employer does not automatically bring the employment within the protection of the Texas Workers' Compensation Act." The claimant still must prove he was acting in the course of his employment at the time of injury. Rose, supra. Other than being on his way to the particular location of his employment that day and driving a company truck, there was no business being furthered by the claimant's activity at the time of the injury. *Compare* Texas Workers' Compensation Commission Appeal No. 93634, decided September 2, 1993. With the constraints of Section 401.011(12)(A) and the Court and Appeals Panel decisions cited, this did not establish that the claimant was in the course and scope of his employment at the time of injury; rather, that he was merely going to his place of employment when the unfortunate accident occurred.

From the evidence and the findings, and applying the provision of the 1989 Act, the case law and Appeals Panel decisions, we hold that the claimant was not in the course and scope of employment at the time of the accident and his injury and that workers' compensation benefits are not owed.

Accordingly, we reverse the decision of the hearing officer and render a new decision that the claimant was not injured in the course and scope of his employment. The carrier is relieved of liability.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge