APPEAL NO. 991341

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 (CCH) was held on May 18, 1999. He made the following findings of fact and conclusion of law:

FINDINGS OF FACT

4. As a purchasing agent for the Employer the Claimant [appellant] would from time to time purchase office supplies before, during or after working hours, using her own automobile.

5. The Employer was aware of the Claimant's actions, but the Employer did not require those actions.

6. The Employer did not compensate the Claimant for mileage incurred in purchasing office supplies with her own vehicle.

7. On Monday, _____, the Claimant went from her home to (office supply store) to buy office supplies for the Employer.

8. The Employer did not furnish or pay for or control the means of transportation by the Claimant.

9. The Employer did not direct the Claimant to proceed from her home to (office supply store).

10. After completing her purchase at (office supply store), the Claimant drove by her home and proceeded to work by the normal route she took everyday.

11. The Claimant stopped at a service station to put air in a low tire.

12. The tire exploded in the Claimant's face while she was putting air into it, causing injury to her eardrums and the loss of hearing.

13. The travel by the place of the injury would have been made by the Claimant in her routine travel to and from work.

14. The travel would have been made past the place of the injury even if there had been no affairs or business of the Employer to be furthered by the travel.

15. Even if the Claimant had been on a special mission for office supplies for the employer, she would have completed the special mission and

resumed her standard route for travel to work by the time she reached the place of the injury.

16. The origin of the Claimant's injury was in the explosion of the tire, a matter in which the Employer had no causal relationship.

CONCLUSION OF LAW

3. The Claimant did not sustain a compensable injury on _____.

The claimant appealed each of those findings of fact except for numbers 4, 6, 7, and 12. She attached to her appeal a job description, her time reports for four weeks in January 1999, her payroll statement for January 1999, a page concerning hours worked and compensation, and the ombudsman assistance request that she signed and contended that those documents established that she was fulfilling the duties of her job when she was injured. The claimant also contended that she did not receive effective ombudsman assistance to establish an exception to the dual purpose rule and that the personal comfort and safety doctrine applied. She requested that the Appeals Panel reverse the decision of the hearing officer or, in the alternative, remand the case for the hearing officer to consider the documents attached to her appeal. The respondent (self-insured) replied, urged that the record does not establish that the claimant received ineffective assistance from the ombudsman, that the claimant has not met the test for reversing and remanding for the hearing officer to consider documents that were not offered into evidence at the hearing, stated that the claimant complains of minute aspects of findings of fact that have no bearing on the conclusion of law that the claimant did not sustain a compensable injury and specifically addresses each of the nine appealed findings of fact; urged that the claimant has not shown that the findings of fact made by the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; and requested that the decision of the hearing officer be affirmed.

DECISION

We reverse and render.

The claimant testified that she is a purchasing agent for the self-insured; that she worked for self-insured for about two years; that Ms. S, her direct supervisor, had previously asked her to purchase items before she came to work, during work, or after work; that she had the discretion to purchase items when it was convenient or when it was necessary; and that she was not reimbursed for using her automobile to make purchases for the self-insured. The claimant stated that on the Friday afternoon before that accident on Monday, she told Ms. S that she would be late on Monday morning because she was going to buy office supplies; that on Monday morning she drove a direct route from her residence to an (office supply store) to purchase items for the self-insured; that after purchasing the items, she noticed that a tire on her car was very, very low; that she drove back in the direction of her residence using the same route that she used to get to the

(office supply store) that passed within about two blocks of her residence; that, after she passed the area of her residence, she drove the route that she normally used to go to work and stopped at a service station that she knew had equipment to put air in the tire; that when she was putting air in the tire, it exploded; and that she called Ms. S to tell her what had happened before she was taken by ambulance to a hospital.

The claimant introduced a map that showed that she drove about 20 blocks from her residence to the store, that she drove back the same route, that she drove about 20 blocks past the area of her residence to the service station at which the explosion occurred, and that she was driving the route that she normally used to go to work. She also introduced receipts from the store where she made the purchase the day of the accident that showed that she had made purchases for the employer on other days at 8:04 a.m.,11:30 a.m., 12:48 p.m., 1:03 p.m., and 4:20 p.m. and at 7:50 a.m. on the day of the accident. In a memorandum to the Texas Workers' Compensation Commission dated February 22, 1999, Ms. S stated:

> [Claimant], an Administrative Associate with (University), was injured during the course and scope of her workday on _____. [Claimant] is the purchasing agent for our office and while functioning in that capacity, she stopped at an office supply store to make purchases needed for a career fair that our office was coordinating. I had asked her to stop in on the way to work at an office supply store close to her home on a number of occasions so that she could make the most efficient use of her time. She did as I had requested and after making the purchases for our office, she noticed her car tire was low and stopped at a garage to fill it. It was while doing so that [claimant] was injured.
>
> Her trip was in the furtherance or [sic] our business and she was doing as I had asked. [Claimant] suffered this injury while working for University. Since then, I realize that stopping in to run an errand on the way to or from work is not something that should be asked of employees. However, I was never before told that this was something that staff should not do and in the interest of saving time, it was a standard we had followed. This will no longer be the case in our office. In the interest of justice, I would encourage The University to support this loyal employee who was carrying out her job responsibilities as requested by her supervisor.

Medical records indicate that the claimant was injured on _____.

We first address the claimant's contention that she did not receive adequate ombudsman assistance. At the CCH, the hearing officer asked the claimant if she understood that the CCH was a legal proceeding with legal ramifications and that she had the right to be represented by an attorney. She responded that she did. The hearing officer also asked, "[a]nd do you choose to waive that right for these proceedings and represent yourself with the assistance of the ombudsman?" The claimant responded,

"[y]es, sir." The ombudsman made an opening statement for the claimant, assisted in having 11 claimant's exhibits admitted into evidence, examined the claimant, made closing statements for the claimant, and presented the hearing officer with copies of four Appeals Panel decisions concerning injury during travel for his consideration. We have reviewed the record and do not conclude that the claimant has established that she did not receive adequate ombudsman assistance at the CCH.

We next address the documents attached to the appeal by the claimant and the request that the case be reversed and remanded to the hearing officer for him to consider those documents that were not offered at the CCH. In her appeal she wrote:

> Claimant believes this new evidence clearly shows that she was fulfilling the duties of her job. Claimant was not acting in a dual capacity by traveling on the most direct route she took to the office, and that Claimant has a right to act for her personal comfort and safety.

In Texas Workers' Compensation Commission Appeal No. 92444, decided October 5, 1992, the claimant submitted with his appeal a document that was not offered into evidence at the CCH. The Appeals Panel wrote:

> Where there is a claim of newly discovered evidence, as there is here, we evaluate the evidence to determine if there is a sound basis to cause a remand for further consideration and development of evidence. In doing so, we look to the guidelines provided in Texas case authority. It is incumbent on a party who seeks a new trial on grounds of newly discovered evidence to establish: (1) the evidence has come to the knowledge of the party since the hearing; (2) it was not owing to want of due diligence that it did not come sooner; (3) the evidence is not just cumulative; and (4) the evidence is so material it would probably produce a different result if a new hearing were granted. *See* Jackson v. Van Winkle, 660 S.W.2d 807 (Tex. 1983); Texas Workers' Compensation Commission Appeal No. 92124 (Docket No. omitted), decided May 11, 1992.

We note that all four of the parts of the test must be met. The claimant certainly had knowledge of her job description, her January 1999 weekly time reports, her January 1999 payroll statement, and the ombudsman assistance request form that she signed on March 11, 1999, prior to the CCH conducted on May 18, 1999. It appears that she would have also had knowledge of the self-insured's document concerning hours worked and compensation. The job description is for a "Coordinator for Administration - Admin. Associate" and includes "[p]urchase office supplies, furniture, and equipment on an as needed basis." A weekly time report indicates that on _____, the claimant worked one-half of an hour and was on sick leave for seven and one-half hours. The hours worked and compensation document contains:

'471. **Home-to-work Travel**

As a general rule, home-to-work travel is not compensable, even if an employee must travel from a town to an outlying site to get to the employer's premises. Generally, an employee is not at work until he or she reaches the work site (*Dillon v. Northern States Power Co., No. 75-1612, 22* W.H. *Cases (BNA) 1187 (8th Cir. 1976) -- digested in Appendix IV).* But if an employee is required to report to a meeting place where he or she is to pick up materials, equipment, or other employees, or to receive instructions, before traveling to the work site, compensation time starts at the time of the meeting.

Some of the information is cumulative of the contents of the letter from Ms. S. The exception in '471 concerns meetings. The claimant has not shown that the evidence is so material that it would probably produce a different result if a new hearing was granted. The documents attached to the appeal do not meet all of the requirements for the Appeals Panel to reverse and remand for them to be considered by the hearing officer. We do not reverse and remand for the hearing officer to consider them.

The claimant also contends that the decision of the hearing officer should be reversed because she did not know of legal theories or bases which she feels are important to her case. The Appeals Panel has on numerous occasions stated the ignorance of statutory or regulatory requirements is not an excuse for noncompliance or inaction. For example, *see* Texas Workers' Compensation Commission Appeal No. 951487, decided October 19, 1995. In an unpublished decision, Texas Workers' Compensation Commission Appeal No. 981939, decided September 30, 1998, the claimant contended that he received bad advice from an attorney and the Appeals Panel stated that ignorance of the law was not an excuse that relieved the claimant. We do not reverse and remand because of the claimant's contention of ignorance of the law.

We next address the appealed findings of fact and conclusion of law. In the letter dated February 22, 1999, Ms. S stated that the claimant is the purchasing agent for the office; that she had asked the claimant to stop in on the way to work at an office supply store close to her home on a number of occasions so that she could make the most efficient use of her time; that on _____, the claimant stopped at an office supply store to make purchases for a career fair that the office was coordinating; and that she was injured before she arrived at the office. Sales receipts from the supply store are in evidence. The claimant testified that she told Ms. S that she would be late on Monday because she was going to buy office supplies. Finding of Fact No. 9 that the employer did not direct the claimant to proceed from her home to the supply store is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We reverse Finding of Fact No. 9 and render a finding of fact that the claimant was directed to proceed from her home to the office supply store on _____.

In Texas Workers' Compensation Commission Appeal No. 941234, decided October 31, 1994, the Appeals Panel addressed dividing special missions into going to and coming

from and wrote:

> We decline to subdivide a "special mission" into "going to" and "coming from" components such that each must be expressly directed by the employer. On the contrary, we believe that "if an employee is sent on a special mission, he is considered as still on such mission while returning from the place to which he was required by his employer to go, unless he deviates from the purpose of his mission and engages in an enterprise of his own." Hartford Accident and Indemnity Company v. Bond, 199 S.W.2d 293, 297 (Tex. Civ. App.-Eastland 1947, writ ref'd n.r.e.).

Concerning the duel purpose provisions in Section 401.011(12), the hearing officer performed an analysis similar to that of the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 941569, decided January 5, 1995. The decision in Appeal No. 941569 was reversed in St. Paul Fire and Marine Insurance Company v. Confer, 956 S.W.2d 825 (Tex. App.-San Antonio 1997, pet. denied). *See also* Texas Workers' Compensation Commission Appeal No. 980330, decided April 1, 1998, citing Confer, *supra*. In Confer, the court stated:

> The controlling issue should be whether the employer is traveling on behalf of his employer at the time of the accident, not on what road he happen to be traveling.

At the time the claimant was injured, she had departed the office supply store where she had purchased the items for the self-insured and had not yet delivered the items to the office in which she worked and for which the items had been purchased. In Texas Workers' Compensation Commission Appeal No. 961229, decided August 8, 1996, the Appeals Panel affirmed a determination that the claimant was injured in the course and scope of employment while changing a flat during a special mission. That the vehicle used on the special mission was owned by the claimant would not result in the injury not being in the course and scope of employment. Finding of Fact No. 15 appears to be partly a conclusion of law and is not consistent with Appeal No. 941234, *supra*; Confer, *supra*; and Appeal No. 980330, *supra*, and the part of that finding of fact which states that she had completed the special mission by the time she reached the place of injury is reversed.

We reverse Conclusion of Law No. 3 and the decision of the hearing officer that the claimant did not sustain a compensable injury on _____, and render a conclusion of law and decision that the claimant did sustain a compensable injury on _____.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Alan C. Ernst
Appeals Judge