APPEAL NO. 991346

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 27, 1999, a hearing was held. She determined that appellant (claimant) was not injured in the course and scope of employment on _____, and therefore had no disability. Claimant asserts that it was part of her job to accompany Ms. F, the lady she attended in performing her work, that Ms. F and she were going to stop and shop on the day in question, and that Ms. F controlled her work and she accompanied Ms. F. Respondent (self-insured) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer). Employer's responsibility to Ms. F, an elderly lady with medical problems, was not set forth at the hearing. Documents do show that when claimant was hired by employer, she was instructed to perform "bathing, dressing, exercising, grooming, routine hair/skin care, transfer/ambulation, cleaning, laundry, meal preparation, shopping, and asst. with self-administered medication." were checked or marked to show that they applied to care for Ms. F. Other services imprinted but not checked or marked on any form in evidence were "escort" and "transportation." Also admitted, perhaps to show what "escort" entailed, was a list of definitions which said that "escort" meant "arranging for transportation" and "accompanying client to clinic, doctor's office or other trips made for the purpose of obtaining medical diagnosis or treatment." This definition of "escort" (as stated, "escort" was not included in any document in evidence as applicable to claimant's care for Ms. F) may be the basis for the hearing officer's comment in her Statement of Evidence that claimant was "to arrange transportation and/or accompany Ms. F to her doctor's appointments or to health care facilities for the purpose of obtaining medical diagnosis or treatment."

Claimant testified that Ms. F told her to accompany her when Ms. F shopped for groceries.

There is no dispute that on the day in question Ms. F drove to City 1 from City 2, to see her niece who was hospitalized there. Claimant went with her. The trip occurred during the time of day when claimant worked for employer by assisting Ms. F. On the way back to City 2 from City 1, while still east of City 3, there was a car wreck, with claimant sustaining injuries.

Claimant testified that Ms. F was going to stop for groceries upon returning from City 1. There was no testimony that the accident occurred as Ms. F was exiting the highway from City 1 to enter a grocery store.

Ms. F gave two statements. In both she said that claimant was not to work on the day in question, _____, but that claimant wanted to come with her when she visited her niece in City 1. Ms. F also said that, generally, claimant was to "go to the grocery store for [her]," but answered, "No," to a question that asked whether claimant was "required to take you to the doctor?"

Claimant agreed that the forms which set forth her work and which checked off various activities as listed at the beginning of this opinion, were filled out by Ms. Fa, an employee of employer, who explained the duties at Ms. F's house with Ms. F translating. Claimant agreed that Ms. Fa marked the duties that were listed for her to do.

There was no evidence that Ms. F worked for employer or, in any other way, except for claimant's testimony, became claimant's supervisor; there was no finding of fact that Ms. F was claimant's supervisor. Whether or not claimant was working on _____ or was not, and whether or not claimant was to accompany Ms. F to do grocery shopping, there is no evidence that claimant was to accompany Ms. F to go to City 1 to visit Ms. F's sick niece whether or not any shopping was to be done in City 2 after returning from City 1.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. Claimant appeals Finding of Fact No. 3 which says, "[c]laimant's work activities did not include accompanying [Ms. F] to any outings other than to doctor's appointments or healthcare facilities for medical treatment." Since claimant did not specifically appeal the latter part of this finding which, in effect, says that claimant was to accompany Ms. F to doctor's appointments, we will not reverse that part of the finding of fact that begins with the word "other." Claimant also disagrees with Finding of Fact No. 5, which says, "[a]ccompanying [Ms. F] to visit her niece in City 1 on _____ was not an activity performed in furtherance of the affairs or business of the employer." That finding of fact, in its entirety, is sufficiently supported by the evidence. Finally, claimant disagrees with Finding of Fact No. 7, which says, "[b]y accompanying [Ms. F] on her trip to City 1, Claimant deviated from the course and scope of employment." *See* Texas Workers' Compensation Commission Appeal No. 961565, decided September 25, 1996, which held that a deviation for a personal reason took that claimant out of the course and scope of employment. Finding of Fact No. 7 is sufficiently supported by the evidence, if an implied finding of fact is made that claimant was working that day as opposed to not working as stated by Ms. F. The evidence sufficiently supports the determination that claimant was not injured in the course and scope of employment and therefore there is no compensable injury.

Since there is no compensable injury, there can be no disability. *See* Section 401.011(16).

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge