APPEAL NO. 991364

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 990488, decided April 22, 1999, the Appeals Panel reversed the determination that the respondent (claimant) was injured in the course and scope of her employment under the personal comfort doctrine and remanded for further findings of fact and consideration of the effect of the special mission doctrine on the issue of course and scope. A hearing on remand was held on May 24, 1999, as a result of which the hearing officer, again found the injury in the course and scope of employment. The appellant (self-insured) appeals these determinations, arguing error as a matter of law and that the determination was against the great weight and preponderance of the evidence. The appeals file contains no response from the claimant.

DECISION

Reversed and a new decision rendered.

The background facts and applicable law are contained in Appeal No. 990488. Briefly, the claimant, a school bus driver, was directed to drive a school track team to a track meet on Saturday morning, _____, in a city some half-hour's driving distance away. The claimant said she was told to remain at the track meet until it was over and then return with the team. She testified that she estimated the track meet would last late into the afternoon or early evening. There was other evidence that the event began at 8:00 a.m. She said that at about 8:15 a.m., she departed the site of the track meet in the bus to obtain a cup of coffee, which she described was her normal "breakfast." According to information developed on remand, the claimant was involved in an accident with the bus approximately 6/10ths of a mile distant from the track meet. She further said that she was unfamiliar with the city and was looking for a place to buy a cup of coffee. In doing so, she said, she declined to stop at closer locations in order to avoid the traffic generated by the track meet.

In Appeal No. 990488, *supra*, we questioned the applicability of the personal comfort doctrine in this case because the injury occurred off the premises of the work site and requested that the hearing officer make findings of fact as to what "special circumstances" might make that doctrine applicable. We further speculated that the only "special circumstances" arguably relied on by the hearing officer, that is, that the "concession stands [at the site of the track meet] were closed" when the claimant wanted a cup of coffee, may not be sufficient "in the absence of other evidence or findings about the length of the workday or when those concessions would open." At the hearing on remand, the claimant testified that she did not know when the concessions would open, but thought it would be for lunch. Mr. E, an investigator for the self-insured, testified that he was told by the athletic director that the concessions would probably open about 9:00 a.m., depending on when the volunteer staff arrived. The hearing officer found the concession stand "was not to open until lunch time," without further specifying what that time was. Finding of Fact

No. 3. Because the claimant arrived at 7:30 a.m., the hearing officer found "it was not unreasonable and of a special circumstance that the claimant had to leave the track field for coffee." Finding of Fact No. 3. She also found it not unreasonable for the claimant "to drive 6/10 of a mile for a cup of coffee for her 'breakfast' rather than a closer location because she was trying to avoid traffic caused by people coming to the track meet since she was driving a bus." Finding of Fact No. 4.

We observe, first, that the 6/10 mile distance was not the place where the claimant went for the coffee, but the place where the accident occurred. Thus, we cannot agree that it was proper to consider the personal comfort doctrine in terms of this distance. We also conclude that, regardless of when the concession stand opened, this effort to seek personal comfort some distance greater than 6/10 mile was not incidental to the employment. For these reasons, we reverse the determination that the injury occurred in the course and scope of employment to the extent that this determination was based on an application of the personal comfort doctrine and render a decision that the personal comfort doctrine did not apply in this case.[1]

As an additional basis for the determination that the injury occurred in the course and scope of employment, the hearing officer found that the claimant was on a special mission to transport the students to the track meet, "which lasted the entire day and part of the evening" and "which of necessity, included meal breaks." Findings of Fact Nos. 1 and 2. We agree that the claimant was on a special mission and stress that the injury did not occur while the claimant was driving to or from the track meet, but after she had arrived there and was waiting for the track meet to end. The question thus became whether she deviated from the special mission and was pursuing a personal errand when the injury occurred.

The hearing officer relied on and quoted from our decision in Texas Workers' Compensation Commission Appeal No. 972294, decided December 29, 1997, that "[i]njuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually compensable." In doing so, she presumably accepted at face value the claimant's testimony that a cup of coffee was in fact her breakfast meal and not simply a coffee break. For purposes of this opinion, we accept this characterization of the claimant's activities as seeking a meal, not engaging in a coffee break.

While eating in restaurants when away from home on a special mission of the employer may well be in the course and scope of employment, this conclusion is not true as a matter of law in every case without regard to the distance between the special mission work site and the restaurant. *See* Texas Workers' Compensation Commission Appeal No. 950973, decided July 31, 1995, which rendered a decision that travel to a restaurant some 15 miles away in another town was in the nature of a personal errand and not a necessity.

[1]The hearing officer listed her findings of fact and conclusions of law on remand as "ADDITIONAL," which we interpret as incorporating by reference the original decision and order. That original decision and order was premised on a determination that the personal comfort doctrine applied. However, in the "DECISION" portion of the decision and order on remand, the hearing officer relies exclusively on the special mission concept as the basis for finding the injury in the course and scope of employment.

In Appeal No. 972294, the Appeals Panel affirmed a finding that the claimant was in the course and scope of employment when injured while returning from lunch while attending an all day seminar at the direction of the employer. While this case does not disclose the location of the restaurant relative to where the seminar was held, it did cite the proposition that an employee under these circumstances is in the course and scope of employment throughout the day unless on a personal errand. In Texas Workers' Compensation Commission Appeal No. 972046, decided November 24, 1997, the Appeals Panel affirmed a finding that a claimant was not in the course and scope of employment when injured some distance away from the hotel where she was staying while looking for a particular kind of restaurant and it was not clear how far she intended to go to find a satisfactory restaurant.

In the case we now consider, as noted above, the hearing officer evaluated the question of whether the claimant was on a personal mission when injured in terms of the distance of 6/10ths of a mile from the track meet and in terms of her finding that there was no place to eat on the premises until "lunch time." This distance cited by the hearing officer had nothing to do with the place of the intended "breakfast" but was merely the place of the accident. The claimant, by her own testimony, did not know where she would find a suitable place to obtain coffee. The findings of fact that there was no place to obtain coffee at the track meet and that it was reasonable for the claimant to leave the premises do not in themselves establish that the claimant was not on a personal errand. The hearing officer further found that it was reasonable to travel beyond a "closer location" because the claimant wanted to avoid traffic caused by people coming to the track meet. And yet the claimant drove down another city street not knowing where it would lead. Whether the claimant was on a personal errand is generally a question of fact for the hearing officer to decide, Texas Workers' Compensation Commission Appeal No. 91019, decided October 3, 1991, and this determination is subject to reversal on appeal only if it 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). Having reviewed the record in this case, we conclude that the determination of the hearing officer that the claimant was not on a personal errand when injured is against the great weight and preponderance of the evidence. Specifically the claimant's testimony that she did not know where she would find an acceptable place to buy coffee along the route she was traveling and her objective of avoiding traffic compel the contrary conclusion that the claimant was on a personal errand and not in the course and scope of employment when injured.

For the foregoing reasons, we reverse the determination of the hearing officer that the claimant was in the course and scope of employment when injured and render a decision that the claimant was not injured in the course and scope of her employment on _____.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge