APPEAL NO. 000127

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 December 20, 1999. The hearing officer determined that the appellant (claimant) was not in the course and scope of employment on _____, when he was injured in a motor vehicle accident (MVA). The claimant appeals, expressing his disagreement with this determination. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a control technician on a natural gas pipeline. His employer was located in (city 1) and he lived in (city 2), some 12 miles away. Because he was subject to being called out on a job at any time, the employer allowed (and perhaps required) him to drive between his residence and the employer's office and to keep the truck at his residence when not on the clock. On the morning of _____, the claimant was directed to perform repairs at a location near (city 3). Before he left the job site in city 1 at about 7:00 p.m., he said, he called home to tell his wife that he was leaving. No one answered the phone, so he assumed she was at a campsite with their travel trailer at (campground), which was approximately 20 miles north of city 1 and city 2. The claimant then drove from city 3 past the employer's location in city 1, but instead of turning east to go to his home in city 2, he continued north towards the campground. Approximately 15 miles north of city 1 shortly after 11:00 p.m., he was injured in an MVA. He contends that these injuries were compensable because they were sustained in the course and scope of his employment.

A "compensable injury" is "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." Section 401.011(10). "Course and scope of employment" is defined, in pertinent part, as "an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer." Section 401.011(12). This includes activities conducted on the premises of an employer or at other locations, but does not generally include transportation to and from the place of employment except in certain limited circumstances; one of these, the "special mission" exception, arises where the employee is directed in his employment to proceed from one place to another. Section 401.011(12)(A)(iii).

The parties agreed and the hearing officer found that the claimant was performing a special mission when he was sent to city 3. Finding of Fact No. 5. At issue in this case was whether he was still on the special mission at the time of the MVA. In a series of

findings of fact appealed by the claimant, the hearing officer determined that the claimant was not in the course and scope of his employment essentially for two reasons: first, because the special mission ended when he "returned to his office in [city 1]" (Finding of Fact No. 4) and, second, because he was not on the way back to his "permanent" residence, but to the campground, when the MVA occurred. Findings of Fact Nos. 7, 8, 9, and 10. With regard to the first basis for this appeal, we agree that the evidence established that the claimant did not stop at the office on his way back from city 3 because, as he testified, there was no point in doing so. To the extent that either Finding of Fact No. 4 or 7 implies that he did stop, those findings are against the great weight and preponderance of the evidence. However, we construe these findings to be simply that the special mission ended when he drove by the location of the office. In any case, we do not consider these findings determinative in this case because the undisputed evidence was that the claimant was authorized in the employer's interest of providing a rapid response to service calls to drive the employer's vehicle to his residence.

The critical dispositive findings in this case deal with the claimant's travel to the campground when the MVA occurred. In his appeal of these findings, the claimant asserts that the campground in effect became his residence on this day and that his travel there in the employer's vehicle was no different from his travel to his home in city 2 and should have no different legal consequences. As additional support for this position, he argued that the distance from the campground to the office was not appreciably greater that the distance from his house to the office. The claimant also testified that in the past he had been given permission in individual instances, but not in this case, to drive the employer's vehicle to the campground. Mr. A, the area supervisor, testified that it was against employer policy to drive the employer's truck on personal business and that the claimant did not have permission to take the truck to the campground on this date.

It has long been held that an employee on a special mission may still remove him or herself from the course and scope of employment if the employee undertakes a deviation from the special mission for a personal reason. *See* Texas Workers' Compensation Commission Appeal No. 991364, decided August 12, 1999, and Texas Workers' Compensation Commission Appeal No. 950973, decided July 31, 1995. Whether there has been a deviation is generally a question of fact for the hearing officer to decide and may depend to some degree on whether a route to perform the special mission was directed or whether the special mission was fairly well circumscribed and provided little discretion to the employee in how to accomplish that mission. *See* Texas Workers' Compensation Commission Appeal No. 950057, decided February 24, 1995. The fact that the employee was being paid an hourly wage during the time of the deviation does not bring the deviation back within the course and scope of employment. In the case we now consider, the hearing officer considered the evidence and the relative locations of the claimant's home to the campground and concluded that he was no longer furthering the affairs or business of the employer at the time of the MVA but was on a personal mission to join his wife at the campground even though, as the claimant asserted, he could arguably be reached by cell phone at the campground. In reaching this conclusion the hearing officer could reject the claimant's argument that he could in effect establish a "residence" anywhere within some

broad circumference of miles around the employer's office. We will reverse a factual determination of a hearing officer only if that determination 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). Applying this standard of review to the record of this case, we find the evidence sufficient to support the decision of the hearing officer that the claimant was not in the course and scope of his employment when injured in the MVA and that his resulting injuries were not compensable.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge