APPEAL NO. 000253

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 January 19, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appeals, contending that the hearing officer's determination that he was not in the course and scope of his employment at the time of his motor vehicle accident on _____, is against the great weight of the evidence. The respondent (carrier) responds that there is sufficient evidence to support the hearing officer's decision and that the hearing officer's decision should be affirmed.

DECISION

Affirmed.

The facts in this case are largely undisputed. The claimant works as an assistant coordinator for grounds and maintenance for the (employer). The claimant was provided a company vehicle for school purposes only. He was permitted to drive the vehicle to and from work and to respond to emergency calls for the employer. At approximately 6:00 a.m. on _____, the claimant left his house and began driving to the employer's warehouse facility to open the gates and get everything prepared for the crew. At about 6:30 a.m., he was involved in a motor vehicle accident when another vehicle turned left in front of him. The claimant testified that he reports to the warehouse facility about three days out of five and that he reports to other locations on the other days. On cross-examination, the claimant acknowledged that he was on his way to work at the time of the accident and that he had not been called for an emergency and directed to a specific location that morning.

Mr. G, the claimant's supervisor, testified that the employer provides the trucks to respond to emergency calls. Mr. G stated that the claimant was not on an emergency call at the time of his accident; that he was not on duty at that time, he was simply on his way to work; that Mr. G had no control over the route the claimant took to work on _____; and that Mr. G also had no control over the way the claimant drove the vehicle. Mr. S testified that, among other duties, he is a risk manager for the employer. Mr. S stated that the employer provides vehicles to supervisory maintenance employees to respond to emergency calls. In addition, Mr. S testified that the decision was made to provide those employees with transportation to facilitate and expedite responses to emergency situations because the school district is so widespread.

In this instance, the hearing officer determined that despite the fact that claimant was driving a vehicle provided by his employer at the time of the accident, he was not in the course and scope of his employment because he was "not acting in furtherance of his employer's business at the time of the [accident]." In Texas Workers' Compensation Commission Appeal No. 950361, decided April 24, 1995, we noted, as follows:

> [E]ven a finding that transportation is furnished or controlled by an employer does not end the inquiry as to compensability. As explained by the court in Rose v. Odiorne, 795 S.W.2d 210 (Tex. App.-Austin 1990, writ denied), "[p]roof 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 still was required to prove that his injury satisfied the [statutory] requirements" that the injury was sustained in the course and scope of employment. *Id.* at 213-4.

See also Texas General Indemnity Co. v. Bottom, 365 S.W.2d 350, 353 (Tex. 1963)("We have not said or held, however, that an employee is in the course of his employment whenever he rides in a vehicle owned, or is otherwise furnished transportation, by the employer."); Wausau Underwriters Ins. Co. v. Potter, 807 S.W.2d 419, 422 (Tex. App.-Beaumont 1991, writ denied)("The mere furnishing of transportation by an employer does not automatically bring the employee within the protection of the *Texas Workers' Compensation Act*. [Citations omitted.] If this were not the law in this State, then each and every accident in a company vehicle, including those operated purely for personal reasons, would be compensable under the *Texas Workers' Compensation Act.*"); Texas Employers' Ins. Ass'n v. Byrd, 540 S.W.2d 460, 462 (Tex. Civ. App.-El Paso 1976, writ ref'd n.r.e.)("We must not lose sight of the fact that workmen's compensation benefits are for injuries on the job--in the course and scope of employment--whether or not at the job site, and must be received while in the furtherance of the employer's affairs or business. The furnishing of transportation as a part of the contract of employment standing alone is not sufficient.").

In this instance, the claimant maintained that he was furthering the employer's business because he was traveling to the warehouse to open the gate and to make sure that everything was ready for the maintenance crew. The hearing officer is the sole judge of the weight, credibility, relevance and materiality of the evidence. Section 410.165(a). As the fact finder it is the hearing officer's responsibility to resolve the conflicts and inconsistencies in the evidence, weigh the credibility of the witnesses and make findings of fact and conclusions of law accordingly. Texas Workers' Compensation Commission Appeal No. 92657, decided January 15, 1993. The hearing officer specifically found that the claimant was not engaged in a special mission or responding to an emergency call at the time of the accident. Rather, she determined that the claimant "was driving a vehicle provided by his employer en route from his home to his regular place of business." We cannot agree that the hearing officer's determination that claimant was not engaged in any activity in furtherance of the affairs of the employer at the time of his accident is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust; therefore, no basis exits for our reversing her decision on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Because the hearing officer determined that claimant did not sustain a compensable injury, she correctly determined that claimant did not have disability within the meaning of the 1989 Act, as the existence of a compensable injury is a necessary prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge