APPEAL NO. 000434

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 February 10, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; and had disability from October 24, 1999, through January 26, 2000. The appellant (carrier) appeals, contending that this determination is against the great weight and preponderance of the evidence. The appeals file contains no response from the claimant.

DECISION

Affirmed.

The claimant worked as an interstate bus driver. He testified that a few months before the incident that is the subject of this claim, he gave his car keys to a security guard so that the guard could park his car in the employee's parking lot when a space became available. The keys were lost. The claimant said he had "gotten over" this incident. On _____, he reported to work and passed the guard station. He testified that he only said "hi" to the guards and one started following him and shouting at him as the claimant walked out of the building to a soda machine. The guard then went into the customer service office. Meanwhile, the claimant decided to file a report about the incident. To do this, he went to the customer service office where he again encountered the guard. More words were spoken and the guard handcuffed the claimant. According to the claimant he remained handcuffed for one and one-half to two hours and was told he was going to be taken to jail. Mr. L, the drivers' supervisor, was called to come to the terminal. By the time he got there, the handcuffs were removed. He asked what happened and was told the claimant brought up the matter of the keys again.

Mr. F, the customer service supervisor, testified that he was present in the office at the time of the incident and saw the guard following the claimant and telling the claimant that if he continued harassing and cursing the guards, he would not drive a bus that day. Mr. F said he did not observe either the claimant or the guards cursing, but that the guard complained to Mr. F about the claimant's harassment. It was not disputed that the handcuffs were on too tight and caused scratches on the wrists and numbness and swelling in the wrists, and that there was inflammation at the site of a tetanus shot given during medical treatment. The claimant was off work from the date of the incident until his return to full duties on January 27, 2000.

The dispositive issue in this case was whether the claimant was injured in the course and scope of employment. Section 401.011(12) defines course and scope of employment 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." We have

described this as a two-pronged test. Texas Workers' Compensation Commission Appeal No. 971613, decided September 25, 1997. The hearing officer commented in her decision and order that the carrier failed to raise the defense of personal animosity. *See* Section 406.032(1)(C). The carrier has not taken exception to this statement. The hearing officer also commented that the claimant "had reported to work in his uniform and was on duty at the time of the alleged assault." She further specifically found that the claimant "did sustain an injury in the course and scope of his employment on _____." Finding of Fact No. 2.

In its appeal of this determination, the carrier argues that the "more credible version of events is that the entire episode arose from the fact that the claimant's keys had been lost after they had been left with the security company" and that the hearing officer found compensability based only on an application of the one prong of the definition of course and scope. We cannot agree. It appears to us that an argument over why there originally was animosity between the claimant and security guards is of limited value in determining course and scope in light of the undisputed evidence that there were words expressed and some animosity displayed between the guards and the claimant in public at the work site on _____, while the claimant was preparing to drive a bus for the employer. Thus, we conclude that the incident, whatever its prior historical background, that was the immediate cause of the use of the handcuffs originated in the employee's work. The evidence also was essentially undisputed that the claimant was in the customer service office to fill out a report of that day's events when he was handcuffed. We believe that the employer had an interest in obtaining an account of the reasons for the public confrontation between one of its drivers and a security guard at the terminal and that the claimant's attempt to complete such a report in itself and regardless of any underlying history of friction placed the claimant in the furtherance of the employer's business when the handcuffing took place. Under these circumstances, we conclude that there was sufficient evidence to support a finding that the injury occurred in the course and scope of employment and we perceive no legal error on the part of the hearing officer in reaching this determination. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The carrier appeals the disability determination on the basis that there was no compensable injury. Having affirmed the determination that the claimant's injury was compensable, we also affirm the disability determination.

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

Alan C. Ernst
Appeals Judge

CONCUR IN THE RESULT:

Judy L. Stephens
Appeals Judge

CONCURRING OPINION:

I concur with the result reached by the majority. I write separately to disassociate myself from any notion that proof of course and scope of employment requires that a worker be necessarily engaged in a particular activity at the workplace. In my view, the workers' compensation law does not envision that a worker will phase in and out of the course and scope from moment to moment depending on the worker's particular activity. In my view, coverage is intended to be continuous throughout the workday. The legislature has specifically provided certain circumstances which will relieve a carrier of liability for an injury, such as intoxication or the injury arising out of the act of a third person for a personal reason. *See* Section 406.032. There was no such defense raised in the present case. There is also considerable case law on the subject of when and whether an employee who is not on duty or on the employer's premises is in the course and scope of employment. Here, the employee was on the premises and on duty at the time of the injury. While there may be extraordinary circumstances that could take an employee on duty and on the employer's premises outside the ambit of the course and scope of employment[1], I certainly see no colorable argument that any such circumstance existed in the present case.

Gary L. Kilgore
Appeals Judge

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[1]For example, an employee injured during the commission of a theft from the employer.