

APPEAL NO. 000679

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 March 1, 2000. With respect to the issues before him, the hearing officer determined that the respondent (claimant) was in the course and scope of her employment with the employer on _____, when she fell and injured her left shoulder, and that she had disability as a result of her compensable injury from October 27, 1999, to January 10, 2000. In its appeal, the appellant (carrier) argues that the hearing officer erred in finding that the claimant was in the course and scope of her employment at the time of her fall, contending instead that the claimant was "on some form of personal errand or off-duty social or recreational activity that was not required by [her] employment or the necessity of sleeping or eating away from home." In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The claimant testified that she is a flight attendant for the employer and that on _____, she worked a flight from Houston to Japan, and was on layover. The claimant testified that she and several other crew members took the shuttle bus from the hotel to the town of Narita to eat. She stated that after she got off the bus she was walking toward the restaurant when she tripped and fell, injuring her left shoulder. The claimant acknowledged that there were restaurants in the hotel; however, she stated that they were expensive and she could not afford to eat there. She explained that during another trip to Japan, she had eaten breakfast at one of the restaurants in the hotel, which she had been told was one of the more reasonably priced restaurants, and that her meal cost \$9.00 or \$10.00. She stated that she is paid a per diem of \$1.95 per hour, that her layover was 26 hours long, and that on other layovers in Japan she had also taken the shuttle bus to Narita to eat. On cross-examination, the claimant acknowledged that she wanted to stay awake after her arrival to minimize the affects of jet lag and that going to dinner served that purpose. However, she insisted that the primary reason she went to Narita was because of the expense of food in the hotel. In addition, the claimant stated that the bus ride from the hotel to the town took approximately 10 to 15 minutes.

The claimant stated that she sought medical treatment when she returned to Texas. She was referred from her primary care physician to Dr. C, an orthopedic surgeon. Dr. C ordered an MRI of the left shoulder, which revealed a non-displaced greater tuberosity fracture. Dr. C took the claimant off work and continued her in that status until January 10, 2000, when she was released to full duty. The claimant testified that she returned to work as a flight attendant for the employer when she was released to full duty.

At issue in this case is whether the claimant was in the course and scope of her employment at the time of her fall. The carrier asserts that the claimant was engaged in a

personal errand at that time and thus, her injury is not compensable. In support of its argument, the carrier relies upon Texas Workers' Compensation Commission Appeal No. 980319, decided March 25, 1998 (Unpublished); Texas Workers' Compensation Commission Appeal No. 972046, decided November 24, 1997 (Unpublished); Texas Workers' Compensation Commission Appeal No. 950973, decided July 31, 1995. We cannot agree that those cases compel reversal in this instance. It is well-settled that "[a]n employee whose work involves travel away from the employer's premises is in the course and scope of employment continuously during the trip, except when a distinct departure on a personal errand is shown. Injuries arising out of the necessity of sleeping in hotels and eating in restaurants away from home are usually compensable." PHILLIP HARDBERGER, TEXAS WORKERS' COMPENSATION TRIAL MANUAL p. 11-4 (Parker-Griffin Publishing 1991). The question of whether the claimant is engaged in a personal errand is a fact question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 980907, decided June 15, 1998. In Appeal No. 950973, *supra*, we noted that the geographically closest restaurant need not be chosen in order for the claimant to continue in the course and scope of her employment when going to eat while traveling. In this instance, the hearing officer determined that the claimant was in the course and scope of her employment at the time of her fall, which occurred after she had taken a 10-to-15-minute shuttle bus ride from the hotel where she was staying to the town of Narita to eat at a more affordable restaurant. The hearing officer apparently believed that in so doing, neither personal pleasure nor recreation played a part in the claimant's having made that choice. Thus, he determined that the claimant remained in the course and scope of her employment when she fell walking from the bus to the restaurant. Nothing in our review of the record demonstrates that the hearing officer's determinations in that regard are so contrary to the great weight of evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the hearing officer's determination that the claimant sustained a compensable injury. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Under the circumstances of this case, we cannot say as a matter of law that the claimant's having taken a shuttle bus from the hotel where she was required to stay during her layover to a nearby town to obtain food "was not an incident of the employment, or that the injuries [she] received did not have to do with and originate in the employer's business." Shelton v. Standard Ins. Co., 389 S.W.2d 290, 294 (Tex. 1965). As such, we will not disturb the hearing officer's decision on appeal.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge