APPEAL NO. 001035

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 28, 2000. The hearing officer determined that the _____, left wrist injury of the appellant (claimant) was not sustained in the course and scope of employment. Claimant appealed this determination on sufficiency grounds. The file does not contain a response to claimant's appeal from the respondent (employer). The employer is listed as the respondent in the heading of this decision on appeal. The workers' compensation insurance carrier did not appear or participate at the hearing or on appeal. Employer contested compensability of the injury in this case.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that his injury was not sustained in the course and scope of his employment. The claimant sustained injuries in a motor vehicle accident (MVA) on _____. The hearing officer has summarized the evidence at the CCH, and we will not repeat it here. Briefly, claimant testified that he was injured in the MVA while driving a truck on a direct route home after having worked for employer as a loader. Claimant said he did not like to drive his own car into the woods and he was told to drive the truck owned by his supervisor. Claimant said he was not paid for mileage or gasoline and that employer did not own or lease the truck. Claimant indicated that he was permitted to drive his supervisor's truck, but he was to repair the truck. Claimant said he put employer's equipment in the truck so that it would not be stolen, and that he was on his way home when the MVA occurred.

The hearing officer determined that: (1) claimant was injured in a one-vehicle accident on his way home from work; (2) employer did not exercise control over claimant's use of the truck claimant was driving; (3) claimant's travel home did not further the employer's affairs; and (4) claimant's injury did not take place while he was in the course and scope of employment.

Section 401.011(12) states, in pertinent part, that the term "course and scope of employment" does not include:

(A) transportation to and from the place of employment unless:

(i) the transportation is furnished as a part of the contract of employment or is paid for by the employer;

(ii) the means of the transportation are under the control of the employer; or

(iii) the employee is directed in the employee's employment to proceed from one place to another place.

The rationale for this exclusion regarding "transportation to and from work" is that an injury resulting during such transportation is a hazard that the general public is exposed to on the public highways and is not considered to be a risk or hazard inherent in or originating in the employment. Texas General Indemnity Company v. Bottom, 365 S.W.2d 350 (Tex. 1963).

Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

There was evidence, as set forth above, from which the hearing officer could determine that: (1) employer did not furnish transportation to claimant as part of his employment contract; (2) employer did not exercise control over claimant's use of the truck as claimant drove the truck home; (3) claimant had not been directed to proceed from one place to another at the time of his accident; and (4) claimant's travel home did not further employer's business affairs. Claimant contends that the owner of employer, Mr. H, was one of the people who suggested that claimant drive the truck, so the employer did furnish transportation to him. However, this was a fact issue for the hearing officer to resolve, and we perceive no error in his determination. Further, even if the transportation had been furnished by employer, claimant would still have to prove that he was furthering employer's business at the time of the injury. Texas Workers' Compensation Commission Appeal No. 990949, decided June 17, 1999. Claimant contended that he furthered employer's affairs after he left the job site because: (1) he sometimes did work at home, such as equipment repair; (2) he was, in effect, on call for varied work hours; and (3) by taking the equipment home, claimant prevented theft and took the equipment to the next job, aiding employer. The hearing officer considered claimant's assertions, heard the evidence, and determined what facts were established. The hearing officer was not persuaded that claimant was furthering employer's business at the time of the accident, despite the fact that claimant had equipment in his truck and sometimes did work at home. The hearing officer determined from the evidence that claimant was merely going home from work at the time of the injury.

Claimant testified that he sometimes thought about work duties while driving and contended that, because he was in effect "on call," this was distracting and made driving more hazardous than the normal public would encounter. The hearing officer could find from the facts of this case that claimant's injury while driving home is a hazard that the general public is exposed to on the public highways and is not a risk or hazard inherent in or originating in the employment. Bottom, *supr*a. We also perceive no error in the hearing officer's determinations under the dual purpose doctrine. The hearing officer determined that claimant would have traveled home even if there had been no business of the

employer to be furthered. We reject claimant's assertions in this regard. We conclude that the hearing officer did not err in determining that claimant was not in the course and scope of employment at the time of his injury. The hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Claimant complained that the hearing officer failed to admit into evidence a summary of the evidence and synopses of appeals decisions claimant considered to be on point. However, this was not evidence that the hearing officer was required to admit. The hearing officer heard the evidence and was not required to review an evidence summary. It does not appear that the hearing officer ignored the evidence or failed to apply the law in this case. We perceive no reversible error.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge