APPEAL NO. 001187

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 12, 2000. With regard to the issues before her, the hearing officer determined that the appellant (claimant) was not injured in the course and scope of her employment on _____, and that because the claimant had not sustained a compensable injury, the claimant did not have disability.

The claimant appealed, citing several court cases and asserting that she was in the course and scope of her employment after making a bank deposit in furtherance of the business of the employer. The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The respondent (carrier) responds, citing court cases that the claimant was subject to the "coming and going" rule and was not in the course and scope of her employment. Both parties appear to agree that the disability issue hinges on the course and scope issue. The carrier urges affirmance.

DECISION

Affirmed.

The facts in this case are not as well-developed as they could have been. It is undisputed that the claimant was an administrative assistant for a monitoring service (employer) and among her duties was to process and make bank deposits. The claimant testified that she would routinely process the check deposits at work, take them home with her in the evening and then make deposits at the bank on the way to work the next morning. The carrier, in its response, states that "the Employer's policy prohibits employees from taking bank deposits home." While that may be a prudent position, there is no evidence to that effect and the carrier cites none. The claimant contends that her manager was aware of this practice and that she had been doing it "for the past 2 years." The claimant cites a recorded statement (Claimant's Exhibit No. 17) that she gave the carrier's adjuster that the employer was aware of this practice and that statement is unrefuted. The claimant's testimony is that she was paid mileage, at 10 miles per trip, for making the deposits, which is apparently the round-trip mileage from the employer's office to the bank. A statement from the claimant's manager was that the claimant's "mileage records indicate that she travelled [sic] 10 miles out of her daily commute to drop off the bank deposit on the morning of 09/28/99." However, the memo also states that "[i]f an employee does company business commuting to or from work mileage would only be paid for the number of miles that is greater than their normal commute." The claimant testified, and there is evidence, that the branch bank the claimant chose was about two miles from her home. It is unclear how far the bank is out of the claimant's normal route to work, although the testimony, appeal and response refer to various roads and there are some almost illegible photocopies of maps with distances in evidence. It is fairly clear that some of the same roads are used to go to the branch bank as to the employer's office. The claimant contends that she usually travels on the Freeway to get to work, and normally

arrives at work at 9:00 a.m., and since the claimant had to make the bank deposit, she was not traveling at the same time that she usually travels. Therefore, the claimant argues, she was not traveling on her normal route going to work when the injury of _____, occurred. The claimant testified, and it is unrefuted, that she was paid an extra one-half hour on mornings that she would make the bank deposit.

The claimant testified that on the morning of _____, she left her home at about 8:15 a.m., she made the bank deposit at 8:24 a.m. and was proceeding on to the office when she was injured in a motor vehicle accident which, according to a municipal court ticket, occurred at 9:20 a.m. (the claimant said around 9:00 a.m.).

The hearing officer, in her Statement of the Evidence, commented that the 10 miles mileage "was just a general figure" and noted some inconsistencies between the claimant's recorded statement and her testimony at the CCH regarding the mileage, although it appears that the claimant was just saying she charged a flat 10 miles for mileage rather than the exact amount of mileage that the bank was out of her way. The hearing officer commented:

> Both the additional pay from milage [sic] and time was based only on the deviation required by the bank deposit. At the time of the accident, claimant was no longer involved with that mission, errand or furthering the business of her employer, but rather, she was on her personal travels going to her office on the same route as she took on non-deposit days.

The hearing officer correctly states that the pivotal issue is whether the claimant's travel after the completion of the bank deposit was in the course and scope of her employment. The hearing officer cites the definition of course and scope of employment in Section 401.011(12), which states:

> 12) "Course and scope of employment" means 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. The term includes an activity conducted on the premises of the employer or at other locations. The term does not include:
>
> (A) transportation to and from the place of employment unless:
>
> * * * *
>
> (iii) the employee is directed in the employee's employment to proceed from one place to another place; or

(B) travel by the employee in the furtherance of the affairs or business of the employer if the travel is also in furtherance of personal or private affairs of the employee unless:

(i) the travel to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee to be furthered by the travel; and

(ii) the travel would not have been made had there been no affairs or business of the employer to be furthered by the travel.

(The latter provision is known as the "dual purpose" doctrine.) The hearing officer made the key finding:

FINDING OF FACT

7. Claimant had completed the errand of making the bank deposit and had returned to her normal route to work at the time of the injury on 9/28/99.

The claimant, in her appeal, cited St. Paul Fire and Marine Insurance Co. v. Confer, 956 S.W.2d 825 (Tex. App.-San Antonio 1997, pet. denied), and discussed the routes of travel in that case (which involved going to an electronics store to pick up supplies on the way home). The appellate court reversed the summary judgment of a district court and found that the claimant had sustained an injury in the course and scope of employment. The claimant contends that in Confer the injured employee (deceased) had not completed his business errand, while in this case, the "claimant was injured between the time of the business errand and work [t]herefore the injury should be compensable." We note that in Confer the court analyzed the case under the dual purpose doctrine and determined that the death was compensable because, at the time of the accident, the employee was on the way to run a business errand before going home. The carrier relies on Tramel v. State Farm Fire and Casualty Co., 830 S.W.2d 754 (Tex. App.-Fort Worth 1992, writ denied), which admittedly has similar background facts (an employee who was going to make a bank deposit for the employer on the way to work); however, Tramel is distinguishable from the present case in that the employee in Tramel had not yet made the bank deposit when the employee was injured. We will further address the Tramel decision later in this opinion. In this case, the claimant had made the deposit and the question is whether the claimant had now entered into the course and scope of employment (was "on the clock") or whether the dual purpose doctrine should be applied.

Texas Workers' Compensation Commission Appeal No. 980133, decided March 6, 1998, and Texas Workers' Compensation Commission Appeal No. 962134, decided December 9, 1996, were cases which involved home health nurses who were injured either

driving to a patient's home or returning to the claimant's home office and were held compensable. Texas Workers' Compensation Commission Appeal No. 961193, decided July 30, 1996, involved a decedent who was driving to a customer's premises from home when he was killed but, there, the employer testified the claimant was on a special mission. (*See* Section 401.011(12)(A)(iii).) Texas Workers' Compensation Commission Appeal No. 961345, decided August 23, 1996, involved a salesman going to receive payment on a contract, and Texas Workers' Compensation Commission Appeal No. 951910, decided December 27, 1995, involved an insurance salesman driving to collect premiums when he was injured. Both cases were held compensable.

Conversely, there are a number of Appeals Panel decisions which involve commencing employment at a location and time other than normally assigned and being injured on the way to those assignments. Those cases have normally cited Evans v. Illinois Employers Insurance of Wausau, 790 S.W.2d 302 (Tex. 1990) (holding that an injury incurred on the way to an early morning safety meeting was noncompensable). However, we note that the court went on to say in Evans that had the employee been injured after the safety meeting, while en route to the primary work site, "these injuries would have been covered . . . ." The Evans case is cited in Tramel, *supra*, a case with the similar factual background of the employee (Suzanne) going to the bank on her way to work. The Tramel court held as a matter of law that Suzanne was not on a special mission at the time of her injury (a fact that can be distinguished from the instant case) but went on to say that "even were Suzanne on a 'special mission' at the time of the accident, she has not met the additional requirement set forth under the 'dual purpose' portion of the statute," citing Davies v. Argonaut Southwest Insurance Co., 464 S.W.2d 102, 104 (Tex. 1971).

Although the claimant contends that she had "begun work" and that the dicta of Evans, *supra*, would apply (where the court said that travel after the safety meeting to the primary work site was covered), we believe the ruling in Tramel, *supra*, which seemed to say that even if the special mission of banking were covered (subsequent) travel along the same route did not meet the dual purpose doctrine. The hearing officer found, as fact, that the claimant had returned to her normal route to work at the time of the injury. The claimant disputes that, citing street routes; however, we defer to the hearing officer's factual determination that the claimant had returned to her normal route. Under these circumstances, we believe the dual purpose doctrine of Section 401.011(12)(B) should be applied as suggested in Tramel. The hearing officer did so, noting that both prongs ((B)(i) and (ii)) of the dual purpose doctrine must be met. The hearing officer found that:

> In this case, the claimant did not meet (B)(ii) as she was required to go to work every work day and she had completed the portion of her activities which were in the furtherance of the affairs or business of her employer. She testified that once she entered IH45, she took the same route, at about the same time every day to get to work on IH10 where the accident occurred. Had there been no bank deposit, the travel still would have been made so that the claimant could meet her obligation to go to the worksite.

In this case, we hold that the dual purpose doctrine is applicable; that the hearing officer correctly applied and analyzed that provision; and, consequently, the claimant was not in the course and scope of her employment at the time of the accident, but rather was going to work.

In that we are affirming the hearing officer's decision that the claimant was not in the course and scope of her employment, we also affirm the hearing officer's decision on disability.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge