

APPEAL NO. 001843

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held in (City 1), Texas, on April 4, 2000, with the record being closed on July 5, 2000. The hearing officer, determined that the decedent suffered a fatal injury in the course and scope of his employment on _____. The appellant (carrier) requested review, contended that the hearing officer did not properly apply the "dual purpose rule," and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the decedent was not in the course and scope of his employment at the time of his death. The respondent (beneficiary) replied, urged that the decision of the hearing officer is correct, and requested that it be affirmed.

DECISION

We affirm.

It is undisputed that the decedent left City 1, driving toward (City 2), Mexico, at about 11:00 p.m. on November 13, 1998; that it takes about 12 or 13 hours to drive from City 1 to City 2; that at the direction of the employer, a roofing contractor, he drove his own truck because he had a permit to take his truck into Mexico; that he took other employees of the employer; that they were to be in City 2 on Saturday, _____, at about noon to unload roofing materials; and that he was to be paid for the time he spent driving, living expenses, and for mileage for use of his truck. It is also undisputed that (City 3), Mexico, is a short distance off the direct route from City 1 to City 2; that it takes about two hours to drive from City 2 to City 3; that the fatal accident occurred at (City 4), Mexico; that City 4 is on the direct route from City 1 to City 2; and that when traveling from City 1 to City 2, City 4 is before the road that would be used to go to City 3. The beneficiary, the decedent's widow, testified that the decedent told her that he was ordered to go directly to City 2 to unload some trucks and that after he unloaded the trucks, he may go to City 3 to visit relatives before work on the roof was to start on Monday.

Section 401.011(12) provides:

"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:
 - (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; 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 hearing officer made the following findings of fact:

FINDINGS OF FACT

2. Decedent was directed in his employment to travel to [City 2] and to transport other workers to unload a truck.
3. The direction came from Decedent's supervisor and the next level supervisor above Decedent's supervisor.
4. Decedent was paid per diem for his stay in Mexico, milage [sic] reimbursement and travel time.
5. It furthered Employer's affairs or business interests to have a crew in [City 2] prior to Monday morning to unload a truck of supplies.
6. Decedent was on a direct route to [City 2] at the time of the accident and had not deviated from the route at the time of the accident, whether the truck was to arrive Saturday or Sunday.
7. The travel to the site of the accident would have been made even had there been no personal or private affairs of the employee to be furthered by the travel.
8. The travel would not have been made had there been no affairs or business of the employer to be furthered by the travel.

The hearing officer concluded that the decedent suffered a fatal injury in the course and scope of his employment on _____.

We note that in its appeal, the carrier made statements concerning evidence related to the timing of the trip. At the hearing, the carrier conceded that the statements were incorrect and had been corrected in a later statement. The carrier also cited St. Paul Fire and Marine Insurance Co. v. Confer, 956 S.W.2d 825 (Tex. App.-San Antonio 1997, pet. denied). In Confer, the decedent left work early so he could complete a business errand and be home on time. At the time of the accident, he was to travel on part of a highway that he would use if he was going to go to his residence or to the place of business where he was going to go and had not passed the location where he would have made an election to go to his residence or to the business. The court of appeals affirmed the district court decision that the decedent was fatally injured in the course and scope of his employment. Nothing in Confer, *supra*, indicates that the hearing officer did not properly apply the dual purpose doctrine set forth in Section 401.011(12). The evidence indicates that the decedent was directly on his way to City 2 at the time of the fatal accident and findings of fact related to the dual purpose doctrine were not necessary.

The hearing officer made findings of fact that are sufficient to support the conclusion of law that the decedent was injured in the course and scope of his employment under both subsection A and subsection B of Section 401.011(12). The evidence is sufficient to support those findings of fact. Those findings of fact are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and are affirmed. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge