APPEAL NO. 001876

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 October 9, 2000. With regard to the issue before her the hearing officer concluded that the respondent (claimant herein) sustained a compensable injury on _____, finding that at the time her injury the claimant was in the course and scope of her employment. The appellant (carrier herein) files a request for review arguing that the hearing officer erred in finding that at the time of the injury the claimant was engaged in furthering the affairs or business of the employer. The carrier also argues that the claimant was not in the course and scope of her employment under the "coming and going" doctrine and was not brought back into the course and scope of employment under the "special mission" exception. The claimant responds that course and scope is a factual question and the fact findings of the hearing officer were supported by the evidence.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The claimant was employed as the vice-president of production for 100% (employer), although she owned no stock in the company. She testified that her duties included resolving problems with the employees, supervising the kitchen, and running errands such as purchasing items for the business. The claimant testified that on the morning of _____, she and her husband arrived at the employer's place of operation about 9:30 a.m. to prepare the restaurant for opening. The claimant testified that employees Ms. R and Ms. M arrived before the restaurant was open and complained that they had been unable to cash their payroll checks. The claimant testified that it was within her authority to try to resolve employee problems of this type and she feared that if she did not resolve the problem it could lead to further problems with both of these employees as well as with other employees. The claimant testified that the bank used by the employer on which the checks were drawn had a branch in the same shopping center in which the employer's restaurant was located. The claimant testified that in the past she had aided an employee in resolving a problem concerning the cashing of a check with this bank. The claimant testified that twenty minutes before the restaurant was to open she informed her husband that she was going to the bank with Ms. R and Ms. M to try to resolve the problem with cashing their payroll checks.

The claimant drove Ms. R and Ms. M to the bank in her car. She testified that since it was Saturday, only the drive-thru window was open. The claimant testified that she asked to speak to a teller with whom she had dealt in the past. The claimant stated she was unsure which teller assisted her, but that she was told that the bank would no longer cash a check for anyone who did not have account at the bank at this particular location. The claimant testified that she endeavored to explain this to Ms. R and Ms. M, neither of whom spoke English. The claimant testified that when she pulled out of the bank's drive-thru lane her vehicle began to accelerate and the brakes failed. The claimant testified that she had no recollection of the ensuing accident and her next memory was waking up in the hospital with her mouth wired shut.

Mr. G testified that he owns 100% of the employer's stock. He testified that the business is run by his family. He testified that the claimant is his mother and that both his parents are vice-presidents of the company. The claimant testified that each of them had his or her own area of responsibility, but that they worked together jointly to run the business and made all important decisions jointly. The claimant testified that he handled most of the banking matters. He testified that for a number of years he and his parents were all signatories on the employer's bank account but that as a condition of a loan the company had taken out, he had became the sole signatory on the bank account. Mr. G testified that it was the duty of his mother to resolve problems with the employees and that resolving such problems were very important because employee turnover was very high in the restaurant business. He testified that his mother had the authority to take the employees to the bank to try to resolve the check-cashing problem. He stated that he was aware of the bank's policy concerning not cashing checks for people not having an account at its location which was the same shopping center in which the employer's restaurant was located, but that he had not told his mother about this policy. He testified that the policy was fairly recent and had not been strictly enforced. He testified that most of the bank employees knew the claimant and knew she was his mother, so they were generally co-operative with her in resolving problems. Mr. G testified that while he might have told his mother not to leave the restaurant so close to the time for it opening had she asked him she had the authority to do so without his permission and it was in the interest of the employer to make certain other employee problems were resolved and that the employees not think there was a problem with the payroll checks.

Ms. M testified that she tried to cash her check prior to reporting for work and that the bank would not cash it. She stated she did not know why the bank would not cash it, but asked the claimant for help concerning this matter. She testified that she told the claimant she needed her money and asked the claimant to cash the payroll check herself. Ms. M testified that the claimant told her that she would see what could be done and that at that point the claimant, Ms. M and Ms. R proceeded to the bank.

The claimant suffered severe injuries during the course of the automobile accident on _____. There was evidence that both her feet were crushed and the right foot was amputated. The claimant's left leg and left arm were broken. The claimant's face was crushed requiring a number of surgeries to attempt to reconstruct her face. The claimant's eyes were lacerated impairing her vision. At the CCH the carrier characterized the claimant's injuries as catastrophic and stipulated to disability in the event that it is determined to be liable for the injury.

The case hinges on whether or not the claimant was in the course and scope of her employment at the time of the accident on _____. The claimant argues that she was; the carrier that she was not. The hearing officer's findings of fact and conclusions of law include the following:

FINDINGS OF FACT

2. On _____, Claimant was injured in an automobile accident.

3. At the time of the automobile accident on _____, Claimant was engaged in the furtherance of the affairs or business of the employer.

CONCLUSIONS OF LAW

2. Claimant did sustain a compensable injury on _____.

Section 406.031(a) provides that an insurance company is liable for an employee's injury without regard to fault or negligence if the injury arises out of and in the course and scope of employment. Section 401.011 defines course and scope of employment as follows:

> (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:
>
> (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 carrier argues that the present case is controlled by the "coming and going" doctrine under which an employee going to or coming from work is not in the course and scope of employment unless an exception to this doctrine applies. The carrier argues that

no exception to this doctrine applies in the present case and in particular the "special mission" doctrine does not imply because the claimant was not instructed to go to the bank. The carrier characterizes the claimant's actions as a personal errand to voluntarily assist two employees. The claimant argues that it was her duty to resolve the employee problem and that doing so furthered the affairs of the employer. It was also her position that she had the authority to take the employees to the bank for the employer.

Much of the prior case law concerning course and scope of employment generally as well as both the "coming and going" doctrine and the special mission exception are codified in Section 401.011(12). The hearing officer's decision essentially resolves the present case on the basis that the claimant was furthering the affairs of the employer. While the carrier argues that at the time of her injury the claimant was on a personal errand to aid two of the employer's workers, we find sufficient evidence in the testimony of the claimant and Mr. G to support the hearing officer's fact findings that the claimant was furthering the affairs of the employer in taking the employees to the bank to resolve the problem. Our standard of review of all factual finding is whether or not it is contrary to the great weight and preponderance of the evidence, and we do find the hearing officer's fact finding to be contrary to the great weight and preponderance of the evidence. Decided in this way, the case does not necessarily involve a question of "coming or going" as the claimant's entire trip to the bank may be viewed as furthering the affairs of the employer after she had already come to work, something she could do under the terms of Section 401.011(12) "on the premises of the employer or at other locations." Even if "coming and going" applies, the special mission doctrine is clearly an exception to the "coming and going" doctrine. *See* Texas Workers' Compensation Commission Appeal No. 991507, decided September 7, 1999. While the carrier argues that the claimant was not directed to proceed to the bank, there was sufficient evidence that she had the authority as an officer of the employer to direct herself to proceed to the bank and back.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

CONCURRING OPINION:

I concur in the result but write separately to stress the need for the hearing officer to make specific and adequate findings of fact which lead to and support a conclusion or conclusions of law.

Section 410.168(a) provides, in part, that "[t]he hearing officer shall issue a written decision that includes: (1) findings of fact and conclusions of law; . . . " In Texas Workers' Compensation Commission Appeal No. 991704, decided September 23, 1999, Judge Lueders, citing Thompson v.Railroad Commission,150 Tex. 307, 240 S.W.2d 759 (1951), stated, in part, that "[a] finding of fact is a conclusion drawn from facts without the exercise of legal judgment"; that "standing alone, a finding of fact does not have any legal consequence"; that "[f]act finders must weigh the evidence presented and must determine each controlling question of fact that is a matter of controversy in the proceeding"; that "[a] conclusion of law is a finding determined through application or rules of law based on facts found in a finding or findings of fact." In Texas Workers' Compensation Commission Appeal No. 952082, decided January 10, 1996, Judge Kelley, citing the Texas Supreme Court in Texas Health Facilities Comm'n v. Charter Medical-Dallas, Inc., 665 S.W.2d 446, 451-452 (Tex. 1984), stated that the objective of findings of fact is to inform the participants of the facts found so that they can intelligently appeal the decision and to assist the reviewing courts in properly exercising their functions of review. The Court's decision also stated that valid findings of fact must be clear and specific and that a mere conclusion or recital of evidence is inadequate.

The only findings of facts are set out in the majority opinion. Finding of Fact No. 3 is simply conclusory. Had the relatively spare statement of the evidence contained any less information, I would have insisted that we reverse and remand for explicit findings of fact to support the ultimate conclusion of law, as the Appeals Panel was compelled to do in Texas Workers' Compensation Commission Appeal No. 92230, decided July 17, 1992.

Philip F. O'Neill
Appeals Judge