

## APPEAL NO. 001914

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 July 18, 2000. The hearing officer determined that respondent (claimant) sustained a compensable injury on \_\_\_\_\_, while in the course and scope of his employment. The hearing officer also determined that claimant had disability from \_\_\_\_\_, through February 14, 2000. Appellant self-insured ("carrier" or "city A" herein) appealed these determinations on sufficiency grounds. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

### DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant was injured in the course and scope of his employment. Carrier also appears to contend that, because there was no compensable injury, there could be no disability. There was evidence that claimant is a police officer for the city A, his employer, and that he usually worked on the west side of town. There was evidence that claimant was "scheduled" to attend a "mandatory" training session on the south side of city A, which is a very large city. Claimant said it was raining, that he had about 50 miles to drive from his home to the training building (gym), and that he was unfamiliar with the area, so he left early to make sure he arrived on time. Claimant said he arrived at the gym more than one hour early, the doors were locked, and he decided to go down the block to a restaurant to get out of the weather and obtain coffee. Claimant said "it was lightening up a storm." On the way to the restaurant, claimant was injured in a motor vehicle accident (MVA).

The hearing officer determined that: (1) claimant was directed by his supervisors to attend the training; (2) claimant left early for the reasons he testified to, and it was reasonable for him to do so; (3) city A provided and paid for claimant's transportation; (4) once he arrived, claimant decided to get out of the bad weather and go for coffee within one block of the gym; (5) it was reasonable for claimant to proceed to a nearby restaurant to obtain shelter from the weather; (6) claimant's injuries from the MVA occurred while he was engaged in activity that furthered city A's business affairs; and (7) claimant had disability.

We may affirm the hearing officer's decision on any grounds supported by the record. Texas Workers' Compensation Commission Appeal No. 000573, decided May 1, 2000. From the evidence, the hearing officer could determine that city A directed claimant to travel to the south side of town for mandatory training, in furtherance of city A's business affairs. She could also consider the evidence and determine that, once he arrived at the gym early and could not enter the building, claimant's travel down the block to the restaurant was not a significant deviation from the course and scope of his employment, given the lightening and weather conditions. We have reviewed the evidence and we

conclude that 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 v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Because we have affirmed the compensability determination, we also affirm the disability determination.

Carrier contends that it should not be liable for all actions of employees who "simply show up at the job prior to" going shopping or other activity. We do not so hold here. In this case, claimant did not simply "show up" at his usual place of business early, and then significantly deviate from his employer's business for a personal errand. This case is distinguishable because of the evidence that claimant was directed to travel to an unfamiliar location, in bad weather, for training and, when he arrived at the work site, he sought available, nearby shelter from the lightning. An employee who significantly deviates from the employer's business would not be similarly covered.

Carrier contends that claimant was not in the course and scope of employment because he was not "involved in the prevention of crime" at the time of the MVA. As set forth earlier, there was evidence that claimant had not significantly deviated from his duties at the time of the MVA. Carrier questions the "real" reason why claimant was traveling at the time of the MVA. However, this was a fact question for the hearing officer, which she resolved. Carrier complains that it was not one of claimant's duties to arrive early for training. Given the facts of this case, the hearing officer could determine that claimant's actions in leaving early for travel due to the distance and weather, and arriving early, was not a significant deviation from his duties.

Carrier cites Texas Workers' Compensation Commission Appeal No. 990488, decided April 22, 1999, in support of its contentions. However, in that case, the Appeals Panel discussed the personal comfort doctrine. After the remand in that case, the Appeals Panel determined that that employee had significantly deviated from a special mission while going on a personal errand. Texas Workers' Compensation Commission Appeal No. 991364, decided August 12, 1999. In Texas Workers' Compensation Commission Appeal No. 950057, decided February 24, 1995, cited by carrier, again, the Appeals Panel stated that that employee had "abandoned" and turned aside from the course and scope of his employment by turning off to go to a convenience store for a personal errand. Carrier also cited Texas Workers' Compensation Commission Appeal No. 962581, decided February 5, 1997. However, that case discussed the personal comfort doctrine and whether it applied to an employee who left his normal work site and was injured while bicycling home for lunch. The Appeals Panel stated that there were no "special circumstances" involved which would apply to bring this off-premises injury within the application of the personal comfort doctrine. The case before us is distinguishable because there was no evidence that claimant had substantially deviated from his duties and had merely left his usual work site on a personal errand. Instead, there was evidence that claimant found himself at the alternative work site he had been sent to and in the unusual circumstance of being without shelter, other than his car, in a lightning storm. The hearing officer could determine that claimant's search for shelter was not a significant deviation. We perceive no error in the hearing officer's determination under the facts of the case before us.

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