

APPEAL NO. 002187

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 in two sessions on April 7 and June 30, 2000. With respect to the issues before her, the hearing officer determined that the appellant (claimant) was not injured in the course and scope of her employment when she was involved in a motor vehicle accident (MVA) on _____, and that she did not have disability. In her appeal, the claimant argues that the hearing officer erred in applying the "dual purpose doctrine" and that under that doctrine, she was in the course and scope of her employment at the time of her MVA. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

We will only briefly summarize the facts most germane to the issues before us. The claimant testified that on _____, she was employed as a paraprofessional with the (employer) and that in that capacity she was a troop leader for troops at different schools. She stated that on _____, she attended a meeting at the employer's central office and that after the meeting, she and her coworkers went to lunch. She testified that before she went to lunch, she had a conversation with Ms. M, her supervisor, and that she and Ms. M discussed that after lunch the claimant would stop by one of the elementary schools where she was to be a leader during the school year. The claimant also testified that she told Ms. M that on the way home from the school, she was going to go to Wal-Mart to purchase a particular type of folder to use which she preferred over the folders supplied by the employer. The claimant maintained that Ms. M approved the activities of going to the school and to Wal-Mart. The claimant stated that after lunch, she took Ms. W to a bus stop and then went to the school. The claimant stated that neither her contact at the school nor the principal were present when she stopped by, so she drove toward Wal-Mart, where she was going to buy the folders. The route the claimant followed to go to Wal-Mart was also the route she would use to go home and the claimant acknowledged that she was going to go home after she purchased the folders. The claimant insisted that she was not going to make any purchases other than the folders. The claimant testified that before she got to Wal-Mart, her car was struck on the driver's side by another car traveling at a high rate of speed.

Ms. W testified that when the claimant took her to the bus stop on _____, the claimant told her that she was going to the store. Ms. W stated that the claimant did not say what she was going to buy; that she did not say that she was going to buy supplies for work; and that the claimant did not say she was going to stop by a school on the way.

Ms. D testified that she has been an administrative assistant with the employer for 44 years. Ms. D stated that on September 4, 1999, she first learned that the claimant was alleging that she sustained a work-related injury, when the claimant left a message to that

effect on Ms. D's answering machine at work. Ms. D stated that in an earlier conversation the claimant had told Ms. D that she was on her way home from Wal-Mart at the time of her MVA. Finally, Ms. D stated that the claimant was required to get her supervisor's approval prior to buying supplies.

Ms. M testified that although she did see the claimant after the _____, meeting at the central office, she did not tell the claimant to stop at the school on her way home. Ms. M stated that she would not have had such a conversation with the claimant at that time because she had some concerns about the claimant's attendance and was considering terminating the claimant's employment. Ms. M stated that she also did not discuss the claimant's stopping at the store to buy folders on _____. Ms. M further testified that she had a conversation with the claimant on the day following her MVA and the claimant did not mention that she had been driving from the school to the store to buy supplies at the time of the accident.

In her appeal, the claimant cites St. Paul Fire and Marine Insurance Co. v. Confer, 956 S.W.2d 825 (Tex. App.-San Antonio 1997, pet. denied) and contends that she was in the course and scope of her employment at the time of her MVA under the "dual purpose doctrine." Section 401.011(12)(B)(i) and (ii) embody the so-called "dual purpose doctrine." These subsections provide that the phrase "course and scope of employment" does not include 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 "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 "the travel would not have been made had there been no affairs or business of the employer to be furthered by the travel." In order to come within the dual purpose doctrine an employee must satisfy both requirements and the question of whether the two requirements of the dual purpose doctrine are met is a question of fact. Confer, supra.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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 overwhelming weight of the evidence as to be clearly wrong and unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). In this instance, there was conflicting evidence on the questions of whether the claimant was on her way from the elementary school to Wal-Mart to buy folders for work at the time of her MVA and that she would not have made that trip except to buy the folders. The claimant testified that Ms. M had approved of the claimant's performing those activities in the conversation following the meeting on _____; however, Ms. M stated that she did not instruct the claimant to stop by the school on her way home and also did not approve her going to buy folders. The hearing officer was acting within her province as the fact finder in rejecting the claimant's testimony as to the purpose of her travel. Our review of the record does not demonstrate that the hearing officer's determinations that the claimant did not meet the two

requirements of the dual purpose doctrine are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to disturb those determinations on appeal. Accordingly, the hearing officer did not err in further determining that the claimant was not in the course and scope of her employment at the time of her MVA.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge