APPEAL NO. 002194

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 August 14, 2000. The hearing officer determined that the respondent (claimant) sustained an injury in the course and scope of employment on _____, and that he had disability from October 13, 1999, to December 8, 1999. Appellant self-insured ("carrier" herein) appealed these determinations, contending that claimant was on his lunch hour and was not injured on the job. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We reverse and render.

Carrier contends the hearing officer erred in determining that claimant was in the course and scope of employment when he was injured in a motor vehicle accident (MVA) while traveling back to an off-premises seminar after lunch. Carrier asserts that claimant was not furthering employer's business at the time of the injury.

Claimant testified that he works as a jailer and that on _____, he was attending a required seminar at a site different from where he normally works. Claimant said the seminar site had a lounge with a microwave and vending machines, but no cafeteria, and that they were instructed that they could go out for lunch. Claimant said he was paid his daily rate while attending the seminar and that he was paid for his lunch hour. Claimant said he was injured in an MVA coming back from a nearby restaurant. Claimant said he was with three coworkers in a car owned and paid for by a coworker, Ms. B.

In this case, it is undisputed that claimant was returning from lunch in a coworker's personal vehicle at the time of the injury. Claimant was not out of town at the time of the MVA and was not traveling as a part of his normal work duties. The employer had not directed him to travel from place to place at the time of the MVA and claimant was not furthering employer's affairs at that time. Therefore, the injury was not in the course and scope of employment under these facts. *See* Texas Workers' Compensation Commission Appeal No. 941362, decided November 28, 1994. Claimant was merely returning after lunch to the equivalent of an alternative work site, at the time of the MVA. Because claimant was not in the course and scope of his employment at the time of the MVA, claimant's injury was not compensable. The hearing officer's determination regarding course and scope is legally incorrect and the determinations regarding injury and disability are 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 claimant did not sustain a compensable injury, he did not have disability.

We reverse the hearing officer's decision and order and render a decision that claimant was not in the course and scope of his employment when he was injured on _____; he did not sustain a compensable injury; and he did not have disability.

Judy L. Stephens
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge