

APPEAL NO. 010105

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 December 19, 2000. The hearing officer determined that the respondent (claimant) sustained an injury to his neck, back, and left shoulder in the course and scope of his employment on _____ (all dates are 2000 unless otherwise noted).

The appellant (carrier) appealed, contending that the claimant was not in the course and scope of his employment at the time he was injured in a motor vehicle accident (MVA) and that the "coming and going" rule should be applied. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

It is undisputed that the claimant sustained a compensable injury some time prior to January and had returned to work in a light-duty position. It is also relatively undisputed that the claimant was still receiving physical therapy (PT) for the injury; that the employer was aware that the claimant would from time to time go to PT; and that the claimant continued to be paid (was "on the clock") while he was attending PT sessions. On the morning of _____, the claimant left the employer's premises to go to a PT session and on the way to the health care facility, he was involved in an MVA at about 10:30, sustaining the complained-of injuries.

It is the claimant's contention that someone called him on the telephone and ordered him to go to PT on the day in question. The carrier disputes that contention and presented witnesses who denied that the claimant was ordered to go to PT and who testified that the claimant was simply allowed to attend scheduled PT appointments. The carrier contends that the "coming and going" rule (Section 401.011(12)) applies. *See also Evans v. Illinois Employers Insurance of Wausau*, 790 S.W.2d 302 (Tex. 1990). The hearing officer, in the Statement of the Evidence (actually discussion) portion of her decision rejects the "special mission" theory and that the claimant was ordered to go to his PT appointment by the employer.

The hearing officer bases her decision in the claimant's favor on two fairly recent Appeals Panel decisions, citing language from those decisions. In Texas Workers' Compensation Commission Appeal No. 001700, decided September 8, 2000, we affirmed a hearing officer's decision, albeit on different grounds, that the employee who was going down a set of stairs to check her car was in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 001821, decided September 19, 2000, involved a situation where an employee returned to the workplace shortly after finishing her shift, to give some keys to her friend, when she slipped and fell. The Appeals Panel reversed the hearing officer's decision that the employee was not in the course and scope

of her employment, holding that action was "not such a deviation as took her out of the course and scope of employment." In Appeal No. 001700, we specifically noted that such deviations as going to the parking lot during stormy weather to check to see whether the employee's car windows were closed and which held that was such a deviation as to take the injured employee out of the course and scope of employment (Texas Workers' Compensation Commission Appeal No. 992215, decided November 8, 1999), would not be followed in the future. Our intent was that such deviations are generally relatively brief in time.

In this case, we do not find Appeal Nos. 001821 and 001700 applicable as this case which involves leaving the premises and traveling on the public thoroughfare. Rather, we view this case in the same light as an employee who is given time off to see a doctor for a nonwork-related illness or who is going off premises for lunch even though they are being paid for that time. See Texas Workers' Compensation Commission Appeal No. 002194, decided October 31, 2000.

Accordingly, we reverse the hearing officer's decision and render a new decision that the claimant did not sustain a compensable injury on _____ because he was not in the course and scope of his employment at the time.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge