APPEAL NO. 010122

Following a contested case hearing held in (city 1), Texas, on December 5, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by determining that the respondent (claimant) sustained an injury in the course and scope of her employment on _____, and that she had disability beginning on February 23, 2000, and continuing through the date of the hearing. The attorney for the appellant (self-insured) has appealed the hearing officer's Findings of Fact Nos. 6, 9, 10, and 11, and Conclusions of Law Nos. 3 and 4 as not supported by sufficient evidence.

The self-insured's position is that the claimant was not injured in the course and scope of her employment because she was not on a "special mission"; that even if it was a "special mission," the claimant's travel was the ordinary "coming and going" to work, which is not covered by workers' compensation; and that even if some portion of the travel was considered part of a "special mission," the claimant deviated from a direct route home by driving to city 1, Texas, where the injuries were sustained. The claimant's attorney has filed a response, urging that the hearing officer's findings and conclusions be affirmed in all respects.

DECISION

Finding that the claimant was not in the course and scope of her employment at the time of the injury, we reverse the decision and order of the hearing officer and render a decision that the claimant did not sustain a compensable injury.

Most of the facts in this case are not in dispute. On _____, the claimant was employed as a "butcher block supervisor" at the self-insured's store located at (address) in (city 2). She testified that she stayed three nights a week in a duplex located in city 2, approximately three miles from the store at which she worked, and she spent the other four nights at her "other residence," the trailer owned by her boyfriend, which was located in city 1. The duplex was rented in April 1999. The claimant's oldest daughter and the daughter's three children stayed at the duplex all the time, and occasionally a son and another daughter of the claimant also stayed there. Although she did not make house payments on the trailer, the claimant contributed to utilities, lot payments, and groceries; she kept clothing, including some of her work clothes, at the residence she shared with her boyfriend in city 1. The claimant stayed in city 1 the night of February 21, 2000, and intended to stay in city 1 again on the night of February 22, 2000. The claimant was selected to attend a butcher block supervisor seminar to be held from 8:00 a.m. to 4:00 p.m. on February 22, in (city 3). The claimant's supervisor, Mr. P, testified that the claimant wanted to know how to get from the store to the site of the seminar in city 3 and that he provided her with directions, but did not tell her she had to go that way. He expected that she would leave from home before the seminar and return home after the seminar. She was not required or expected to go to the store before going to the seminar or to return to the store after the seminar. Mr. P estimated that it would take 30 to 40 minutes to travel

from the store to the meeting site in city 3, if traffic was moving well; otherwise, it might take an hour to get there. Mr. P knew where the claimant's duplex was located in city 2 and had no knowledge at all about a residence in city 1. The claimant was told by her supervisor that she would be paid for eight hours work while she attended the seminar. In addition, she was to be paid additional time for her travel to the seminar. The exact extent of additional compensation was in dispute and there is conflicting evidence as to whether it was to be one additional hour of compensation or whether it was to cover the entire time of travel involved. The answer to that question does not affect our resolution of this case.

The claimant testified that she departed city 1 about 5:30 in the morning, attended the seminar from 8:00 a.m. to 4:00 p.m., talked to other attendees until about 4:20 or 4:30 p.m, and then left city 2 to return to city 1. She indicated that she had to stop once to get directions to the airport as she was unsure of her return route, that it was raining during the trip, and that traffic was heavier in the afternoon than it had been in the morning. She testified that she did not depart from her direct route back to city 1, or stop for any personal errands. She estimated that her workplace was located approximately 15 to 20 minutes driving time from the intersection of (highway 1) and (highway 2), and that it would take 20 to 25 minutes to get to her residence in city 1 from that same intersection. She was about one-half mile from the city 1 residence when she had the accident which resulted in her injuries. The accident occurred about 6:30 or 6:40 p.m.

The hearing officer made the following determinations, which have been appealed:

FINDINGS OF FACT

6. The Claimant maintained "dual residents" [sic] in city 2, Texas and city 1, Texas.

* * * *

9. On _____, the Claimant was injured when she was involved in a motor vehicle accident (MVA) on the way home to city 1 after attending the business seminar.

10. The Claimant sustained an injury in [the] course and scope of her employment on _____, as she was on a special mission.

11. Due to the claimed injury, the Claimant was unable to obtain or retain employment at wages equivalent to her pre-injury wage level beginning on February 23, 2000 and continuing through the date of this hearing.

CONCLUSIONS OF LAW

3. The Claimant sustained an injury in [the] course and scope of her employment on _____.

4. The claimant had disability beginning on February 23, 2000 and continuing through the date of this hearing.

The burden of proof is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Company v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). Section 401.011(12) provides as follows:

> "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[.]

The general rule is that an injury occurring in the use of the public streets or highways in going to and returning from the place of employment is noncompensable. American General Insurance Co. v. Coleman, 303 S.W.2d 370 (Tex. 1957). The rule is known as the "coming and going" rule. The rationale of the rule is that "in most instances such an injury is suffered as a consequence of risks and hazards to which all members of the traveling public are subject rather than risks and hazards having to do with and originating in the work or business of the employer." Texas General Indemnity Co. v. Bottom, 365 S.W.2d 350, 353 (Tex. 1963).

The claimant has advanced the proposition that because she was to be compensated for her travel time, this case falls within the first statutory exception to the general travel rule (Section 401.011(12)(A)(i)) as transportation “paid for by the employer.” The claimant is mistaken; any compensation she was to receive was for her time, and was not “transportation . . . furnished as a part of the contract of employment or . . . paid for by the employer.” Even if time compensation was deemed to be transportation paid for by the employer, the claimant failed to demonstrate that she was furthering the employer’s affairs or business, as discussed below.

We likewise find Section 401.011(12)(A)(ii) inapplicable to the facts of this case and move on to a discussion of the third statutory exception, the special mission exception.

The exception to the coming and going rule where the employee is directed in the employee's employment to proceed from one place to another place has been referred to as the "special mission" exception. *See* Evans v. Illinois Employers Insurance of Wassau, 790 S.W.2d 302 (Tex. 1990) (hereinafter referred to as Evans). If an employee comes within one of the stated exceptions to the general coming and going rule, she must still show that the injury occurred within the course and scope of her employment. Bottom, *supra*; Texas Workers' Compensation Commission Appeal No. 93151, decided April 14, 1993. The Evans case discusses the exclusion of travel to and from work from workers' compensation coverage. Coverage does not apply while an employee is on the way to or from work because travel to and from work is a risk shared by society as a whole. However, the decision makes clear that once the employee is at work and subsequently travels in the furtherance of the employer's business, there would be coverage. In Evans, the deceased employee was not within the course and scope of his employment because his injury occurred while en route from his home to a safety meeting. The employee's normal duty location and starting time of 8:00 a.m. was different on Mondays when employees were required to attend a safety meeting that was located one and one-half miles from the usual work site and started at 7:30 a.m. On the way to the safety meeting the employee was killed in an accident. The court held that the injuries fell squarely within the "coming and going" rule and noted that had the injured employee been injured en route from the safety meeting to the primary work site, there would have been coverage. The "going from work" aspect of the case before us applies. The claimant had ended her workday and was no longer continuing any part of her duties or furthering the interests of her employer. She had completed her duties for the day and had embarked on going from her place of employment to her home.

The basic question in this case is whether the claimant was in the course and scope of her employment at the time she sustained the injuries in the MVA. The hearing officer found that she was on a “special mission” at the time she sustained an injury, but we do not concur with his finding. A “special mission” exists when “the employee is directed in the employee's employment to proceed from one place to another place.” See also Texas Workers’ Compensation Commission Appeal No. 001420, decided August 2, 2000, where the Appeals Panel held: “An employer may direct an employee to begin work (or the work may end) at a different location other than the normal work location without thereby creating a ‘special mission.’” This claimant was merely given an alternate work location on _____, and her travel to and from the alternate work location fits squarely within the coming and going rule, making her injuries noncompensable. Coleman, *supra.* The claimant, on the way home from the meeting site, was not subjected to any risk which she would not otherwise have faced. Travel to and from work is inherently personal and risks of travel are personal risks because everyone must travel the same public streets to and from work. Going home after leaving the meeting site created no greater risk for the claimant than going home from the workplace. *See* also Texas Workers’ Compensation Commission Appeal No. 941340, decided November 10, 1994, where the Appeals Panel

determined that there was no compensable injury when the claimant was "simply going directly from home to a scheduled meeting which only comprised a portion of the workday, and which took place in the same vicinity as her normal work site and was well within a reasonable daily commute."

We find the Appeals Panel decision in Texas Workers' Compensation Commission Appeal No. 972294, decided December 29, 1997, and cited by claimant, to be inapposite. In that case, a police officer was attending a multi-day, off-premises seminar and was injured in an MVA during the lunch break. The Appeals Panel agreed that the police officer was performing a special mission, noting that the police officer was paid for lunch breaks, and concluding that attending the seminar was a special mission undertaken in furtherance of the employer's business or affairs. The decision did not deal with the question of an injury sustained in coming or going to the seminar, but rather an injury sustained during the course of the day. That is not the same question as is before us.

Texas Workers' Compensation Commission Appeal No. 92098, decided April 27, 1992, and Texas Workers' Compensation Commission Appeal No. 91078, decided December 19, 1991, provide support for our determination. Appeal No. 92098, *supra*, concluded that a nurse driving home from a required training session was within the coming and going rule. The training was required, but the claimant was not required to attend that particular training session and the employer did not specify or care about the route the claimant took to or from the training. The training took less than a full day. In Appeal No. 91078, *supra*, a convenience store employee was assigned two successive shifts at separate stores owned by the same employer. She was allowed to stop by her home to freshen up between shifts. She was injured while driving between home and the second store. The hearing officer found that going home was an accommodation to the employee, but not directed by the employer and not in furtherance of the employer's affairs or business.

We specifically reverse Finding of Fact No. 10 because we have determined that the claimant was not on a special mission at the time she was injured. *See* Evans, *supra*, and the Appeals Panel decisions cited above. While we note that it is not uncommon to have more than one place to reside, we decline to address any question about the "dual residences" of the claimant, as we have decided that she was not in the course and scope of her employment while going home and the location of her home is therefore irrelevant. We reverse the hearing officer's Conclusions of Law Nos. 3 and 4 and render a new

decision that the claimant did not sustain an injury in the course and scope of her employment, as she was merely going home after work. Because there was no compensable injury, the claimant does not have disability.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge