

APPEAL NO. 010228

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 January 16, 2001. With regard to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, which resulted in disability beginning June 22, 2000, and continuing through the date of the hearing. The appellant (carrier) appealed the determination of the hearing officer. The claimant responded that the hearing officer's decision should be affirmed.

DECISION

Affirmed.

The evidence indicates that on _____, the claimant was employed as a truck driver and was making a trip for his employer, who is in the business of hauling propane. While in route to his destination, the claimant came upon an overturned propane truck, which he identified as also being owned by the employer, and heard the sound of escaping gas. According to the claimant, he approached the truck in an effort to activate the emergency shut-off valves and locate the driver. Upon discovering that the driver was not inside the damaged cab of the truck, the claimant continued searching for the driver, but due to the escaping propane, he had to leave the area several times in order to catch his breath. Ultimately, the claimant located the injured driver beside the roadway.

The claimant remained near the scene of the accident giving information to, and assisting, the highway patrol officer who responded to the accident. According to the claimant, he felt out of breath and light-headed during this time, but attributed his symptoms to the stress of the situation. After being released by the highway patrol, the claimant proceeded on his route, but continued feeling nauseated and experiencing blurred vision. Upon delivering the propane on _____, he contacted his employer in order to receive permission to seek medical attention at the employer's expense. The claimant finally reached the employer on June 23, 2000, and received permission to seek medical attention. Ultimately, the claimant was referred to a toxicologist, Dr. H, who diagnosed the claimant as suffering from reactive airway disease, resulting from the injury sustained to his lungs as a result of the propane exposure.

As a general rule, an injury sustained in the course of employment (1) must be of a kind or character originating in or having to do with the employer's work, and (2) must have occurred while engaged in the furtherance of the employer's business or affairs. Biggs v. United States Fire Ins. Co., 611 S.W.2d 624, 627 (Tex. 1981). In Texas Employers' Insurance Association v. Thomas, 415 S.W.2d 18 (Tex. Civ. App.-Fort Worth 1967, no writ history), a truck driver, who was driving the employer's truck, was found to be within the scope of his employment while searching for a billfold belonging to one of the occupants of a wrecked automobile which was blocking the highway and prevented the driver from proceeding. The court held:

A servant does not cease to be in the course of his employment merely because he is not actually engaged in doing what is specially prescribed to him, and if in the course of his employment an emergency arises, and, without deserting his employment, he does what he thinks necessary for the purpose of advancing the work in which he is engaged in the interest of his employer.

We believe that the principle of law in Thomas is analogous and that the employer's interest in the present case was being furthered, at least as much as the truck driver's employer's interest was being furthered in looking for a billfold belonging to a passenger in another vehicle. We further believe that the claimant in the instant case was doing what seemed reasonable and necessary to respond to the emergency and advance the work of the employer. See, generally, Nations & Kilpatrick, Texas Workers' Compensation Law, Vol. 1 § 3.01[2][a], pp. 3-6. Based on the evidence presented, the hearing officer concluded that the claimant was acting within the course and scope of his employment when he responded to the emergency situation. We find there was sufficient evidence to support the determination of the hearing officer that the claimant sustained a compensable injury which resulted in disability. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge