APPEAL NO. 011160
FILED JULY 09, 2001

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 May 10, 2001. With respect to the issues before him, the hearing officer determined that the appellant/cross-respondent (claimant) was not injured in the course and scope of her employment when she was involved in a motor vehicle accident on _____; that the respondent/cross-appellant (carrier) is relieved from liability because of the claimant's failure to timely notify the employer of the injury; and that the claimant timely filed a claim for compensation. On appeal, the claimant urges that those determinations which are not favorable to her be reversed and a new decision rendered ordering the carrier to begin paying disability and medical benefits; reimburse group carriers, health care providers, and the claimant for medical charges incurred; and furnish the claimant with lifetime medical and disability benefits. The carrier urges on appeal that the determination that the claimant timely filed a claim for compensation be reversed and, in response to the claimant's appeal, urges that in all other respects the decision be affirmed. The claimant did not respond to the carrier's appeal.

DECISION

We affirm in part and reverse and render in part.

The essential facts of the case are undisputed. The evidence reflects that the claimant was severely injured in an automobile accident on _____. On that day, the claimant and her friend ST, who was also employed by the same company as the claimant, but worked at a different location than the claimant, attempted to pick up their paychecks at the location where ST worked. The claimant and ST planned to attend a church-related outing in (city), Texas, later that day. Neither the claimant nor ST was scheduled to work on _____; however, per company policy, employees had to pick up their paychecks in person. ST drove the claimant to the location where ST worked so that they could both pick up their checks from the manager; however, the claimant's usual habit was to pick up her check at the location where she worked. There is some dispute regarding whether only ST or both ST and the claimant approached the manager about receiving their checks; however, it is undisputed that the manager had not yet picked up the checks from the post office. The claimant and ST intended to follow the manager to the post office where he would give the checks to them. ST and the claimant then proceeded to follow a vehicle which was owned by the manager; however, unbeknownst to the claimant and ST, the manager's wife was driving the vehicle that day and the manager was driving a different vehicle to the post office. At some point while following the vehicle, it became clear that it was not going in the direction of the post office and ST turned the car in the opposite direction, at which time it was involved in an accident with another vehicle. The claimant sustained severe injuries in the accident.

The claimant argues that she was injured in the course and scope of her employment on _____. Section 406.031(a)(2) provides, in part, that "[a]n insurance carrier is liable for compensation for an employee's injury without regard to fault or negligence if the injury arises out of and in the course and scope of employment." Section 401.011(12) defines "course and scope of employment" to mean "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 definition goes on to state that the term includes an activity conducted on the premises of the employer or at other locations but does not include transportation or travel subject to certain exceptions. The claimant had the burden to prove by a preponderance of the evidence that an injury occurred in the course and scope of her employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. Whether an injury occurred in the course and scope of employment is generally a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 91036, decided November 15, 1991.

In ESIS, Inc., Servicing Contractor v. Johnson, 908 S.W. 2d 554 (Tex. App.-Fort Worth 1995, writ denied), the court stated:

> Course and scope of employment is not limited to the exact moment when the employee reports for work, the moment when the employee's labors are completed, nor to the place where the work is done. [Citation omitted.] If the injury is the result of an activity that originates from the employment, and is received while the employee is actually engaged in furthering the employer's business, the injury is deemed to have been sustained within the course and scope of employment. [Citations omitted.] An injury originates from the employment when it results from a risk or hazard that is reasonably inherent or incident to the work or business. [Citation omitted.]

In Texas Workers' Compensation Commission Appeal No. 950021, decided February 16, 1995, the employee drove his car to the employer's premises sometime after his bus driving shift had ended to pick up his paycheck and was injured in a motor vehicle accident in the employer's parking lot. The hearing officer determined that the injured employee was not injured in the course and scope of employment and the Appeals Panel affirmed. While testifying that the employer encouraged him to pick up his paycheck at the time he did, he did not testify that he was required to pick up his pay on the premises. The employee relied on INA of Texas v. Bryant, 686 S.W.2d 614 (Tex. 1985), which concerned an employee who returned to her place of employment to receive pay several days after ceasing employment and fell on the premises. The majority opinion stated that if the employer's practice required the employee to return to pick up her check, or if she reasonably believed that she was required to return to pick up the check, then her injury would be in the course and scope of employment. The decision in Appeal No. 950021 also cited McCoy v. Texas Employers Insurance Association, 791 S.W.2d 347 (Tex. App.-Fort Worth 1990, writ denied) in which decision the appellate court affirmed the district court,

which ruled that the employee was not in the course and scope of her employment when injured. In that case, the employee was injured at the office of her employer where she had gone for the sole purpose of picking up her paycheck before her shift began and there was evidence that she could have picked up the paycheck in person during her shift, could have called ahead and had someone else pick it up for her, could have had it mailed to her, or could have had it deposited directly into her account.

The claimant in this case contends that she was in the course and scope under the "special mission" doctrine. That doctrine is an exception to the general rule that an injury occurring in the use of the public streets or highways in going to or returning from work is not compensable, the so-called "coming and going" rule. *See, generally*, American General Insurance Co. v. Coleman, 303 S.W.2d 370 (Tex. 1957); Texas General Indemnity Co. v. Bottom, 365 S.W.2d 350 (Tex. 1963). The special mission exception is codified in Section 401.011(12)(A)(iii). In the present case, it is undisputed that the employer's general policy requires employees to pick up their checks in person and that the claimant picked up her check at the location where she actually worked. However, on the day she was injured, she was attempting to pick up her check at a different location. Upon discovering that it was not there, the claimant attempted to follow her manager to the post office to retrieve her check. The hearing officer determined that the claimant was not required to make the trip to the post office in order to receive her check. Our review of the record does not demonstrate that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exits for us to reverse the hearing officer's determination that the claimant was not in the course and scope of her employment at the time she was injured in the motor vehicle accident on _____. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer found that the date on which the claimant or a next friend informed the employer that she had sustained a work-related injury was not established by the evidence. Consequently, the hearing officer determined that the carrier is relieved from liability under Section 409.002 because of the claimant's failure to give timely notice of the injury pursuant to Section 409.001. Our review of the record does not reveal that the hearing officer's notice determination is so against the great weight of the evidence as to compel its reversal on appeal. Cain, *supra.*

Section 409.003 provides that for injuries other than occupational diseases, an employee or a person acting on the employee's behalf shall file with the Texas Workers' Compensation Commission (Commission) a claim for compensation for an injury not later than one year after the date on which the injury occurred. Section 409.008 provides that if an employer or the employer's insurance carrier has been given notice or has knowledge of an injury to or the death of an employee and the employer or insurance carrier fails, neglects, or refuses to file the report under Section 409.005 (Employer's First Report of Injury or Illness - TWCC-1), the period for filing a claim for compensation under Sections 409.003 and 409.007 does not begin to run against the claim of an injured employee or a legal beneficiary until the day on which the report required under Section 409.005 has been

furnished. Section 409.005(a) provides that an employer shall file a written report with the Commission and the employer's insurance carrier if: (1) an injury results in the absence of an employee of that employer from work for more than one day; or (2) an employee of the employer notifies that employer of an occupational disease under Section 409.001. We have previously held that an employer's lack of notice of injury or knowledge of injury will prevent any tolling under Section 409.008. Texas Workers' Compensation Commission Appeal No. 94268, decided April 19, 1994. *See also* Texas Workers' Compensation Commission Appeal No. 93858, decided November 9, 1993; and Texas Workers' Compensation Commission Appeal No. 931157, decided February 3, 1994. Since the hearing officer found that the claimant did not timely report her injury of _____, to her employer, and also determinated that the date on which the employer had actual knowledge of the alleged work-related injury had not been established by the evidence, the hearing officer erred in applying the tolling provision of Section 409.008 to extend the time for filing of the claim for compensation.

The hearing officer's determinations that the claimant was not injured in the course and scope of her employment on _____, and that the carrier is relieved from liability in accordance with Section 409.002 because the claimant did not give timely notice to her employer of the injury pursuant to Section 409.001 are affirmed. The determination that the claimant timely filed a claim for compensation as required under Section 409.003 is reversed and a new decision rendered that the claimant did not timely file her claim and, as such, that the carrier is also relieved of liability pursuant to Section 409.004.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge