

APPEAL NO. 011449  
FILED AUGUST 1, 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 18, 2001. The record closed on May 23, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) was not in the course and scope of her employment at the time she was injured in a motor vehicle accident on \_\_\_\_\_; that the claimant did not have disability because she did not sustain a compensable injury; and that the claimant's average weekly wage (AWW) is \$520.000. In her appeal, the claimant asserts error in the hearing officer's determinations that she was not in the course and scope of her employment at the time of her accident and that she did not have disability. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. Neither party appealed the determination that the claimant's AWW is \$520.00.

DECISION

Affirmed.

It is undisputed that the claimant sustained a severe injury when she was involved in a motor vehicle accident on \_\_\_\_\_. Specifically, she suffered a C6-7 cervical fracture dislocation which transected the spinal cord at the C6 level. It is also undisputed that the claimant was driving from the office where she worked as a leased employee to the office of her employer at the time of her accident. The dispute arises as to the reason for the trip. The claimant acknowledges that a coworker went with her on the trip so that the coworker could pick up her paycheck. That employee was killed in the accident. The claimant denied that she was going to the employer's to pick up her paycheck because it was direct deposited. The claimant maintained that the reason for her trip to the employer's office was to pick up a bar code scanner, which was the property of the company to whom she was leased, so that she could return the scanner. The claimant's husband also works for the employer and he also testified that the claimant was making the trip to the employer's office on \_\_\_\_\_, to pick up the scanner and return it because he had mentioned to the claimant on the evening of November 1, 2000, that the scanner needed to be returned. Several witnesses called by the carrier testified that the claimant had made the trip to pick up her direct deposit confirmation and that she never mentioned that she was making the trip to the employer's office to pick up the scanner and return it.

The claimant maintains that because her travel was in furtherance of the affairs or business of the employer and made with the express or implied approval of her employer, her accident was in the course and scope of her employment and outside the general rule that injuries that occur in travel to and from the place of employment are excluded from the course and scope. That issue presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight, credibility, relevance, and materiality of the evidence before him. Section 410.165(a). He was acting within his province as the fact finder in resolving the

conflicts and inconsistencies in the evidence, relating to the reasons for the claimant's trip to the employer's office at the time of her accident, against the claimant. Our review of the record does not reveal that the hearing officer's determination that the claimant was not in the course and scope of her employment at the time of her tragic accident is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Likewise, the fact that another fact finder could have drawn different inferences from the evidence, which would have supported a different result, does not provide a basis for us to disturb the hearing officer's decision. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the hearing officer's determination that she did not have disability. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Thus, the existence of a compensable injury is a prerequisite to a finding of disability.

The claimant also asks that we resolve an issue of the claimant's entitlement to lifetime income benefits (LIBs). At the hearing, the parties agreed to withdraw an issue of entitlement to LIBs because consideration of that issue was premature. Thus, the issue of entitlement to LIBs was not before the hearing officer and it is likewise not before us on appeal.

The hearing officer's decision and order are affirmed.

---

Elaine M. Chaney  
Appeals Judge

CONCUR:

---

Robert E. Lang  
Appeals Panel  
Manager/Judge

---

Philip F. O'Neill  
Appeals Judge