

APPEAL NO. 011609
FILED AUGUST 30, 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 June 26, 2001. With respect to the sole issue before him, the hearing officer determined that the respondent (claimant) was injured in the course and scope of his employment when he was involved in a motor vehicle accident (MVA) on _____. The appellant (carrier) appeals and seeks reversal, arguing that the claimant's MVA was outside of the course and scope of his employment, or, alternatively, that if the claimant was in the course and scope of his employment, his deviation therefrom caused his injury to be noncompensable. There is no response from the claimant in the file.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was injured in the course and scope of his employment when involved in an MVA on _____. The claimant was a "utility locator" for his employer. He called the office from home for his job assignments. He drove, in a company car for purely business use, to each job site, sometimes as many as 60 sites per day, and called the office for more assignments as he completed the ones previously given. On occasion, and at the time of the incident in question, he was tasked to take a trainee with him to his job sites and then to take him home. On the date of the injury, the claimant and his trainee had completed the last of their work together, and while the claimant was taking the trainee home, they decided to stop and get a cold drink. When preparing to turn into the convenience store for a drink, the claimant was struck from behind by another automobile, causing the injury made the basis of this claim.

In Texas Workers' Compensation Commission Appeal No. 980133, decided March 6, 1998, we reversed a hearing officer's determination that the claimant was not in the course and scope of his employment at the time of his MVA and rendered a new decision that the claimant was in the course and scope of his employment at the time of the MVA. The claimant in that case was a licensed vocational nurse for a home health care agency, who worked out of his home and received his work assignments there. At the time of his accident, the claimant in Appeal No. 980133 had completed an assignment and was returning home to eat and to await a further assignment. In reversing, we noted that the claimant's travel was at the direction of his employer and, as such, that it was within one of the exceptions to the "coming and going" rule articulated in Section 401.011(12)(A)(iii). The reasoning of that case controls here. In this instance, as in Appeal No. 980133, the travel was made at the direction of the employer and was an integral part of the claimant's job duties for the employer. Accordingly, we find no merit in the carrier's assertion that the claimant was not in the course and scope of his employment at the time of his MVA.

The carrier also argues that if the claimant's travel was in the course and scope of his employment, his action of stopping to purchase a cold drink was a deviation. The hearing officer determined that the claimant's actions did not rise to the level of a deviation such that the claimant was removed from the course and scope based upon the "personal comfort" doctrine. The Supreme Court of Texas has described the "personal comfort" doctrine in the following terms:

An employee need not have been engaged in the discharge of any specific duty incident to his employment; rather an employee in the course of his employment may perform acts of a personal nature that a person might reasonably do for his health and comfort, such as quenching thirst or relieving hunger; such acts are considered incidental to the employee's service and the injuries sustained while doing so arise in the course and scope of his employment

Yeldell v. Holiday Hills Retirement and Nursing Center, Inc., 701 S.W.2d 243, 245 (Tex. 1985).

In arguing that the "personal comfort" doctrine does not apply in this instance, the carrier cites Texas Workers' Compensation Commission Appeal No. 950057, decided February 24, 1995, where the Appeals Panel reversed a determination that the claimant was in the course and scope of his employment at the time of his MVA and rendered a new decision that the claimant was not in the course and scope at the time of his injury. In that case, the claimant worked at an automobile dealership washing cars and driving customer cars to be serviced. At the time of his MVA, the claimant in Appeal No. 950057 had dropped off a customer at the customer's home and was returning the customer's car to the dealership for servicing. On the way, the claimant stopped at a convenience store to get lunch and was involved in an MVA as he turned into the convenience store. The Appeals Panel rendered a determination that the claimant had deviated from the course and scope of his employment once he turned off the road to go to the convenience store. That case does not necessitate reversal here because the claimant in this case does not have a designated workplace where he can attend to his personal comfort, whereas the employee in Appeal No. 950057 did. The essential principle of the personal comfort doctrine is that certain activities, such as using the restroom, quenching thirst, and relieving hunger, are incidental to the employee's performance of the job such that the performance of those activities will not be considered a deviation from the course and scope of employment. We are unaware of any sound basis for determining that the personal comfort doctrine does not apply to the claimant in this instance, simply because the nature of his job is such that he travels and, therefore, does not have a fixed workplace. The other cases cited by the carrier are distinguishable for similar reasons. The hearing officer determined that the claimant remained in the course and scope of his employment at the time of his MVA under the principle of the personal comfort doctrine. Under the facts of this case, we cannot agree that the hearing officer erred in so finding.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE I
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge