

APPEAL NO. 012660
FILED DECEMBER 3, 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 October 3, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____, because her "recklessness" in connection with her driving of the truck on _____, constituted a willful attempt to injure herself under Section 406.032(1)(B), thus relieving the respondent (carrier) of liability. The claimant appealed that determination and the carrier responded. The two other issues resolved by the hearing officer were that the claimant was not engaged in "horseplay that was a producing cause of the injury" and that the claimant is not barred from recovering benefits under the 1989 Act because she did not make an informed election of remedies. There is no appeal of the determinations in favor of the claimant on the horseplay issue or the election-of-remedies issue. The parties stipulated that the claimant did not make an informed election of remedies.

DECISION

The hearing officer's decision is reversed and rendered.

We reform the hearing officer's decision to reflect that the insurance carrier is Service Lloyds Insurance Company as was stipulated to by the parties.

The parties stipulated that the claimant sustained an injury in the form of contusions to her neck, shoulders, knees, and chest, and an internal derangement of her left knee on _____. The claimant was working as a sales associate for the employer on _____. It is undisputed that on that day the claimant was performing her job duties while she was driving a customer's truck on the employer's premises to have the truck gassed up for the customer. The claimant sustained her injuries when the truck she was driving collided with the employer's gate. The hearing officer found that the claimant's injury also included a torn meniscus of her left knee.

Section 406.032(1)(B) of the 1989 Act reads in pertinent part "[A]n insurance carrier is not liable for compensation if: (1) the injury: (B) was caused by the employee's willful attempt to injure himself" The hearing officer found that immediately before the accident the claimant became angry because a coworker had admonished her for bumping into vehicles while parking other vehicles, that the claimant drove the customer's truck "recklessly," and that the claimant's _____, injury was due to her "reckless driving" of the customer's truck," i.e., traveling too fast in a small confined space, which led to a collision that totaled the vehicle."

We hold that the hearing officer erred in concluding that "the Claimant's recklessness in connection with her driving of the truck on _____, constitutes a 'willful attempt' under [Section] 406.032(1)(B) of the [1989] Act."

BLACK'S LAW DICTIONARY (7th ed., 1999) (Black's) defines "willful" as "Voluntary and intentional, but not necessarily malicious." Black's defines "reckless" as "Characterized by the creation of a substantial and unjustifiable risk of harm to others and by a conscious (and sometimes deliberate) disregard for or indifference to that risk; heedless; rash. Reckless conduct is much more than mere negligence: it is a gross deviation from what a reasonable person would do." Black's defines "recklessness," in part, as "Conduct whereby the actor does not desire harmful consequence but nonetheless foresees the possibility and consciously takes the risk. Recklessness involves a greater degree of fault than negligence but a lesser degree of fault than intentional wrongdoing."

Under the earlier workers' compensation laws, the Texas Supreme Court addressed varying levels of "intent" with respect to the compensability of an employee's purported suicide in Saunders v. Texas Employers' Ins. Assoc., 526 S.W.2d 515 (Tex. 1975). While the Saunders case is not directly on point, it is illustrative of the fact that the workers' compensation laws differentiate between a willful, intended act, and one that is accidental in nature. *In accord, see*, Texas Employers' Ins. Assoc. v. Gregory, 534 S.W.2d 166 (Tex. Civ. App.-Houston [14th Dist] 1976, no writ) and Texas Workers' Compensation Commission Appeal No. 950998, decided July 27, 1995.

In addition, the general definitions and levels of "intent" are often addressed in the jurisprudence of criminal law. "Intentional" and "knowing" are the highest levels of *mens rea*, and "recklessness" falls between "knowing" and the lowest level of *mens rea*, "negligence." See, generally, Donoho v. State, 39 S.W.3d 324 (Tex. App.-Fort Worth 2001, no pet.); McKinney v. State, 12 S.W.3d 580, (Tex. App.-Texarkana 2000, pet. ref'd); Peterson v. State, 942 S.W.2d 206 (Tex. App.-Texarkana 1997, pet. ref'd). Per the well-drawn distinctions in the definitions of intentional and reckless behavior, a defendant may be charged with murder (intentional) or manslaughter (reckless); therefore, there is a distinction in the definitions, and one is not tantamount to the other.

Accordingly, we reverse the hearing officer's decision that the claimant's _____, injury is not compensable because of her "recklessness" in connection with her driving of the truck, and we render a decision that the claimant's _____, injury is compensable because the claimant did not make a "willful attempt" to injure herself.

The true corporate name of the insurance carrier is **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLEY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY, NORTH
AUSTIN, TEXAS 78755.**

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge