APPEAL NO. 013180
FILED FEBRUARY 1, 2002

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 December 5, 2001. The hearing officer resolved the disputed issues before him by determining that (1) respondent (claimant) was involved in a motor vehicle accident (MVA) while engaged in activity having to do with and originating in the business of the employer and performed while engaged in the furtherance of the business of the employer; (2) claimant sustained injuries as a result of the MVA; and (3) due to claimant's injuries, she had disability from _____, through April 14, 2001. Appellant (carrier) appeals, asserting that the hearing officer erred in the application of the law to the facts. Claimant responded that the Appeals Panel should affirm the decision and order.

DECISION

We affirm.

Claimant testified that (1) she was employed as an insurance agent and that her job required her to make house calls on clients to both sell policies and collect premiums; (2) on _____, she had some time between scheduled appointments so she stopped in a parking lot to consult her log book, which showed clients who owed premium payments; (3) she found a client in the log book who lived in the area and owed premiums; and (4) as she was pulling out of the parking lot to go to the client's home in an attempt to collect the premium, she was injured in the MVA. Carrier presented testimony from claimant's sales manager. The manager testified that "everyone" stops to purchase personal items and that claimant had told her that she had stopped to buy personal items. Carrier's position, both at the hearing and on appeal, is that claimant had deviated from the course and scope of her employment at the time of the MVA. The hearing officer determined that, whether or not claimant had stopped for personal reasons, claimant had completed the personal business and had resumed the course and scope of her employment when the MVA occurred.

A claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury in the course and scope of her employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A "compensable injury" means "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." Section 401.011(10). "Course and scope of employment" means, in pertinent part, "an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer." Section 401.011(12). In General Ins. Corp. v. Wickersham, 235 S.W.2d 215 (Tex. Civ. App.-Fort Worth 1950, writ ref'd n.r.e.), the court stated that an injury is not compensable if received during a deviation by the employee from the course and scope of employment, but after the deviation is over, injuries thereafter received are compensable. In Lesco

Transportation Company, Inc. v. Campbell, 500 S.W.2d 238 (Tex. Civ. App.-Texarkana 1973, no writ), the court stated as follows:

> Stated in converse terms, the rule is that when an employee abandons and turns aside from the course and scope of his employment, such deviation defeats a claim for compensation. Such deviation occurs if at the time of the injury the employee is engaged in and pursuing personal work or objectives that do not further the employer's interest. An injury received under such circumstances is not from a hazard that has to do with and originates in the employer's business, work, trade or profession. [Citation omitted.]

Carrier cites Texas Workers' Compensation Commission Appeal No. 950057, decided February 24, 1995, in support of its argument that claimant had deviated from employment. In Appeal No. 950057, an employee of a car dealership was instructed to drive a customer home in the customer's vehicle and return the vehicle to the dealership to be serviced. On the way back, the employee decided to stop at a convenience store for lunch and coffee, which required a left turn. As the employee was entering the left turn lane, he was hit by another vehicle. The Appeals Panel reversed the hearing officer and rendered a decision that the injury was not compensable, stating that the fact that the accident occurred before the turn was completed did not alter the undisputed fact that the employee had left the direct route back to the dealership. Carrier also cites Texas Workers' Compensation Commission Appeal No. 961565, decided September 25, 1996. In Appeal No. 961565, an employee was directed to make a bank deposit and mail letters while he was on his lunch break. The employee picked up some personal mail of his own while he was at home for lunch and proceeded to the bank, where he made the deposit. The employee then proceeded to the post office when he decided to stop at a convenience store to buy some stamps for his personal mail. The employee was proceeding to turn right into the convenience store parking lot when he was involved in an MVA. The Appeals Panel reversed the hearing officer and rendered a decision that the injury was not compensable.

What distinguishes this case from those cited by carrier was that, even assuming that claimant had deviated from the course and scope of her employment, she said that, at the time of the MVA, she was turning back to the route to collect the premiums from a client. Claimant testified that her stop in the parking lot was not for personal reasons, which would support a determination that there was no deviation at all. Although the hearing officer made no findings as to whether there had been a deviation by claimant when she pulled into the parking lot, he clearly stated that claimant was back in the course and scope of her employment at the time of the MVA. Assuming there was a deviation, the facts of the case before us are similar to those in Texas Workers' Compensation Commission Appeal No. 991909, decided October 15, 1999 (Unpublished). In Appeal No. 991909, the employee was traveling from the employer's headquarters to his work site as he did almost every workday. On his way, the employee stopped to buy breakfast at a bakery. After leaving the bakery, the employee was continuing on to his work site taking a different route than usual when he was involved in an MVA. The Appeals Panel affirmed

the hearing officer's decision that the injury sustained was compensable because the employee had returned to the route to work and the deviation had ended. In this case, we conclude that the hearing officer's decision is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PA** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge