

APPEAL NO. 022252
FILED OCTOBER 28, 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 August 14, 2002. The hearing officer, having made findings that the respondent's (claimant) travel in her car on _____, was in the course and scope of her employment, concluded that she was injured in the course and scope of her employment when she was involved in a motor vehicle accident (MVA) on _____. The hearing officer also determined that the claimant had disability from December 8, 2001, through the date of the hearing. The appellant (carrier) contends on appeal that the hearing officer has failed to correctly analyze this case in that he applied the "dual purpose" doctrine in the face of evidence establishing that the claimant was simply driving herself to work when she had the MVA, that her travel fell within the "coming and going" rule and came within no exceptions to that rule, and, therefore, that she was not in the course and scope of her employment at the time she was injured in the MVA. The carrier challenges the disability determination on the grounds that since the claimant did not sustain a compensable injury, she cannot have disability. The claimant has responded, contending that although the hearing officer should have analyzed the case as one simply involving the "coming and going" rule, the hearing officer's employment of the "dual purpose" doctrine to resolve the travel issue can be affirmed.

DECISION

Affirmed on other grounds.

The claimant testified, without contradiction, that on _____, a Friday, she was employed by an insurance company as a "home service insurance agent" and had been so employed for about two years; that she worked out of her home; that her duties consisted of calling customers about their life, health, and annuity insurance policy needs or about their premium arrearages, presenting new customers with their policies, and so forth; that she would call the customers from her home, schedule the appointments at the customers' homes, and then drive her car to keep those appointments. Her hours varied from 40 to 60 plus hours per week and approximately 35 to 50 hours per week were spent driving her car to and from her home to the homes of her customers. She said that she had to call her supervisor at his office every morning by 10:30 a.m. to report the premiums she had collected by that time; that on Tuesdays and Fridays, she and the approximately 20 other home service agents were required to go to the supervisor's office, for about two hours, to turn in collected premiums, do some paperwork, get briefed on new information, and sometimes stay for meetings; and that only the supervisor and two support staff members were provided with company offices. The claimant further stated that on _____, having already arranged the appointment, she left her fiancé's home (where she had been staying temporarily) to drive to a customer's house to collect his premium check, and

that about five minutes into this travel the car brakes stopped working and she ultimately had to drive into a tree to stop the car. She said that she was taken by ambulance to a hospital and treated; that her right knee, both ankles and wrists, and neck and back were injured; that she was taken off work by her doctor and has not yet been released to return to work, primarily due to the problems she would have driving with her injured knee; and that she felt that by mid-April 2002 she probably would have started working part-time.

In Texas Workers' Compensation Commission Appeal No. 951833, decided December 18, 1995, the Appeals Panel stated the following:

The general rule is that an injury occurring in the use of the public streets or highways in going to and returning from the place of employment is noncompensable. [Citation omitted.] The rule is known as the "coming and going" rule. The rationale of the rule is that "in most instances such an injury is suffered as a consequence of risks and hazards to which all members of the traveling public are subject rather than risks and hazards having to do with and originating in the work or business of the employer." [Citation omitted.]

The "coming and going" rule has been codified in Section 401.011(12) which states, in part, that the term "course and scope of employment" does not include transportation to and from the place of employment. The claimant's position at the hearing was that her travel at the time of the MVA fell within the "special mission" exception to the "coming and going" rule codified in Section 401.011(12)(A)(iii) which provides for an employee who is directed in the employee's employment to proceed from one place to another. The carrier contended that because the claimant was traveling from her residence to the residence of her first customer of the day, and not from one customer's residence to another's, her travel fell within the "coming and going" rule.

In support of his conclusion that the claimant was injured in the course and scope of her employment when she was involved in an MVA on _____, the hearing officer made the following findings:

FINDINGS OF FACT

3. On _____, the Claimant sustained an injury in a [MVA] while traveling to a customer's house to collect insurance premium money in furtherance of the Employer's business.
4. On _____, the Claimant's transportation was not furnished by or under the control of the Employer. On that date, the Employer had not specifically directed the Claimant to proceed from one place to another place as part of her employment, but gave its implied approval of the Claimant's effort to collect insurance

premium money as part of her assigned duties of employment.

5. On _____, the Claimant would have driven to the location of her injury even if she had no personal or private affairs to be furthered by the travel; and she would not have driven to the location of her injury if there were no business of the Employer to be furthered by such travel.
6. On _____, the Claimant sustained an injury that arose out of and was in the course and scope of her employment.

In his discussion of the evidence, the hearing officer states that “[t]he applicable provision of the statutory definition is Section 401.011(12)(B), not Subsection (A).” However, Subsection (B) provides for the “dual purpose” exception and there is no evidence to support that exception. The hearing officer must have had in mind Section 401.011(12)(A)(iii), which codifies the “special mission” exception, since Sections 401.011(12)(A)(i) and (ii) provide for, respectively, the transportation being provided by the employer and the means of the transportation being under the control of the employer, exceptions clearly not raised by the evidence. The hearing officer also cites our decision in Texas Workers' Compensation Commission Appeal No. 951910, decided December 27, 1995, as having nearly identical key facts. In that decision, the injured employee, an insurance agent who, although he had an office, also made house calls on customers, left his house with his wife intending to drive to the residences of two customers to collect insurance premiums before driving to the residence of his wife’s parents, and was injured in an MVA before arriving at the residence of the first customer. The hearing officer in that case made findings of fact which addressed both the “special mission” exception in Section 401.011(12)(A)(iii) and the “dual purpose” of the travel exception in Section 401.011(12)(B) and the Appeals Panel held that these findings were sufficiently supported by the evidence and sufficiently supported the conclusions that the employee was in the course and scope of employment at the time. That decision stated the following:

First, as the claimant points out, driving to collect premiums is part of the claimant’s employment duties and furthers the affairs of his employer. The hearing officer found this as a matter of fact in his Findings of Fact Nos. 12 and 13. If this is so, it is difficult to see how going to the home of a customer to collect premiums would be going to and from work since the travel itself would be part of the work. This is a similar situation to the one in Employers Casualty Company v. Hutchinson, 813 S.W.2d 539 (Tex. App.–Austin 1991, no writ) (hereinafter Hutchinson). In Hutchinson the decedent was returning from a family reunion in Horseshoe Bay to his home in Austin when he deviated from a direct route home to collect a delinquent account for his employer in Granite Shoals. The Austin Court of Appeals stated as follows in affirming a finding by the trial court that decedent’s accident was in the course and scope of his employment:

An injury received while using the public streets is compensable when the employee has undertaken a special mission at the direction of the employer or is performing a service in furtherance of the employer's business with the express or implied approval of the employer. [Citations omitted.]

Also, even if one were to consider going to the customer's home to collect premiums going to the place of employment, clearly it was part of the requirements of the claimant's job and would be covered under Section 401.011(12)(A)(iii).

We agree with the hearing officer that our decision in Appeal No. 951910, supra is dispositive of the legal issue in this case. Also, we are satisfied that the challenged factual determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

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

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge