APPEAL NO. 022377
FILED OCTOBER 31, 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 (CCH) was held on August 12, 2002. The hearing officer determined that, while the appellant (claimant) sustained a right knee injury on _____, the injury was not compensable because the claimant was not in the course and scope of his employment at the time he sustained the injury, and that because the claimant did not have a compensable injury, the claimant did not have disability.

The claimant appeals, contending that his injury "falls under the continuous coverage principle" citing both court and Appeals Panel decisions. The respondent (carrier) responds, asserting that the continuous coverage doctrine is not applicable nor is the personal comfort doctrine or exceptions to the "coming and going" rule applicable citing court and Appeals Panel decisions. The carrier urges affirmance.

DECISION

Reversed and rendered.

The facts are not much in dispute and are set out in some detail in the hearing officer's decision. The case basically involves a question of law. The claimant was employed as a mobile home technician performing warranty work on mobile homes in Louisiana and Texas. It is undisputed that the claimant would load the employer's truck and trailer with supplies and materials at the beginning of the week in (city 1) and travel to various locations in Louisiana and Texas during the week, returning to (city 1) when his jobs were finished. The claimant was paid on an hourly basis and was given a weekly expense check. The claimant could request additional expense money and any expense money not used during the week was to be reimbursed to the employer. The claimant was paid a per diem of $5.00 for breakfast, $7.00 for lunch and $11.00 for dinner regardless of whether the meals were eaten or not and regardless of how much the meals actually cost. The claimant was also required to keep a daily log. It is undisputed that the claimant was paid for time spent driving from place to place and from and to (city 1). In dispute was whether the claimant was required to log in and out for all breaks, meals, and personal errands or whether short breaks or stops at a fast food restaurant to get food to go did not require logging out.

It is undisputed that on the morning of Friday _____, the claimant did some work at a location close to (city 2), went to (city 2) and performed some work, and that around 11:30 a.m. or 12:00 noon the claimant called his supervisor, advised her that it was raining, and that the supervisor authorized him to return to (city 1) and "have a nice weekend." The claimant was en route back to (city 1) when he stopped at a convenience store that had a "chicken restaurant" to get some lunch. The claimant testified that he had not planned to log out because he was just going to get some

chicken to go. The claimant placed his order and went back out to the truck to get some change when he slipped, fell and injured his knee. Someone in the store came and helped the claimant up and on the way to the truck the claimant fell a second time. Someone from the store brought the claimant his chicken and the claimant ate and rested in the truck. At some point the claimant called his supervisor and advised her of the injury and logged out. This incident occurred sometime between 1:30 and 3:30 p.m. when the claimant continued to drive toward (city 1) with his injured knee. The claimant took another supper rest break between 5:00 and 6:30 p.m. before arriving back at (city 1) sometime later. The claimant subsequently had surgery for his injured knee. The hearing officer found:

FINDINGS OF FACT

9. Claimant was off the clock, not on duty with Employer, and was not being paid his hourly wage by Employer while taking a lunch break in (city 3), Texas, from 1:30 PM through 3:30 PM on _____.

10. Claimant was not engaged in or about the furtherance of the affairs or business of Employer when he suffered his right knee injury on _____.

CONCLUSIONS OF LAW

4. Claimant's right knee injury of _____, is not compensable because Claimant was not in the course and scope of his employment with Employer at the time he suffered his right knee injury on _____.

The primary issue in this case is whether the claimant sustained his injury while in the course and scope of his employment. Course and scope of employment is defined in Section 401.011(12) and generally does not include transportation to and from the place of employment except in certain limited circumstances; one of these, the "special mission" exception, arises where the employee is directed in his employment to proceed from one place to another. Section 401.011(12)(A)(iii). Generally, an employee on a special mission does not go into and out of the course and scope of employment while on that special mission. This is sometimes referred to as the principle of "continuous coverage." Texas Workers' Compensation Commission Appeal No. 980924, decided June 22, 1998; Texas Workers' Compensation Commission Appeal No. 950973, decided July 31, 1995. It applies to special missions unless there is a deviation from or abandonment of the course and scope of employment while on a personal errand. Texas Workers' Compensation Commission Appeal No. 000118, decided February 24, 2000. Regarding this area of the law, the Appeals Panel has frequently cited PHILLIP HARDBERGER, TEXAS WORKERS' COMPENSATION TRIAL MANUAL p. 11-4 (Parker-Griffin Publishing 1991) as stating:

> An employee whose work involves travel away from the employer's premises is in the course and scope of employment continuously during the trip, except when a distinct departure on a personal errand is shown. Injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually compensable.

Appeal No. 980924, involves a review of a number of Appeals Panel decisions and comments on North River Insurance Co., v. Purdy, 733 S.W.2d 630 (Tex. App.-San Antonio 1987, no writ), Shelton v. Standard Insurance Co., 389 S.W.2d 290, (Tex. 1965), also cited by the 1989 Act, and Aetna Casualty & Surety Co. v. Orgon, 721 S.W.2d 572 (Tex. App.-Austin 1986, writ ref'd n.r.e.). Other Appeals Panel decisions involving the continuous coverage doctrine include Texas Workers' Compensation Commission Appeal No. 000118, *supra*, and Texas Workers' Compensation Commission Appeal No. 000679, decided May 15, 2000.

What makes this case somewhat different than the cited cases is that the claimant was clearly on his way home at the time of the fall and injury accident. We attach no particular import to the fact that the claimant was off the clock, or was not being paid his hourly wage at the time of the injury. Had this occurred earlier in the week, or even earlier on _____, while the claimant was going from one location to another and stopped for breakfast, he would have been under the continuous coverage doctrine. In this case the carrier asks us, in essence, to apply the "coming and going rule" (*see* Section 401.011(12)(A)) while the claimant was out of town on travel away from the employer's premises. The carrier argues that the cited cases all "occurred in the destination city" and that distinction "makes the continuous coverage doctrine inapplicable in this case." We disagree. We hold that when an employer's work requires an employee to travel away from the employer's premises the continuous coverage doctrine applies from the time the employee leaves the employer's premises until he returns to the employer's premises. We note that in this case, while the claimant was not being paid while he was on break, he was being paid for travel time until he returned home to (city 1). We hold that the special mission exception to the coming and going rule (Section 401.011(12)(A)(iii)) is applicable. See also Texas Workers' Compensation Commission Appeal No. 991282, decided July 28, 1999, for a case with similar type facts with the same result we hold here.

Accordingly we reverse the hearing officer's decision that the claimant was not in the course and scope of his employment and render a new decision that the claimant was in the course and scope of his employment on _____, when he sustained a compensable right knee injury. We also reverse the hearing officer's determination that the claimant did not have disability because the injury was not compensable. Having held the right knee injury is compensable we also render a new decision that the claimant had disability from March 2, 2002, through the date of the CCH, August 12, 2002.

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

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

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Michael B. McShane
Appeals Judge