APPEAL NO. 030236
FILED MARCH 17, 2003

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 January 9, 2003. The hearing officer determined that the respondent (claimant) sustained compensable right hip, right shoulder, and cervical and lumbar spine injuries on _____, and had disability from August 24, 2002, through the date of the hearing. The appellant (carrier) appeals this decision. The claimant urges affirmance.

DECISION

Affirmed.

Essentially, the carrier asserts on appeal that the claimant was not acting within the course and scope of his employment at the time the injury occurred. "Course and scope of employment " is defined as "an activity of any kind or character that has to do with and originates in the work, business, trade or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer." Section 401.011(12). The claimant had the burden to prove that he sustained an injury in the course and scope of his employment and that he had disability. These issues presented factual questions for the hearing officer to determine from the evidence presented. As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. The hearing officer explained that based on the evidence presented, the claimant persuasively established that he was furthering the business of the employer at the time of the injury. Nothing in our review of the record indicates that the hearing officer's determinations relating to course and scope and disability are 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).

The carrier also argues that the hearing officer erred in determining that the claimant sustained a compensable injury because (1) he failed to establish that diagnoses had been made relating to the right hip and right shoulder, and (2) the medical records do not establish a causal connection between the claimed injury and the claimant's cervical and lumbar spine conditions. We are not persuaded by either of these arguments. As stated in Texas Workers' Compensation Commission Appeal No. 020528, decided April 16, 2002, "[w]hile the Appeals Panel has on rare occasion observed that pain, without more, may not constitute an injury, we observe that the experience of pain after an accident occurs is certainly a strong indicator that an injury exists." With regard to establishing a causal connection between the injury and the diagnostic findings relating to the claimant's spine, we note that lay testimony is sufficient to establish causation where, based upon common knowledge, a fact finder could understand a causal connection between the employment and the injury. Texas Workers' Compensation Commission Appeal No. 941464, decided January 9, 1995. In

the present case, the hearing officer, using common knowledge, could understand a causal connection between a pedestrian being struck by an automobile and cervical and lumbar injuries. We perceive no error in the hearing officer's resolution of the compensability issue.

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **ACE PROPERTY & CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Roy L. Warren
Appeals Judge

CONCURRING OPINION:

The claimant, a service technician at an automobile dealership, was hit by a salesman driving a car as he was crossing a parking lot. In dispute was whether the claimant was furthering the business of the employer at the time he was hit or whether he was going to his personal vehicle to close the windows during a sudden hailstorm. The hearing officer determined that the claimant was engaged in an activity in furtherance of the employer's business and that determination is affirmable as a factual determination.

I write separately only to note that the hearing officer could have found the injury in the course and scope of employment even if the claimant was going to close the windows of his personal vehicle in the basis of an incidental deviation from the employment. *See* Texas Workers' Compensation Commission Appeal No. 010163-s, decided March 5, 2001, for a general overview of cases in this area and Texas Workers' Compensation Commission Appeal No. 001700, decided September 8, 2000, of an employee going to check her car.

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Thomas A. Knapp
Appeals Judge