APPEAL NO. 030294
FILED MARCH 19, 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 8, 2003. The hearing officer determined that the appellant (claimant) was not injured in the course and scope of his employment "on _____, [sic should be __] ____," and that he did not have disability.

The claimant appealed, expressing disagreement with the hearing officer's interpretation of the facts and asserting that he met the requirements of Section 401.011(12)(A), or in the alternative, met the requirements of the "dual purpose" doctrine in Section 401.011(12)(B), and that the hearing officer's decision is against the great weight of the evidence. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was a "shower installer" for the employer glass company. It was generally undisputed that the claimant would come to work, do some paperwork, and then, using one of the employer's vehicles, drive to locations in the city performing his duties. Employees were not permitted to use the employer's vehicles for personal errands or take the vehicles home for the night. The hours the claimant worked were not clear; however, the testimony was that Ms. D, the office secretary, and Ms. M, the office manager/dispatcher, usually left at 5:00 pm. It is the claimant's contention that he was working on a job on the northside of the city with his brother, a coworker, when he received a dispatch call at approximately 4:45 pm from Ms. D directing him to go to a southside location to inspect a job he had previously completed. That contention is disputed by Ms. M. The employer's premises were in the northwest part of the city as commented by the hearing officer. The claimant's brother had previously gotten a call that he had to pick up his child from the babysitter. The claimant testified that after he got the dispatch call he took his brother with him and dropped him off at a southside intersection on his way to the southside job location. A few blocks after dropping off his brother, the claimant was involved in a motor vehicle accident where he sustained multiple injuries. The police report indicates that the accident occurred at 7:07 pm.

The hearing officer discusses the definition of course and scope of employment found in Section 401.011(12) including the "coming and going rule" and its exceptions, including the "special mission" and "dual purpose doctrine." The hearing officer found that at the time of the accident "the Claimant was traveling on a public highway on his way to the employer's office having completed a personal mission." (Finding of Fact No. 3.)

While this case is undoubtedly a "course and scope of employment" case, we do not view it as necessary to discuss the "coming and going," "special mission," or the "dual purpose" doctrines. Rather clearly the key disputed element was the factual determination whether the claimant was dispatched to go to the southside location. If so, then the claimant was performing his normal duties. However, the hearing officer, both in the referenced factual determination and in her discussion, seems to find that the claimant had not been directed to go to the southside location and discussed some of the evidence leading her to that conclusion. If the claimant had not been dispatched to the southside location his presence near that location would constitute a deviation from the course and scope of his employment. The hearing officer's determination is supported by the evidence.

We were somewhat concerned with the hearing officer's comments and finding that the claimant "was driving back to the office to drop off the vehicle," was "most likely traveling to the office location to return the truck," and the previously referenced Finding of Fact No. 3 as indicating that the claimant's deviation had ended and that the claimant was now back in the course and scope of his employment by returning the vehicle to the employer's premises. However, that was never the claimant's testimony and the claimant, even in his appeal, contends that he was proceeding "on the way to the [southside location]" and that since the claimant was traveling south "it cannot be assumed that after dropping off his brother the Claimant was driving back to the office to drop off the vehicle."

There was conflicting evidence, and the hearing officer, as the sole judge of the weight and credibility, resolves the conflicts and determines what facts the evidence has established. The hearing officer's decision is supported by the evidence and we will uphold the hearing officer's judgment on any reasonable basis supported by the evidence. Daylin, Inc. v. Juarez, 766 S.W.2d 347, 352 (Tex. App.-El Paso 1989, writ denied).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **NATIONAL FIRE INSURANCE COMPANY OF HARTFORD** 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:

_____
Roy L. Warren
Appeals Judge

CONCUR IN THE RESULT:

_____
Judy L. S. Barnes
Appeals Judge