

APPEAL NO. 030531
FILED APRIL 16, 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 February 5, 2003. With respect to the disputed issues before him, the hearing officer determined that (decendent) did not sustain a compensable injury resulting in her death on _____, as she was not in the course and scope of her employment at the time of her fatal injury. In addition, the hearing officer determined that the decendent is survived by her husband, (claimant beneficiary), and two adult dependent children. The claimant beneficiary has appealed the course and scope determination, and argues that the decendent was in the course and scope of her employment at the time of her fatal injury, either by virtue of falling under the "special mission" exception and/or the "dual purpose" exception to the "going and coming" rule under Section 401.011(12). The respondent (carrier) responded, urging that the hearing officer be affirmed, as the decendent fell under neither exception to the rule and was not in the course and scope of her employment at the time of her fatal injury. Neither party appealed the legal beneficiaries' determination; therefore, it has become final pursuant to Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the decendent did not sustain a compensable injury on _____. The parties do not dispute that the decendent sustained injuries causing her death in a motor vehicle accident (MVA) while on her way to pick up a document before heading to her workplace. Nor do the parties dispute that the decendent was going to retrieve said document, at a different location than her normal workplace, at the express instruction of her supervisor. The only issue in dispute was whether the decendent was in the "course and scope" of her employment at the time of the MVA. The claimant beneficiary testified that the decendent was traveling, on the route she usually took to her workplace, to get to a library downtown to retrieve the document, when she was killed in the MVA. There was no evidence presented that the decendent was traveling from one workplace to another workplace. The hearing officer determined that the decendent's activities at the time of the MVA did not fall within the exceptions to the "going and coming" noncompensability under Sections 401.011(12)(A)(iii) and (B), commonly called the "special mission" and the "dual purpose" exceptions, respectively, which read as follows:

"Course and scope of employment" means 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. The term includes an activity conducted on the premises of the employer or at other locations. The term does not include:

(A) transportation to and from the place of employment unless:

* * * * *

(iii) the employee is directed in the employee's employment to proceed from one place to another place; or

(B) travel by the employee in the furtherance of the affairs or business of the employer if the travel is also in furtherance of personal or private affairs of the employee unless:

(i) the travel to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee to be furthered by the travel; and

(ii) the travel would not have been made had there been no affairs or business of the employer to be furthered by the travel.

The carrier argues that the facts do not support that the decedent was on a "special mission" for her employer, or that her travel on the date of the MVA was of a "dual purpose" nature and that the decedent was simply "going to" her employment. The hearing officer determined that the decedent was involved in the MVA "before getting to work"; that the decedent "had not yet performed the employer's mission, at the time of the accident and was not traveling in the nature of a "dual purpose"; and therefore, the injuries she sustained in the MVA on _____, were not compensable. The hearing officer properly applied the 1989 Act and his determination is not against the great weight of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order is affirmed.

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

**MR. RUSSELL OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Terri Kay Oliver
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge