

APPEAL NO. 031198
FILED JUNE 30, 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 April 11, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____, and had disability from September 28 through December 31, 2002. The appellant (carrier) appealed, arguing that the hearing officer incorrectly applied the law to the facts of this case. The carrier argues that the claimant was injured on his way to work and that accidents occurring during travel to and from work are not compensable. The carrier also argues that the claimant had deviated from the course and scope of his employment. The claimant responded, urging affirmance.

DECISION

Affirmed.

The claimant testified that he was employed as a salesman for the employer and that his job required him to solicit sales door to door in an assigned territory. The claimant testified that he sometime worked from home. He testified that on _____, he was driving from his home to meet his sales partner in their assigned territory when he was involved in a motor vehicle accident (MVA).

A "compensable injury" means "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." Section 401.011(10). "Course and scope of employment" means, in pertinent part, "an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer." Section 401.011(12). In General Ins. Corp. v. Wickersham, 235 S.W.2d 215 (Tex. Civ. App.-Fort Worth 1950, writ ref'd n.r.e.), the court stated that an injury is not compensable if received during a deviation by the employee from the course and scope of employment, but after the deviation is over, injuries thereafter received are compensable. Although the hearing officer noted that the evidence was conflicting regarding what the claimant was doing at home before he left to meet his sales partner in the assigned territory, the hearing officer was persuaded that he went home to change into a company shirt and/or get a battery pack for work purposes. Further, although the carrier argued that there was no way to determine the claimant's destination, the hearing officer was persuaded that the MVA occurred while the claimant was on his way to the sales territory and specifically found that the claimant was furthering the affairs of his employer by traveling to the sales territory at the time of the MVA. Additionally, the hearing officer specifically found that the claimant was directed in his employment to proceed from his home area to the sales area by his employer. Prior Appeals Panel decisions have affirmed determinations of compensability in similar circumstances. Texas Workers' Compensation Commission Appeal No. 961345, decided August 23, 1996, involved a salesman going to receive

payment on a contract, and Texas Workers' Compensation Commission Appeal No. 951910, decided December 27, 1995, involved an insurance salesman driving to collect premiums when he was injured. Both cases were held compensable.

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. Section 410.165(a). 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).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge