APPEAL NO. 032234
FILED OCTOBER 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 July 30, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and had disability beginning February 24, 2003, and continuing through April 6, 2003. The appellant (carrier) appeals these determinations on sufficiency of the evidence grounds. The claimant did not file a response.

DECISION

Affirmed on other grounds.

The claimant was employed as an alarm technician. He was provided a company vehicle, which he took home with him each day. The claimant testified that he would go directly from home to his first job site each morning, and return directly home after completing his last assignment each day. The evidence showed that the claimant was not paid for travel to and from his first and last job sites, up to 30 minutes, but he is paid for all commute time which exceeds 30 minutes. The claimant completed his last job of the day, on _____. The claimant testified that almost immediately after departing the job site, he became aware of the fact that his company vehicle had a flat tire. The claimant testified that his job duties required him to change flat tires on the company vehicle. While changing the flat tire, the claimant sustained an injury to his right hand. The injury occurred at approximately 6:00 p.m. The employer's records show that the claimant was paid through 6:30 p.m. that evening. The hearing officer found that the claimant was "on the clock" at the time of his injury. The hearing officer also found that the claimant was on a "special mission" in that he was returning from a business service trip while "on the clock."

The general rule in workers' compensation law has been that an injury occurring through the use of the public streets or highways in going to and returning from the place of employment is noncompensable because not incurred in the course and scope of employment. American General Insurance Company v. Coleman, 157 Tex. 377, 303 S.W.2d 370 (1957). The rationale behind the rule is that an injury incurred in such travel does not arise out of the person's employment, but rather occurs as a result of the dangers and risks to which all members of the traveling public are exposed. Janak v. Texas Employers' Insurance Association, 381 S.W.2d 176 (Tex. 1964). Exceptions to the general rule are contained in Section 401.011(12), which provides, in pertinent part:

> (12) "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:
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> (i) the transportation is furnished as a part of the contract of employment or is paid for by the employer;
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> (ii) the means of the transportation are under the control of the employer; or
>
> (iii) the employee is directed in the employee's employment to proceed from one place to another place . . . [.]

The exception to the "coming and going" rule where the employee is directed in his employment to proceed from one place to another place has been referred to as the "special mission" exception. We believe that the facts in this case do not establish that the claimant was on a special mission as the courts of this state have interpreted that exception. *See* Evans v. Illinois Employers Insurance of Wassau, 790 S.W.2d 302 (Tex. 1990). Notwithstanding, we affirm the hearing officer's decision because the findings of fact support the conclusion that the claimant was furthering the affairs of the employer at the time of the injury by changing a flat tire on the company vehicle. Daylin, Inc. v. Juarez, 766 S.W.2d 347 (Tex. App.-El Paso 1989, writ denied). The hearing officer's determination that the claimant was in the course and scope of his employment at the time of his injury is not 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's challenge to the hearing officer's disability determination is premised upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of the injury determination, we likewise affirm the hearing officer's disability determination.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ST. PAUL FIRE & MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Edward Vilano
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Chris Cowan
Appeals Judge