APPEAL NO. 032821
FILED DECEMBER 8, 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 October 2, 2003. The hearing officer determined that the respondent (claimant) was in the course and scope of his employment when he was injured in a motor vehicle accident (MVA) on _____. The appellant (carrier) appeals this determination and asserts that the hearing officer erred in admitting Claimant's Exhibit Nos. 1-6. The claimant urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

The carrier asserts that the hearing officer erred in admitting Claimant's Exhibit Nos. 1-6, because, although the exhibits were timely exchanged with the carrier's representative, they were not timely exchanged with the carrier. The hearing officer admitted the exhibits on the basis that they were exchanged with the carrier "by and through its agent," the representative. In order to obtain a reversal for the admission of evidence, the carrier must demonstrate that the evidence was actually erroneously admitted and that "the error was reasonably calculated to cause and probably did cause rendition of an improper judgment." Hernandez v. Hernandez, 611 S.W.2d 732, 737 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been held that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mut. Ins. Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). In this instance, any error in the admission of the claimant's exhibits does not rise to the level of reversible error because there is evidence, including the testimony of Mr. M, which supports the hearing officer's decision. As a result, we cannot agree that the admission of Claimant's Exhibit Nos. 1-6 was reasonably calculated to, and probably did, cause the rendition of an improper judgment. Accordingly, any evidentiary error was harmless and does not provide a basis for reversing the decision and order on appeal.

The hearing officer did not err in determining that the claimant was acting within the course and scope of his employment at the time that he was injured in the MVA. 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. The term includes an activity conducted on the premises of the employer or at other locations. The general rule is that an injury occurring in the use of the public streets or highways in going to and returning from the place of employment is noncompensable. American General Insurance Co. v. Coleman, 303 S.W.2d 370 (Tex. 1957). An exception to the general rule is contained in Section 401.011(12)(A)(iii), which provides, in pertinent part, that travel to and from the

place of employment is covered if the employee is directed in the employee's employment to proceed from one place to another place, i.e., is directed on a special mission.

There is sufficient evidence to support the determination that the claimant was acting at the employer's direction while furthering the employer's business and that he was in fact on a special mission at the time of the accident. Mr. M, the president of the company who employed the claimant, testified that the men riding in the van on the day in question had been directed to leave the jobsite in (city 1), (state 1), because it had temporarily been shut down, and to return to (city 2) to begin working at a site there. The men left (city 1) within one day of receiving the instruction and the MVA occurred en route to (state 2). The determination that the claimant was acting within the course and scope of his employment at the time of the MVA 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 also argues that our decision in Texas Workers' Compensation Commission Appeal No. 030439, decided March 24, 2003, is dispositive in this case. In Appeal No. 030439, a decision on remand, the Appeals Panel affirmed the hearing officer's decision that the decedent, the driver of the van containing the claimant and the other men, was not in the course and scope of his employment at the time of the MVA. The hearing officer in that case specifically noted that she based her decision on her perception of the credible evidence that the men were returning to Austin, Texas, for personal time off. Obviously, the hearing officer in the present case drew the opposite inference from the evidence before him. The fact that another fact finder could have drawn different inferences from the evidence, which would have supported a different result, does not provide a basis for us to disturb the hearing officer's determination. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). We would also point out that it was inappropriate for the parties to offer, and for the hearing officer to admit, the unredacted copies of our decisions in Appeal No. 030439 and Texas Workers' Compensation Commission Appeal No. 022452, decided November 6, 2002, as well as the original transcript of the proceedings relating to Appeal No. 022452, which involve the deceased driver and wherein the decedent's widow was the claimant beneficiary.

Accordingly, the decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **ADVANTAGE WORKERS' COMPENSATION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Margaret L. Turner
Appeals Judge

_____
Edward Vilano
Appeals Judge