APPEAL NO. 032915
FILED DECEMBER 31, 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 20, 2003. The hearing officer determined that the respondent (claimant) was in the course and scope of his employment when he was injured on _____, and that, as a result, he sustained a compensable injury. In its appeal, the appellant (carrier) contends that the hearing officer erred in determining that the claimant's injury on _____, was in the course and scope of his employment and, thus, compensable. The appeal file does not contain a response from the claimant to the carrier's appeal.

DECISION

Affirmed on other grounds.

The facts in this case are largely undisputed. The claimant was hired to work for a cemetery owned by Mr. S. Mr. S also owns a pawnshop and a ranch. Mr. S purchased workers' compensation insurance that covered the cemetery and the pawnshop. The claimant worked at all three of the entities owned by Mr. S depending upon where he was instructed to work by Mr. S. The claimant was paid for the work he did at all three businesses by check from the cemetery. Mr. S was the claimant's only supervisor and he told the claimant what work to do at what location. It is undisputed that on _____, the claimant was directed by Mr. S to take two other employees to the ranch to help unload bales of hay that were being delivered to the ranch. The parties stipulated that the claimant fractured his right calcaneus bone on _____, when he jumped to the ground to avoid being hit by a bale of hay.

The hearing officer determined that the claimant was in the course and scope of his employment at the time he fractured his right calcaneus bone at the ranch. The hearing officer noted that Mr. S's employees were hired by the cemetery to do the work of the cemetery, the pawnshop, and the ranch. The hearing officer further noted that the "cemetery was in effect a staff leasing company for the other businesses. So while performing services for the other businesses [sic] entities, Claimant was simultaneously performing services for the cemetery." The carrier correctly notes that "the hearing record . . . contains no evidence that any provision of the Staff Leasing Services Act have been complied with in the instant case." Accordingly, we agree that there is insufficient support for the hearing officer's determination that the activity that the claimant was performing at the ranch, unloading bales of hay, was an act in furtherance of the business affairs of the cemetery.

Nevertheless, the legal conclusions that the claimant was in the course and scope of his employment at the time of his injury and that he, therefore, sustained a compensable injury need not be reversed. The claimant's theory was that he was

injured in the course and scope of employment in accordance with the "temporary direction" exception contained in Section 401.012(b)(1). That section provides that the term "employee" includes "an employee in the usual course and scope of the employer's business who is directed by the employer temporarily to perform services outside the usual course and scope of the employer's business." In Biggs v. United States Fire Ins. Co., 611 S.W.2d 624 (Tex. 1981), the Texas Supreme Court had occasion to consider the "temporary direction" rule contained in the predecessor workers' compensation statute that is substantially similar to Section 410.012(b)(1). In so doing, the Biggs court stated:

> Under this so-called "temporary direction" exception, if an employee is directed by his employer and is then injured, his injury is sustained in the course of his employment. In other words, an employee does not forfeit his workers' compensation coverage while acting in obedience to his employer's orders. [Citation omitted.] The purpose underlying the enactment of the exception was to eliminate a dilemma that would otherwise face an employee when instructed to perform a task outside his employer's usual business, to wit: either obey his employer and lose his compensation coverage or disobey his employer and lose his job. [Citations omitted.]

611 S.W.2d at 628. In Biggs, the Supreme Court further stated that "[i]t should be recognized at the outset that, in line with the express terms of the 'temporary direction' exception, compensation has generally been allowed whenever the employer directs or instructs any work done." In this instance, there is no dispute that on _____, Mr. S directed the claimant to go to the ranch to unload hay bales and that the claimant fractured his right calcaneus bone while performing those duties. Under the guidance of Biggs, it follows that the claimant was in the course and scope of his employment at the time of his injury under the "temporary direction" exception contained in Section 401.012(b)(1).

The hearing officer's determination that the claimant sustained a compensable injury on _____, because he was in the course and scope of his employment is affirmed, albeit on other grounds.

The true corporate name of the insurance carrier is **FIRE AND CASUALTY INSURANCE COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Margaret L. Turner
Appeals Judge