

APPEAL NO. 041783  
FILED SEPTEMBER 8, 2004

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 June 29, 2004. The hearing officer resolved the disputed issues before her by determining that: (1) respondent (claimant) sustained a compensable injury in the course and scope of his employment on \_\_\_\_\_; and (2) he had disability from \_\_\_\_\_, through the date of the hearing. Appellant (carrier) appeals, asserting that the hearing officer erred in the application of the law to the facts. Claimant responded that the Appeals Panel should affirm the decision and order.

DECISION

We affirm.

The hearing officer did not err in determining that claimant sustained a compensable injury in the course and scope of his employment. The parties stipulated that on \_\_\_\_\_, between 11:30 and 12 noon, while in a common parking lot at claimant's place of employment, claimant was struck by a motorcycle driven by a coemployee and sustained severe injuries. Claimant has not returned to work since that time. Carrier's position, both at the hearing and on appeal, is that claimant had deviated from the course and scope of his employment at the time of the incident by being a spectator to a dangerous sport. The hearing officer determined that claimant went out to the parking lot on a paid break, which was a common practice. She also determined that while he was on break, he looked at some motorcycles two of his coworkers had been riding. Claimant declined to ride, but one of the other coworkers lost control of the motorcycle he rode and ran into claimant. The hearing officer determined that claimant had not deviated from the course and scope of his employment.

Carrier contends that there is no evidence that claimant was taking a break to clear his mind. However, this presented a fact issue for the hearing officer. The hearing officer could consider the evidence from Mr. L regarding employee breaks. Mr. L said claimant was on a break and that it was a common habit for employees to go outside for a break. He stated that employees are encouraged to take breaks because of the stressful environment. He said claimant's work involved detail work. He stated that claimant had not clocked out at the time of the accident. Claimant's wife said she had seen claimant's office and that there is no designated break room in the office. This evidence and the evidence regarding claimant's activities that day support the hearing officer's determinations. The hearing officer could find that claimant was not engaged in a dangerous activity at the time of the accident. We conclude that the hearing officer did not err in determining that claimant had not deviated from the course and scope of his employment when he was injured. See Texas Workers' Compensation Commission Appeal No. 970064, decided February 25, 1997.

Carrier contends that, because claimant's injury is not compensable, he did not have disability. Because we are affirming the determination regarding disability, we find no error in the disability determination. The testimony of claimant's wife and the records of his treating doctor support the hearing officer's determination.

We affirm the hearing officer's decision and order.

According to information provided by carrier, 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  
701 BRAZOS, SUITE 1050  
AUSTIN, TEXAS 78701.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge