APPEAL NO. 071218
FILED AUGUST 24, 2007

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on May 8, 2007, with a second session on June 1, 2007. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) was in the course and scope of her employment when she was involved in a motor vehicle collision and sustained a compensable injury on _____, and that the claimant sustained disability from November 28 to December 19, 2006, but not thereafter through the date of the CCH. The appellant (self-insured) appealed, disputing both the determination that the claimant sustained a compensable injury in the course and scope of her employment and the disability determination. The claimant responded, urging affirmance.

DECISION

Reversed and rendered.

On _____, the claimant was employed as a police officer for the self-insured. The claimant testified that on that date, while on duty in her jurisdiction, she received a phone call on her personal cell phone from an emergency responder, who informed her that her daughter was at home (which was located in a different jurisdiction) and had cut her hand and might need one or two stitches. The claimant's daughter was hearing impaired and communicated by using American Sign Language. The affidavit in evidence from the emergency responder states that he "let the [claimant's daughter] use his phone to call her mother." The claimant testified that there was some discussion by telephone with the emergency responder about the fact he had been writing her daughter notes and thought that she understood. The emergency responder asked the claimant what she wanted him to do regarding whether or not to transport her daughter for medical care. The claimant requested that they not transport her daughter until she could arrive. The written statement from the emergency responder states that he was aware the claimant was employed as a police officer. However, the record is not clear regarding when he became aware of the claimant's occupation. The claimant testified she was needed to help the medical personnel communicate with her daughter. The claimant further testified that she called her corporal and requested permission to go home so she could make sure her daughter understood what was going on. She explained that either she or the emergency responders would take her daughter for further medical treatment and stated that she may have to "sign something [documents]" because her daughter was only 17 years old. There is evidence that the police department in the jurisdiction where the claimant lived had responded to the claimant's residence along with the emergency medical services. The claimant's written statement reflects that she remembered her corporal put her "10-6" (which the evidence indicates means unavailable to take calls) so she

could go home. The corporal testified at the CCH that he asked the claimant if she wanted him to go to her house "out of concern for the family member."

It is undisputed that the self-insured had an Inter-Jurisdictional Mutual Aid Agreement with various other cities in the area, including the city where the claimant's residence was. There was evidence that the claimant had assisted other cities with sign language interpretation in the past when suspects were being interviewed and while responding to a domestic dispute. The claimant testified that prior to being hired as a police officer she had volunteered in assisting with sign language for the police department. However, the corporal testified that he has never received a call on his personal cell phone when asked to assist another city, it has always been through dispatch.

It is undisputed that the claimant sustained an injury in a serious motor vehicle accident while traveling to her home in the police car she was driving after receiving the call on her cell phone from the emergency responder. Section 401.011(10) provides that a "compensable injury" means an injury that arises out of and in the course and scope of employment for which compensation is payable under the 1989 Act. Section 401.011(12) provides in pertinent part that "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, and that the term includes an activity conducted on the premises of the employer or at other locations.

We hold that the hearing officer's determination that the claimant sustained damage or harm to the physical structure of her body in the course and scope of employment on _____, is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Rather, the evidence establishes that the claimant was called because she was the mother of the injured individual, not because she was a police officer. The claimant was not engaged in a police function at the time of the motor vehicle accident. Consequently, the hearing officer's determination that the claimant sustained damage or harm to the physical structure of her body in the course and scope of her employment is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

However, even if the evidence was sufficient to establish that the claimant was injured while responding to a situation in her official capacity as a police officer, further analysis is required to determine whether or not the claimant sustained an injury in the course and scope of employment. The dual purpose rule is designed to address whether an employee is in the course and scope of employment for the purpose of coverage when injury occurs during travel that is for both personal and business purposes. Section 401.011(12)(B) provides that injuries incurred during travel for the dual purpose of furthering the affairs or business of the employer and of furthering the employee's personal or private affairs shall not be deemed in the course and scope of employment unless: (1) the travel to the place of occurrence of the injury would have

been made even had there been no personal or private affairs of the employee to be furthered by the travel; and (2) the travel would not have been made had there been no affairs or business of the employer to be furthered by the travel. See Janak v. Texas Employers' Ins. Assoc., 381 S.W.2d 176, 179 (Tex. 1964). *See also* Appeals Panel Decision 031099, decided June 11, 2003. In order to be entitled to workers' compensation benefits in dual purpose situations, the employee must satisfy both prongs of Section 401.011(12)(B). Janak, *supra*; Tramel v. State Farm Fire & Cas. Co., 830 S.W.2d 754, 756 (Tex.App.-Fort Worth 1992, writ denied). This means that the travel would have occurred even if the personal purpose were removed from the analysis and the travel would not have occurred if the business purpose of the travel were removed from the analysis. Section 401.011(12)(B) only applies whenever the travel is for both business and personal purposes and the travel cannot be ascribed a single purpose.

The claimant acknowledged that if she was not working as a police officer and got the same call she would have returned home to check on her daughter. In this case there is no evidence that the travel would not have occurred if the business purpose of the travel was removed from the analysis. The claimant cannot satisfy both prongs of Section 401.011(12)(B) and therefore was not in the course and scope of employment.

We reverse the hearing officer's determination that the claimant was in the course and scope of her employment when she was involved in a motor vehicle collision and sustained a compensable injury on _____. We render a new decision that the claimant was not in the course and scope of her employment when she was involved in a motor vehicle accident on _____. Because we are rendering a decision that the claimant was not in the course and scope of her employment the claimant did not sustain a compensable injury. Without a compensable injury, the claimant, by definition in Section 401.011(16) cannot have disability. Accordingly, we reverse the hearing officer's decision that the claimant had disability from November 28 to December 16, 2006, and render a new decision that the claimant did not have disability.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

MR
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Veronica L. Ruberto
Appeals Judge

CONCUR IN RESULT:

_____
Thomas A. Knapp
Appeals Judge