

APPEAL NO. 071401
FILED OCTOBER 3, 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 was held on June 21, 2007. The sole issue before the hearing officer was: "Was the [deceased] in the course and scope of his employment when [he was] involved in a motor vehicle accident [MVA] on _____?" The hearing officer found that on _____, the deceased died as the result of injuries suffered in the course and scope of employment. The hearing officer concluded that the appellant/cross-respondent (claimant), the surviving spouse of the deceased, is entitled to death benefits.

The claimant appealed, requesting that the hearing officer's decision be reformed to decide that in addition to the claimant being entitled to death benefits, her three minor children are also entitled to death benefits, and to provide a conclusion of law that on _____, the deceased died as a result of injuries suffered in the course and scope of his employment. The respondent/cross-appellant (carrier) filed a timely cross-appeal, contending that the deceased did not fall within the special mission exception to the "coming and going" rule in Section 401.011(12)(A)(iii), when his fatal injuries occurred in the MVA, and that the deceased was not furthering the affairs of his employer when the injury occurred. The claimant filed a timely response to the carrier's appeal, contending that the carrier's appeal appears untimely. The carrier responded that its appeal was timely filed.

DECISION

Affirmed in part and reversed and rendered in part.

TIMELINESS OF CARRIER'S APPEAL

We have reviewed the claimant's contention that the carrier's appeal appears untimely. The due date for the carrier's appeal, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code was July 31, 2007. The carrier's appeal was timely filed on July 27, 2007. See Section 410.202, and 28 TEX. ADMIN. CODE § 143.3 (Rule 143.3).

COURSE AND SCOPE OF EMPLOYMENT

The hearing officer's finding that on _____, the deceased died as the result of injuries suffered in the course and scope of employment is supported by sufficient evidence and is affirmed.

CONCLUSION THAT CLAIMANT IS ENTITLED TO DEATH BENEFITS

The only issue before the hearing officer was whether the deceased was in the course and scope of his employment when he was involved in an MVA on _____. We note that the disputed issue mistakenly refers to the claimant instead of the deceased. It is undisputed that the deceased died as a result of injuries sustained in the MVA. The parties stipulated that the claimant was the decedent's spouse on the date of the decedent's death. It is also undisputed that the decedent is survived by three minor children, although there was no stipulation to that effect. Section 408.181(a) provides that an insurance carrier shall pay death benefits to the legal beneficiary if a compensable injury to the employee results in death. In this case, we are affirming the hearing officer's finding that on _____, the deceased died as a result of injuries suffered in the course and scope of his employment. Consequently, the decedent's legal beneficiaries are entitled to death benefits because the deceased sustained a compensable injury which resulted in his death. However, there was no issue before the hearing officer with regard to the identity of the legal beneficiaries. The claimant requests that we reform the hearing officer's conclusion that she is entitled to death benefits to include her three minor children. Because there was no issue before the hearing officer as to the identity of the legal beneficiaries, the hearing officer exceeded the scope of the only issue before him by concluding that the claimant is entitled to death benefits. Consequently, we reverse the hearing officer's Conclusion of Law No. 3 and the decision that the claimant is entitled to death benefits and render a new decision striking from the hearing officer's decision Conclusion of Law No. 3 and the decision that the claimant is entitled to death benefits. In addition, we render a new Conclusion of Law No. 3 and decision that the deceased was in the course and scope of his employment and sustained a compensable injury when he was involved in a MVA on _____, which resulted in his death.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge