

APPEAL NO. 090554
FILED JUNE 15, 2009

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 January 14, 2009. The issues before the hearing officer were:

- (1) Did the respondent (claimant) sustain an injury while in the course and scope of his employment on _____?
- (2) Did the claimant have disability from April 5, 2008, through May 6, 2008, resulting from an injury sustained on _____?

The hearing officer determined that the claimant sustained an injury in the course and scope of his employment on _____, and that the claimant sustained disability as a result of the compensable injury of _____, beginning on April 5, 2008, and continuing through May 6, 2008.

The appellant (self-insured) appealed the hearing officer's determinations on the issues of course and scope of employment and disability. The claimant responded, urging affirmance.

DECISION

Reversed and rendered.

It is undisputed that the claimant was a truck driver for the self-insured and that he sustained an injury to his right wrist on _____, when he fell from the truck that he had been driving and landed on the ground injuring his right wrist. The evidence reflects that on the date of injury, _____, the claimant was driving the employer's truck from job site A to job site B; the claimant was allowed a half-hour for lunch; the claimant was allowed to eat lunch anywhere within a three mile radius of the job site; and, the claimant went home for lunch which was located between job site A and job site B. There was conflicting evidence whether the claimant informed his supervisor that he was going home for lunch while he was traveling from job site A to job site B. The claimant testified that he parked the truck on the street in front of his home and when he exited the truck, he missed a step and fell to the ground injuring his right wrist. The claimant testified that he reported his injury to his employer on the date of injury and he received medical treatment for his right wrist injury. The claimant testified that he did not work from April 5, 2008, through May 6, 2008, due to his right wrist injury. The claimant returned to work on May 7, 2008.

COURSE AND SCOPE OF EMPLOYMENT

In the Background Information section of the decision, the hearing officer states that the claimant met his burden of proof that he sustained a compensable injury in the course and scope of his employment on _____, under the special mission, continuous coverage, and personal comfort doctrines. Accordingly, the hearing officer determined that the claimant sustained an injury in the course and scope of his employment on _____.

Section 401.011(12) provides as follows:

- (12) "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. The term includes an activity conducted on the premises of the employer or at other locations. The term does not include:
- (A) transportation to and from the place of employment unless:
 - (i) the transportation is furnished as a part of the contract of employment or is paid for by the employer;
 - (ii) the means of the transportation are under the control of the employer; or
 - (iii) the employee is directed in the employee's employment to proceed from one place to another place; or
 - (B) travel by the employee in the furtherance of the affairs or business of the employer if the travel is also in furtherance of personal or private affairs of the employee unless:
 - (i) 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
 - (ii) the travel would not have been made had there been no affairs or business of the employer to be furthered by the travel.

If the employer directs the employee to proceed from one place to another, which is known as the "special mission" doctrine, the transportation to and from work may be in the course and scope of employment. See Section 401.011(12)(A)(iii). The Appeals

Panel has held that an employee on a special mission does not go into and out of the course and scope of employment while on that special mission, which is sometimes referred to as the principle of “continuous coverage.” Appeals Panel Decision (APD) 980924, decided June 22, 1998; APD 950973, decided July 31, 1995. A “special mission” exists when “the employee is directed in the employee’s employment to proceed from one place to another place.” In Lesco Transportation Company, Inc. v. Campbell, 500 S.W.2d 238 (Tex. Civ. App.-Texarkana 1973, no writ), the court stated as follows:

Stated in converse terms, the rule is that when an employee abandons and turns aside from the course and scope of his employment, such deviation defeats a claim for compensation. Such deviation occurs if at the time of the injury the employee is engaged in and pursuing personal work or objectives that do not further the employer’s interest. An injury received under such circumstances is not from a hazard that has to do with and originates in the employer’s business, work, trade or profession. [Citation omitted.]

In APD 950057, decided February 24, 1995, an employee of a car dealership was instructed to drive a customer home in the customer’s vehicle and return the vehicle to the dealership to be serviced. On the way back, the employee decided to stop at a convenience store for lunch and coffee, which required a left turn. As the employee was entering the left turn lane, he was hit by another vehicle. The Appeals Panel stated that the employee had abandoned and turned aside from the course and scope of his employment by turning off to go to a convenience store for a personal errand. The Appeals Panel reversed the hearing officer’s decision and rendered a new decision that the injury was not compensable, stating that the fact that the accident occurred before the turn was completed did not alter the undisputed fact that he had left the direct route back to the dealership. In APD 961565, decided September 25, 1996, an employee was directed to make a bank deposit and mail letters while he was on his lunch break. The employee picked up some personal mail of his own while he was at home for lunch and proceeded to the bank where he made the deposit. The employee then proceeded to the post office when he decided to stop at a convenience store to buy some stamps for his personal mail. The employee was proceeding to turn right into the convenience store parking lot when he was involved in a motor vehicle accident. The Appeals Panel reversed the hearing officer’s decision and rendered a new decision that the injury was not compensable. See *also* APD 991364, decided August 12, 1999 (an employee on a special mission may still remove him or herself from the course and scope of employment if the employee undertakes a deviation from the special mission for a personal reason).

In the instant case, the hearing officer states in the Background Information section of the decision, that the claimant’s home is approximately one block from the route that leads to job site B, and that the claimant proceeded to his home for lunch. The claimant sustained an injury to his right wrist after he left the route leading from job

site A to job site B to go home for lunch. Under the facts of this case, the claimant did not sustain a compensable injury under the special mission doctrine.

Also, the claimant alleged that he was in the course and scope of employment under the personal comfort doctrine. In Yeldell v. Holiday Hills Ret. and Nursing Ctr., Inc., 701 S.W.2d 243, 245 (Tex. 1985), the Supreme Court of Texas described the “personal comfort” doctrine in the following terms:

An employee need not have been engaged in the discharge of any specific duty incident to his employment; rather an employee in the course of his employment may perform acts of a personal nature that a person might reasonably do for his health and comfort, such as quenching thirst or relieving hunger; such acts are considered incidental to the employee's service and the injuries sustained while doing so arise in the course and scope of his employment and are thus compensable.

The Appeals Panel has held that that the personal comfort doctrine does not extend to bring an off-premises injury that occurs during a lunch break within the course and scope of the injured worker's employment. APD 000865, decided June 7, 2000. Generally, an employee who works a normal business day is not in the course and scope of his employment while away from the premises at lunch. APD 950215, decided March 30, 1995. In APD 962581, decided February 5, 1997, the Appeals Panel discussed the personal comfort doctrine and whether it applied to an employee who left his normal work site and was injured while bicycling home for lunch. The Appeals Panel stated that there were no “special circumstances” involved which would apply to bring this off-premises injury within the application of the personal comfort doctrine.

In the case in review, the claimant argued that his injury was sustained while engaging in an activity for his own personal comfort and therefore, is compensable under the personal comfort doctrine. The evidence reflects that the claimant drove home for the purpose of eating lunch prior to commencing his job duties at job site B. Under the facts of this case, the claimant did not sustain a compensable injury under the personal comfort doctrine.

Accordingly, the hearing officer's determination that the claimant sustained an injury in the course and scope of his employment on _____, is against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. We reverse the hearing officer's determination that the claimant sustained an injury in the course and scope of his employment on _____, and we render a new decision that the claimant did not sustain an injury in the course and scope of his employment on _____.

DISABILITY

Section 401.011(16) defines disability as “the inability because of a compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage.”

Without a compensable injury the claimant would not have disability as defined by Section 401.011(16). APD 060779, decided June 19, 2006. We reverse the hearing officer's decision that the claimant sustained disability as a result of the compensable injury of _____, beginning on April 5, 2008, and continuing through May 6, 2008, and we render a new decision that the claimant did not have disability because he did not sustain a compensable injury.

SUMMARY

We reverse the hearing officer's decision that the claimant sustained an injury in the course and scope of his employment on _____, and we render a new decision that the claimant was not in the course and scope of his employment on _____.

We reverse the hearing officer's decision that the claimant sustained disability as a result of the compensable injury of _____, beginning on April 5, 2008, and continuing through May 6, 2008, and we render a new decision that the claimant did not have disability because he did not sustain a compensable injury.

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

**(NAME)
COUNTY JUDGE
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge