APPEAL NO. 121951
FILED JANUARY 29, 2013

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 August 28, 2012, in [City] Texas, with [hearing officer] presiding as hearing officer. With regard to the three disputed issues, the hearing officer determined that: (1) the appellant/cross-respondent (claimant) did not sustain a compensable injury on [date of injury]; (2) the claimed injury did not occur while the claimant was in a state of intoxication as defined in Section 401.013, thereby not relieving respondent 1/cross-appellant (carrier) of liability for compensation; and (3) because the claimant did not sustain a compensable injury, he did not have disability.

The claimant appealed, contending that he was, in effect, being paid for out of town travel. The carrier cross-appealed, contending that the claimant had failed to prove that he was not intoxicated (had the normal use of mental or physical faculties pursuant to Section 401.013(a)(2)). The carrier responded to the claimant's appeal, urging affirmance of the course and scope issue. The appeal file does not contain a response from the claimant to the carrier's cross-appeal. The appeal file does not contain a response from respondent 2 (subclaimant) to the claimant's appeal or to the carrier's cross-appeal.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that he was a welder and had been sent with a crew to work at a drilling site in [City], Texas. The claimant testified that he, and the crew, had worked at the site for five days, and that on the morning of the accident he had checked out of the hotel, which had been paid for by the employer, at 6:30 a.m. and had worked at the site until about 11:30 a.m. when the claimant and the crew finished work for the day. The claimant and the crew packed up their tools and equipment, and in an employer owned vehicle, stopped at a convenience store before driving back to [City], Texas. The claimant testified that he was asleep in the front seat of the pickup vehicle when the driver lost control of the vehicle and was involved in a rollover accident at about 12:30 p.m. The claimant testified that he was not getting paid for travel time but that the driver, who was not a supervisor but was another welder, was getting paid. There was no evidence presented regarding how much the driver was paid, or details of whether, and how much, per diem the claimant may have been paid.

The evidence established that the claimant was taken to the hospital by ambulance and subsequently a trauma center by aircraft. The claimant had complaints of head and chest pain as well as having minor head lacerations. A drug screen performed at the hospital was positive for cannabinoids. The claimant testified that he had smoked marijuana three weeks before the incident in question. The claimant also testified regarding his job duties the morning of the accident. EMS and emergency room records indicate that the claimant had normal neurological and mental responses. A report from [Dr. K] regarding the drug screen test, concluded that the "use of marijuana alters mental and physical faculties" and there "is not a safe or normal level of marijuana that is found in the human body."

INTOXICATION

The hearing officer's determination that the claimed injury did not occur while the claimant was in the state of intoxication, as defined in Section 401.013, thereby relieving the carrier of liability for compensation is supported by sufficient evidence, based on the claimant's testimony and medical records, and is affirmed.

COURSE AND SCOPE

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; [. . .]

The claimant, at the CCH, contended that the exception in Section 401.011(12)(A)(ii) is applicable because the employer provided the vehicle that he was riding in at the time of the accident. The hearing officer, in his Background Information, discusses why he does not believe the transportation exception (the means of transportation are under the control of the employer Section 401.011(12)(A)(ii)) is applicable. The hearing officer bases his opinion that the claimant was not in the course and scope of his employment on the basis that the exception of "the general transportation provisions are not found in this case." The hearing officer does not comment on the special mission exception in Section 401.011(12)(A)(iii).

The primary issue in this case is whether the claimant sustained his injury while in the course and scope of his employment. Course and scope of employment is defined in Section 401.011(12) and generally does not include transportation to and from the place of employment except in limited circumstances; one of these, the "special mission" exception, arises where the employee is directed in his employment to proceed from one place to another. Generally, an employee on a special mission does not go into and out of the course and scope of employment while on that special mission. This is sometimes referred to as the principle of "continuous coverage." See Appeals Panel Decision (APD) 022377, decided October 31, 2002. Regarding this area of the law, the Appeals Panel has cited PHILLIP HARDBERGER, TEXAS WORKERS' COMPENSATION TRIAL MANUAL p.11-4 (Parker-Griffin Publishing 1991) as stating:

> An employee whose work involves travel away from the employer's premises is in the course and scope of employment continuously during the trip, except when a distinct departure on a personal errand is shown. Injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually compensable.

In APD 022377, supra, the injured worker was a mobile home technician performing warranty work on mobile homes in Louisiana and Texas. The worker would leave his home location, travel to various locations during the week and return to his home location when the jobs were finished. The worker had finished his work for the week and was in route back to his home location when he stopped to get something to eat and slipped and injured himself returning to his truck. The Appeals Panel, in reversing the hearing officer's decision that the worker was not in the course and scope of his employment, held that when an employer's work requires an employee to travel away from the employer's premises, the continuous coverage doctrine applies from the time the employee leaves the employer's premises until he returns. The Appeals Panel,

in APD 022377, held in that case, involving out of town travel, the special mission continuous coverage doctrine was applicable.

In this case, the claimant was clearly on his way home at the time of the motor vehicle accident. The carrier contends that the "coming and going rule" (*see* Section 401.011(12)(A)) applies because the claimant was out of town on travel returning to his home. We hold that when an employer's work requires an employee to travel away from the employer's premises the continuous coverage doctrine applies from the time the employee leaves the employer's premises until he returns.

We reverse the hearing officer's determination that the claimant did not sustain a compensable injury on [date of injury], and render a new decision that the claimant did sustain a compensable injury on [date of injury], based on the continuous coverage principle of the special mission exception.

DISABILITY

The hearing officer's determination that the claimant did not have disability is based on the determination that the claimant did not have a compensable injury. The hearing officer made a finding of fact that due to the claimed injury of [date of injury], the claimant was unable to obtain and retain employment at wages to his pre-injury wage beginning April 1, 2012, and continuing through the date of the hearing. That finding is supported by sufficient evidence.

The hearing officer found that the claimant did not have disability because he had not sustained a compensable injury. We have reversed the hearing officer's determination that the claimant did not have a compensable injury and rendered a new decision that the claimant did have a compensable injury on [date of injury]. Because we have reversed the hearing officer's determination on the compensable injury we also reverse the hearing officer's determination that the claimant did not have disability. We render a new decision that the claimant had disability beginning April 1, 2012, and continuing through the date of the CCH.

SUMMARY

We reverse the hearing officer's decision that the claimant did not sustain a compensable injury on [date of injury], and render a new decision that the claimant did sustain a compensable injury on [date of injury].

We affirm the hearing officer's decision that the claimed injury did not occur while the claimant was in a state of intoxication as defined in Section 401.013, thereby not relieving the carrier of liability for compensation.

We reverse the hearing officer's decision that because the claimant did not sustain a compensable injury, he did not have disability and render a new decision that the claimant had disability beginning April 1, 2012, and continuing through the date of the CCH.

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

RON O. WRIGHT, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge