

APPEAL NO. 140388
FILED APRIL 25, 2014

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 22, 2014, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) sustained a compensable injury on [date of injury]. The appellant (self-insured) appealed the hearing officer's determination. The self-insured argued that the claimant was not engaged in any activity for which she was employed and was not furthering the affairs of the self-insured at the time of the injury. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

The claimant, a detention service officer (DSO) for the employer, testified that she had applied for a Deputy I position with the employer. The claimant testified that she received an email from the employer notifying her that the employer had scheduled two mandatory pre-physical readiness assessments for Deputy I candidates. The claimant testified that she injured her left knee while performing a vertical jump during the first scheduled pre-physical readiness assessment. It was undisputed that the first pre-physical readiness assessment occurred on the claimant's day off, although there was conflicting evidence as to whether or not the claimant would have received pay for attending the pre-physical readiness assessment.

Section 401.011(12) defines course and scope of employment as:

[A]n 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 hearing officer noted in the Background Information section of the decision that the claimant believed participation in the pre-physical readiness assessment was mandatory by the employer and relied in part on an email from a Civil Service Coordinator indicating that the pre-physical readiness assessment was mandatory. In evidence is the email sent to the claimant and all Deputy test candidates from a Civil Service Coordinator with the employer, with the subject listed as "Pre-Physical Readiness Assessment." The email lists the dates for the two pre-physical readiness

assessments and notes that both sessions are mandatory. The hearing officer further noted that the evidence was persuasive that the claimant reasonably believed participation in the pre-physical readiness assessment was mandatory and under the control of the employer.

Appeals Panel Decision (APD) 961159, decided July 29, 1996, is strikingly similar to the case on appeal. In APD 961159, the claimant, a clerk with the sheriff's department, applied for a transfer/promotion to become a certified jailer. The claimant was notified that before she could become a certified jailer she would have to pass an agility test. While taking the agility test the claimant fell and injured her leg. The Appeals Panel noted that the claimant was not directed to take the agility test as part of her clerk duties but rather was told, as any other applicant, that to qualify for the position of certified jailer she would first have to pass an agility test. The Appeals Panel affirmed the hearing officer's determination that the claimant's undertaking the agility test was not an activity which was in the course and scope of her employment as a clerk as being supported by the evidence and not an incorrect application of law.

The evidence in the case on appeal established that the claimant, just as any other candidate for the Deputy I position, was required to attend the pre-physical readiness assessment as part of the application process, which the claimant voluntarily underwent, and not as part of her employment as a DSO. The evidence did not establish that the employer directed the claimant to attend the pre-physical assessment readiness as part of her DSO duties. Accordingly, we reverse the hearing officer's determination that the claimant sustained a compensable injury on [date of injury], and we render a new decision that the claimant did not sustain a compensable injury on [date of 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

**COUNTY JUDGE
[ADDRESS]
[CITY], TEXAS [ZIP CODE].**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge