

APPEAL NO. 151511
FILED OCTOBER 1, 2015

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 July 1, 2015, in Midland, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the respondent (claimant) sustained a compensable injury on (date of injury); and (2) the claimant had disability resulting from an injury sustained on (date of injury), beginning on March 13, 2015, and continuing through the date of the CCH. The appellant (self-insured) appeals the hearing officer's determinations of compensability and disability, contending that the hearing officer misstated the evidence which resulted in an incorrect determination of compensability and disability. The appeal file does not contain a response from the claimant.¹

DECISION

Reversed and remanded.

It was undisputed that the claimant sustained injuries in a motor vehicle accident on (date of injury), while driving from his home in (city 1) to the employer's warehouse in (city 2). The claimant was driving a vehicle that was owned by the company and was issued a company credit card to purchase fuel for that vehicle. The dispute between the parties was whether the injuries sustained by the claimant occurred in the course and scope of his employment.

Section 401.011(12) provides in part 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;

¹ We note the hearing officer's decision lists the self-insured's registered agent as Corporation Service Company d/b/a Lawyers Incorporation Service Company. The carrier's information sheet lists the registered agent as Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company.

(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 general rule is that an injury occurring in the use of the public streets or highways in going to and returning from the place of employment is noncompensable. *American General Insurance Co. v. Coleman*, 303 S.W.2d 370 (Tex. 1957). The rule is known as the "coming and going" rule. The rationale of the rule is that "in most instances such an injury is suffered as a consequence of risks and hazards to which all members of the traveling public are subject rather than risks and hazards having to do with and originating in the work or business of the employer." *Texas General Indemnity Co. v. Bottom*, 365 S.W.2d 350 (Tex. 1963). In order for the exceptions to the "coming and going" rule to apply, the claimant must not only show that a specific exception applies, but must show that the injury is of a kind or character that had to do with and originated in the work, business, trade or profession of his employer and was received while he was engaged in or about the furtherance of the affairs or business of his employer. *Bottom*.

In *Leordeanu v. American Protection Ins. Co.*, 330 S.W.3d 239 (Tex. 2010), the court stated:

The Act did not require that an employee be injured on the employer's premises. Cases applying the Act concluded that work-required travel is in the course of employment, but not, as a general rule, travel between home and work. An employee's travel to and from work makes employment possible and thus furthers the employer's business, satisfying the second component of the definition, but such travel cannot ordinarily be said to originate in the business, the requirement of the first component, because '[t]he risks to which employees are exposed while traveling to and from work are shared by society as a whole and do not arise as a result of the work of employers.' [citing *Evans v. Ill. Emp'rs Ins. of Wausau*, 790 S.W.2d 302, 305 (Tex. 1990)].

There is no bright line rule for determining whether the employee travel originated in the employer's business. Rather each situation is necessarily dependent on the facts. Proof of origination can come in many forms. See *Zurich American Ins. Co. v. McVey*, 339 S.W.3d 724 (Tex. App.-Austin 2011, pet. denied).

In his discussion of the evidence, the hearing officer stated that the claimant was hired and was in training to be a warehouse technician for the to-be-opened city 1

warehouse, but was needed temporarily to work on site at the city 2 warehouse. The hearing officer found that at the time of his injury, the claimant was “in the furtherance of the business affairs of the employer” and that the “[c]laimant’s work activities originated in the business affairs of the employer.”

However, a review of the record reflects that there was no evidence that the claimant was only working at the city 2 warehouse temporarily while awaiting the opening of the city 1 warehouse, but rather had been hired to work at the city 2 warehouse even though he lived in city 1. There was no evidence in the record that the employer was building a warehouse in city 1. The hearing officer applied his legal analysis regarding whether the claimant was injured in the course and scope of employment to inaccurate facts. Accordingly we reverse the hearing officer’s determination that the claimant sustained a compensable injury on (date of injury), and remand the compensability issue to the hearing officer for further action consistent with this decision. Because we have reversed and remanded the issue of whether the claimant sustained a compensable injury on (date of injury), we also reverse and remand the issue of whether the claimant had disability from March 13, 2015, through the date of the CCH.

On remand the hearing officer is to review the record and apply his legal analysis to the documentary evidence and testimony admitted at the CCH held on July 1, 2015. No new evidence should be admitted on remand. The hearing officer is then to make a determination of whether the claimant sustained a compensable injury on (date of injury), and whether the claimant sustained disability from an alleged injury on (date of injury), from March 13, 2015, through the date of the CCH based on the evidence in the record.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers’ Compensation, pursuant to Section 410.202, which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **MASTEC INC., (a certified self-insured)** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY D/B/A
CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge