

APPEAL NO. 160953
FILED JULY 20, 2016

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 April 14, 2016, in Fort Worth, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that respondent 1 (claimant) sustained a compensable injury on (date of injury).

The appellant (carrier) appealed the hearing officer's determination arguing that the claimant was not in the course and scope of his employment at the time of his injury because he was not furthering the employer's business or affairs when he was injured while assisting a third party who had been injured in a motor vehicle accident.

The appeal file does not contain a response from the claimant or respondent 2 (subclaimant) to the carrier's appeal.

DECISION

Reversed and rendered.

The relevant facts in this case are not in dispute. On the date of the claimed injury, the claimant, a cable installer, had completed his work assignments for the day and was driving his company truck back to the employer's office to complete paperwork and "clock out" for the day. As the claimant was traveling to the office a motor vehicle accident occurred directly in front of him. Although he was not involved in the accident, the claimant exited his vehicle to assist in removing an unconscious woman from one of the motor vehicles involved in the accident. After the police arrived on the scene, the claimant made a U-turn and proceeded to the office using an alternate route as the road on which he had been travelling was still blocked as a result of the accident. The claimant testified that after he arrived home later in the evening, he noticed minor discomfort in his left knee; however, the next morning his knee was significantly swollen and painful, prompting him to seek medical attention.

The hearing officer determined that the claimant sustained a compensable injury on (date of injury), finding that the claimant's knee injury occurred while he was in the course and scope of his employment. In reaching his decision, the hearing officer relied on *Texas Employers' Ins. Ass'n v. Thomas*, 415 S.W.2d 18 (Tex. Civ. App.-Fort Worth 1967, no writ) and stated in the Discussion section of his decision that in the instant case, as in *Thomas*, "the conduct subsequent to the accident, including the act of assisting with the accident and resultant emergency stemming therefrom, was a part of clearing the road so [the claimant] could proceed with his [e]mployer's business."

In *Thomas, supra*, the court held that "[a] servant does not cease to be in the course of his employment merely because he is not actually engaged in doing what is specifically prescribed to him, if in the course of his employment an emergency arises, and, without deserting his employment, he does what he thinks necessary for the purpose of advancing the work in which he is engaged in the interest of his employer." *Id.* at 20. Specifically, the court in *Thomas* found that the claimant's help in looking for a billfold, at which time he was injured, was "a continuing part of clearing the road so he could proceed with his employer's business." We do not agree with the hearing officer that *Thomas* is applicable to the facts of this case. Although an emergency situation did arise, there was no evidence that the claimant was performing any action that he thought was necessary for the purpose of advancing the employer's interest. On the contrary, the claimant testified that after law enforcement authorities arrived at the accident scene, he made a U-turn and traveled back to the office via an alternate route. His action in assisting the accident victim was not action calculated to clear the road so that he could proceed back to the office and was not necessary for the purpose of advancing the work in which the claimant was engaged in the interest of the employer.

We accordingly reverse the hearing officer's decision that the claimant sustained a compensable injury on (date of injury), and 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 **XL SPECIALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge