APPEAL NO. 950385

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held in (city), Texas, on February 9, 1995, (hearing officer) presiding. The appellant, which is a self-insured governmental entity, appeals the hearing officer's determination that the claimant sustained a compensable injury on (date of injury), and that he had disability from that date to December 30, 1993. The appeal file does not contain a response from the claimant.

DECISION

The hearing officer's decision is reversed and remanded for further findings and conclusions.

The claimant was employed with the field force of the ("employer" or "carrier," as appropriate); his responsibilities including supervising, on horseback and in uniform, inmates doing work outside the prison. He testified that he wore his uniform to and from work because there was no place to change clothes at the prison, but that he was not allowed to appear in public in his uniform unless he was on duty; therefore, he always proceeded straight home after work. (Included in the evidence was a publication entitled "Employee's General Rules of Conduct" prepared by the employer which stated under Rule 28, "The uniform is not authorized for wear during non-working hours.") Claimant's usual working hours were 6:00 a.m. to 4:00 p.m., and on the day of injury, (date of injury), he had gotten off work and was proceeding home in his car down (road), the road that led directly into the prison, when he was involved in a motor vehicle accident at the intersection of (road) and (road).

The claimant stated that (road) had been a dirt road in a remote area which had been paved and widened in order to provide access to two prison facilities. Prisoners did some maintenance work, including mowing, on part of the roadway, although they did not maintain the highway portion. He said that the only people who used the road were prison employees and trucks which delivered supplies to the prisons; he stated that it was not to be used by the general public and that occasional sightseers were not supposed to be there. However, (road) was a road traveled by the general public. A written statement by the captain of the unit at which claimant was employed stated: ". . . (road) is the only road or highway that provides access to the [prison unit] . . . All Employees must use (road) to get to the [prison unit] or to leave the unit enroute to their respective home." Also in the record was a December 14, 1989, engineering memorandum requesting "the Commission to designate a new farm to market road to serve the new ("employer" or "carrier," as appropriate) facility to be opened northeast of (city) in January 1992." The distance between the prison facility where claimant worked and the intersection of (road) and (road) was .9 mile.

Claimant said that he stopped at a stop sign at the intersection of the two roads, but a tree to his left obstructed his view. As he eased forward toward (road), he was struck

broadside by a car whose occupant was distracted, causing the car to leave the road and veer onto (road). The claimant suffered an injury to his cervical spine. He treated first with (Dr. W) and later with (Dr. T); both doctors took him off work until December 1, 1993. However, he did not return to work until February 7, 1994, due to the employer's policy of terminating employees after absences of three months or more and the resulting necessity of claimant's getting reinstated.

Claimant in arguing for compensability raised the access doctrine, claiming that the road he was on was built specifically for the prison site and was the only means of ingress and egress to the site; moreover, he argued, the obstructing tree (which, the police report indicates, was removed two days after the accident) created a hazard. The claimant further argued that he was on a special mission, as his employer had directed that all employees must go straight home and change clothes prior to doing anything else. At the hearing the claimant stated that but for this rule he would have stopped to pick up some paint on his way home.

The carrier in its appeal challenges the following determinations of the hearing officer:

FINDINGS OF FACT

12.Employer's rule 28 reflects that Employer deemed it was in its best interest and was in furtherance of its business not to have its prison guards appear in uniform in public when not on duty.

13.Had Claimant not been required to change out of his uniform prior to appearing in public in a non-business capacity, he would have gone directly from the prison to the hardware store on (date of injury), instead of having to first go home, change clothes, then go all the way back across town to the hardware store to pick up the paint.

14.Claimant was directed by Employer as a part of his employment to not appear in public in uniform while off duty.

17.The injuries Claimant suffered on (date of injury) rendered him unable to perform any work or earn any wages from (date of injury) to 12-30-93.

CONCLUSIONS OF LAW

2.Claimant was injured in the course and scope of his employment on (date of injury) because at the time of such injury he was proceeding under the express direction of Employer to his residence to change out of his uniform prior to appearing in public in an off duty capacity.

3.Claimant had disability from (date of injury) to 12-30-93.

The definition of "course and scope of employment" contained in Section 401.011(12) includes activities conducted on the premises of an employer or at other locations, but does not generally include transportation to and from the place of employment except in certain 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. Section 401.011(12)(A)(iii). In addition, the "dual purpose" exception arises where the travel furthers both the employee's personal affairs as well as the employer's business, so long as the travel would have been made even if there had been no personal business and would not have been made in the absence of the employer's business. Section 401.011(12)(B). The carrier argues that the evidence does not show that either of these situations existed.

We agree with the carrier that the facts presented herein do not come within what Texas courts have determined to constitute the special mission or dual purpose exceptions. As the court stated in Tramel v. State Farm Fire and Casualty Company, 830 S.W.2d 754 (Tex. App.-Fort Worth 1992, writ denied), finding noncompensable an employee's injuries which occurred as she traveled a route common to both her place of employment and a bank where she regularly went at the direction of her employer, an injury incurred while traveling to and from work is considered a personal and private affair of the employee and is thus not compensable. That case also cited Freeman v. Texas Compensation Insurance Company, 603 S.W.2d 186 (Tex. 1980), for the proposition that a special mission existed where an employee was directed to proceed from one work site to another. *See also* Evans v. Illinois Employers Insurance of Wausau, 790 S.W.2d 302 (Tex. 1990), in which recovery was denied for employees who were injured on their way to a safety meeting away from the regular work site which, the Supreme Court held, was "an integral and regular part of their job," such that travel to this location was tantamount merely to travel from home to work. In the instant case we find lacking any evidence of the employer directing the claimant to proceed in any way; the employer's rule that the official uniform was not authorized for wear during non-working hours does not, we believe, amount to a direction to proceed from place to place as is contemplated by the 1989 Act and case law. While it is true that the direction to proceed from one place to another can be an implied direction, such direction and the resulting travel must be in furtherance of the business of the employer. Jecker v. Western Alliance Insurance Company, 369 S.W.2d 776 (Tex. 1963); Janak v. Texas Employers' Insurance Association, 381 S.W.2d 176 (Tex. 1964). The court in the latter case said it could not imply a direction to proceed from one place to another when the travel is for reasons or purposes purely personal to the employee. We hold that that is the situation in this case.

Texas Workers' Compensation Commission Appeal No. 92251, decided July 29, 1992, summarized the dual purpose exception to include injury during a trip which serves both a business and a personal purpose, so long as the trip involves the performance of a service for the employer which would have caused the trip to be taken by someone even if it had not coincided with the personal journey. As noted above, we find lacking any

evidence that claimant's physical trip home served any but a personal purpose, even where the claimant testified that he was constrained from any other activity but going home due to the need to change out of his uniform. Courts have held that both provisos of the statutory provisions of the dual purpose exception must be met in order for compensability to be found; that is to say, if the only purpose of the travel was either personal or business, the exception does not apply. Davis v. Argonaut Southwest Insurance Company, 464 S.W.2d 102 (Tex. 1971). Applying the statutory requirements to the facts of the case, it is impossible to find that the trip to the place where the injury occurred would have been made even if the claimant had no personal business to conduct (i.e., was not going home), and the trip would not have been made had there been no business of the employer to be furthered by the trip (i.e., the claimant would have traveled home anyway). Thus, we find that the dual purpose exception has no application in this case.

Nevertheless, we believe it is appropriate to examine whether, as the claimant contended at the hearing, his injury occurred in the course and scope of his employment due to the "access doctrine," another exception to the general rule that injuries received while coming and going to work are not compensable. Texas Compensation Insurance Company v. Matthews, 519 S.W.2d 630 (Tex. 1974). Under this doctrine, compensability has been allowed where the employer has evidenced an intention that the particular access route or area be used by the employee in going to and from work, and where such route or area is so closely related to the employer's premises as to be fairly treated as a part of the premises. *Id*. Because of the evidence presented below in support of this theory, we believe it is appropriate to reverse the hearing officer's decision and remand for a determination as to whether the access doctrine applied under the facts presented herein. We therefore reverse the decision of the hearing officer and remand to allow him to consider that issue based either upon the existing record or after further development of the evidence as may be appropriate. 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 Workers' Compensation Commission's division of hearings, pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The hearing officer's decision is hereby reversed and remanded, as provided herein.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge