APPEAL NO. 992399

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 September 15, 1999. The hearing officer determined that appellant (claimant) was not injured in the course and scope of his employment on _____. Claimant appeals this determination on sufficiency grounds. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he was not injured in the course and scope of his employment. Claimant asserts that he was in the course and scope because his truck, gasoline, and maintenance on the truck were furnished by his employer; that the means of transportation was under the employer's control; and that the employer paid all of his expenses until he returned home from the rig to his home in State B.

The claimant sustained injuries in a motor vehicle accident (MVA) on _____. The hearing officer has summarized the evidence at the CCH, and we will not repeat it here. Briefly, claimant testified that he was injured in the MVA on a direct route home after having worked on a drilling rig in State A. Claimant said he was taking some days off to go to his home in State B after having spent seven days living and working as a tool pusher and rig manager at the rig.

The hearing officer determined that: (1) claimant was driving a company pickup to his home after work at the time of the MVA; (2) claimant was not on a special mission; (3) claimant was not furthering the employer's affairs at the time of the MVA; and (4) claimant was not injured in the course and scope of employment.

Section 401.011(12) states, in pertinent part, that the term "course and scope of employment" does not include:

(A) transportation to and from the place of employment unless:

(1) 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 rationale for this exclusion regarding "transportation to and from work" is that an injury resulting during such transportation is a hazard that the general public is exposed to on the public highways and is not considered to be a risk or hazard inherent in or originating in the employment. Texas General Indemnity Company v. Bottom, 365 S.W.2d 350 (Tex. 1963).

The evidence showed that claimant drove a truck provided by his employer and that he was driving it home at the time of the accident. However, this, alone, is not a sufficient basis to hold that claimant was in the course and scope of his employment at the time of the accident. The mere furnishing of transportation by an employer does not automatically bring the employment with the protection of the Texas Workers' Compensation Act. Wausau Underwriters Insurance Co. v. Potter, 807 S.W.2d 419, 421-422 (Tex. App.-Beaumont 1991, writ denied). A claimant still must prove that he or she was acting in the course and scope of employment at the time of the injury. Other than being on his way home from work driving a truck furnished by the employer, there was no business being furthered by the claimant's activity at the time of the injury. Texas Workers' Compensation Commission Appeal No. 990949, decided June 17, 1999. *Compare* Texas Workers' Compensation Commission Appeal No. 93634, decided September 2, 1993. Claimant contended that he was subject to being called back to the rig or being asked to run an errand at any time. However, there was nothing to indicate that, at the time of the MVA, claimant was doing anything other than driving home to take some days off. The hearing officer noted that claimant was not directed to go to State B as part of his job duties and he also concluded that claimant was not on a special mission. The hearing officer determined that the evidence in this case did not establish that the claimant was in the course and scope of his employment at the time of injury. Instead, he was merely going home from his place of employment when the MVA occurred.

Claimant contends that the hearing officer erroneously stated that employer did not control the means of transportation and that the furnishing of the truck was not a part of the employment contract. However, the hearing officer was the sole judge of the evidence and he determined what facts were established. In any case, under these facts, this claimant was not in the course and scope of employment regardless of the circumstances regarding the vehicle because he was not furthering the affairs of the employer at the time of the MVA. *See* Appeal No. 990949, *supra*; Texas Workers' Compensation Commission Appeal No. 970317, decided April 9, 1997. Under these facts, we affirm the determination that claimant was not in the course and scope of employment at the time of the MVA and that workers' compensation benefits are not owed.

Claimant complains that he did not live within 75 miles of the field office, as stated by the hearing officer in Finding of Fact No. 3. However, we note that the parties stipulated that venue was proper in the field office where the hearing was held. Claimant did not raise any concern in this regard at the CCH. We perceive no reversible error with regard to this venue finding, which was apparently based on the stipulation.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge