APPEAL NO. 000503

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 February 8, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in a motor vehicle accident (MVA) of _____, because it did not occur in the course and scope of his employment. He further found that as there was not a compensable injury, the claimant did not have disability as defined by the 1989 Act.

The claimant has appealed, and argues that the hearing officer has erred as a matter of law. The claimant points out that he was directed to return home by the employer (as found by the hearing officer in a finding of fact) in order to pack and prepare for an out-of-town job. As such, he was traveling pursuant to a special mission. The respondent (carrier) counters that because the claimant was driving his personal vehicle and packed personal clothing, he was not injured in the course and scope of employment but rather while going to work. The carrier argues that claimant was merely exposed to the hazards of the highways.

DECISION

Reversed and rendered that claimant was in the course and scope of employment at the time of his injury. Remanded on the issue of disability.

The claimant was employed for what appears to be a well servicing company, (employer), which necessitated some travel to client locations out of town. He reported for work on _____, at 6:00 a.m., his usual time, and somewhat later that morning, around 8:30, he was told that his services would be required on a job in (City P), for an upcoming period of several days. The claimant was directed to go home and pack, and then report back to the employer prior to leaving for his trip to City P. The claimant said that pursuant to the company policy, he did not clock out because he was considered to still be on the job when preparing to leave town. He finished packing and on the way back to the employer=s location was involved in an MVA. The claimant said that his departure to City P was delayed a few hours while he attended to damage to his vehicle and the reporting of the MVA to the police.

The claimant was gone on his well service job in City P for about 10 days. He said he had some pain while out of town and was not able to give 100% to the job. The claimant continued to work for the employer, on what he said was light duty that did not require lifting, until August 6, 1999, when he was laid off. The claimant said that he believed his injury was a factor in the layoff because he was told he was terminated because he could not do the work. On cross-examination, the claimant said that he drove his personal truck home because no other vehicle was available, and he agreed that he was packing primarily clothing and personal items that he did not wear for work. The claimant said that after his layoff he could not return to the type of work he was doing at the time of his injury and said that no one would hire him with his back injured.

Mr. B, a superintendent for the employer, said that a "few months" after the claimant returned from his out of town job, the claimant told Mr. B he was suing the other party and was going to start going to physical therapy. Mr. B said that claimant was doing this on the advice of his attorney. Mr. B said that claimant did not appear to be having trouble the first month or so after his return, but then began having trouble with his back. Mr. B agreed that claimant was transferred to a lighter duty job.

Mr. B was asked several times why the claimant was laid off on August 6th. He said that three people were laid off due to a reduction in force. His testimony was somewhat hard to understand because of his references to unidentified persons as "they." Mr. B said that he asked his field service department, which he said did not need additional employees, if they would take the claimant into their department. Here was Mr. B's comment on that discussion:

> And I said, "Well, he is on"---you know, "They say he's**C**"he is"---you know, "he's hurt or"---you know, whatever, and "His back has been bothering him," and that there's a bunch of lawsuits pending against him. They didn't want to get involved in it. That's when they decided to let him go.

In reference to a meeting held in which the layoffs were discussed, Mr. B said:

> They asked, you know, about "Well, how is the guy?" You know, "Is he a good worker" and stuff like that. And I said, "Yeah, he's a good worker." I said, "There's some problems with him right now. He's"---you know, "He's suing somebody at"---"He's"--"we think"---"He's taking time off from work, and he's"—you know, "He is claiming that he has back problems."

In his recorded statement taken sometime before November 2, 1999, but after the claimant left the employer, Mr. B agreed that claimant had been sent home by the employer to pack. He said that two months later claimant was complaining about his back. Mr. B said in the statement and his testimony that claimant had also said he had a waterskiing accident, but, pressed about the date during the CCH, could not recall when this happened. Mr. B's statement indicated that claimant was suing the employer, apparently for damages to his truck from the MVA. Mr. B believed that claimant had been involved in an insurance "scam" relating to his motorcycle, but knew none of the details and said at the CCH that this was hearsay.

Claimant first saw Dr. K, D.C., on October 6, 1998. Dr. K gave claimant frequent low back treatments and put him on light duty effective January 11, 1999. Dr. K's pain diagrams show that claimant had pain in the lumbar spine and up into the lower thoracic spine. On referral to Dr. D, claimant was found through MRI to have a herniated thoracic disc. Dr. D opined that this was directly related to the MVA, and referred claimant to Dr. G, a spinal surgeon. There is nothing in the record indicating if claimant had diagnostic tests for his lumbar spine. The claimant said that Dr. G said he could wait because of his age (late 20s) to have surgery, but that his injury would get worse over time.

The hearing officer's discussion consists only of reciting Section 401.011(12). We are therefore unable to tell why the hearing officer would find that the claimant was directed to go home and pack by his employer and did not clock out, but then find that the journey was a personal errand and claimant was not furthering the business of the employer. Because we believe the hearing officer has erred, and that the claimant was injured on a special mission which would not have been made unless his travel out of town on a job was required, we reverse and render the decision that the claimant was injured in the course and scope of his employment.

Plainly, the claimant left work in mid morning at the direction of the employer, pursuant to his need to travel out of town, and this was additional to his employment. As such, his travel to and from work in this instance is a "special mission" that comes under subsection (A)(iii) of Section 401.011(12):

> (A) transportation to and from the place of employment unless:
>
> (iii) the employee is directed in the employee's employment to proceed from one place to another place; . . .

See Texas Workers= Compensation Commission Appeal No. 981612, decided August 28, 1998 (Unpublished); and Texas Workers= Compensation Commission Appeal No. 951833, decided December 18, 1995.

We regard as irrelevant the fact that he was packing personal clothing and items that he did not wear while performing his work; it would be unreasonable to suppose that a worker traveling out of town for several days on a job would not pack personal clothing to take with him. The fact that his preparation for an out-of-town mission involved packing personal items did not convert his trip home into solely a personal errand. None of the cases cited by the carrier involve analogous facts to the case here. We reverse the finding that claimant=s journey home was for personal reasons as against the great weight and preponderance of the evidence.

The hearing officer did not determine any period that the claimant's injuries caused him to be unable to obtain and retain employment equivalent to his preinjury average weekly wage; rather, he simply held that because there was no compensable injury, there was no disability. We note Mr. B indicated that claimant's injury was a factor in his layoff, the claimant was on light duty when laid off, and the claimant also testified that he had not worked or been able to work since August 6, 1999. We accordingly remand the decision for a determination of the period of disability as defined in the 1989 Act.

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 Workers= Compensation Commission=s Division of Hearings, pursuant to Section 410.202. *See* Texas Workers= Compensation Commission Appeal No. 92642, decided January 20, 1993.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O=Neill
Appeals Judge