APPEAL NO. 020211
FILED MARCH 13, 2002

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 December 3 , 2001. The hearing was continued and the record closed on December 20, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) was not in the course and scope of his employment at the time he was injured in a motor vehicle accident (MVA) on _____, and that the claimant did not have disability because he did not sustain a compensable injury. The claimant appeals, arguing that the hearing officer's determinations are not supported by sufficient evidence. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

Section 401.011(12) states, in pertinent part, that the phrase "course and scope of employment" 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;

(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 claimant testified, and the parties stipulated, that he was employed as a welder for the employer. It is undisputed that the claimant sustained serious injuries in the _____, MVA. The claimant contends that the hearing officer erred in determining that his injury was not sustained in the course and scope of his employment. He maintains that he was engaged in a special mission at the time of the MVA because he was directed by his employer to come to the field office to pick up some welding procedures and his personal tools before proceeding to the job site. The claimant's supervisor testified that he did not remember telling the claimant to come to the field office to pick up welding procedures; that he did not think there were any such welding procedures for the job to which the claimant had been assigned; that he would not have had a problem with the claimant if the claimant had driven straight to the job site on the date of the injury; that there were tools available at the job site which the employer's day crew had been using; and that the claimant could have completed the job with those tools rather than his own.

The claimant asserts error in the hearing officer's statement that "the claimant was apparently not an employee of the employer as such . . . ." It is evident from the record that the hearing officer accepted the parties' stipulation that the claimant was an employee of the employer. Indeed, the hearing officer so found in Finding of Fact No. 1.A. As such, the hearing officer's statement in his discussion is somewhat puzzling. However, it appears that the statement is more in the nature of an acknowledgment that the claimant did not have a fixed work schedule with the employer and that his work hours varied depending upon his job assignments.

The Supreme Court of Texas held in Evans v. Illinois Employers Ins. of Wausau, 790 S.W.2d 302 (Tex. 1990), that an employee who was killed on his way to a special safety meeting was not in the course and scope of his employment, as a matter of law, notwithstanding the fact that the safety meeting started earlier and at a different location than the employee's regular work. An employer may direct an employee to begin work (or the work may end) at a different location other than the normal work location without thereby creating a "special mission." Texas Workers' Compensation Commission Appeal No. 961503, decided September 16, 1996. Thus, the critical question in this case is whether the claimant was directed to go to the employer's field office to get the welding procedures and his tools before he went to the job site. There was conflicting evidence on that issue. The hearing officer resolved the conflicts in the evidence against the claimant and determined that the claimant had not been directed by the employer to go to the field office before reporting to the job site. The hearing officer was acting within his province as the fact finder in so resolving the conflicts in the evidence. Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the hearing officer's decision on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). In addition, the fact that another fact finder may have drawn different inferences from the evidence, which would have supported a different result, does not provide a basis for us to disturb the hearing officer's determination that the claimant was not in the course and scope of his employment at the time of his MVA. Atlantic Mut. Ins. Co. v. Middleman, 661 S.W.2d 182, 186 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

In that we are affirming the hearing officer's decision that the claimant did not sustain a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge