

APPEAL NO. 031900-s  
FILED SEPTEMBER 8, 2003

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 June 11, 2003. With respect to the single issue before him, the hearing officer determined that (decendent) was not in the course and scope of his employment at the time of his fatal motor vehicle accident (MVA) on \_\_\_\_\_. In her appeal, the appellant (claimant beneficiary), the decedent's wife, argues that the hearing officer erred in determining that the decedent was not in the course and scope of his employment at the time of his MVA. In its response to the claimant beneficiary's appeal, the respondent (carrier) urges affirmance.

DECISION

Reversed and a new decision rendered that the decedent was in the course and scope of his employment at the time of his fatal MVA.

It is undisputed that the decedent died in a MVA on \_\_\_\_\_. At the time of his accident, the decedent, the chief executive officer of a sprinkler and alarm company that installed such systems in commercial buildings, was driving to his home in a company car to pick up the claimant beneficiary. The decedent and the claimant beneficiary were then going to proceed to a John Deere Company to purchase a part for a skid-loader that they had previously purchased for the company. The claimant was a short distance from his home at the time of the MVA. At the time of the accident, the decedent was talking on his cell phone with Mr. W, the vice president of operations for the company. Mr. W testified that when he heard the crash, he and the decedent were discussing a problem with a subcontractor who had completed a job with the company and was not satisfied with the money he had been paid. The police report concerning the MVA reflects that contributing factors to the accident were the decedent's failure to yield the right of way at a stop sign and driver inattention (cell/mobile phone use).

The claimant beneficiary initially argues that the decedent was in the course and scope of his employment at the time of the MVA pursuant to Section 401.011(12)(A)(iii) because he was engaged in a special mission to purchase the part for the skid-loader. The hearing officer determined that the decedent was not in the course and scope because his action of departing from the most direct route to the business where he was going to buy the part to pick up his wife was a deviation from the course and scope of his employment. There was conflicting evidence on that issue and it was a matter for the hearing officer to resolve the conflicts and to determine what facts had been established. Nothing in our review of the record reveals that the hearing officer's determination that the claimant had deviated from his mission of going to the JD location to buy the part is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists to reverse the hearing officer's determination that the claimant was not in the course and scope of his

employment under Section 401.011(12)(A)(iii) at the time of his fatal MVA. 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 challenged determination. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The question remains as to whether the decedent was in the course and scope of his employment at the time of his MVA because he was engaged in a telephone conversation with Mr. W discussing a business problem. It is undisputed that the decedent was driving a company car at the time of his fatal MVA. Section 401.011(12)(A)(1) provides that the phrase course and scope of employment does not include transportation to and from the place of employment unless “the transportation is furnished as part of the contract of employment **or is paid for by the employer.**” (Emphasis added). It is undisputed that the claimant was driving a company car at the time of his fatal MVA. Thus, his transportation was “paid for by the employer” and, as a result, he was not automatically excluded from being in the course and scope of his employment under the coming and going rule. To the contrary, the issue of whether the decedent was in the course and scope of his employment at the time of the MVA turns on whether he was engaged in or about the furtherance of the affairs or business of the employer at the time of the MVA. The hearing officer determined that the decedent’s talking on the cell phone with Mr. W about business “was not an event that would give rise to a new special mission for the Employer.” While we do not disagree with the hearing officer’s determination in that regard, it does not answer the claimant beneficiary’s argument. The claimant beneficiary maintains that the decedent was furthering the affairs of the employer at the time of the MVA because he was on the cell phone provided by the company discussing a problem with the vice president of operations that the company was having with a subcontractor. The action of a chief executive officer discussing a business problem with the vice president of operations seems the very embodiment of an action in furtherance of the affairs and business of the employer. Accordingly, we reverse the hearing officer’s determination that the claimant was not in the course and scope of his employment at the time of his fatal MVA and render a new decision that the decedent was in the course and scope of his employment at that time.

We reverse the hearing officer’s determination that the decedent was not in the course and scope of his employment at the time of his fatal MVA and render a new decision that the decedent was in the course and scope of his employment at the time of the fatal MVA. Accrued and unpaid death benefits should be paid in a lump sum with interest.

The true corporate name of the insurance carrier is **HARTFORD CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge