APPEAL NO. 032487
FILED OCTOBER 16, 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 August 13, 2003. The hearing officer determined that the respondent (claimant) was within the course and scope of his employment at the time he was involved in a motor vehicle accident (MVA) on _____. The appellant (carrier) appeals, asserting that the hearing officer has not correctly applied the law to the facts. The claimant responds, urging affirmance.

DECISION

Reversed and remanded.

The hearing officer determined that the claimant was injured as a result of being involved in an MVA on _____; that at the time of the MVA, the claimant was operating a vehicle owned by and paid for by his employer; and that at the time of the MVA, the claimant was traveling along the most direct route between his home and his usual place of employment. From these factual determinations, the hearing officer concluded that the claimant was within the course and scope of his employment at the time of the MVA.

In the Discussion portion of her decision and order, the hearing officer states that:

> Section 401.011(12)(A)(i) clearly indicates that transportation to and from the place of employment falls within the ambit of the term "course and scope of employment" if the transportation is furnished as part of the contract of employment *or* is paid for by the employer [emphasis supplied]. Since the transportation in this case admittedly was paid for by Employer, Claimant was within the course and scope of his employment at the time of the [MVA] at issue in this decision.
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> The unequivocal terms of the cited section of the Act render it irrelevant that Claimant may not have conducted a business-related errand on his way to his usual employment location, since, for the reasons discussed in the foregoing paragraph, Claimant would have been within the course and scope of his employment even had he not made the stop in question.
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> Section 401.011(12) provides that:
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> "Course and scope of employment" means an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while

engaged in or about the furtherance of the affairs or business of the employer. The term includes an activity conducted on the premises of the employer or at other locations. The term 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; or

(B) travel by the employee in the furtherance of the affairs or business of the employer if the travel is also in furtherance of personal or private affairs of the employee unless:

(i) the travel to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee to be furthered by the travel; and

(ii) the travel would not have been made had there been no affairs or business of the employer to be furthered by the travel.

We have discussed similar issues in previous cases, including Texas Workers' Compensation Commission Appeal No. 010996, decided June 21, 2001, which contains this excellent summary of the legal principles:

> The general rule is that an injury occurring in the use of the public streets or highways in going to and returning from the place of employment is not compensable. Texas Workers' Compensation Commission Appeal No. 961622, decided October 2, 1996; American General Insurance Co. v. Coleman, 303 S.W.2d 370 (Tex. 1957). The rule is known as the ["]coming and going" rule. The rationale of the rule is that "in most instances such an injury is suffered as a consequence of risks and hazards to which all members of the traveling public are subject to rather than risks and hazards having to do with and originating in the work or business of the employer." Texas General Indemnity Co. v. Bottom, 365 S.W.2d 350, 353 (Tex. 1963). Appeal No. 961622.
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> The hearing officer was persuaded by the claimant's testimony that he was in the course and scope of employment at the time of the MVA

because: (1) he was traveling in the company vehicle; (2) he was in "stand by" status; and (3) he was paid from the time he left the office until he returned home later that evening. It is undisputed that the claimant was traveling to his home in a company vehicle; however, this fact in and of itself does not bring the claimant within the ["]course and scope of employment." The Appeals Panel has held that merely because claimant was assigned a vehicle does not, in and of itself, put claimant in the course and scope of employment. Appeal No. 961622, *supra*. A Texas court also has held that the "mere furnishing of transportation by an employer does not automatically bring the employee within the protection of the [1989] Act. If this were not the law in this State, then each and every accident in a company vehicle, including those operated for purely personal reasons would be compensable under the [1989] Act." Wasau Underwriters Ins. Co. v. Potter, 807 S.W.2d 419, 422 Tex. App.-Beaumont 1991, writ denied) citing United States Fire Insurance Company v. Eberstein, 711 S.W.2d 355 (Tex. App.-Dallas 1986, writ ref'd n.r.e.). *See also* Poole v. Westchester Fire Ins. Co., 830 S.W.2d 183 (Tex. App.-San Antonio, 1992) citing Great Am. Reserve Ins. Co. v. San Antonio Plumbing Supply Co., 391 S.W.2d 41, 47 (Tex. 1965). *See also* Texas Workers' Compensation Commission Appeal No. 92324, decided August 26, 1992, and Texas Workers' Compensation Commission Appeal No. 92716, decided February 16, 1993.

A Texas court of appeals held that even if the employee falls within one of the recognized exceptions to the "coming and going" rule, he must be in the furtherance of the employer's business at the time of the injury. Poole, *supra*.

The hearing officer erred in her application of the law to the facts. She equated the furnishing of transportation with being in the course and scope of employment, overlooking the requirement that the claimant be "in the furtherance of the employer's business at the time of the injury." *See* Texas Workers' Compensation Commission Appeal No. 031900-s, decided September 8, 2003, for a recent discussion of driving a company owned vehicle and furthering the employer's business. Since the hearing officer has not discussed the issue of the furtherance of the employer's business at the time of the injury, she erroneously applied the law and failed to complete the analysis of how the law applies to the facts of this case. We remand the case for her to do so.

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, which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **HARTFORD UNDERWRITERS 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.

_____
Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Edward Vilano
Appeals Judge