APPEAL NO. 050051
FILED FEBRUARY 28, 2005

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 December 3, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability.

The claimant appealed, citing the definition of course and scope of employment in Section 401.011(12) and offering some new details regarding his employment. The respondent (carrier) responds, contending that the "coming and going" provisions of Section 401.011(12) apply, citing case law and Appeals Panel decisions and addressing various aspects of Section 401.011(12). The carrier also objects to information presented on appeal which was not elicited at the CCH.

DECISION

Reversed and rendered in part and affirmed in part.

The claimant was vice president for shared services for the employer. The hearing officer cites testimony that the employer's main office is in (City 1), (State 1), that the claimant routinely travels to (State 2), (State 3) and (State 4) and that the claimant lives in (City 2), (State 5) where he "also had an office at his residence." It appears undisputed that on Thursday, _____, the claimant was flying from (City 1) to (City 3), (State 5) when the airplane "experienced a period of turbulence during the flight." The claimant testified that he felt his back "give" or "pull, tear" with pain. The claimant testified the he reported his injury to the employer's vice president of Human Resources the next day and conferred with her the following Monday. It is undisputed that the claimant first sought medical attention on December 18, 2003, that the claimant's position was eliminated effective December 31, 2003, and that the claimant's treating chiropractor took the claimant off work on January 4, 2004. The claimant also received a severance package which equaled his preinjury salary for several months. The hearing officer found:

FINDINGS OF FACT

4. On _____ the Claimant was traveling from his place of business, (City 1), (State 1), to his residence, (City 2), (State 5), when he sustained an injury to his low back.

5. On _____ the Claimant was not injured in the course and scope of employment.

6. The claimed injury did not cause the Claimant to be unable to obtain or retain employment at wages equivalent to the Claimant's preinjury wage.

CONCLUSIONS OF LAW

3. On _____ the Claimant did not sustain a compensable injury.

4. The Claimant did not have disability.

The claimant in his appeal cites and quotes the definition of course and scope of employment found in Section 401.011(12). As we view it, the primary issue in this case is whether the claimant sustained his injury while in the course and scope of his employment or whether the "coming and going" doctrine is applicable. Course and scope of employment as defined in Section 401.011(12) generally does not include transportation to and from the place of employment except in certain limited circumstances; one of these, the "special mission" exception, arises where the employee is directed in his employment to proceed from one place to another. Section 401.011(12)(A)(iii). Generally, an employee on a special mission does not go into and out of the course and scope of employment while on that special mission. This is sometimes referred to as the principle of "continuous coverage." Texas Workers' Compensation Commission Appeal No. 980924, decided June 22, 1998; Texas Workers' Compensation Commission Appeal No. 950973, decided July 31, 1995. It applies to special missions unless there is a deviation from or abandonment of the course and scope of employment while on a personal errand. Texas Workers' Compensation Commission Appeal No. 000118, decided February 24, 2000. Regarding this area of the law, the Appeals Panel has frequently cited PHILLIP HARDBERGER, TEXAS WORKERS' COMPENSATION TRIAL MANUAL p. 11-4 (Parker-Griffin Publishing 1991) as stating:

> An Employee whose work involves travel away from the employer's premises is in the course of employment continuously during the trip, except when a distinct departure on a personal errand is shown.

Most of the cited cases in Hardberger's manual deal with injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home. Texas Workers' Compensation Commission Appeal No. 980924, decided June 22, 1998, a case where an airline flight attendant sustained multiple insect bites staying over night in a hotel, reviews a number of Appeals Panel decisions and comments on North River Insurance Co., v. Purdy, 733 S.W.2d 630 (Tex. App.-San Antonio 1987, no writ), Shelton v. Standard Insurance Co., 389 S.W.2d 290, (Tex. 1965), also cited by the 1989 Act, and Aetna Casualty & Surety Co. v. Orgon, 721 S.W.2d 572 (Tex. App.-Austin 1986, writ ref'd n.r.e.). Other Appeals Panel decisions involving the continuous coverage doctrine include Appeal No. 000118, *supra*, and Texas Workers' Compensation Commission Appeal No. 000679, decided May 15, 2000.

The instant case is somewhat different than the cited cases in that the claimant was headed to his home at the time of the turbulence. The carrier cites Texas Workers' Compensation Commission Appeal No. 961503, decided September 16, 1996, a special mission case involving travel back home which was found not compensable. In that case, an executive went to the office as usual, but then left work early to meet a client and negotiate a business deal. The executive met the client, they had a business dinner and afterward the executive dropped the client off at his hotel. In going home the executive was injured in a motor vehicle accident. The Appeals Panel held that while the executive was with the client he was arguably on a special mission, but when the client was dropped off at the hotel the special mission ended and the executive was merely going home and was at no greater risk than going home from the office.

We believe a much more applicable case is Texas Workers' Compensation Commission Appeal No. 022377, decided October 31, 2002. In that case the injured worker was a mobile home technician performing warranty work on mobile homes in (State 6) and (State 5). The worker would leave his home location, travel to various locations during the week and return to his home location when the jobs were finished. The worker had finished his work for the week and was enroute back to his home location when he stopped to get something to eat and slipped and injured himself returning to his truck. The Appeals Panel, in reversing the hearing officer, held that when an employer's work requires an employee to travel away from the employer's premises, the continuous coverage doctrine applies from the time the employee leaves the employer's premises until he returns to the employer's premises. We held that in that case, involving out of town travel, the special mission continuous coverage doctrine was applicable.

In the instant case, the claimant's travel was in furtherance of the affairs and business of the employer and the continuous coverage doctrine principle would apply until the special mission is completed when he returned home. The carrier, in its response references the "Seven Rules of Compensability in Travel Cases" but does not mention the continuous coverage principle. This is not a case where the claimant was "merely given an alternate work location" and was traveling to and from the alternate work location. The claimant in this case was required to fly from location to location from (State 1) to (State 3) and points in between. Further, it was the claimant's undisputed testimony that he "had an office at home and a Blackberry and a laptop, and so I typically worked before the flight, after the flight."[1] We do not consider the claimant's travel to (City 1) (and other locations) to be travel to an alternate work site such as set out in Evans v. Illinois Employers Insurance of Wausau, 790 S.W.2d 302 (Tex. 1990). Nor do we consider the claimant's travel as "inherently personal," transporting supplies or equipment to work or involving the dual purpose rule, applicable.

Regarding the disability issue, the hearing officer specifically found that while the claimant sustained an injury to his low back during the flight on _____, the

[1] The quote is from the claimant's testimony at the CCH. We will not consider factual information presented for the first time in the appeal.

"claimed injury did not cause the Claimant to be unable to obtain or retain employment at wages equivalent to the Claimant's preinjury wage." In this case the claimant continued to work in his preinjury employment until December 31, 2003, when his position was eliminated. The hearing officer could believe that although the claimant sustained an injury, that injury did not cause the claimant to be unable to obtain and retain employment at the preinjury wage.[2] The hearing officer is the sole judge of the weight and credibility to be given to the evidence. (Section 410.165(a)). As such he could believe all, part or none of the testimony or evidence before him. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Therefore the hearing officer could disbelieve the claimant's testimony regarding his inability to work after December 31, 2003, and discount the treating doctor's report taking the claimant off work. The hearing officer's determination that the claimant did not have disability is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We reverse the hearing officer's determination that the claimant was not in the course and scope of employment and did not sustain a compensable injury and render a new decision that the claimant was in the course and scope of his employment and had sustained a compensable injury. We affirm the hearing officer's determination that the claimant did not have disability.

[2] Section 401.011(16) defines disability as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage."

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

NICHOLAS PETERS
12801 NORTH CENTRAL EXPRESSWAY, SUITE 100
DALLAS, TEXAS 75243.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Margaret L. Turner
Appeals Judge