APPEAL NO. 100495
FILED JUNE 18, 2010

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 March 25, 2010. With regard to the two issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that the claimant had disability from January 28 and continuing through May 27, 2009.

The appellant (carrier) appealed, contending that the hearing officer's decision is a misapplication of the law and the facts to the law and that the claimant was on a personal mission at the time of her injury. The claimant responded, urging affirmance.

DECISION

Reversed and rendered.

The claimant testified that she was a respiratory therapist at the employer's hospital and that her shift was from 7:00 p.m. to 7:00 a.m. The evidence established that on _____, the claimant arrived at work and clocked in at 6:45 p.m. The evidence further established that a co-worker, (Mr. R), whose shift was ending, had locked his keys in his car and needed money to call a locksmith to unlock his car. The claimant agreed to assist Mr. R and accompanied him to a nearby convenience store which had an ATM and the claimant withdrew money so that Mr. R could get a locksmith to unlock his car. A copy of the ATM receipt in evidence showed the withdrawal was made at 7:23 p.m. on _____. On the way back to the hospital the claimant slipped on some ice, fell and severely fractured her left ankle. Exactly where the claimant fell is in dispute. The hearing officer, in the Background Information, comments that the claimant "slipped and fell on ice near the employer's driveway." Although the exact location of the fall is in dispute, it is undisputed that the fall was not on the employer's premises.

COMPENSABLE INJURY

The hearing officer further notes in her Background Information:

> The evidence established that the [c]laimant's action was a minimal deviation of short duration, which is in the nature of common human habits, and she did not deviate from her duties to the extent that an intent to abandon employment could be inferred. Thus, she was in the course and scope of her employment.

Course and scope of employment is defined in Section 401.011(12) as:

> . . . 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 carrier, in this case, argues that the claimant had deviated from her duties by leaving the hospital to go to the nearby convenience store to get money to assist Mr. R in unlocking his car, which had nothing to do with the employer's work or business, and was not in the furtherance of the affairs or business of the employer. *See* Section 401.011(12). Lesco Transportation Co., Inc. v. Campbell, 500 S.W.2d 238 (Tex. Civ. App.-Texarkana 1973, no writ), states the general proposition as follows:

> Stated in converse terms, the rule is that when an employee abandons and turns aside from the course and scope of his employment, such deviation defeats a claim for compensation. Such deviation occurs if at the time of injury the employee is engaged in and pursuing personal work or objectives that do not further the employer's interest. An injury received under such circumstances is not from a hazard that has to do with and originates in the employer's business, work, trade or profession.

In Texas General Indemnity Company v. Luce, 491 S.W.2d 767, 768 (Tex. Civ. App.-Beaumont 1973, writ ref'd n.r.e.), the court affirmed workers' compensation coverage for an employee who had gone to pick up her paycheck, as required by her employer, while she was on vacation, then went behind the serving line to speak with her fellow employees and was injured. The court held that "[t]he law must be reasonable . . . . We are unable to apply the principle of deviation from employment so rigidly as to ignore the common habits of most people."

The hearing officer, in her decision, relies on the theory that the claimant's action in leaving the hospital premises "was a minimal deviation of short duration, which is in the nature of common human habits . . ." to find the claimant in the course and scope of employment. The seminal Appeals Panel Decision (APD) case involving a minimal deviation is APD 001700, decided September 8, 2000. In that case, an employee twisted her knee going down a staircase on the employer's premises while on her way to see if she would need help starting her car when she left for the day. The Appeals Panel held that an act which is reasonably anticipated to be performed by an employee, *performed while on the premises*, and which does not deviate from the course and scope of employment to the extent that an intent to abandon employment can be inferred, remains within the course and scope of employment. We note that in APD 001700 and other similar cases, such as APD 090873, decided August 20, 2009, a case where the injured employee went to her car in the parking lot to retrieve a package claim form, fell and was injured and where the Appeals Panel held the employee was in the course and scope of employment, involved situations where the injured worker remained on the employer's premises. In the instant case, the claimant had left the employer's premises to engage in a personal mission.

In several cases, an employee who is involved in a separate personal mission or endeavor is found not to be in the course and scope of employment. *See* APD 960846, decided June 14, 1996 (jump starting car); APD 010163-s, decided March 5, 2001 (loading bags of concrete the worker had purchased from the employer) as cases which were held not compensable. In Roberts v. Texas Employers' Insurance Association, 461 S.W.2d 429 (Tex. Civ. App.-Waco 1971, writ ref'd), a case where before starting work an employee had received permission from the employer to take some card board boxes home and was injured loading the boxes in her car in the employer's parking lot, the court held:

> The accident and appellant's injuries did not arise out of her employment; they did not have to do with or originate in her employer's business; and she was not engaged in the furtherance of her employer's affairs or business . . . . There is no suggestion in the record that appellant was temporarily directed or instructed by the employer to perform any 'service' for or incidental to the work of the employer or that appellant was employed in the usual course of the employer's business when any purported direction was given or when the injury occurred. She was engaged on a purely personal mission, and the injury was not compensable. [Citations omitted.]

In the present case, the claimant had left the employer's premises and was engaged in a separate personal mission unrelated to her employment at the time of her injury.

However commendable the claimant's motive in this case was, the fact that she left the employer's premises to engage in a personal mission which did not further the employer's affairs or business, takes the claimant out of the course and scope of her employment. *See* Section 401.011(12) and Lesco, *supra*. The hearing officer's determination that the claimant sustained a compensable injury on _____, is a misapplication of the law. Accordingly, we reverse the hearing officer's decision that the claimant sustained a compensable injury on _____, and we render a new decision that the claimant did not sustain a compensable injury on _____.

DISABILITY

Because we have reversed the hearing officer's decision regarding the compensable injury and rendered a new decision that the claimant did not sustain a compensable injury, the claimant cannot by definition in Section 401.011(16) have disability. Accordingly, we reverse the hearing officer's decision that the claimant had disability from January 28 and continuing through May 27, 2009, and render a new decision that the claimant did not have disability from January 28 through May 27, 2009.

SUMMARY

We reverse the hearing officer's decision that the claimant sustained a compensable injury on _____, and had disability from January 28 and continuing

through May 27, 2009. We render a new decision that the claimant did not sustain a compensable injury on _____, and did not have disability from January 28 through May 27, 2009.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** 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.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Veronica L. Ruberto
Appeals Judge

_____
Margaret L. Turner
Appeals Judge