APPEAL NO. 110074
FILED MARCH 21, 2011

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 20, 2010. With regard to the two disputed issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that the claimant did not have disability resulting from an injury sustained on _____.

The claimant appealed, contending that a condition of his employment required him to live on the employer's premises and therefore he was in the course and scope of his employment at the time of the injury and that he had disability. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed in part as reformed, and reversed and rendered in part.

It is undisputed that the claimant was the former Director of Maintenance (also known as the Director of Physical Plant) at the employer's college. The claimant testified as a condition of his employment he was to live in housing on the college campus. In evidence is an agreement dated June 18, 2009, signed by the claimant and a college vice-president that states: "a condition of employment that the Director of Physical Plant live on-campus in housing provided by the college." The agreement further explains:

> The college deems that necessary to the successful completion of the duties of that position. This has proven to be true on several occasions where the Director needed to respond quickly to prevent additional damage to the college's physical plant or to [the] people during an event such as a heavy rainstorm or tornado or unsafe conditions in a dormitory.

The claimant also testified that he was provided with a computer in his live-in housing on campus, with which he could check the college's heating, lighting and air conditioning systems from home.

The hearing officer, in the Background Information, commented that on _____, the claimant "checked the college's heating, lighting and air systems from his home" on the college's computer. The hearing officer further commented that after the claimant had checked the computer he "was exiting his back door to the carport to drive to his campus office in his employer furnished truck, when he tripped and fell against a desk and an exercise bicycle in his carport." The hearing officer made an unappealed finding of fact that the "[c]laimant was injured in a fall at his home on _____."

COURSE AND SCOPE

Section 401.011(12) provides in pertinent part that "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, and that the term includes an activity conducted on the premises of the employer or at other locations. In Deatherage v. International Insurance Company, 615 S.W.2d 181, 182 (Tex. 1981), the court stated:

> [a]s a general rule, a claimant must meet two requirements: (1) the injury must have occurred while the employee was engaged in or about the furtherance of the employer's affairs or business; and (2) the claimant must show that the injury was of a kind and character that had to do with and originated in the employer's work, trade, business or profession.

The self-insured, in support of its position that the claimant was not furthering the affairs or business of the employer, cites Appeals Panel Decision (APD) 961848, decided October 30, 1996, and cases cited therein. Those cases deal with an injured worker who had deviated to engage in a personal endeavor (such as working on the injured workers' private automobile) and are readily distinguishable from the facts of this case. The self-insured also cites a recent Court of Appeals case, Gray Insurance Co. v. Jones, 2009 Tex. App. LEXIS 1640 (Tex. App.—Beaumont 2009, pet. denied) as a case in which the worker was not engaged in furthering the employer's business at the time of his injury. In Jones, the worker was a roughneck on a drilling rig. The worker worked seven days on and seven days off. During the seven days on the job he worked a 12 hour shift. When he was working he could drive home or stay at a "crew house" provided by the employer. On a day when the worker was working, but during the 12 hours he was off, the worker, in the 10th hour of his off time injured his back throwing away some garbage in the crew house. The court held that there was "no evidence that the act resulting in his injury was an act that had to do with and originated in the work, business, trade, or profession of [the employer]." That case is clearly distinguishable from the instant case in that the worker in Jones had a choice to go home or stay at the crew house while the claimant in this case was required to live in a house on campus as a condition of his job. Further, the worker in Jones was clearly on his own off time at the time of his injury.

The self-insured, in its response to the claimant's appeal, seems to concede that the claimant had begun work on the day of injury stating: "[t]he evidence established that the [c]laimant had done some work when he checked the computers the morning of the accident but he had deviated from his employment and was not furthering the affairs of the employer when he was going out to get into his vehicle to drive to the office."

The hearing officer made an appealed finding that "[a]t the time of his fall, [the] [c]laimant was departing his home to drive to his campus office and was not furthering the business of [the] [e]mployer." We disagree. In APD 050874-s, decided June 9,

2005, the claimant worked out of her home and on the morning of the injury she had logged on to her computer, received her assignment, confirmed the assignment and contacted the first customer before leaving her home and received injuries in a motor vehicle accident (MVA). The claimant in that case was benefiting the employer at the time of the MVA because the employer was billing the client for the claimant's travel time. The Appeals Panel held that the claimant "had actually begun to work." Similarly in the instant case the claimant had actually begun to work when he checked the heating, lighting and air conditions on the employer's computer at the housing provided by the employer.

In the instant case, the great weight and preponderance of the evidence was that the claimant had begun work when he checked the college's heating, lighting and air systems from home. Such actions were clearly in furthering the business of the employer. Once the claimant had begun work leaving the home office to go to his campus office was just going from one work station to another. *See* Evans v. Illinois Employers Ins. Of Wausau, 790 S.W.2d 302 (Tex. 1990). Further, the claimant makes the argument that he was required to live on campus as a condition of employment proves that he was furthering the business of the employer college by being available to prevent damage to the college's physical plant or to people during an event such as a heavy rainstorm or tornado or unsafe conditions in a dormitory, as stated in the agreement referenced earlier. We do not disagree.

We hold that the hearing officer's determination that the claimant did not sustain a compensable injury on _____, or that the claimant was not furthering the business of the employer to be incorrect as a matter of law. We reverse the hearing officer's decision and render a new decision that the claimant did sustain a compensable injury on _____, because he was in the course and scope of his employment at the time of his injury

DISABILITY

Disability is defined in Section 401.011(16) as the inability because of the compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage. There was conflicting evidence of disability and the claimant had continued to work after his injury until his employment was terminated for cause on February 25, 2010. Under the facts of this case, we perceive no error in the hearing officer's resolution of the disability issue. However, because a disability ending date cannot be after the date of the CCH, Conclusion of Law No. 4 and the decision are reformed to reflect the following:

4. The claimant did not have disability resulting from an injury sustained on _____, through the date of the CCH.[1]

[1] *See* APD 031243, decided July 7, 2003.

SUMMARY

We reverse the hearing officer's determination that the claimant did not sustain a compensable injury on _____, and render a new decision that the claimant did sustain a compensable injury on _____.

We affirm the hearing officer's determination that the claimant did not have disability resulting from an injury sustained on _____, as reformed, to state the claimant did not have disability from an injury sustained on _____, to the date of the CCH, December 20, 2010.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

GB
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Cynthia A. Brown
Appeals Judge

_____
Carisa Space-Beam
Appeals Judge