

APPEAL NO. 131284
FILED AUGUST 5, 2013

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 April 25, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) (decedent) was not within the course and scope of his employment with the employer at the time of his motor vehicle accident (MVA) of [date of injury]; (2) the untimely filing of the Beneficiary Claim for Death Benefits (DWC-42) relieves respondent/cross-appellant (carrier) of liability for death benefits as to [SKA] and [AP] but does not relieve carrier of liability for death benefits as to [SA], a minor child.

The carrier appealed, disputing Finding of Fact No. 3. The appeal file does not contain a response from the appellants/cross-respondents (claimant beneficiaries) to the carrier's limited appeal.

The claimant beneficiaries appealed, disputing the findings and decision of the hearing officer. The carrier responded, urging affirmance of the hearing officer's determination that the decedent was not in the course and scope of employment at the time of his MVA as well as the determination that the untimely filing of the DWC-42 relieves carrier of liability for death benefits as to SKA and AP. The hearing officer's determination that the untimely filing of the DWC-42 does not relieve carrier of liability for death benefits as to SA, a minor child, was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

It was undisputed that the decedent had a MVA on [date of injury], which subsequently resulted in his death on July 4, 2011. At issue was whether the decedent was in the course and scope of his employment at the time of his fatal MVA of [date of injury].

TIMELY FILING OF A CLAIM

The hearing officer's determination that the untimely filing of the DWC-42 relieves carrier of liability for death benefits as to SKA and AP is supported by sufficient evidence and is affirmed.

COURSE AND SCOPE

Section 401.011(12) provides in 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. The term includes an activity conducted on the premises of the employer or at other locations. Course and scope of employment 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.

The hearing officer found in Finding of Fact No. 3 that “[a]t the time of the [MVA] made the basis of this case [the decedent] was traveling from his home to either [e]mployer’s office or to his initial job assignment of [date of injury].” There is no bright-line rule for determining whether employee travel originated in the employer’s business. Rather each situation is necessarily dependent on the facts. See Zurich American Ins. Co. v. McVey, 339 S.W.3d 724 (Tex. App.-Austin 2011, pet. denied). In the instant case, the hearing officer failed to make a finding of fact regarding the specific nature or purpose of the claimant’s travel to resolve the issue in dispute. Rather, the hearing officer in Finding of Fact No. 3 found the claimant was traveling to either one of two different places. Accordingly, we remand the issue of whether the decedent was in the course and scope of employment at the time of his fatal MVA of [date of injury]. On remand the hearing officer is to make a finding as to the exact nature and purpose of the claimant’s travel and then make a determination of whether the decedent was in the course and scope of employment at the time of his fatal MVA of [date of injury].

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 Department of Insurance, Division of Workers’ Compensation, 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 Appeals Panel Decision 060721, decided June 12, 2006.

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

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge