

APPEAL NO. 200798  
FILED JULY 24, 2020

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 April 22, 2020, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the respondent (claimant) did sustain a compensable injury on (date of injury); and (2) the claimant does have disability from (date), and continuing through the date of the CCH as a result of the compensable injury on (date of injury).

The appellant (carrier) appealed the ALJ's determinations regarding compensability and disability. There was no response from the claimant in the file.

DECISION

Reversed and rendered.

The claimant worked as the only mechanic for the employer and took care of the employer's rental units and equipment for use in oilfields. The evidence reflected that he typically reported to work each day to the employer's yard at 7:00 a.m. However, the claimant explained that the weekend prior to the date of injury, he was contacted by the shop foreman and instructed to arrive at the yard early on (date of injury). The claimant testified that he was told that a rig was going out early that day, and he had to be there to turn on the lights at the shop. The evidence indicates that on the way to the shop on the morning of (date of injury), at approximately 5:00 a.m., the claimant was involved in a motor vehicle accident (MVA) when the company truck he was driving rear-ended a semi-trailer truck. The claimant suffered multiple injuries, including facial fractures, rib fractures, a cervical fracture, and thumb fractures.

It is undisputed that the employer's policy states that employees are only paid from the time they arrive at work until they leave for the day. They are not paid for driving to and from work. However, the ALJ stated that "the evidence was sufficient to establish that [the] [c]laimant was directed by his supervisor to arrive early at work, and he was doing as he was instructed at the time of the [MVA]." Therefore, the ALJ determined that the claimant was in the course and scope of employment at the time of the MVA.

Section 401.011(12) provides:

(12) “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 it 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[.]

The general rule is that an injury occurring in the use of public streets or highways in going to and returning from the place of employment is not compensable. *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 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). The exception to the coming and going rule in Section 401.011(12)(A)(iii) is referred to as the “special mission” exception where the employee is directed as part of the employment to proceed from one place to another. A leading case in this area is *Evans v. Illinois Employers Ins. of Wausau*, 790 S.W.2d 302 (Tex. 1990). In *Evans*, the employee was instructed by his supervisor to attend a safety meeting at a different location and different time than his normal duty location and starting time. The employee’s pay was to begin when he arrived at the safety meeting. On the way to the safety meeting the employee was in a MVA and was killed. The court held that “since neither [Evans and another employee] of them had begun work their injuries fall squarely within the ‘coming and going’ rule.” The court further noted that though the petitioners asserted that the earlier starting time tended to prove that this was a special mission, a time change alone has been held insufficient to transform a trip into a “special mission.

Similarly, in the present case, the claimant was still driving to work when the MVA occurred, and his workday had not yet begun. The fact that the claimant had been instructed to get to the yard earlier than normal does not establish that the claimant was in the course and scope of employment. Therefore, we hold that the ALJ's determination that the claimant sustained a compensable injury on (date of injury), to be incorrect as a matter of law. We accordingly reverse the ALJ's determination that the claimant sustained a compensable injury on (date of injury), and render a new decision that the claimant did not sustain a compensable injury on (date of injury).

Because we have reversed compensability, we also reverse the ALJ's determination that the claimant does have disability from (date), and continuing through the date of the CCH, as a result of the compensable injury sustained on (date of injury), and render a new decision that the claimant does not have disability from (date), and continuing through the date of the CCH.

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

**RICHARD J. GERGASKO, PRESIDENT  
2200 ALDRICH STREET  
AUSTIN, TEXAS 78723.**

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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge