APPEAL NO. 931083

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001, *et seq*. (formerly V.A.C.S., Article 8308-1.01, *et seq*.) On September 29, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that injuries from respondent's (claimant) fall at work were compensable. Appellant (carrier) asserts that the 1989 Act added language, "arises out of," in describing a compensable injury that had not been contained in the prior Act (TEX. REV. CIV. STAT. ANN. Article 8309, § 1); as such, prior Texas cases that found idiopathic falls compensable are no longer controlling. Claimant did not respond.

DECISION

We affirm.

Claimant worked for (employer) when she fell on (date of injury). At the time, she was standing by a desk making a phone call relative to a fax transmission. She fainted or "blacked out" and fell, bruising her back, arm, and knee. Claimant could not remember the specifics of the fall itself, but remembers that she found herself on the floor with her back and head against the desk. (LB) was nearby and testified that claimant was leaning against a desk while talking on the phone and fell; he thinks she was able to catch herself before falling all the way to the floor. After the accident, claimant worked a short time and then was taken home by another employee. Prior to the incident in question, claimant had been treated for depression and was on Prozac at the time of the fall. She was hospitalized after the fall; there was no evidence submitted that the fall brought on her depression.

The issues before the hearing were whether claimant sustained an injury in the course and scope of employment and whether the carrier adequately controverted the claim. Findings of fact, including that claimant fainted at work for an unknown reason and sustained injury to various parts of her body when she fell, along with a finding that carrier controverted on the basis that the injury did not arise out of the employment, were not attacked on appeal. The conclusion of law that claimant sustained a compensable injury when she fell is now at issue because the carrier states that the 1989 Act changed the criteria for a compensable injury by adding the phrase "arises out of" to the definition contained in prior law. The carrier states that this addition requires that the injury be "peculiar" to the work.

Carrier cites Garcia v. Texas Indemnity Insurance Company, 146 Tex. 413, 209 S.W.2d 333 (1948), General Insurance Corporation v. Wickersham, 235 S.W.2d 215 (Tex. Civ. App.-Fort Worth 1950, writ ref'd n.r.e.), and American General Insurance Company v. Barrett, 300 S.W.2d 358 (Tex. Civ. App.-Texarkana 1957, writ ref'd n.r.e.). Several cases from other jurisdictions were also cited, but Texas Employers Insurance Ass'n v. Page, 553 S.W.2d 98 (Tex. 1977) was only cited for its reference to the statutory requirement set forth in the words "injury sustained in the course of employment" and for carrier's assertion that Page only noted the Wickersham and Barrett decisions and that Page was decided under prior law so should not necessarily be followed.

Page v. Texas Employers Insurance Ass'n, 544 S.W.2d 452 (Tex. Civ. App.-Dallas 1976, writ granted) considered an instructed verdict for the carrier in a case in which a security guard, while on duty, felt his knee buckle and fell on that knee on the parking lot surface. That court said "[t]here was no evidence of anything unusual about the surface of the driveway. It was a flat hard surface." The appeals court also stated that the carrier argued that the injuries "did not rise out of the employment of the employee." The court in addressing this issue specifically addressed the question of causation by saying, "[t]he evidence presented by appellant Page clearly raises an issue of fact as to whether the injury sustained by him on the occasion in question grew out of and arose in his employment with the employer . . . . Consequently, the trial court erred in removing the case from the jury and holding, as a matter of law, that the employee could not recover." (emphasis added) The case was remanded for a new trial. The Supreme Court in Texas Employers Insurance Ass'n v. Page, 553 S.W.2d 98 (Tex. 1977) affirmed the judgment of the appeals court described above. This court began its discussion by considering the statute, stating that a compensable injury must have occurred while engaged in the work of the employer, and it must be of a kind or character that originated in the employer's work. The carrier was reported as asserting that Page did not meet the second part of the requirement (kind or character). The court pointed out that the carrier failed to plead sole cause as a defense. It discussed Garcia v. Texas Indemnity Company, 146 Tex. 413, 209 S.W.2d 333 (1948), stating that in that case the court found the injury "arose out of his employment, because 'it had causal connection with his injuries, either through its activities, its conditions, or its environments.'" (emphasis added) Carrier was also said to have argued that the pavement presented no "hazard which was peculiar to his employment." The court referred favorably to General Insurance Corporation v. Wickersham, 235 S.W.2d 215 (Tex. Civ. App.-Fort Worth 1950, writ ref'd n.r.e.), and quoted from it, in part, "[w]e can find no reason for denying a recovery where the fall is to the floor . . . Suppose the employee had fallen against a counter or showcase. It seems clear that a recovery would be allowed under the Garcia case . . . . " The court then concluded that a fact issue had been raised as to whether Page's injury originated out of the employment, "whether there was a sufficient causal connection" and affirmed the decision to remand the case.

While the Supreme Court in Page quoted from the statute (which did not then contain language as to "arising"), its reference to and discussion of Garcia, its use of the term "causal connection" in affirming (compare to the use of "causal connection" in Garcia which was the basis for that case concluding that injury arose out of the employment), and its affirmance of the appeals court which had considered the question of whether the injury arose out of the employment as part of the matter to be determined on remand, showed that it considered whether the injury arose from the employment.

With case law considering whether an injury arose out of the employment as part of the question of causal connection, the 1989 Act in using the term "arises out of" did not add an element that had not been considered before. Texas Workers' Compensation Commission Appeal No. 92211, decided July 10, 1992, dealt with a fall from a trailer to the ground after fainting. The Appeals Panel in discussing the same Page, Garcia, and Barrett cases did not limit their authority because the 1989 Act had added the words "arises out of"

to the criteria for finding liability. In addition, Texas Workers' Compensation Commission Appeal No. 91005, decided August 14, 1991, considered other issues (independent contractor and borrowed servant) but commented that the 1989 Act in certain articles "strives to codify certain common law principles that determine whether the employer-employee relationship exists." The adding of certain language to legislation may simply reflect a codification of existing law.

Subsequent to the Page decisions, Director, State Employees Workers' Compensation Division v. Bush, 667 S.W.2d 559 (Tex. App.-Dallas 1983, no writ), considered an injury to an employee who had a 12 year history of high blood pressure. She felt faint, and a stretcher was called for her. While being transported on the stretcher, Bush was injured. The court said, "(w)e agree that if Bush had fallen at the time of her initial fainting and had been injured by hitting the floor or any other instrumentality of her employer's business, her injury would clearly lie within the criteria of Garcia and its progeny."

In commenting on the 1989 Act, Volume I of A Guide to Texas Workers' Comp. Reform, by Montford, Barber, and Duncan at page 3-5 states that Article 3 contains provisions regarding coverage, "including new provisions that permit certain 'large' private employers to self-insure." It also refers to changes in Article 3 as to the relationship between general contractors and independent contractors. No reference is made to any change as to criteria for liability for injury in regard to the phrase "arises out of."

The conclusion of law that claimant sustained a compensable injury from falling after she fainted is sufficiently supported by the evidence and does not reflect error on the part of the hearing officer in applying the provisions of the 1989 Act. The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge