

APPEAL NO. 992001

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 August 18, 1999. She (the hearing officer) determined that the appellant (claimant) did not sustain a compensable left ankle injury on \_\_\_\_\_, but due to the claimed injury was unable to obtain and retain employment at her preinjury wage from December 9, 1999, through July 31, 1999. The claimant appeals these determinations, contending that they are not supported by sufficient evidence. The respondent (self-insured) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Reversed and a new decision rendered.

The background facts of this case are essentially undisputed. The claimant arrived at work on \_\_\_\_\_, and parked in the employer's parking lot. As she got out of her car and stepped onto the parking lot, her left foot "folded over," she fell, and landed in a seated position, resulting in an ankle fracture. She described the parking lot as fenced in with the building where she worked. The employer provided this parking area for its employees. The claimant testified that she did not know what caused the accident to happen. The hearing officer found that the ankle fracture was not compensable because it did not occur in the course and scope of employment. In reaching this conclusion, the hearing officer relied exclusively on our decision in Texas Workers' Compensation Commission Appeal No. 980631, decided May 14, 1998, for the proposition that to be compensable, a claimant must establish some "instrumentality of the workplace" as a cause of the injury and that, in this case, there was no causal connection between the injury and the employment "other than the fact that the injury occurred in the employer's parking lot." The claimant categorized her injury as the result of an idiopathic fall and relied on Texas Workers' Compensation Commission Appeal No. 941436, decided December 7, 1994, as authority for finding the injury compensable.

The 1989 Act provides that a "compensable injury" is "an injury arising out of and in the course and scope of employment for which compensation is payable under this subtitle." Section 401.011(10). "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." Section 401.011(12). The phrase "arising out of" is not defined in the 1989 Act, but we have held that this did not add a new element to the concept of course and scope not present in prior law. Texas Workers' Compensation Commission Appeal No. 931083, decided January 10, 1994. An idiopathic event is generally considered to be caused by conditions "peculiar to the

individual" or "arising spontaneously or from an obscure or unknown cause." Appeal No. 941436, *supra*.

In Texas Workers' Compensation Commission Appeal No. 941056, decided September 21, 1994, the Appeals Panel did its first comprehensive review of existing case law on the question of the compensability of an injury resulting from an idiopathic event. In that case, the decision of the hearing officer that a back injury caused by a sneeze at work was compensable was reversed and a decision was rendered that the claimant did not sustain a compensable injury. It was stressed that an idiopathic fall could be compensable if the resulting injury involved some "instrumentality" of the employer. Appeal No. 941436, *supra*, undertook another extensive examination of the idiopathic fall cases, but did not decide the issue before it on that basis. In Appeal No. 980631, *supra*, considered dispositive by the hearing officer, the claimant felt a pop and severe pain in her right knee as she was walking down a hallway at work, but did not fall. The diagnosis was acute patellar femoral instability. At the time, the walking was ordinary and did not involve turning, twisting, hurrying, or a defect in the floor. The hearing officer found the injury compensable. The Appeals Panel, with one judge dissenting, rendered a decision that the injury was not compensable. In doing so, it conducted an extensive review of cases and concluded that to be compensable, the claimant had to establish a "nexus" between the injury and the employment beyond the fact that the injury occurred during working hours. Typically, that nexus was some contact with an "instrumentality" of the employer or some peculiar activity of the claimant such as twisting, bending, or turning, or other "untoward body motion." In that case, because there was only walking and no untoward body motion or contact with an instrumentality of the employer, the Appeals Panel rendered a decision that the injury was not in the course and scope of employment. A similar result was reached in Texas Workers' Compensation Commission Appeal No. 972235, decided December 17, 1997. In that case, we stated that "[i]diopathic falls resulting in an employee's physical contact with some instrumentality of the employer, such as a floor, asphalt parking lot or other hard surface, are more likely to succeed as compensable injuries." (Emphasis added.) See also Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977).

In the case we now consider, the undisputed evidence was that the claimant fractured her ankle as a result of her fall on and contact with the employer's parking lot. We construe the parking lot to be an instrumentality of the employer. Any implied finding by the hearing officer that no instrumentality of the employer was involved is, we believe, contrary to the great weight and preponderance of the evidence. Thus, Appeal No. 980631, *supra*, which relied on the absence of any instrumentality of the employer, is factually distinguishable. For these reasons, we reverse the determination of the hearing officer that the claimant did not sustain a compensable injury and render a decision that the claimant's left ankle fracture on \_\_\_\_\_, was a compensable injury.

Disability is defined as the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16).

Because the hearing officer found no compensable injury, she did not find disability, but did find, consistent with the claimant's testimony, that due to the claimed injury, she was "unable to obtain and retain employment at wages equivalent to her pre-injury wage beginning December 9, 1998 and continuing through July 31, 1999." Finding of Fact No. 5. This finding has not been appealed.

Because we have rendered a decision that the injury was compensable, we also reverse the finding of no disability and render a decision that the claimant had disability from December 9, 1998, through July 31, 1999.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge