APPEAL NO. 992215

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 September 9, 1999. She determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. An average weekly wage issue was resolved by stipulation. The claimant appeals the adverse determinations, expressing her disagreement with them. The respondent (self-insured) replies that the decision is correct and should be affirmed.

DECISION

Affirmed.

The facts of this case are not disputed. The hearing officer resolved the compensability issue as a matter of law. The claimant worked as a mental health worker supervisor. She arrived at work at approximately 10:30 p.m. on _____. Her supervisor directed her to take her first 15-minute break early. She did so and, because the weather was stormy, she went to the parking lot, which was on the premises of the self-insured, to see if she had closed her car windows. In returning to the building, she slipped on some mud on the sidewalk and injured herself.

An injury is generally compensable if it occurs in the course and scope of employment, which is defined as "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 case was presented and determined in terms of whether the personal comfort doctrine applied. *See* Yeldell v. Holiday Hills Retirement and Nursing Center, Inc., 701S.W.2d 243, 245 (Tex. 1985), for the proposition that any employee in the course of employment may perform acts of a personal nature that a person might reasonably do for health and comfort, such as quenching thirst or relieving hunger. Such acts are considered incidental to the employment and injuries sustained while doing so arise in the course and scope of employment. In a well-reasoned discussion of the law, the hearing officer divided personal activities into two general types. One deals with addressing the personal needs of the employee such as eating or using a restroom and comes within the scope of the personal comfort doctrine. The other deals with activities of an employee on a break to do personal business, chores or errands and falls outside the personal comfort doctrine. The hearing officer considered the claimant's activities in the latter category and found that, while the injury originated in the workplace, it did not occur while the claimant was furthering the affairs of the employer.

We believe that the controlling precedent in this case is our decision in Texas Workers' Compensation Commission Appeal No. 971607, decided September 30, 1997, one judge dissenting. In that case, the claimant left her workstation to go to the parking lot

to check the condition of her car to see if it would start when her shift ended. In doing so, she slipped on ice in the parking lot and injured herself. The hearing officer found that the injury was in the course and scope of employment. The Appeals Panel reversed and rendered a decision that it was not. In doing so, we noted that the activity that caused the injury arose out of the employment, but was not in furtherance of the affairs of the employer. Rather, the injury happened while the employee was engaged in personal business. In the case we now consider, the undisputed evidence from the claimant's testimony was that she went to the parking lot to check her car windows because of stormy weather and slipped on the way back to her office. The hearing officer considered this a personal errand and not in furtherance of the claimant's employment. We find the evidence sufficient to support this determination and no error of law.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

DISSENTING OPINION:

I respectfully dissent. While I acknowledge that Texas Workers' Compensation Commission Appeal No. 971607, decided September 30, 1997, would seem to control the outcome in this instance, I believe that case was incorrectly decided. In Standard Fire Ins. Co. v. Rodriguez, 645 S.W.2d 534, 538 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.), the Court of Appeals stated that under the access doctrine, the term employment, for purposes of workers' compensation, includes:

> [N]ot only actual doing of work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done. If the employee be injured while passing, with the express or implied consent of the employer, to or from his work by way over the employer's premises, or over those of another in such proximity and relation as to be in practical effect, a part of the employer's premises, the injury is one arising out of and in the course of the employment as though it had happened while the employee was engaged in his work at the place of its performance. [Citations omitted.]

As a practical matter, the access doctrine is generally considered in cases where the employee has either just arrived at or intends to leave the employer's premises; however, I do not believe that the claimant fell outside the access doctrine here simply because she did not leave the premises when she went out to her car. The claimant in this instance walked to her car in the employer's parking lot to ensure that her windows were closed during a storm and she fell when she was walking back to the building. Thus, I believe she was "passing to and from the place where the work was to be done" at the time of the fall and as such, under the access doctrine, the claimant was within the course and scope of her employment at the time of her injury. Accordingly, I would have reversed the hearing officer's decision and rendered a new decision that the claimant sustained a compensable injury on _____, when she slipped and fell in the employer's parking lot.

Elaine M. Chaney
Appeals Judge