APPEAL NO. 000865

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 March 28, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) was not in the course and scope of her employment at the time of her motor vehicle accident (MVA) on _____, and, thus, she did not sustain a compensable injury and did not have disability. In her appeal, the claimant contends that she was in the course and scope of her employment at the time of the MVA under the personal comfort doctrine. In its response to the claimant's appeal, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The facts in this case are largely undisputed. The claimant is a jail attendant for the self-insured. On _____, she was attending mandatory in-service training at the police academy, rather than working at her normal work site, the jail. The class was scheduled from 8:00 a.m. to 4:00 p.m. and at 11:00 a.m., the class broke for lunch. The claimant and three of her coworkers left the academy to go to a restaurant for lunch. After lunch, the claimant was returning to the academy in the car driven by one of her coworkers and they were involved in an MVA. The claimant was taken to the emergency room by ambulance. The claimant testified that she sustained injuries to her neck, back, shoulder, and left knee in the MVA. The claimant was referred by the emergency room to follow up with her primary care physician, Dr. J. Dr. J took the claimant off work and continued her in an off-work status until December 2, 1999, when she was released to work regular duty, full time.

The hearing officer determined that the claimant was not in the course and scope of her employment at the time of her MVA because she was not furthering the business affairs of the employer at that time. The claimant contends that under the personal comfort doctrine as recognized by the Supreme Court in Yeldell v. Holiday Hills Retirement and Nursing Center, Inc., 701 S.W.2d 243 (Tex. 1985), she was in the course and scope of her employment while she was eating lunch. We have previously recognized that the personal comfort doctrine does not extend to bring an off-premises injury that occurs during a lunch break within the course and scope of the injured worker's employment. Texas Workers' Compensation Commission Appeal No. 962581, decided February 5, 1997; Texas Workers' Compensation Commission Appeal No. 950215, decided March 30, 1995. Accordingly, we find no merit in the claimant's assertion that she was in the course and scope of her employment at the time of her MVA, which occurred at an off-premises location as she was returning to the site of her training on _____, after eating lunch.

Given our affirmance of the hearing officer's decision that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant did not

have disability. The existence of a compensable injury is a necessary prerequisite to a finding of disability under the 1989 Act. *See* Section 401.011(16).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge