APPEAL NO. 001753

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 June 21, 2000. The hearing officer determined that the respondent (claimant) was the employee of the appellant (self-insured) and had sustained a compensable injury. The self-insured has appealed the hearing officer's determination that the claimant was an employee on the date of her injury, asserting that the claimant was an unpaid volunteer and that the injury was not compensable because the claimant was not an employee at the time of the injury. The claimant asserts in response that the decision of the hearing officer is supported by the evidence and requests that the decision be affirmed.

DECISION

Affirmed.

The facts of this case are essentially undisputed. Claimant was a teacher for (the self-insured). Approximately a week before the teachers were required to report for duty to prepare the classrooms for the fall semester, the claimant's principal notified the teachers that she would be at the school, that the school would be open, and that they would be allowed to come to the school to begin preparing their rooms for the students. It is also undisputed that the claimant had been offered and had accepted a contract for employment and that the contract for employment had been neither modified nor terminated at the time the claimant was injured.

On _____, as the claimant was walking near the parking lot, she stepped into a hole in the grass and sustained an inversion injury to her right ankle.

The self-insured contends that the claimant is not entitled to compensation for her injury because the activities engaged in by the claimant at the time of her injury were neither required by nor encouraged by the self-insured, the claimant was a volunteer at the time of the injury, and the claimant was not an employee at the time of the injury because the contract period for the 1999-2000 school year did not begin until August 3, 1999.

In support of its argument that the claimant was not an employee at the time of the injury, the self-insured cites TEIA v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.); Carnes v. Transport Insurance Company, 615 S.W.2d 909 (Tex. Civ. App.-El Paso, 1981, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 992079, decided November 5, 1999; and Texas Workers' Compensation Commission Appeal No. 992270, decided December 1, 1999. The self-insured's basic premise is that there is no such animal as an "unpaid employee" and that unless an employee is injured at a time when remuneration is to be paid, no employee/employer status can exist, and the claimant, in going to the school before the start of the contract period to prepare for the first days of class, was a volunteer. In Texas Workers' Compensation Commission Appeal No. 992270, we cited Section 22.053(b) of the Texas Education Code which defines "volunteer" to be:

> [A] person providing services for or on behalf of a school district, or on the premises of the district or at a school sponsored and school related activity on or off school property, who does not receive compensation in excess of reimbursement for expenses.

Under her contract, the claimant was to be paid more than $1,000.00 per week. The claimant was not a "volunteer" as defined by the Texas Education Code at the time of her injury.

An "employee" is a person in the service of another under a contract of hire, whether express or implied, oral or written. Act Section 401.012(a). It is undisputed that the claimant was under a contract to begin work for the self-insured as a teacher. Although earnings may not have accrued at the time of her injury, the claimant's status in this matter is significantly different from the truck driver in Carnes, *supra*, or the putative employer's father in Burrell, *supra*. The court of appeals in Carnes, *supra,* held that the truck driver was not an employee because the contract for leasing the truck he was driving had not yet been entered into; an expectancy of a contract for hire, even if imminent, does not create an employment relationship. In Burrell, *supra*, the court of appeals remanded the case back to the trial court because the father's acts while working without pay for his son had some of the indicia of an employer/employee relationship and the evidence was factually insufficient to allow the court of appeals to determine if an employer/employee relationship existed, despite the undisputed fact that the father had received no pay for his work up to the time of the injury.

On a number of occasions we have found that an injured employee was entitled to compensation when an injury occurred outside the regular workplace and no expectation of additional remuneration was proven. *See* Texas Workers' Compensation Commission Appeal No. 941269, decided November 8, 1994 (teacher participating in a fundraising event); Texas Workers' Compensation Commission Appeal No. 982340, decided November 13, 1998, (teacher helping to run a PTA "Fun House" at an after-school carnival);Texas Workers' Compensation Commission Appeal No. 981792, decided September 15, 1998 (employee driving home after a weekend meeting at employer's vacation house); and Texas Workers' Compensation Commission Appeal No. 960004, decided February 16, 1996, and Texas Workers' Compensation Commission Appeal No. 991497, decided August 26, 1999 (police officers injured while working outside jobs).

In Texas General Indemnity Company v. Luce, 491 S.W.2d 767, 768 (Tex. Civ. App.-Beaumont 1973, writ ref'd n.r.e.), the court of appeals stated:

> The law must be reasonable. . . . We are unable to apply the principle of deviation from employment so rigidly as to ignore the common habits of most people.

The court of appeals then held that an employee who had picked up her paycheck did not deviate from the course and scope of her employment by going behind the serving line to

greet her coworkers. Luce, *supra*. It is undisputed that, in the case at hand, had the claimant not been preparing her classroom for the start of classes, she would have not gone to the school on the date of the injury. It is also undisputed that the self-insured's teachers were provided access to the school before the beginning of the contract period to prepare their rooms for the school year and a majority of the teachers availed themselves of the opportunity provided by the self-insured. It would be nonsensical to hold that the claimant, who entered into a contract for employment and was engaged in preparing employer's premises for that employment, was not an employee of the self-insured simply because the beginning date of the contract period had not been reached. To the extent that Appeal No. 992079 *supra*, may appear to conflict with our decision in this matter, it is distinguished on its merits since the issue before the hearing officer in that matter was whether the claimant was a seasonal employee despite the payment of earnings over a twelve-month period.

The hearing officer's determination that the claimant was an employee of the self-insured at the time she sustained her injury is not in error and will be affirmed.

The self-insured does not assert that the claimant's injury did not occur in the course and scope of her employment on any ground other than that the claimant was a volunteer at the time of the injury, not an employee. Since we have affirmed the hearing officer's decision on the claimant's status as an employee of the self-insured, his decision that the claimant sustained a compensable injury is also affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge