APPEAL NO. 001821

Following a contested case hearing held on July 13, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by concluding that the appellant (claimant) did not sustain a compensable injury on _____, and that, because she did not sustain a compensable injury, she did not have disability. The claimant has appealed these conclusions and certain findings of fact, asserting, as she did at the hearing, that the undisputed facts bring her slip-and-fall injury within the scope of the "access doctrine" and, thus, that her injury occurred in the course and scope of her employment. The respondent (carrier) urges in response, as it maintained at the hearing, that the undisputed facts place the claimant's injury outside the access doctrine.

DECISION

Reversed and a new decision rendered.

The hearing officer notes that the facts surrounding the claimant's slip and fall at the work place are largely undisputed and neither party takes issue with that statement. The parties stipulated that the claimant was employed by (employer) on _____. The claimant testified that she works in a room of the employer's plant where the chickens are processed and that her job is to stand and hang up chickens. She indicated that the employer's premises consist of just one building which contains the room where the chickens are processed, an office which contains the time clock, a lunch room, a bathroom, and a changing room with lockers and that all of these areas are close together. The claimant further stated that on _____, after completing her duties at sometime after 5:00 p.m., she punched out on the time clock, passed through the cafeteria to the changing room, and took off her rubber boots, and while traversing back through the cafeteria, a coworker offered her a ride home which she accepted. She said she then walked back to the chicken-processing room which was nearby to give some car keys to her boyfriend, who was still working; that her boyfriend came to the doorway of that room and took the keys from her; and that, as she turned to go back to leave the premises, she slipped and fell injuring her back.

Both parties indicated in closing statements that the basic facts were undisputed and that the issue for the hearing officer to resolve was whether these facts established that the claimant's slip-and-fall injury occurred in the course and scope of her employment through the application of the access doctrine. The claimant contended that her return to the workroom to give the car keys to her boyfriend was a mere minor deviation from her exiting the premises and did not remove her from the scope of the access doctrine. She also briefly suggested that the hearing officer could consider some combination of the access doctrine and the "personal comfort" doctrine. The carrier contended that when the claimant returned to the workroom she lost the coverage of the access doctrine because she was on a personal mission and not on her way out of the premises.

The following findings are not appealed:

FINDINGS OF FACT

2. On _____ Claimant had completed her shift, clocked out and had taken off her work boots. During the time between clocking out and having removed her boots, Claimant was asked by a co-worker if she would like a ride home. Claimant responded that she would like to ride with her co-worker.

3. Claimant returned to the chicken hanging portion of the plant to give car keys to her boyfriend and to advise that she had a ride home. After giving the keys to her boyfriend, Claimant slipped and fell.

4. The slip and fall took place within a reasonable time and space from the end of the work period.

* * * *

9. Due to the injury, Claimant was unable to obtain and retain employment at wages equivalent to Claimant's pre-injury wage beginning on November 18, 1999 through June 10, 2000.

The claimant does challenge the following findings, as well as the two dispositive legal conclusions:

5. Claimant was not at a place intended by the employer for use by the employee in passing to and from the actual place of service on the premises.

6. Claimant would not have left that way except that she wanted to give the keys to her boyfriend before she left.

7. Claimant was not furthering her employer's affairs by being in the area.

8. Claimant did not sustain an injury in the course and scope of her employment on _____.

In her discussion of the evidence, the hearing officer states that the Appeals Panel has said that the access doctrine "extends to bring within the course and scope of employment those activities that do not constitute 'actual work', without the further necessity of proving that the coming and going furthered the employer's business"; that there is no dispute that the claimant had clocked out about 15 minutes before she fell; that "[t]his is a reasonable time and space from the end of the work period"; and that the

claimant "was not at a place intended by the employer for use by the employee in passing to and from the actual place of service on the premises." The hearing officer goes on to state that the claimant testified that "she would not have left that way except that she wanted to give the keys to her boyfriend before she left"; that the area in which the claimant fell was known to be slippery, that special equipment (boots) is required to be in that area, and that the claimant knew that; and that the claimant "was not furthering the employer's affairs by being in the area" and "was not injured in the course and scope of employment on _____."

A compensable injury means "an injury that arises 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, in pertinent part, "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 claimant had the burden to prove by a preponderance of the evidence that she sustained an injury in the course and scope of her employment and that she had disability as that term is defined in Section 401.011(16). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.)). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We believe that all parties concerned incorrectly analyzed this case because the access doctrine does not apply in this particular factual setting. The basic notion of the access doctrine is to provide an exception to the "going to and coming from" work rule. The doctrine has the effect of extending an employer's premises to a reasonable time and space so as to provide a zone of employment for employees between the hazards of travel on the streets, hazards to which all travelers are exposed, and the risks in the actual work place, to which employees are exposed. *See, generally*, Texas Workers' Compensation Commission Appeal No. 91036, decided November 15, 1991, which briefly reviews a number of Texas court cases from 1922 to 1984, all involving injuries outside the work place premises such as a short road leading to a plant, a sidewalk near the entrance, a crosswalk, and parking lots. *See also* Texas Workers' Compensation Commission Appeal No. 92532, decided November 13, 1992, for an extensive discussion of access doctrine cases from the Texas courts. In Texas Workers' Compensation Commission Appeal No. 92321, decided August 19, 1992, the Appeals Panel again reviewed a number of Texas court cases involving the access doctrine and stated the following:

> The access doctrine as reported in Bordwine [Bordwine v. Texas Employers' Insurance Association, 761 S.W.2d 117 (Tex. App.-Houston [14th Dist.] 1998, writ denied)], Turner [Turner v. TEIA, 715 S.W.2d 52 (Tex. App.-Dallas 1986, writ ref'd n.r.e.)], Rodriguez [Standard Fire Insurance Co. v. Rodriguez, 645 S.W.2d 534 (Tex. App.-San Antonio 1982, writ ref'd n.r.e)], Kelty [Kelty v. Travelers Insurance Co., 391 S.W.2d 558 (Tex. Civ. App.-Dallas 1965, writ ref'd n.r.e.)], and TEIA v. Boecker, 53 S.W. 2d 327 (Tex. Civ, App. - Dallas 1932, writ refused), which quoted the United States Supreme Court in Bountiful Brick Co. et al v. Giles, 276 U.S. 154, does not require that a showing of furtherance of the employer's business be made."

And see Texas Workers' Compensation Commission Appeal No. 992765, decided January 24, 2000, where the Appeals Panel reversed and rendered for the claimant, applying the access doctrine to an injury sustained at one of the entrance doors of a building housing two state agencies. In Texas Workers' Compensation Commission Appeal No. 001700, decided September 8, 2000, we affirmed the hearing officer's decision on other grounds and pointed out the error in her reliance on the access doctrine under the particular facts of that case where the employee was neither going to or coming from work when she twisted her knee on the outside staircase while on her way to the parking lot to see if her car was going to start when she finished work.

In the case we consider, notwithstanding that the claimant had ceased to perform her work tasks and had "clocked out," she was still within the premises preparing to leave for the day but not yet having left when she fell and was injured. The fact that the injury occurred after she had stopped performing her work tasks is not necessarily determinative of the issue. *See* Texas Workers' Compensation Commission Appeal No. 91037, decided November 20, 1991, where the Appeals Panel affirmed the hearing officer's determination that the injured employee's slip-and-fall injury in the bathroom on the work premises about 30 minutes before she commenced her shift was sustained in the course and scope of employment.

In Lumberman's Reciprocal Ass'n. V. Behnken, 112 Tex. 103, 246 S.W. 72, 73 (1922), the Texas Supreme Court stated that "an injury has to do with, and arises out of, the work or business of the employer, when it results from a risk or hazard which is necessarily or ordinarily or reasonably inherent in or incident to the conduct of such work or business." *And see* Texas Employers' Insurance Association v. Prasek, 569 S.W.2d 545, 547, Tex. Civ. App.-Corpus Christi 1978 [writ ref'd n.r.e.]) and cases cited therein. However, as the court stated in Ranger Ins. Co. v. Valerio, 553 S.W.2d 682, 684 (Tex Civ. App.-El Paso 1977 [no writ]), "coverage under the compensation law ceases during deviations by the employee from the course and scope of his employment and injury sustained during a deviation is not compensable." *See, generally,* Texas Employers Insurance Association v. Blessen, 308. S.W.2d 127 (Tex. Civ. App.-Amarillo 1957, writ ref'd n.r.e.) in which the court reviews a number of related cases. In Texas Workers' Compensation Commission Appeal No. 91095, decided January 13, 1992, a "deviation" case, the Appeals Panel, citing Kimbrough v. Indemnity Insurance Co. of North America,

168 S.W.2d 708 (Tex. Civ. App.-Galveston 1943, writ ref'd), stated that "[a]s a general proposition, an employee injured while he is engaged in an enterprise of his own and something that is not required in the furtherance of his employment is not entitled to workers' compensation."

As mentioned, in Appeal No. 001700, *supra*, the employee twisted her knee on a staircase on the premises while on her way to check on her car to see if she would need help starting it when she left for the day. In that decision, the Appeals Panel declined to follow the reasoning in Texas Workers' Compensation Commission Appeal No. 971607, decided September 30, 1997, and Texas Workers' Compensation Commission Appeal No. 992215, decided November 8, 1999, in which the employees were found not to have been in the course and scope of employment, and affirmed the hearing officer's determination that the employee was in the course and scope of employment when injured, albeit on different grounds. Our opinion cited Texas General Indemnity Company v. Luce, 491 S.W.2d 767, 768 (Tex. Civ. App.-Beaumont, 1973, writ ref'd n.r.e.), a case in which the court affirmed workers' compensation coverage for an employee who went to the employer's premises to pick up her pay, as required by the employer, and who was injured when she went behind the serving line to greet fellow employees. The court of appeals noted the general rule that coverage under workers' compensation law ceases during deviations from the course and scope of the employment but went on to state: "[t]he 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." Our decision in Appeal No. 001700*, supra*, held that "an act which is reasonably anticipated to be performed by an employee, performed while on the premises, and which does not deviate from the course and scope of employment to the extent that an intent to abandon the employment can be inferred, remains within the course and scope of employment."

In Texas Workers' Compensation Commission Appeal No. 960829, decided June 21, 1996, another "deviation" case, we cited the opinion in General Ins. Corp v. Wickersham, 235 S.W.2d 215 (Tex. Civ. App.-Fort Worth, 1950, writ ref'd n.r.e.) which stated that an injury is not compensable if received during a deviation by the employee from the course and scope of the employment but that an injury received after the deviation is over is compensable.

In Lesco Transportation Company, Inc. v. Campbell, 500 S.W.2d 238 (Tex. Civ. App.-Texarkana 1973, no writ), the court stated the following:

> Stated in converse terms, the rule is that when an employee abandons and turns aside from the course and scope of his employment, such deviation defeats a claim for compensation. Such deviation occurs if at the time of injury the employee is engaged in and pursuing personal work or objectives that do not further the employer's interest. An injury received under such circumstances is not from a hazard that has to do with and originates in the employer's business, work, trade or profession. [Citations omitted.]

We are satisfied that in the case we consider, the claimant's act in walking to another part of the premises to leave some car keys with a fellow employee just prior to her leaving the premises at the end of her shift is not such a deviation as took her out of the course and scope of her employment. And even if it were, she had handed over the keys and turned to resume her exit from the premises when the injury occurred.

The decision and order of the hearing officer is reversed and a new decision is rendered that the claimant did sustain a compensable injury on _____, and that she did have disability beginning on November 18, 1999, through June 10, 2000.

Philip F. O'Neill
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Robert W. Potts
Appeals Judge