APPEAL NO. 002115

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 16, 2000, in (city 1). With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained an injury to her left ankle and left knee in the course and scope of her employment on _____; that her compensable injury did not extend to or include a low back injury; that the appellant's (carrier) contest of compensability was based on newly discovered evidence and, therefore, the carrier did not waive its right to contest compensability; and that the claimant had disability as a result of her compensable injury from April 6 to July 7, 2000. In its appeal, the carrier contends that the hearing officer erred in finding that the claimant sustained a compensable injury because she was not in the course and scope of her employment at the time of her fall. The carrier did not appeal the hearing officer's disability determination. The appeals file does not contain a response to the carrier's appeal from the claimant. In addition, the claimant did not appeal the hearing officer's determinations that the compensable injury does not extend to or include a low back injury and that the carrier did not waive its right to contest compensability in this case because its contest was based on newly discovered evidence. As such those determinations have become final pursuant to Section 410.169.

DECISION

Affirmed.

The facts in this case are largely undisputed. On _____, the claimant was an employee of (employer) and was sent from city 1 to (city 2), Texas, to conduct inventory at a (store). The employees were driven to city 2 in vans owned by the employer and they began the inventory at about 8:00 a.m. The employer had a rule that the employees were not permitted to take their personal effects into the store with them; thus, the claimant left her purse in the van when she arrived at the work site. At about 11:30 a.m., the team leader for the employer told the employees to go to lunch. The claimant went to the van to get her purse so that she would have money for lunch. Several of the employees who had ridden in the van with the claimant went out to lunch; however, the claimant stayed at (store) with other employees and bought and ate her lunch there. At the end of the lunch period, the claimant was waiting outside to return her purse and the part of her lunch that she had not eaten to the van, so that she could return to work and complete the inventory. As the claimant was walking to the van, she stepped into a hole in the parking lot with her left foot, twisted her left ankle, fell to her knees, and then fell backwards, landing on her buttocks. On cross-examination, the claimant testified that she was not actually taking inventory at the time of her fall and that she was not aware of doing anything else for the employer at that time.

The carrier contends that the hearing officer erred in finding that the claimant was in the course and scope of her employment at the time of her fall in the parking lot. Section 401.011(12) defines the phrase "course and scope of employment" 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." The carrier argues that the claimant was not furthering the business or affairs of the employer at the time of her fall. Rather, it maintains that the claimant was serving her individual interests by returning her personal effects to the van. The carrier cites several Appeals Panel decisions and requests that we reverse the hearing officer's determination that the claimant was in the course and scope of her employment when she fell and render a new decision that the claimant was not in the course and scope of her employment at that time and, thus, did not sustain a compensable injury. We cannot agree that the cases cited by the carrier necessitate reversal in this case. We find no merit in the assertion that the claimant was not furthering the business or affairs of the employer when she fell in the parking lot while returning her purse to the van. In accordance with the employer's rules, the claimant could not continue the work of taking inventory with her purse. That is, in order for the claimant to return to her duties of taking inventory, she was required to return her purse to the van. Certainly, the employer's business and affairs were furthered by the claimant's efforts to comply with its rules by returning her personal effects to the van so that she could return to work taking inventory. Accordingly, we reject the carrier's contention that the hearing officer erred in finding that the claimant was in the course and scope of her employment at the time of her fall in the parking lot on _____, and affirm his determination that the claimant sustained a compensable injury.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge