APPEAL NO. 002137

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 25, 2000. The issues at the CCH were whether the appellant (claimant) was injured on _____, while in the course and scope of her employment, and whether she had disability.

The hearing officer held that as the claimant was injured on a public street in front of her office building, she was not within the course and scope of her employment. Consequently, she did not have disability, as defined in the 1989 Act, although she was unable to obtain and retain employment due to her injury from _____ through April 19, 2000.

The claimant appeals, and argues that she should be covered for a slip and fall in front of her building just as she would be covered inside the building. The claimant points out that she had no reason to be downtown but for work. The respondent (carrier) responds that the access doctrine does not extend out into the public streets. The carrier seeks affirmance.

DECISION

We affirm.

There is little dispute over the facts of the injury. The claimant worked for (employer), and had ridden the public bus to her workplace on _____. The employer arranged for lower cost public transportation through a contract with the local transit authority. The claimant started across the public crosswalk and slipped on oil and fell. She fractured her ankle.

The claimant testified that the provision of an "E-Pass" by her employer to promote environmentally safe travel should allow her the same coverage that she would have on her employer's premises. She pointed out that she had used up all of her sick leave and some vacation time. She sought disability for the period she was taken off work by her doctor, _____ through April 19, 2000. The claimant agreed that the employer neither owned nor maintained the crosswalk where she was injured, and she had not yet clocked in at work.

The general rule is that workers' compensation benefits do not apply to injuries received going to and from work. Texas General Indemnity Co. v. Bottom, 365 S.W.2d 350 (Tex. 1963). An exception is those cases which come within the access doctrine, where "the employer has evidenced an intention that the particular access route or area be used by the employee in going to and from work, and where such access route or area is so closely related to the employer's premises as to be fairly treated as a part of the premises." Texas Workers' Compensation Insurance Co. v. Matthews, 519 S.W.2d 630 (Tex. 1974).

Matthews, concerned an employee who, like the instant claimant, was injured when she fell in a street on her way to work. In that case, the supreme court briefly summarized prior cases concerning the access doctrine, including Kelty v. Travelers Insurance Company, 391 S.W.2d 558 (Tex. Civ. App.-Dallas 1965, writ ref'd n.r.e.), which found compensable injuries sustained when an employee slipped on an icy sidewalk 10 to 12 feet from the employer's building, which sidewalk was found to be an appurtenance to the premises leased by the employer who was responsible for maintaining it. However, the court wrote that the Kelty, court had carried the access exception "as far as it reasonably could be, without an amendment to the Workmen's Compensation Act," stating that "no case has extended the `access exception' out into the public streets where other members of the public are subject to the same hazard."

This language was cited in Texas Workers' Compensation Commission Appeal No. 950156, decided March 9, 1995, a case similar to the instant one in which the claimant, standing in a public street, was forced to step backwards, breaking her foot and ankle, to avoid being hit by a car. In that case, the claimant contended she actually fell onto property owned by the employer, although the hearing officer held that the injury occurred at the intersection of public streets and, applying the reasoning of Matthews, *supra* ,"the access doctrine does not operate in this case to bring claimant's injury within the course and scope of her employment in that the site of the injury was neither located on employer's premises nor in such proximity or relation as to reasonably be considered a part thereof." Finally, we affirmed a hearing officer's decision not to apply the access doctrine to a case essentially the same as this one, in Texas Workers' Compensation Commission Appeal No. 960959, decided July 1, 1996. We do not agree that the partial subsidizing of public transportation by an employer qualifies as employer-furnished transportation for purposes of Section 401.011(12)(A)(i).

Accordingly, we affirm the hearing officer's decision.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge