APPEAL NO. 002852

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 10, 2000, a contested case hearing was held. The hearing officer determined that the respondent (claimant) sustained a compensable injury as he sat down in the driver's seat of the bus he drove for his employer. The appellant (carrier) asserts that the hearing officer's decision is incorrect as a matter of law. The claimant responded.

DECISION

We affirm.

The facts of the case before us are undisputed. The claimant, a bus driver, was in the process of sitting down in the driver's seat of the bus he drove for the employer and sat on his left testicle. The trauma to the testicle resulted in the formation of a hydrocele, the accumulation of fluid in the claimant's scrotum, necessitating surgery. The carrier asserts that the claimant could have sustained the injury in question, in the manner that it occurred, at any time and, although the claimant was within the course and scope of his employment at the time of the injury, the injury is not compensable.

We find that the hearing officer did not err in determining that the claimant's injury was compensable. Although in Texas Workers' Compensation Commission Appeal No. 972235, decided December 17, 1997, we stated that an injury sustained while getting out of a chair, without more, is a normal occurrence without regard to the work situation, has nothing to do with furthering the business of the employer, and is not compensable, that proposition is not absolute. In Texas Workers' Compensation Commission Appeal No. 950103, decided March 3, 1995, the Appeals Panel affirmed a determination that an employee sustained a compensable injury while in the act of sitting down at his desk when he felt a pull and burning pain in his low back. The decision stated that each case must be determined upon its own peculiar facts. The decision also noted the distinction between the cases involving repetitive sitting and standing, which may be an ordinary disease of life, and a discrete injury occurring at a definite time and place. In Texas Workers' Compensation Commission Appeal No. 992086, decided October 28, 1999, we addressed the injury of an account representative who pushed her chair back, and when she stood up, felt a sharp pain in her back. We found that there was a nexus between the injured worker's work and her injury. She was performing her assigned duties at her workstation. The injury occurred when she stood up. This activity was clearly part of her job and furthered the affairs and business of her employer. We stated that we do not believe that whether the claimant was twisting, turning, or performing any untoward body motion is determinative of whether the injury is compensable. We see no reason to depart from that rationale in the instant case. We do not agree that an injury arising from an activity that could also be experienced outside of work is, per se, noncompensable for that fact alone. *See* Texas Workers' Compensation Commission Appeal No. 990252, decided March 25, 1999, and Texas Workers' Compensation Commission Appeal No. 000074, decided

February 25, 2000. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ) defines 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.

In the instant case, the claimant was required to sit as an essential part of his employment. In the course of doing so, the claimant sustained an injury. However, this is a case which involves more than just sitting down. The unrefuted evidence indicated that the driver's seat was crooked and was not aligned with the steering wheel. The claimant's mishap occurred as he tried to adjust his position due to the misaligned seat. Under the facts presented in this case, we find that the hearing officer's decision is supported by the evidence and we decline to disturb it. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge