APPEAL NO. 012124
FILED OCTOBER 23, 2001

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 7, 2001. The hearing officer resolved the disputed issues by determining that the respondent (claimant) sustained a compensable injury on _____, when he fell from the cab of his employer's truck.

The appellant (carrier) appealed the hearing officer's determination that the claimant sustained a compensable injury from his idiopathic fall. The carrier argued that the claimant's idiopathic fall represented no greater hazard to his employment than that encountered by the general public and that an instrumentality of the employer was not involved because it did not own the surface upon which the claimant fell. There is no cross-appeal or response from the claimant.

DECISION

Affirmed.

The hearing officer did not err in holding that the claimant sustained a compensable injury when he experienced his idiopathic fall. The facts of this case are largely undisputed. The claimant was employed as a line supervisor for the employer at a local municipal airport. On _____, the claimant was refueling airplanes from a tank truck. At the time, he was working a double shift because another worker did not show up. The claimant parked a tank truck used by his employer at a refueling rack; while refueling the truck, he sat in the passenger side of the cab to do his paperwork with his left hand, while holding a "deadman switch" to allow the fueling to continue. The claimant suddenly felt dizzy and lost consciousness. He fell from the truck onto the ground and sustained a severe laceration as well as a herniated cervical disc.

Although the claimant surmised that he must have struck his head on the refueling rack, he could not be sure what he actually hit. The claimant does not know what caused him to lose consciousness, although he testified that he was sure it was not due to jet fuel fumes. Likewise, medical opinion was that it was unclear why the claimant fainted or what he hit. The premises onto which he fell were owned by the city that operated the airport. The truck he drove was leased by the employer from another company.

There was no question that at the time of his accident, the activity in which the claimant was engaged was one which furthered the business of his employer. The carrier argued that the accident did not "arise" out of his employment because no instrumentality of the employer was involved. The definition of "course and scope" in Section 401.011(12) specifically provides for work performed either on the premises of the employer or at other locations. We find, therefore, that it was of no consequence in this case that the claimant's employer may not have owned the truck, the refueling rack, or the tarmac.

The arguments posed by the carrier concerning whether such an accident arises from employment or whether the general public is equally exposed to hazards of falling on pavement have been answered and rejected in case law and Appeals Panel decisions. Texas courts have several times addressed situations in which the precipitating event which led to injury was either idiopathic or had its origins in a condition not related to the work. In Garcia v. Texas Indemnity Insurance Company, 209 S.W.2d 333 (Tex. 1948), an early case addressing a fall which had its origin in an epileptic fit suffered by the employee, the Supreme Court addressed the issue of whether the fatal injuries in question arose out of the employment. After citing case law from other jurisdictions the court wrote that "[u]nder the great weight of authority . . . we hold that Garcia's injuries arose out of his employment, because it had 'causal connection with' his injuries, either through its activities, its conditions, or its environments . . .[t]he post with the sharp corners . . . was a condition attached to the place of Garcia's employment; more than that, it was an instrumentality essential to the work he was waiting to do." (Citations omitted.)

Subsequent to Garcia was General Insurance Corp. v. Wickersham, 235 S.W.2d 215 (Tex. Civ. App.-Fort Worth 1950, writ ref'd n.r.e.) wherein an employee suffered a dizzy spell while sweeping in a restaurant, causing him to fall and suffer a fatal skull fracture. The court in that case noted that those jurisdictions which had denied compensation under similar facts did so on the theory that a floor presents no risk or hazard that is not encountered everywhere, and that such risks and perils as they do present are those to which all members of the public are exposed; contrary cases found such injuries compensable because the risk or hazard merely exists as one of the conditions of the employment. Adopting the latter position, the court wrote:

> We can find no sound reason for denying a recovery where the fall is to the floor, when recovery is allowed where the fall is from a ladder, or platform or similar place, or into a hole, or against some object such as a table, machine, or post. Suppose the employee had fallen against a counter or showcase. It seems clear that a recovery would be allowed under Garcia . . . If it be argued that the peril of falling to the floor was one which the employee shared with the general public, it can be said that the general public was as likely as was the employee to fall against a counter, showcase, or other objects in the restaurant. [Citations omitted.]

Another level-ground fall case was American General Insurance Company v. Barrett, 300 S.W.2d 358 (Tex. Civ. App.-Texarkana 1957, writ ref'd n.r.e.), in which the employee blacked out while walking along a road on the employer's premises; he later died of what was diagnosed as a subarachnoid hemorrhage. In determining that the injury "originated out of" the employment, the court cited both Garcia, *supra*, and Wickersham, *supra*, as precedential and said that under the facts of the case before it the road was "an instrumentality essential to the work of the employer and falling against it was a hazard to which Barrett was exposed because of his employment and death came to him because he was then working in the course of his employment."

Page v. Texas Employers Insurance Association, 544 S.W.2d 452 (Tex. Civ. App.-Dallas 1976, writ granted) concerned a bank security guard who was injured when his knee buckled while walking across his employer's parking lot, causing him to fall. The appeals court, reversing the trial court's instructed verdict for the carrier, stated that the evidence presented by the employee "clearly" raised an issue of fact as to whether his injuries arose out of his employment, stating that it was "uncontroverted" that the parking lot was an instrumentality essential to the business of the bank and that the employee was in the course and scope of his employment as he walked across it. The Supreme Court in Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977) agreed with the appeals court that a trial on the facts was warranted, stating that the evidence presented "a fact issue of whether the injury originated out of Page's employment, that is whether there was a sufficient causal connection between the conditions under which his work was required to be performed and his resulting injury."

The Appeals Panel has incorporated and followed this case law in applying the 1989 Act. *See* Texas Workers' Compensation Commission Appeal No. 931083, decided January 10, 1994. All cases cited here support the determination reached by the hearing officer in this case. Contrary to what the carrier asserts, the hearing officer has not departed from Appeals Panel cases which have analyzed whether injuries from idiopathic falls "arose out of" employment. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LEGION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATE SERVICE COMPANY
800 BRAZOS
AUSTIN, TX 78701.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge