APPEAL NO. 012541
FILED NOVEMBER 19, 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 September 24, 2001. With respect to the sole issue before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____. The appellant (carrier) urges on appeal that this determination is not sufficiently supported by the evidence. The claimant urges affirmance.

DECISION

Affirmed.

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 carrier contends that at the time of the injury, the claimant was performing a personal errand and, therefore, not acting within the course and scope of her employment.

The evidence reflects that the claimant twisted her knee when she stepped into a hole in the pavement of the parking lot on the employer's premises, where she had gone to notify her husband, who was waiting to pick her up, that she had not yet finished her work. After twisting her knee the claimant returned to the building and completed her work. This was not a case of accessing, i.e., coming to or going from, the employer's premises, but of activity solely on the premises. Thus, the traditional dual requirements of the definition of "course and scope of employment" must be applied to determine whether her injuries were compensable: first, the injury must be of a kind or character that had to do with or originated in the employer's work, trade or profession; and second, the injury must have occurred while the claimant was engaged in or about the furtherance of the employer's affairs or business. Texas Employers Insurance Assn. v. Page, 553 S.W.2d 98 (Tex. 1977).

In support of its position that the claimant was not acting within the course and scope of her employment when she twisted her knee, the carrier cites Texas Workers' Compensation Appeal Decision No. 992215, decided November 8, 1999. In that case, an employee was found not to have been in the course and scope of her employment when, during a break, she slipped and fell in the employee parking lot while checking the windows of her car due to an impending storm. However, in Texas Workers' Compensation Commission Appeal No. 001700, decided September 8, 2000, where an 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, the Appeals Panel declined to follow the reasoning in Appeal No. 992215, 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, "The 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." Applying this rationale, we perceive no error in the hearing officer's determination that the claimant was acting within the course and scope of her employment when she was injured on _____.

The claimant had the burden to prove, by a preponderance of the evidence, that she sustained a compensable injury. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). The carrier contends on appeal that the claimant should not be considered to have met this burden because the medical evidence indicates that two doctors cannot be certain that the claimant suffered a new injury on the date in question. We disagree. An injury determination can be established by the claimant's testimony alone, if believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). We also note that Dr. P, who examined the claimant, expresses in his report that although previous operative reports and imaging studies were not made available to him, given the available information, "it is more likely than not that the claimant suffered a new injury in 1999." The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. 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, 224 S.W.2d 660 (1951). We are satisfied that the evidence sufficiently supports the hearing officer's determination that the claimant sustained a compensable injury on _____.

Accordingly, the decision and order of the hearing officer are affirmed.

The true corporate name of the self-insured is **TWIN CITY FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

JIM ADAMS
450 GEARS ROAD, SUITE 500
HOUSTON, TEXAS 77067.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge