APPEAL NO. 030068
FILED MARCH 3, 2003

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 December 4, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____. The appellant (self-insured) appeals this decision. The appeal file contains no response from the claimant.

DECISION

Affirmed.

The self-insured asserts that the hearing officer erred as a matter of law in determining that the claimant was injured in the course and scope of his employment. The self-insured argues that merely attempting to sit down in a chair is an ordinary activity of life and that his employment at the time of the injury did not expose him to any particular hazard or risk that was not otherwise present to the general public in the same degree. That, however, is not the test in a specific incident injury; rather, that analysis applies in the situation of an occupational disease, which includes repetitive trauma injuries. *See* Texas Workers' Compensation Commission Appeal No. 951630, decided November 15, 1995, and Texas Workers' Compensation Commission Appeal No. 951129, decided August 22, 1995, for a discussion of ordinary activity as related to repetitive trauma injuries, which by definition occur over a period of time. Such is not the case in injuries arising out of a specific event or incident. *See* Texas Workers' Compensation Commission Appeal No. 950103, decided March 3, 1995. If there is damage or harm to the physical structure of the body and it arises out of and in the course and scope of employment, it is generally a compensable injury. Section 401.011(10) and (26). It is the fact that an injury occurs while performing a work-related function that is controlling, and not that an injury might not have been sustained by someone else performing the same function or that one might confront a similar situation elsewhere. The hearing officer was persuaded by the evidence, including the claimant's testimony and the medical evidence that he offered, that he sustained an injury while in the course and scope of his employment. Nothing in our review of the record indicates that the hearing officer's decision is 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).

The carrier asserts that the hearing officer erred in finding that the claimant sustained a compensable injury because the facts fail to show "a strong, logically traceable connection between the event and the injury" and because the claimant failed to meet the requirements of the "positional risk" test. We have previously rejected the argument that an injury arising from an activity that could also be experienced outside of work is, per se, noncompensable based on that fact alone. As we stated in Texas Workers' Compensation Commission Appeal No. 951736, decided December 7, 1995:

> In many, if not most, instances an accident could either occur at work or away from work, and, as a result, the fact that an accident could have occurred at some other location does not mean that an on-the-job injury becomes noncompensable under the positional risk test. In addition, the use of the word "would" by the Bratcher [Employers' Casualty Company v. Bratcher, 823 S.W. 2d 719 (Tex. App.-El Paso 1992, writ denied)] court in describing the "but for" test is indicative of the inevitability of the injury as opposed to the possibility that it could occur elsewhere. The purpose of the positional risk test is to ensure that there is some connection between the work and the risk of injury. That connection is present in this instance because claimant was at his regular duty station performing his work duties at the time of his injury. That is, the "employment brought the employee in contact with the risk that in fact caused his injuries." Bratcher, 823 S.W. 2d at 722 (citing Walters. v. American States Ins. Co., 654 S.W. 2d 423 (Tex. 1983)).

We find the facts in the present case to be analogous to those in Appeal No. 951736, and accordingly, we dismiss the self-insured's assertion that the claimant's injury is noncompensable under the positional risk doctrine.

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.

For service by mail the address is:

RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

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Daniel R. Barry
Appeals Judge