APPEAL NO. 030180
FILED FEBRUARY 24, 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 (CCH) was held on December 11, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable injury in the course and scope of his employment on _____, and that the claimant has had disability from April 20, 2002, to the date of the CCH.

The appellant (carrier) appeals, asserting that the claimant was not in the course and scope of his employment when he was injured and that the claimant did not have disability. The claimant responds, urging affirmance and citing some authority.

DECISION

Affirmed.

The background facts of this case are basically undisputed. The claimant was employed as a service technician (mechanic) by an automobile dealership. On the morning of _____, the claimant came to work on his motorcycle, going through a gate and parking next to the bay where he worked. The claimant went off the premises for his lunch period and upon returning found the gate to his work area locked and so he turned to go to an area of the parking lot reserved for employees. On the way he was hit by a car driven by a customer. Although not relevant to his workers' compensation claim, the claimant settled a third party claim with the third party's insurance carrier prior to the CCH. The carrier primarily denied the claim on the basis of the "coming and going" doctrine and that the claimant was not "engaged in furtherance of the employer's business" at the time of the accident.

Section 401.011(12) defines "course and scope of employment" to mean 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. The term includes an activity conducted on the premises of the employer or at other locations but does not include transportation to and from the place of employment (the "coming and going" rule). We view this case as coming within the parameters of the "access doctrine" exception. (We note that the hearing officer at the CCH asked the parties "what about the access doctrine?") Standard Fire Insurance Co. v. Rodriguez, 645 S.W.2d 534 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.) and Texas Workers' Compensation Insurance Company v. Matthews, 519 S.W.2d 630 (Tex. 1974) both discuss the access doctrine and outline a two-pronged test as follows:

1. [Whether] 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,

2. 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.

Further, as noted in Texas Workers' Compensation Commission Appeal No. 012248, decided November 7, 2001, both the Texas courts and the Appeals Panel have considered cases involving injuries sustained by employees at parking facilities in the context of the access doctrine. *See, e.g.* Turner v. Texas Employers Insurance Ass'n., 715 S.W.2d 52 (Tex. App.-Dallas 1986, writ ref'd n.r.e.); Bordwine v. Texas Employers Insurance Ass'n., 761 S.W.2d 117 (Tex. App.-Houston [14th dist.] 1988, writ den.); Texas Workers' Compensation Commission Appeal No. 972020, decided November 17, 1997. Those cases also follow the two prongs or elements of the access doctrine cited previously. *See* Bordwine at page 119 (cited by the claimant in his response).

We find that the cases cited by the carrier involve either general rules of law or involve parking lot cases where the employee was on a personal errand. *See* Texas Workers' Compensation Commission Appeal No. 960846, decided June 14, 1996. Nor do we find the carrier's argument that the claimant failed to prove "that the area where the incident occurred was owned or leased by the employer" persuasive. Very clearly by all the evidence the premises were controlled and used by an automobile dealership for the benefit of the employer and such others of the public that might be customers. Here the claimant returned to the premises after lunch, found the route to his customary parking spot blocked and was proceeding to an area of the employer's parking lot reserved for employee parking. As such we hold that he met the requirements of the access doctrine.

The hearing officer's determination on the disability issue is also supported by the claimant's testimony and medical records of the treating doctor. The fact that the claimant received a third party settlement is immaterial for purposes of this case and the carrier is liable for income and medical benefits as ordered by the hearing officer.

The hearing officer's decision and order are affirmed.

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

ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge