

APPEAL NO. 120273
FILED MARCH 29, 2012

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 January 4, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on [date of injury], and the claimant did not have disability resulting from a compensable injury at any time. The claimant appealed, disputing the hearing officer's compensability and disability determinations. The respondent (carrier) responded, urging affirmance of the disputed determinations.

DECISION

Reversed and rendered.

The claimant testified that on [date of injury], he began working at 7:00 a.m. He had eaten during his morning break so during his lunch break he went into a room in the building where he was working. There is some evidence that the claimant took a nap during this time. When he got up to return to work, he twisted his right ankle. The claimant was taken by ambulance from the work place to the hospital. An x-ray was taken of the right ankle with an impression of soft tissue swelling, avulsion injury of the medial malleolus displaced approximately 5 mm, posterior tibia fracture displaced approximately 5 mm, and mild widening of the medial tibiotalar joint space. In evidence is an operative report dated July 29, 2011, which described the procedure performed on the claimant's right lower extremity as open reduction, internal fixation of the right ankle. A designated doctor was appointed by the Texas Department of Insurance, Division of Workers' Compensation to give an opinion of whether the injury is from the claimed incident. [Dr. O] was appointed and examined the claimant on September 29, 2011. Dr. O in his report stated that the fracture of the claimant's ankle is a result of the injury that he suffered at work on [date of injury], where he had a twisting injury of the right lower extremity.

The hearing officer noted in the Background Information portion of his decision that both the supervisor and owner of the employer testified that sleeping on the job at any time throughout the day was against company rules. The hearing officer determined that the claimant did not sustain an injury within the course and scope of employment on [date of injury], and therefore did not have disability at any time.

The claimant contends that the injury is compensable due to the personal comfort doctrine. The claimant also contends that the violation of an employer's policy

or rule will not, as a general rule, remove the worker from the right to compensation where the rule relates to the manner of doing work, as opposed to a rule intended to limit the scope of employment. The carrier maintains that the claimant was not furthering the affairs of the employer at the time of the injury and that sleeping during a break was against the employer's policy.

Section 401.011(12) provides in pertinent part that "[c]ourse and scope of employment" means 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, and that the term includes an activity conducted on the premises of the employer or at other locations.

In Appeals Panel Decision (APD) 970064, decided February 25, 1997, the Appeals Panel affirmed the decision of the hearing officer that a claimant was in the course and scope of her employment while walking on a break to stretch her legs in an area adjacent to, and in front of, the employer's premises. Also, in APD 990516, decided April 16, 1999, the Appeals Panel found that an injury which took place during a lunch break in an area adjacent to the employer's premises was compensable.

The carrier contends that the claimant was sleeping during his break and that sleeping was against the employer's policy. However, the claimant was not injured while sleeping but rather while walking back to his work area. The evidence establishes that the claimant's injuries occurred when he twisted his right lower extremity while walking back to his work area from taking a break during the lunch period on the employer's premises.

In reviewing a "great weight" challenge, we must examine the entire record to determine if: (1) there is only "slight" evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. See Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We reverse the hearing officer's determination that the claimant did not sustain a compensable injury on [date of injury], and render a new decision that the claimant sustained a compensable injury on [date of injury].

The hearing officer's conclusion that the claimant did not have disability was premised on his conclusion that the claimant did not sustain a compensable injury. The hearing officer found that the claimant has been unable to obtain and retain employment at wages equivalent to the pre-injury wage from July 15, 2011, continuing through the date of the CCH. Therefore, we reverse the hearing officer's determination that the

claimant did not have disability resulting from a compensable injury sustained on [date of injury], and render a new determination that the claimant did have disability from July 15, 2011, through the date of the CCH.

The hearing officer's determinations that the claimant did not sustain a compensable injury on [date of injury], and did not have disability are reversed and we render new determinations that the claimant sustained a compensable injury on [date of injury], and had disability from July 15, 2011, through the date of the CCH.

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

**RON O. WRIGHT, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge