APPEAL NO. 950434

A contested case hearing was originally held in Austin, Texas, on November 7, 1994, under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), with (hearing officer) presiding as hearing officer. In Texas Workers' Compensation Commission Appeal No. 941644, decided January 23, 1995, the Appeals Panel reversed the decision of the hearing officer and remanded for the hearing officer to make a determination whether the respondent (claimant) was in the furtherance of the affairs of the appellant (self-insured) when she slipped and fell. The hearing officer, without holding another hearing, rendered another decision on February 6, 1995, in which he determined that the claimant's departure from the self-insured's establishment on (date of injury), during which the claimant slipped and fell, was incidental to her termination and was in the furtherance of the affairs of the self-insured. The self-insured appealed urging that the hearing officer erred in finding that the claimant's departure from the building after termination, and after she was no longer an employee, was incidental to her termination and finding that her slip and fall occurred within the course and scope of her employment. The claimant responded urging that the evidence amply supports the determinations of the hearing officer and that we affirm the decision of the hearing officer.

DECISION

We reverse and render.

The evidence is in sharp conflict. The claimant testified that she does not recall a termination interview on (date of injury). She said that she went to the snack machines, thinking that she was still an employee and was on break. She testified that she then was walking to the customer service area to use the telephone when she fell near the barbecue grills. (Ms. S), the self-insured's personnel and training manager at the store where the claimant worked, testified that the claimant knew that she was terminated when she left the office of (Mr. R), the manager of the store where the claimant worked, on (date of injury). Ms. S said that the claimant said that they would be hearing from her and that she and Mr. R took that to be a threat. Mr. R testified that the claimant refused to sign the report of the termination interview, but that the claimant knew that she had been terminated, and that he told the claimant that she needed to leave the store. Mr. R testified that members of the public are not permitted in the area where employees have lockers for personal items such as purses but that the claimant was on the floor in a part of the store open to the public. He said that if the claimant was leaving the building she should be going out the front door and should not have been in the area where she was on the floor.

In reversing and remanding this case, we included the following quotation from Texas Workers' Compensation Commission Appeal No. 94825, decided August 4, 1994:

> The rule stated by Texas courts is that once an employment relationship has been terminated, either by the resignation of the employee or by the employee being fired, an injury incurred at the job site or while leaving the job site

> subsequent to the termination is not an injury sustained in the course of employment, within the meaning of the workers' compensation law. Ellison v. Trailte, Inc., 580 S.W.2d 614, (Tex. Civ. App.-Houston [14th Dist.] 1979, no writ). An exception to this rule occurs, however, when the employee is required, or reasonably believes that he is required, to remain at or return to the employer's premises for his final paycheck or to take care of some other duty incidental to the termination. INA of Texas v. Bryant, 686 S.W.2d 614 (Tex. 1985).

The claimant in the case before us testified that she did not know that she had been terminated and that she thought that she was on a break. She in no way indicated in her testimony how she was taking care of some duty incidental to her termination. The determination of the hearing officer that the claimant's slip and fall was incidental to her termination and was in the furtherance of the affairs of the self-insured is against the great weight and preponderance of the evidence. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We reverse the decision of the hearing officer and render a decision that the claimant was not injured in the course and scope of employment.

Tommy W. Lueders
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Alan C. Ernst
Appeals Judge