APPEAL NO. 960521

On January 23, 1996, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). The appellant (claimant) appeals the hearing officer's decision that she was not in the course and scope of her employment when she sustained an injury on _____, that she did not sustain a compensable injury, and that she has not had disability. The respondent (self-insured employer) requests affirmance.

DECISION

Affirmed.

The self-insured employer operates a hospital. The claimant has worked for the hospital for 27 years and is a "PBX operator." The claimant testified that she works on the first floor of the hospital and that her doctor, Dr. J, who treats her for hypertension, has an office on the third floor of the hospital. The claimant said she had a prearranged appointment to see Dr. J about her hypertension at 9:00 or 9:15 a.m. on _____. She said her normal work hours are from 6:00 a.m to 2:00 p.m and that she started work at 6:00 a.m. on _____. She said that the morning of _____, while she was at work, her fingers felt numb. She said that when her supervisor, JG, arrived at work about 8:30 a.m. she told JG that she had to go for her "check up" and that her hand felt numb and that she had a leg cramp. She said JG said "well, be sure to tell him," apparently referring to Dr. J. The claimant said she "punched out" to go to Dr. J's office about 9:00 a.m. and that she took vacation time to go to the prearranged appointment.

The claimant described the hospital as a big building and testified that there are different ways to get from her work area to Dr. J's office and from Dr. J's office back to her work area. She said she went to the main lobby and took the elevator to the third floor and went to Dr. J's office where she had to wait in the waiting room for a while. She said that Dr. J saw her for about ten or fifteen minutes and that her appointment was over at "ten-something." She said that while she was seeing Dr. J she told him that she had a tingling in her fingers and that Dr. J told her that "maybe you could be starting with carpal tunnel from working on the computer." She said that Dr. J gave her a paper to make an appointment for an EMG. She said she went to the hospital "pain clinic," which is also located on the third floor, to schedule the EMG appointment, but was told that the doctor was not in and that the appointment could not be scheduled for right then. The claimant said that she left the paper for the appointment at the pain clinic and told the person working there to call her when the appointment was set.

The claimant testified that she left the pain clinic and started down the hallway on

the third floor to go to the elevators so that she could go back to her work area and punch back in. She said that this was between 10:15 a.m. and 10:45 a.m, but she wasn't sure of the time. She said that, as she was walking down the hallway on the third floor, her foot "gave out" and twisted and she fell down face forward. She said she was put in a wheelchair and taken back to Dr. J's office. Diagnostic testing revealed that the claimant had herniated discs at two levels of her cervical spine and she underwent a cervical discectomy on November 14, 1995. She returned to work on January 8, 1996. JG testified that the claimant told her on the morning of _____, that she was going to see her doctor because her hand was feeling numb and her foot was "dragging." She said that after the claimant had fallen down, the claimant told her that she had fallen down in the rehabilitation clinic, which she said contained the pain clinic.

The first issue was whether the claimant sustained an injury in the course and scope of her employment on or about _____. The hearing officer's findings of fact show that he believed the claimant's testimony as to how, when, and where her accident occurred. He also found that the claimant was injured when she fell. However, he also found that the claimant's injury did not arise out of and was not in the course and scope of her employment with the self-insured employer. He concluded that the claimant did not sustain a compensable injury on _____. 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 "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. The term does not include: [travel and transportation exceptions]." Section 401.011(12).

In McKim v. Commercial Standard Ins. Co., 179 S.W.2d 357 (Tex. Civ. App.-Dallas 1944, writ ref'd), the employee was a hatmaker who worked on the second floor of the employer's business. The employer sold hats on the first floor and employees could buy hats at wholesale prices. The employee clocked out at her lunch hour and went to the front office and asked a manager about buying a particular hat in the showroom on the first floor. The manager told the employee to get the hat and bring it to her so that she could determine if it was for sale. The employee got the hat and on her return to the office fell and injured herself. The trial court instructed a verdict for the carrier and the employee appealed. The court affirmed the trial court's judgment, with one judge dissenting. In the majority opinion, the court noted that the workers' compensation statute "does not provide insurance against every accident happening to the workmen, though on the premises of the employer." The court stated that, to be compensable, the injury (1) must have to do with and originate in the work, and (2) must have been suffered while the employee was engaged in or about the furtherance of the employer's affairs or business. The court determined that the employee's injury was not compensable and described the employee's

"errand for the hat" as a "personal mission" which was "wholly independent of the employment or her duties thereunder." The dissenting judge said the case should have been submitted to the jury, as a fact question was raised.

In Roberts v. Texas Employers' Insurance Association, 461 S.W.2d 429 (Tex. Civ. App.-Waco 1971, writ ref'd), before starting work, the employee asked her supervisor if she could have a pasteboard box and was told she could. The employee was injured during working hours in the employee's parking lot when she started to her car to put the box in her car. In affirming the trial court's judgment for the carrier, the court stated that "the accident and appellant's injuries did not arise out of her employment; they did not have to do with and originate in her employer's business; and she was not engaged in the furtherance of her employer's affairs or business . . . ." The court stated that the employee was "engaged on a purely personal mission, and the injury was not compensable." In Texas Employers' Ins. Ass'n v. Anderson, 125 S.W.2d 674 (Tex. Civ. App.-Dallas 1939, writ ref'd), the court stated that whether an employee sustained an injury while in the course and scope of his employment must be determined on the peculiar facts of each case and as a question of fact. The evidence in the instant case indicates that the claimant was on a personal mission when injured on her employer's premises. We conclude that the hearing officer's decision that the claimant was not injured in the course and scope of her employment is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant contends that her injury is compensable under the access doctrine. The access doctrine is an exception to the rule that injuries going to and from work are not compensable. Turner v. Texas Employers' Insurance Association, 715 S.W.2d 52 (Tex. App.- Dallas 1986, writ ref'd n.r.e.). In Turner, *supra*, the court observed that the access doctrine applies (1) when the employer has evidenced an intention that the particular access route be used by the employee in going to and from work and (2) where such access route is so closely related to the employer's premises as to be fairly treated as a part of those premises. The court noted that under the access doctrine "the employment may begin in point of time before the work is entered upon and in point of space before the place where the work is to be done is reached," citing Standard Fire Insurance Co. v. Rodriquez, 645 S.W.2d 534 (Tex. App.-San Antonio 1982, writ ref'd n.r.e.). The hearing officer in the instant case found that the first part of the test for application of the access doctrine was not met. As noted in Texas Employers' Insurance Association v. Lee, 596 S.W.2d 942 (Tex. Civ. App.-Waco 1980, no writ), whether an injury was received under circumstances to which the access doctrine applies is usually a question of fact governed and controlled by the particular facts of each case. We conclude that the hearing officer's decision with respect to the access doctrine is supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain, *supra*.

Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16). Consequently, the hearing officer did not err in concluding that the claimant has not had disability.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge