APPEAL NO. 010564

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 commenced on January 22, 2001, the record closed on February 27, 2001. The hearing officer resolved the disputed issues by determining that the respondent (claimant herein) sustained a compensable injury on _____, and that the claimant had disability from _____, continuing through the date of the CCH. The appellant (carrier herein) files a request for review arguing that the hearing officer erred in these determinations. The claimant responds that the decision of the hearing officer should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Most of the essential facts of this case are not in dispute. The parties stipulated that on _____, the claimant was working for (employer) as a customer service representative. On that date the claimant ate lunch at a cafeteria located in the building in which she worked and then during the remainder of her lunch break took a walk on a sidewalk that ran through the employer's "campus." It was clear that the sidewalk was on property owned or leased by the employer and that the sidewalk was maintained by the employer or a contractor hired at the employer's expense. It was also clear that the employer permitted employees to use the sidewalk (which ran parallel to a lake) to take walks during breaks from work, particularly lunch breaks. It is undisputed that the claimant fell while walking on the sidewalk during her lunch break and was taken to the hospital by ambulance. There was conflicting medical evidence as to whether the claimant's fall resulted in developing reflex sympathetic dystrophy (RSD), also referred to as Complex Regional Pain Syndrome. There was testimony from the claimant and medical evidence, that as a result of the claimant's fall she was unable to work as a result of her injury from _____, continuing through the date of the CCH.

The real issue in this case is whether the claimant was in the course and scope of her employment at the time of her injury. The carrier argues that the claimant was not in the course and scope of her employment because she was not furthering the business of the employer at the time of her injury. The claimant argues that she was covered under the personal comfort doctrine. The leading case on the personal comfort doctrine in Texas is Yeldell v. Holiday Hills Retirement and Nursing Center, 701 S.W.2d 243, 245 (Tex. 1985) (hereinafter Yeldell). In this case, the Texas Supreme Court held that a nurse who was injured while hanging up the telephone after calling her daughter--the telephone cord became entangled with a coffee urn and hot coffee spilled on the nurse, burning her--was in the course and scope of her employment under the personal comfort doctrine. The personal comfort doctrine provides that an employee is in the course and scope of employment when performing acts of a personal nature that a person might reasonably do for health and comfort because such acts are incidental to the employee's employment.

As the Supreme Court noted in Yeldell, this doctrine as long been recognized in the Texas law and has been applied in a number of Texas cases. *See* Fidelity & Guaranty Insurance Underwriters, Inc. v. Rochelle, 587 S.W.2d 493, 495 (Tex. Civ. App.-Dallas 1979, writ dism'd); Texas Employers' Insurance Association v. Prasek, 569 S.W.2d 545, 548 (Tex. Civ. App.-Corpus Christi 1978, writ ref'd n.r.e.); and Southern Surety Co. v. Shook, 44 S.W.2d 425 (Tex. Civ. App.-Eastland 1931, writ ref'd).

The Appeals Panel has applied the doctrine of these cases to a number of fact situations. In Texas Workers' Compensation Commission Appeal No. 93484, decided July 30, 1993, the Appeals Panel reversed and rendered a decision that an employee who was injured tossing a football on the employer's premises during a scheduled break was in the course and scope of employment. The decision of the Appeals Panel in that case was upheld in Texas Workers' Compensation Insurance Fund v. Rodriguez, 953 S.W.2d 765 (Tex. App.-Corpus Christi 1997, pet. denied). In Texas Workers' Compensation Commission Appeal No. 970064, decided February 25, 1997, which the hearing officer cites as controlling authority in the present case, 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 Texas Workers' Compensation Commission Appeal No. 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.

Based upon the foregoing court decision and Appeals Panel decisions, we find no error in the hearing officer's determination in the present case that the claimant was in the course and scope of her employment at the time of her injury. She was walking for health and recreation during a scheduled break on a sidewalk that was either part of or directly adjacent to the employer's premises. There is evidence that the employer permitted, and even encouraged, employees to walk along this sidewalk during breaks. There was also evidence that the employer provided incentives to employees to exercise through its wellness program. While the carrier presents evidence concerning the safety of the sidewalk, such evidence is irrelevant to a claim based upon workers' compensation, which provides for no-fault recovery, and not for recovery predicated on negligence.

As far as disability is concerned, there is conflicting evidence concerning the severity of the claimant's injury and, specifically, whether her injury includes RSD. The hearing officer specifically states in his decision that he finds the medical evidence supporting the contention that the claimant is suffering from RSD more credible than the evidence that she is not. In any case, disability is a question of fact to be determined by the hearing officer, and there is sufficient evidence in the claimant's testimony and the medical records to support the hearing officer's finding of disability.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge