APPEAL NO. 012376-S
FILED NOVEMBER 14, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 19, 2001. The hearing officer held that the respondent (claimant) sustained a compensable injury on _____, when she slipped and fell in the course and scope of her employment.

The appellant (self-insured) argues that because the claimant was performing an activity, going up steps, that she could have been performing off the job, she was at no greater risk than the general public and therefore her injury did not arise out of her employment, even if an instrumentality of the employer were involved. The self-insured argues that the "coincidental eruption" of a medical or degenerative condition at work cannot form the basis for a compensable injury. The self-insured finally argues that there was no evidence of damage or harm to the knee, i.e., "injury." The claimant responds in support of the decision.

DECISION

We affirm the hearing officer's decision.

The claimant was a teacher for the self-insured. She testified that on _____, she began to climb bleachers that were set up for staff pictures. Her left knee gave out as she climbed, and she fell onto her right knee. The claimant sought medical treatment from the doctor suggested by the adjuster after she was erroneously informed that she could not first see a doctor of her own choice. She had an MRI. The claimant said that she had a swollen bruise after the incident. Diagnoses recorded in medical evidence include knee sprain, effusion, knee joint instability, and internal derangement. No fractures were shown on x-ray, which also showed some degenerative processes in the knee. The claimant testified that she is 56 years old.

The hearing officer did not err in finding that the claimant sustained a compensable injury. The argument of the self-insured is wholly without merit; none of the cited Appeals Panel cases are in point and do not involve situations where a claimant falls and strikes a body part on the premises of the employer while engaged in work-related activity. The major thrust of the appeal brief is largely a legal argument–that the claimant was not in the course and scope of employment if the injury arose from an activity she could as likely have performed at home (climbing a step), which is an activity common to both the general and working public at large. We reject the contention that a worker who is injured while performing a work-related activity at the employer's premises assumes the further burden of proving that the activity in which he or she was at that moment engaged does not parallel one that could have occurred outside of employment, or that an underlying instability was not in some respect a cause of the accident. As we stated in Texas Workers' Compensation Commission Appeal No. 990252, decided March 25, 1999:

> Workers' compensation law is not tort law; the employee need not prove that the employer was in some way negligent, or the premises defective, in order to recover for injuries that are encountered in the course and scope of employment or arise from that employment, while the business of the employer is being furthered. We do not agree, as the carrier urges, that an injury arising from an activity that could also be experienced outside of work is, per se, noncompensable for that fact alone.

We note that the Appeals Panel has previously rejected a variant of the same argument that injuries that could be sustained by the general public are not compensable. *See* Texas Workers' Compensation Commission Appeal No. 951576, decided November 9, 1995; Texas Workers' Compensation Commission Appeal No. 990896, decided June 14, 1999. In many, if not most, instances an accident could either occur at work or away from work, and, as a result, the fact that an accident could have occurred at some other location does not mean that an on-the-job injury becomes noncompensable under the positional risk test.

In addition, the Texas Supreme Court has made clear that the long-standing doctrine of liberal construction of the workers' compensation act applies to the 1989 Act. Albertson's, Inc. v. Sinclair, 984 S.W.2d 958 (Tex. 1999). *See also* The Kroger Co. v. Keng, 976 S.W.2d 882, 890 (Tex. App.-Tyler 1998, no pet.). Although not much in the way of liberal interpretation is needed under the facts of this case, we are disinclined to adopt the strict construction urged by the self-insured, which would, in effect, have the worker moving in and out of the course and scope of employment throughout the workday, depending on whether the activity undertaken is one which could also be undertaken elsewhere. We are also disinclined to reinterpret the 1989 Act in a manner that would strip a worker who has a bodily infirmity from coverage that would be extended to similarly situated, but healthy, employees. An incident may indeed cause injury where there is preexisting infirmity where no injury might result in a sound employee, and a predisposing bodily infirmity will not preclude compensation. Sowell v. Travelers Insurance Company, 374 S.W.2d 412 (Tex. 1963). However, the compensable injury includes these enhanced effects, and, unless a first condition is one for which compensation is payable under the 1989 Act, a subsequent carrier's liability is not reduced by reason of the prior condition. St. Paul Fire & Marine Insurance Company v. Murphree, 357 S.W.2d 744 (Tex. 1962). We would observe that there is sufficient evidence of damage or harm to the right knee to support the decision.

Finally, we are also mindful of case law discussing the compensability of idiopathic falls, also squarely in point in this case. We have reviewed this case law and find the decision of the hearing officer consistent with Garcia v. Texas Indemnity Insurance Company, 209 S.W.2d 333 (Tex. 1948); General Insurance Corp. v. Wickersham, 235 S.W.2d 215 (Tex. Civ. App.-Fort Worth 1950, writ ref'd n.r.e.); American General Insurance Company v. Barrett, 300 S.W.2d 358 (Tex. Civ. App.-Texarkana 1957, writ ref'd n.r.e.); and Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). The hearing officer's decision is affirmed.

The true corporate name of the self-insured/insurance carrier is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

CONCURRING OPINION:

I concur in the result. I write separately only to state my disagreement with the majority's resorting to the doctrine of liberal construction to resolve the appealed issue. There is ample case law from the Texas courts to support the hearing officer's determination and such precedent should be followed. It is the doctrine of stare decisis and not the doctrine of liberal construction that should be applied to resolve this appeal.

Philip F. O'Neill
Appeals Judge