APPEAL NO. 021369
FILED JULY 15, 2002

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 April 29, 2002. The hearing officer decided that the appellant (claimant) was not injured in the course and scope of her employment on _____, and that she therefore did not have disability. The claimant appealed citing legal error. The respondent (self-insured) responded, urging affirmance.

DECISION

Reversed and rendered.

The hearing officer erred as a matter of law in deciding that the claimant did not sustain a compensable injury and did not have disability.

The facts of this case are largely undisputed. The parties stipulated that the claimant sustained an injury to her left ankle on _____, and that due to that injury she was unable to obtain and retain employment equivalent to her preinjury wage from _____, through March 13, 2002. The claimant testified that she had regularly scheduled one-hour lunch periods; that she would sometimes eat her lunch in the office in order to assist customers or a working employee; and that on _____, after finishing her lunch in the office she decided to run a personal errand during the remainder of her lunch period. The claimant further testified that while exiting down the exterior steps of the building's north exit, she twisted her ankle and fell down the steps sustaining a fractured and dislocated left ankle, which required surgery. It is undisputed that at the time of the accident the claimant was clocked out for lunch, still on the premises of the employer, and leaving the building to perform a purely personal errand.

The hearing officer determined that the claimant did not sustain a compensable injury because she was leaving to perform a personal errand, she was not engaged in nor furthering the affairs or business of the employer, the injury did not arise out of nor in the course and scope of her employment, and the personal comfort doctrine does not apply.

We find that the "access doctrine" applies to this case and that the hearing officer's failure to apply it constitutes reversible legal error. The general rule is that the benefits of the 1989 Act do not apply to injuries received going to and from work. The courts have created an exception to this rule known as the "access doctrine." In The Standard Fire Insurance Company v. Rodriguez, 645 S.W. 2d. 534, 538 (Tex. App.-San Antonio 1982, writ ref'd n.r.e.) the court stated the following:

> When the employer has evidenced an intention that the particular access route or area be used by the employee in going to and from work, and where such access route or area is so closely related to the employer's premises as to be fairly treated as a part of the premises, the general rule does not apply. (Citation omitted).

In further explaining the "access doctrine," the Rodriguez court went on to say:

> The "access doctrine" further contemplates that employment include not only the actual doing of work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done. If the employee be injured while passing, with the express or implied consent of the employer, to or from his work by a way over the employer's premises, or over those of another in such proximity and relation as to be in practical effect a part of the employer's premises, the injury is one arising out of and in the course of the employment as much as though it had happened while the employee was engaged in his work at the place of its performance. (Citation omitted).

In applying the "access doctrine" to the facts of this case, we find that the claimant sustained a compensable injury as a matter of law in that she was passing from her work area by a way over her employer's premises with the express or implied consent of the employer. The fact that she was leaving to tend to personal business is irrelevant to the application of the "access doctrine." Because we find that the claimant sustained a compensable injury, we further find that she had disability from _____, through March 13, 2002, as that is the period of time which the parties stipulated that the claimant was unable to obtain and retain employment at wages equivalent to her preinjury wage as a result of the _____, left ankle injury.

The hearing officer's decision that the claimant did not sustain a compensable injury on _____, and that she did not have disability is reversed and a new decision is rendered that the claimant did sustain a compensable injury on _____, and that she did have disability from _____, through March 13, 2002.

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

COUNTY JUDGE
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Daniel R. Barry
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge