APPEAL NO. 070284-s
FILED APRIL 20, 2007

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 held on January 4, 2007. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) did not sustain a compensable injury on _____; and (2) because the claimant did not sustain a compensable injury on _____, the claimant does not have disability. The claimant timely appealed the hearing officer's injury and disability determinations. The respondent (self-insured) responded, urging affirmance.

DECISION

Reversed and rendered.

The evidence reflects that the claimant was employed as a correctional officer. The claimant testified that on _____, she was walking on the employer's premises on her way to attend a work related meeting on the premises. The claimant testified that she walked past a gate, turned to close the gate, took a few steps and then experienced a pop in her right knee. The claimant testified that she went to the emergency room for treatment to her right knee and received an injection for pain. In a Work Status Report (DWC-73) dated March 24, 2006, for the date of injury (DOI) of _____, a doctor provided a work injury diagnosis of a right knee strain and tear of the calf muscle. An MRI report for the claimant's right knee dated June 16, 2006, stated an impression of moderately severe degenerative joint disease, tear of the medial meniscus, and tear of the lateral meniscus. The claimant argues on appeal that her right knee injury of _____, arose from her employment because "walking was a requirement of her job function as a correctional officer." The self-insured contends that the claimant was "merely walking and the claimed injury, knee derangement, occurred without the claimant turning or pivoting, or otherwise involving any instrumentality of the employer."

**COMPENSABLE INJURY**

Section 401.011(10) provides that a "compensable injury" means an injury that arises out of and in the course and scope of employment for which compensation is payable under the 1989 Act. Section 401.011(12) provides in pertinent part that "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, and that the term includes an activity conducted on the premises of the employer or at other locations.

The hearing officer determined that the claimant did not sustain a compensable injury. The hearing officer states in the Background Information section that "[a]lthough the claimant testified that she had turned to close a gate, the overwhelming other evidence that included the claimant's recorded statement, initial medical reports, and report of injury supports the mechanism of injury as simply walking."

The facts of this case are similar to Appeals Panel Decision (APD) 980631, decided May 14, 1998. In that case, an x-ray technician walked down the hallway to get an x-ray cassette, and she popped her knee. She was diagnosed as having a subluxation of the patella. There was conflicting evidence of whether she had turned a corner and then popped her knee. The Appeals Panel reversed the hearing officer's determination that the claimant sustained a compensable injury. The Appeals Panel stated "[t]here was no nexus to the employment other than the fact that the incident occurred on the employer's premises and we do not regard injury from any and all types of body motion on an employer's premises to be, *per se*, caused by the employment." In that case there was a vigorous dissenting opinion stating that the claimant's testimony regarding the injury to her knee, which took place while she was walking to obtain an x-ray cassette, and doing so was part of her job and furthered the affairs of her employer, was sufficient to affirm the hearing officer's decision.

Some Appeals Panel decisions have followed the holding of APD 980631, *supra*. In APD 001590, decided August 24, 2000, the claimant felt a pop in her right knee resulting in a torn meniscus while she "walked hurriedly" across her employer's floor. The Appeals Panel affirmed the hearing officer's determination that the claimed right knee injury was not compensable. In APD 990216, decided March 22, 1999, the claimant felt her "foot pop while walking" with "no turn, twist, or fall involved" on the employer's premises. The Appeals Panel affirmed the hearing officer's determination that the claimed injury was not compensable. *See also* APD 001721, decided September 11, 2000; APD 983048, decided February 4, 1999; APD 982782, decided January 14, 1999; and APD 982185, decided October 26, 1998.

Other Appeals Panel decisions have questioned the holding of APD 980631, *supra*. In APD 020583, decided April 30, 2002, the Appeals Panel noted that the "continuing viability" of APD 980631, was called into question. *See also* APD 990252, decided March 25, 1999. In APD 982796, decided January 14, 1999, the Appeals Panel stated that it has "never laid down, as a rule of thumb, a doctrine that injuries that occur while a person is walking are not compensable per se." *See also* APD 000074, decided February 25, 2000 (concurring opinion states APD 980631, was incorrectly decided).

Several Appeals Panel decisions have held that injuries involving factors such as pivoting, turning, twisting and other types of body motions while walking were sufficiently distinct from simply walking and were held compensable. In APD 042641, decided December 7, 2004, as the claimant was exiting a supply closet, he turned or pivoted to go around the supply closet door, heard a pop and felt immediate pain in his left foot, and was diagnosed as having a fracture of the left foot. The hearing officer

determined that the claimant did not sustain a compensable injury because the injury "did not occur as a result of twisting, turning, tripping, stumbling, or any similar untoward body motion" while the claimant was exiting the supply closet. The Appeals Panel reversed the decision and explained that pivoting "to turn around the door in question" was such an activity which took it out of the realm of "merely walking." *See also* APD 990252, decided March 25, 1999 (compensable injury occurred when a nurse slipped slightly and knee locked); APD 012582, decided December 10, 2001 (compensable injury occurred when the claimant took a long stride over water at the doorway and her knee popped); APD 033142, decided January 16, 2004 (compensable injury occurred when a prison guard rolled ankle walking down hallway),

Under the 1989 Act, the issue of compensability is a two prong test: (1) whether the injury occurred in the course and scope of employment; and (2) whether the injury arose from the employment. *See* Texas Workers' Compensation Insurance Fund v. Simon, 980 S.W.2d 730 (Tex. App.-San Antonio 1998, no pet.) The claimant had the burden to prove that she was in the course and scope of employment and that the claimed injury arose from her employment, pursuant to the 1989 Act. In the instant case, the claimant has met the requirement of the first prong. The claimed injury occurred while the claimant was walking on the employer's premises to attend a work related meeting. The injury occurred while the claimant was performing an activity that had to do with and originated in the business of her employer and she was performing that activity furthering the business of her employer. Therefore the injury occurred in the course and scope of her employment.

Consequently, the next issue then becomes whether the injury arose from the claimant's employment. The court in Simon, *supra*, stated that the question under the second prong for determining compensability is whether the injury would have occurred if the conditions and obligations of employment had not placed the claimant in harm's way. The court noted that this was an issue of causation. The court also noted that an accident arising from employment causes an injury if it is "a" cause, even if there are other causes; however, the accident must still be a producing cause of the injury. *See also* APD 051610-s, decided August 26, 2005. In Lumberman's Reciprocal Ass'n v. Behnken, 112 Tex. 103, 246 S.W.72 (1922), the Texas Supreme Court stated that "an injury has to do with, and arises out of, the work or business of the employer, when it results from a risk or hazard which is necessarily or ordinarily or reasonably inherent in or incident to the conduct of such work or business." In Hanover Insurance Company v. Johnson, 397 S.W.2d 904 (Tex. Civ. App.-Waco 1965, writ ref'd n.r.e.) the court stated that:

> The causal connection may be either through its activities, its conditions or its environments, and the "'risk may be no different in degree or kind than those to which he may be exposed outside of his employment. The injury is compensable, not because of the extent or particular character of the hazard, but because it exists as one of the conditions of the employment.'" Garcia v. Texas Indemnity Ins. Co., 146 Tex. 413, 209 S.W.2d 333, 337 [(Tex. 1948)].

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). In APD 992086, decided October 28, 1999, the Appeals Panel affirmed a hearing officer's decision that the claimant sustained a compensable lumbar spine injury when she pushed her chair back at work, stood up, and felt a sharp pain in her low back and down her legs. The claimant was subsequently diagnosed with a herniated lumbar disc. The Appeals Panel noted that there was a connection, or nexus, between the claimant's work and her injury in that she was performing her assigned duties at her work station, her activities furthered the affairs of her employer, and the injury took place when the claimant stood up from her chair. The Appeals Panel stated "we do not believe that whether the claimant was twisting, turning, or performing any untoward body motion is determinative of whether the injury is compensable." The Appeals Panel declined to follow APD 972235, decided December 17, 1997, wherein the Appeals Panel had rendered a decision that there was no compensable injury under similar facts. Similarly, in the instant case we hold that to establish whether the injury arose from the employment it was not necessary for the claimant to prove that a pivot, twist, turn, or other type of untoward body motion occurred while walking to the work related meeting, and we decline to follow APD 980631, *supra*. The dissenting opinion in APD 980631, made a sound argument for not attempting to distinguish various body movements while walking.

We note that the employer accepts the employee as she is when she enters employment and that it is no defense to a claim for compensation that the injury would not have been as great if the employee had been in a healthy or more perfect physical condition. Gill v. Transamerica Insurance Company, 417 S.W.2d 720 (Tex. Civ. App.-Dallas 1967, no writ). An incident may indeed cause injury where there is a pre-existing infirmity where no injury might result to a sound employee, and a predisposing bodily infirmity will not preclude compensation. APD 040735, decided May 25, 2004.

In this case, the hearing officer erred in determining that the claimant did not sustain a compensable injury because she believed that an injury that occurs from simply walking is not compensable. The hearing officer did not make findings of fact on whether the injury arose from the claimant's employment. However, the hearing officer stated in her decision that the overwhelming evidence supports the mechanism of injury as simply walking. Under the facts of this case the claimant was in the course and scope of her employment and the claimed injury arose from her employment because she was performing her assigned duties by walking to attend a work related meeting on the employer's premises when the injury took place. Accordingly, we reverse the hearing officer's determination that the claimant did not sustain a compensable injury on _____, and render a new decision that the claimant sustained a compensable injury on _____.

We note that the claimed injury in this case is a specific injury, and not a repetitive trauma injury. Repetitive trauma injuries associated with ordinary walking or ordinary standing are generally not compensable. *See* APD 960307, decided March 25,

1996. Also, this case is not a case to which an analysis under idiopathic falls would be applied.

## DISABILITY

The hearing officer found that due to the claimed injury the claimant was unable to obtain or retain employment at wages equivalent to the claimant's pre-injury wages beginning March 24, 2006, and continuing through April 30, 2006, and beginning on June 14, 2006, and continuing through the date of the CCH.[1] This finding was not appealed. The hearing officer determined that because the claimant did not sustain a compensable injury on _____, the claimant did not have disability.

Given that we have reversed the hearing officer's injury determination and rendered a new decision that the claimant sustained a compensable injury on _____, we reverse the hearing officer's disability determination. We render a new decision that the claimant had disability beginning March 24, 2006, and continuing through April 30, 2006, and beginning on June 14, 2006, and continuing through the date of the CCH.

## SUMMARY

We reverse the hearing officer's determination that the claimant did not sustain a compensable injury on _____, and render a new decision that the claimant did sustain a compensable injury on _____.

We reverse the hearing officer's determination that the claimant did not have disability, and render a new decision that the claimant had disability beginning March 24, 2006, and continuing through April 30, 2006, and beginning on June 14, 2006, and continuing through the date of the CCH.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR**
**STATE OFFICE OF RISK MANAGEMENT**
**300 W. 15TH STREET**
**WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR**
**AUSTIN, TEXAS 78701**.

[1] The hearing officer's Finding of Fact No. 4 contains an obvious typographical error. This finding identifies the beginning date of disability as March 24, 2005, instead of the correct date, March 24, 2006. We note that the DOI is March 23, 2006.

For service by mail the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR**
**STATE OFFICE OF RISK MANAGEMENT**
**P.O. BOX 13777**
**AUSTIN, TEXAS 78711-3777**.

_____
Veronica L. Ruberto
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Margaret L. Turner
Appeals Judge