APPEAL NO. 130361
FILED MARCH 22, 2013

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 December 18, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the only issue before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on [date of injury].

The claimant appealed the hearing officer's decision, contending that the personal comfort doctrine was applicable and "when doing a short errand such as going to the employee parking lot to get something out of a personal vehicle" does not take an employee out of the course and scope of employment. The respondent (carrier) responded, citing Appeals Panel decisions, and urging affirmance.

DECISION

Reversed and rendered.

The facts in this case are undisputed. The claimant, an administrative assistant, testified that [date of injury], was a very hot day and that toward the end of the work day she went to the company owned parking lot to crack open the windows of her vehicle so the vehicle would not be so hot for her drive home. The claimant testified her vehicle was very close to where she was working and that she had to get in the vehicle to roll down the windows. The parties agree that as the claimant exited her vehicle she twisted her right ankle. The parties stipulated that the claimant sustained an injury to her right foot on [date of injury].

The issue presented was whether the claimant's injury happened in the course and scope of employment. Section 401.011(12) defines course and scope of employment as:

> [A]n 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 hearing officer analyzed the disputed issue in terms of the personal comfort doctrine and commented in the Background Information that "there was no evidence that the claimant planned to use her vehicle to promote the affairs of the employer that day between the time she went to the vehicle and the time she drove home after work." The hearing officer noted that both parties cited Appeals Panel decisions. The hearing

officer concluded that based on the current status of the appellate decisions, the claimant was not in the course and scope of her employment at the time she sustained her injury. The hearing officer did not cite the appellate decisions on which he was relying.

The carrier, both at the CCH and in response to the claimant's appeal, cited Appeals Panel Decision (APD) 992215, decided November 8, 1999, a case where the employee was injured when returning to her workstation after going out to the employee parking lot in order to roll up her windows due to an impending storm. The Appeals Panel, in that case, cited APD 971607, decided September 30, 1997, a case where the claimant left her workstation to go to the parking lot to check the condition of her car to see if it would start when her shift ended. In both of those cases the Appeals Panel reversed the hearing officer's decision and held that the activity that caused the injury was not in the furtherance of the affairs of the employer and that the injury happened while the employee was engaged in a personal mission. We note that both of those cases had a dissent. The dissent in APD 971607, noted that the underpinning of the majority decision in those cases (holding the injured employee was not in the course and scope of employment) was the "notion that a worker moves in and out of the scope of employment during the paid work day depending upon microanalysis of the task at hand" a notion that had been rejected in Yeldell v. Holiday Hills Retirement and Nursing Center, Inc., 701 S.W.2d 243 (Tex. 1985).

While we agree that the fact situations in the above-cited cases are strikingly similar to the case at hand, those cases were specifically overruled in APD 001700, decided September 8, 2000. The facts in APD 001700 were that the employee had twisted her knee going down some stairs on the outside of the employer's building, while on break, to determine if she would need to have a coworker help start her car after work. The Appeals Panel in APD 001700 noted that APD 971607, *supra*, was followed in APD 992215, *supra*, and that the injuries in APD 971607 and APD 992215 were held "not compensable under the access doctrine."

In APD 001700*, supra*, the Appeals Panel cited Yeldell, *supra*, a Texas Supreme Court case where a nurse was injured as she was hanging up from a personal call and the telephone cord became entangled, overturned a coffee urn, and spilled hot coffee on her. The Appeals Panel quoted the Court as saying:

> Under appropriate circumstances, making a personal telephone call during working hours may be as essential as a rest period or refreshment break. In particular, a parent's telephone call to a minor child at bedtime is as reasonably necessary to a worker's well-being as quenching one's thirst or relieving hunger.

The Appeals Panel also cited an earlier case, Texas General Indemnity Company v. Luce, 491 S.W.2d 767 (Tex. Civ. App.-Beaumont, 1973, writ ref'd ), a case where an injury to an employee who had gone to pick up her paycheck, then went behind a serving line to speak with her fellow employees was found compensable. The Court of Appeals held:

> The law must be reasonable. . . . We are unable to apply the principle of deviation from employment so rigidly as to ignore the common habits of most people.

The Appeals Panel held that an act which is reasonably anticipated to be performed by an employee, performed while on the premises, and which does not deviate from the course of employment to the extent that an intent to abandon employment can be inferred, remains within the course and scope of employment. The Appeals Panel, in APD 001700, *supra*, specifically cited APD 971607*, supra*, and APD 992215, *supra* (cases where employees were involved in personal errands and were held to be outside the course and scope of their employment) and held to the extent that APD 971607 and APD 992215 conflicted with the decision in APD 001700, those cases are overruled. The Appeals Panel held that it declined to follow APD 971607, and APD 992215, and anticipated that the reasoning set forth in APD 001700 will be followed by the Appeals Panel in the future. APD 010105, decided February 27, 2001, cited APD 001700, and specifically noted that such deviations as going to the parking lot during stormy weather to check to see whether the employee's car windows were closed did not take the employee out of the course and scope of employment, and cases which held to the contrary that such a deviation takes the injured employee out of the course and scope of employment, would not be followed in the future. The Appeals Panel in APD 010105, noted that "such deviations are generally relatively brief in time."

In APD 001821, decided September 19, 2000, a case where the employee walked back to a chicken processing room to give some car keys to her boyfriend and injured her back as she turned to go back to leave the premises was held compensable. The Appeals Panel in APD 001821 cited APD 001700, *supra*, and the language in Luce, *supra*, and restated the principle that "an act which is reasonably anticipated to be performed by an employee, performed while on the premises, and which does not deviate from the course and scope of employment to the extent that an intent to abandon the employment can be inferred, remains within the course and scope of employment."

Other cases cited by the carrier are distinguishable from the instant case based on their facts.

In the case on appeal, the claimant's actions in walking to her car in the employer's parking lot to crack open the windows of her vehicle was not such a deviation as to take her out of course and scope of her employment. Accordingly, we reverse the hearing officer's determination that the claimant did not sustain a compensable injury on [date of injury], and render a new decision that the claimant did sustain a compensable injury on [date of injury].

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY**
**211 EAST 7TH STREET, SUITE 620**
**AUSTIN, TEXAS 78701-3218.1**

CONCUR:

Thomas A. Knapp
Appeals Judge

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge

[1] The zip code in the decision and order incorrectly lists 78701-3232.