IN THE SUPREME COURT OF TEXAS

No. 16-0337

STATE OFFICE OF RISK MANAGEMENT, PETITIONER AND CROSS-RESPONDENT

v.

EDNA A. MARTINEZ, RESPONDENT AND CROSS-PETITIONER

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTH DISTRICT OF TEXAS

Argued October 12, 2017

JUSTICE BROWN delivered the opinion of the Court, in which CHIEF JUSTICE HECHT, JUSTICE GREEN, JUSTICE JOHNSON, JUSTICE WILLETT, JUSTICE GUZMAN, JUSTICE LEHRMANN, and JUSTICE DEVINE joined.

JUSTICE BOYD did not participate in the decision.

This workers' compensation case requires us to consider the meaning of "issue" as Title 5 of the Labor Code uses that word. The court of appeals conflated Labor Code "issues" with appellate "issues" and consequently defined the word too narrowly. On that point, we reverse and remand to the court of appeals for further proceedings.

In her cross-petition, Edna Martinez asserts that the factual findings a hearing officer relied on in coming to a decision actually establish the decision's opposite. She also argues that error preservation requires a plaintiff to appeal adverse findings from an ultimately favorable administrative ruling. The court of appeals disagreed with her on both. So do we. On these points, we affirm.

I

Background

The Texas Department of Family and Protective Services (DFPS)[1] employed Edna Martinez as a caseworker. On Saturday, June 9, 2001, Martinez was working from home at her kitchen table in preparation for the next week's hearings when she got up, slipped in her kitchen, and fell. She broke her shoulder and hit her head in the fall.[2]

Martinez submitted a workers' compensation claim to the State Office of Risk Management (SORM), the claim administrator for state-agency employees. SORM denied her claim on the grounds that she was not injured in the course and scope of her employment, was not engaged in the furtherance of her employer's business at the time of the injury, and did not establish a causal connection between her injuries and her employment.

Martinez requested a benefit review conference, a mediation process by which an employee may dispute coverage denials. The Texas Workers' Compensation Commission conducted the conference.[3] At the conference, SORM argued that Martinez's injuries were not compensable because Martinez did not obtain permission to work at home—a violation of a DFPS policy "requiring advance approval for overtime." Martinez responded that caseworkers like her often worked from home without prior approval. The benefit review officer's report listed two "disputed

[1] When it hired Martinez, the agency was called the Texas Department of Protective and Regulatory Services. It has since changed names. We use the new name.

[2] The contested officer's report stated that "according to [Martinez's] testimony, [Martinez] got up from the kitchen table to get a new pen." By contrast, Martinez's supervisor testified that Martinez said she had fallen while getting a cup of coffee. The officer concluded: "Under the personal comfort doctrine, it would not have made much difference whether [Martinez] was going for a pen or coffee."

[3] The Texas Legislature has since abolished the Texas Workers' Compensation Commission and replaced it with the Texas Department of Insurance Division of Workers' Compensation. The Commission's appeals panel issued its decision before the legislature made this change.

issue[s]" that remained unresolved when the conference concluded: "Did [Martinez] sustain a compensable injury on June 9, 2001?" and "Did [Martinez] sustain disability as the result of the June 9, 2001, claimed injury, and if so, for what period(s)?"

The parties proceeded to a contested case hearing. SORM reasserted its argument that Martinez violated agency policy by working from home without prior approval. This argument did not persuade the hearing officer, who ruled that Martinez was "furthering the business and affairs" of her employer when the fall occurred. But the officer also found that Martinez's injury "did not involve any instrumentality of the [e]mployer." As a result, the officer concluded, Martinez's injury "did not arise out of nor [occur] in the course and scope of her employment" and thus Martinez "did not sustain a compensable injury."

Martinez then appealed to the Texas Workers' Compensation Commission's Appeals Panel. The panel reversed the hearing officer's decision and rendered a decision that Martinez "sustained a compensable injury." Citing *Garcia v. Texas Indemnity Insurance Co.*, 209 S.W.2d 333 (Tex. 1948), the panel stated that "[Martinez's] injuries arose out of her employment because the employment had a causal connection with her injuries." The appeals panel also noted that evidence existed to support the hearing officer's finding that Martinez "had authority to work from home"—the DFPS's alleged overtime policy notwithstanding.

SORM appealed to the district court, arguing that the panel's decision was "contrary to the law and facts." Both parties moved for summary judgment. In its motion, SORM did not reassert the ground it had argued throughout the administrative phase—that Martinez violated agency policy by working from home and that therefore her injury was not compensable. Instead, as a new ground for precluding compensability, SORM argued that Martinez violated a statute by working

from home. The trial court denied Martinez's motions for summary judgment and granted SORM's motion.

Martinez appealed the trial court's ruling that she did not suffer a compensable injury. The court of appeals held that SORM moved for summary judgment in the trial court on a ground never presented in the administrative review process—that Martinez violated a statute by working from home. ___ S.W.3d ___, ___ (Tex. App.—San Antonio 2016). The Labor Code limits the trial court's review of an appeals panel's decision to "issues decided by the appeals panel and on which judicial review is sought." TEX. LAB. CODE § 410.302(b). Because SORM never presented the statutory-violation ground to the appeals panel, the court of appeals reasoned that the panel necessarily could not have "decided" that "issue." *See id.* Since SORM's motion for summary judgment asserted only the statutory-violation ground, the court of appeals held that the Labor Code barred the trial court from exercising jurisdiction over SORM's motion. *See* ___ S.W.3d at ___. Thus, the court of appeals' decision depended on characterizing SORM's statutory-violation ground as an "issue" within the Workers' Compensation Act. *See id.*

Martinez also appealed the trial court's denial of her summary-judgment motion. Martinez had moved on the ground that SORM waived judicial review of the compensability of her injuries by failing to bring before the appeals panel all of the factual findings that the hearing officer made during the contested case hearing. The court of appeals noted that "using the hearing officer's findings to argue the hearing officer determined that Martinez sustained a compensable injury is contrary to the hearing officer's finding that [her injury] 'did not arise out of nor [occur] in the course and scope of her employment' and its conclusion that Martinez 'did not sustain a compensable injury.'" *Id.* The court of appeals reversed the grant of summary judgment for

SORM, affirmed the denial of Martinez's motion for summary judgment, and remanded to the trial court. *See id.* at ___.

SORM and Martinez both filed petitions for review in this Court. We take each in turn.

II

SORM's Appeal

SORM asks us to determine whether its statutory-violation ground is an *issue* that precluded jurisdiction as opposed to an *argument* related to an issue over which the trial court had proper jurisdiction. This requires us to consider the meaning of "issue" as the Labor Code uses it. "Statutory construction is a legal question we review de novo." *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625 (Tex. 2008). "In construing statutes, we ascertain and give effect to the Legislature's intent as expressed by the language of the statute." *Id.* (citing *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006)). We must use any definitions the legislature prescribes. *See* TEX. GOV'T CODE § 311.011(b). Otherwise, we construe the statute's words according to their plain meaning. *See Tex. Dep't of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 642 (Tex. 2004); *see also Tex. Dep't of Protective & Regulatory Servs. v. Mega Child Care, Inc.*, 145 S.W.3d 170, 177 (Tex. 2004) (noting that when statutory text is unambiguous, courts must adopt the interpretation that the statute's plain language supports unless doing so would lead to absurd results).

A. The Labor Code

We begin with the Labor Code's text. When a statute provides a definition, we must apply it. TEX. GOV'T CODE § 311.011(b). Although Chapter 410 uses the noun "issue" more than forty times, it never provides an explicit definition. *See* TEX. LAB. CODE §§ 410.001–410.308. But the Labor Code does state that the trial court renders "judgment on an issue described by Section

410.301(a).” *Id.* § 410.304(b). However, section 410.301(a) does not use the word “issue” in its body. Instead, that section discusses “a final decision of the appeals panel regarding compensability or eligibility for or the amount of income or death benefits.” *Id.* Because there is no explicit definition, we must assume the Legislature intended the phrase “a final decision of the appeals panel regarding compensability or eligibility” to “describe” the “issues” on which the trial court may render a judgment. *See id.* §§ 410.301(a), 410.304(b).

The administrative review process begins with a benefit review conference—“a nonadversarial, informal dispute resolution proceeding.” *Id.* § 410.021. The conference’s purpose is to “delineate the disputed issues” and “mediate and resolve disputed issues by agreement.” *Id.* The Labor Code requires a benefit review officer to “prepare a written report that details each issue that is not resolved at the benefit review conference.” *Id.* § 410.026(a)(4). “The report must also include: (1) a statement of each resolved issue; (2) a statement of each issue raised but not resolved; [and] (3) a statement of the position of the parties regarding each unresolved issue . . . .” *Id.* § 410.031(b)(1)–(3).

The parties next proceed to a contested case hearing. *See id.* § 410.151(a). There, the Labor Code bars a hearing officer from considering any “issue that was not raised at a benefit review conference or that was resolved at a benefit review conference” unless “the parties consent” or “the commissioner determines that good cause existed for not raising the issue at the conference.” *Id.* § 410.151(b). The benefit review officer provides “a written description of the benefit dispute or disputes to be considered by the hearing officer” at the contested case hearing. 28 TEX. ADMIN. CODE § 142.7(a).

If a party wishes to appeal a contested-case-hearing officer's findings, the party may bring their case to an appeals panel. *See* TEX. LAB. CODE § 410.202(a). The party must "clearly and concisely rebut . . . the decision of the [hearing officer] on each issue on which review is sought." *Id.* § 410.202(c); *see also* 28 TEX. ADMIN. CODE § 143.3(a)(2) ("The request [for an appeals panel's review shall] clearly and concisely rebut each issue in the hearing officer's decision that the appellant wants reviewed, and [it must] state the relief the appellant wants granted . . . .").

The appeals panel's decision marks the end of the administrative review process. *See* TEX. LAB. CODE § 410.205(a). Only after exhausting that process may the parties seek judicial review. *See id.* § 410.251. Chapter 410 subchapter G bears the title "Judicial Review of Issues Regarding Compensability or Income or Death Benefits." *See id.* §§ 410.301–410.308. Within subchapter G, section 410.301(a) provides for "[j]udicial review of a final decision of the appeals panel regarding compensability or eligibility for or the amount of income or death benefits." *Id.* § 410.301(a). The following section provides that "[a] trial under [subchapter G] is limited to issues decided by the appeals panel and on which judicial review is sought." *Id* § 410.302(b).

At trial, "[t]he pleadings must specifically set forth the determinations of the appeals panel by which the party is aggrieved." *Id.* "The party appealing the decision on an issue described in Section 410.301(a)" bears the burden of proof. *Id.* § 410.303. Finally, "the court in rendering its judgment on an issue described by Section 410.301(a) shall consider the decision of the appeals panel." *Id.* § 410.304(b). The parties may settle a "claim or issue," but they may not "settle[] contrary to the provisions of the appeals panel decision issued on the claim or issue unless a party to the proceeding has filed for judicial review." *Id.* § 410.256(a). The Labor Code imposes further restrictions on parties wishing to settle "an issue of impairment." *Id.* § 410.256(d).

B. Arguments

SORM argues that within the Labor Code, "issue" means a disputed matter specifically defined at the initial benefit review conference and upon which the hearing officer makes a determination. Here, those "issues" were "whether Martinez sustained a compensable injury[] and whether she had a disability as a result of the claimed injury." Thus, in SORM's view, both the policy ground it asserted in the administrative phase and the statutory ground it asserted in its motion for summary judgment are "arguments" relating to the "issue" of compensability. In particular, SORM contends these arguments preclude compensability.

To support its definition, SORM directs our attention to the Labor Code's structure, case law, and Justice Pulliam's dissent in the court of appeals in this case. *See* ___ S.W.3d at ___ (Pulliam, J., dissenting) ("I would hold that 'issue,' as used in Section 410.301 and .302, refers to the disputed matters enumerated therein, that is, compensability, income, or death benefits."); *see also Tex. Workers' Comp. Ins. Fund v. Tex. Workers' Comp. Comm'n*, 124 S.W.3d 813, 820 (Tex. App.—Austin 2003, pet. denied) ("Throughout the workers' compensation act, 'issue' is never used to refer to legal arguments or doctrines; rather, 'issue' is used to refer to disputed matters related to the underlying workers' compensation claim."). SORM argues the court of appeals erred by construing Labor Code "issues" the same way that courts construe legal "issues" in appellate practice (i.e., as points of error).

Martinez argues that "issue" means "the specific grounds for denial or recovery raised in the administrative [process]." In this case, SORM raised the policy as a ground for denial during the administrative process, but it never raised the statutory ground. Thus, on Martinez's definition,

whether the statute applied and whether Martinez violated it are separate issues—neither of which SORM could have raised in the trial court.

To support her argument, Martinez points to subchapter G and section 410.301, both of which bear the title "Judicial Review of *Issues Regarding Compensability* or Income or Death Benefits." TEX. LAB. CODE § 410.301 (emphasis added). She argues the Labor Code's use of "regarding" implies that the "issues" are the arguments for or against compensability, not compensability itself. Moreover, Martinez argues that a broad definition of "issue" would frustrate the legislative intent that a party exhaust its administrative remedies. She also urges that allowing a party to add new issues in the trial court would circumvent the administrative process and prohibit the Workers' Compensation Commission from making the initial decisions that the Labor Code requires of it.

Notably, the commission's definition of "issue" is broader than Martinez's but narrower than SORM's. The appeals panel treats the hearing officer's statement of issues as the "issues" before it.[4] The Labor Code requires the commission to maintain a precedent manual.[5]

[4] *See, e.g.*, *Appeal No. 170558*, TEX. DEP'T INS. (May 2, 2017), http://www.tdi.texas.gov/appeals/2017cases/170558r.pdf ("The specific issue before the hearing officer as certified and amended at the [contested case hearing] was whether the claimant is entitled to [life-insurance benefits] from September 20, 2016, based on a physically traumatic injury to the brain resulting in incurable imbecility. The hearing officer's determination that the claimant is entitled to [life-insurance benefits] from September 20, 2016, based upon the total and permanent loss of use of both feet at or above the ankle exceeded the scope of the issue before him."); *Appeal No. 042740*, TEX. DEP'T INS. (Dec. 21, 2004), http://www.tdi.texas.gov/apeals/2004cases/042740r.pdf ("We would agree that the stated issue at the [contested case hearing] did not specifically include a cervical strain. However, even though the stated issue was limited to specific diagnoses of cervical herniations and radiculopathy, what was actually litigated was generally whether the claimant's compensable injury extends to include an injury to his cervical spine.").

[5] Although statutorily mandated, the manual's introduction includes the caveat: "The manual is an abbreviated summary of selected aspects of Texas workers' compensation law. An accurate understanding of the law covered in the manual may require reading the Act, rules, and cases referenced. The content of the manual does not constitute official [Department of Workers' Compensation] policy." *See Appeals Panel Decision Manual – Table of Contents*, TEX. DEP'T INS., http://www.tdi.texas.gov/wc/idr/apdmtoc.html (last visited Dec. 15, 2017) [*Appeals Manual*].

Id. § 410.203(e). The manual lists twenty-two "issues" under the "Liability/Compensability Issues" section.[6] These issues include "Existence of Coverage," "Date of Injury," "Compensability/Injury (Existence)," "Extent of Injury," "Voluntary Social/Recreational Activity," and "Course and Scope of Employment." The "Course and Scope of Employment" issue lists sub-issues such as "Idiopathic Falls," "Personal Comfort Doctrine," and "Violation of Employer's Policy." Thus, under the commission's interpretation, the two issues in this case are "course and scope of employment" (which the benefit review officer referred to as "compensability") and "Compensability/Injury" (which the benefit review officer referred to as "disability").

The court of appeals held that the trial court lacked jurisdiction because SORM "never presented [its statutory ground] for consideration in the administrative review process." ___ S.W.3d at ___. But, of course, if the statutory ground is an argument rather than an issue, the Labor Code does not require SORM to present it during the administrative process. *See* TEX. LAB. CODE § 410.301(a). In any case, it appears the court of appeals' definition would have permitted SORM to raise its policy ground in its motion for summary judgment—but only because SORM had raised that specific "argument" in the administrative process. *See* ___ S.W.3d at ___.

C. Analysis

The definition of "issue" cannot be as narrow as Martinez argues. Contrary to the suggestion in her briefing, nothing in the Labor Code supports a definition that would require SORM to raise whether the Code applied and whether Martinez violated it as separate issues.

[6] The manual contains nine sections overall: "Attorney Fee Issues," "Liability/Compensability Issues," "Death Benefit Issues," "Employer Reimbursement Issues," "Income Benefit Issues," "Medical Benefit Issues," "Procedural Issues," "Spinal Issues," and "Wage Issues." *See Appeals Manual*, *supra* note 5.

Instead, as the Labor Code defines it, an issue eligible for judicial review is "a final decision of the appeals panel regarding compensability or eligibility." TEX. LAB. CODE §§ 410.301(a), 410.304(b).

Likewise, the headings for subchapter G and section 410.301 (both of which include the phrase "Issues Regarding Compensability") do not mandate Martinez's narrow definition. She argues that the headings bolster her claim that an issue cannot be as general as whether compensation is payable, because then there would only ever be one issue. *See id.* § 401.011(10) (partially defining "compensable injury" as an injury "for which compensation is payable"). However, we must be wary of giving too much weight to a section title's use of the phrase "issues *regarding* compensability" when the Labor Code's text refers to "the issue *of* compensability." *See id.* §§ 410.301, 409.022(b) (emphasis added). The headings are just that—headings—and they do not delineate the term's narrowest limits.

Neither does our common understanding of the term require such a narrow definition. In general, an "issue" is a "point in dispute between two or more parties." *Issue*, BLACK'S LAW DICTIONARY (10th ed. 2014). A party may waive an issue by failing to present it in the courts below. *See Greene v. Farmers Ins. Exch.*, 446 S.W.3d 761, 763 n.4 (Tex. 2014). By contrast, however, "parties are free to construct new *arguments*" in support of unwaived issues properly before the court. *Id*.

We agree with the Austin court of appeals that the Labor Code requires a definition narrower than *Black's*, but not as narrow as Martinez's. *See Tex. Workers' Comp.*, 124 S.W.3d at 820 (listing instances in which the Labor Code uses the term "issue"). We start with the premise that Chapter 410 uses the noun "issue" in the same way throughout the review process that it

establishes. *See* TEX. LAB. CODE § 410.021 (explaining that the "benefit review conference is . . . designed to . . . delineate the disputed issues"); *id.* § 410.151(b) (limiting the hearing officer's decision to issues "raised at a benefit review conference," but providing exceptions not relevant here); *id.* § 410.203(b) (indicating that the appeals panel considers the hearing officer's decision and decides for itself whether to reverse and render, reverse and remand, or affirm); *id.* § 410.302(b) (confining judicial review to "issues decided by the appeals panel").[7] Since the benefit review conference is part of the review process, the "issues" that the review officer identifies remain the same through hearing, appeal, and judicial review.

This analysis provides us with the boundaries for determining what constitutes an "issue" eligible for judicial review. First, within Chapter 410, the term "issue(s)" refers to the "disputed issues" that the review officer identifies at the benefit review conference. *See id.* § 410.021. Second, for purposes of Chapter 410, "issues" are different from "issues" in the appellate context. Labor Code "issues" cannot be points of error because Labor Code issues begin in the benefit review conference, at which point no error can yet have occurred. *See id.* Finally, although the dictionary definition is not dispositive, it does persuade us that "issue" is a term that stands in useful contrast to "argument." That is, if the parties offer a certain point as an argument on a particular issue, that point will not normally be an issue itself. With these principles in mind, we turn our attention to this case.

[7] The definition of "issue" in Chapter 410 as a whole is broader than the definition that bounds the subset of issues on which the trial court may render judgment—i.e., issues regarding "compensability or . . . income or death benefits." *See* TEX. LAB. CODE §§ 410.304(b), 410.301(a). That is, section 410.301(a) defines the issues on which the trial court may render judgment. It does not define "issues" for purposes of Chapter 410 as a whole. *See id.* § 410.255 (outlining the process "for issues *other than*" compensability (emphasis added)).

Throughout the administrative review process, the parties in this case disputed the same two points: whether Martinez was injured in the course and scope of her employment and whether she was disabled. The benefit review officer's report listed two unresolved issues: "Did [Martinez] sustain a compensable injury . . . ?" and "Did [Martinez] sustain a disability . . . ?" Under the compensability heading, the benefit review officer noted that SORM's ultimate "[p]osition" was that Martinez's injury did not occur in the "course and scope of her employment."

The parties disputed the same two issues at the contested case hearing. The hearing officer made the finding of fact that "[Martinez] sustained an injury that did not arise out of nor [occur] in the course and scope of her employment." The officer also concluded that "[b]ecause she did not sustain a compensable injury, [Martinez] did not have [a] disability."

And the parties also disputed these issues before the appeals panel. The panel's decision provides that Martinez's fall occurred while she was "in the course and scope of her employment furthering the business affairs of her employer" and that her injuries "arose out of her employment because the employment had a causal connection with her injuries." The appeals panel rendered a decision "that [Martinez] sustained a compensable injury and that [Martinez] had disability from June 10, 2001, through the date of the [contested case hearing]."

Here, the foremost disputed issue was consistently whether Martinez was in the course and scope of her employment when she fell. At different levels, the parties made different arguments and the administrative officers decided this issue on different grounds:

- At the benefit review conference, Martinez argued she had approval to work from home. SORM disagreed. It argued that since Martinez was not in the course and scope of her employment when she was injured, she did not sustain a disability

entitling her to benefits. The benefit review officer reported that the two disputed issues remaining after the conference were whether Martinez sustained a compensable injury and whether she was therefore disabled.

- At the contested case hearing, the hearing officer asked both parties if "compensable injury" and "disability" were the two disputed issues "as the parties understand them." SORM and Martinez agreed those were the two issues. At the hearing, Martinez's representative stated Martinez "intend[ed] to show today by her testimony that . . . she was injured in the course and scope of her employment" because Martinez's injury occurred during an activity "that has to do and originates with work." SORM argued that it was "not aware" that Martinez was working from home and that she did not have "prior approval" to do so.
- The hearing officer found that Martinez's injuries did not "arise out of her employment" because neither a "hazard . . . inherent in the employment" nor an "instrumentality of the [e]mployer" was present.
- The appeals panel decided Martinez was in the course and scope of her employment because she was "furthering the business affairs of her employer." And her injuries "arose out of her employment because the employment had a causal connection with" her fall.

In this case, the "disputed issue" and the issue "decided by the appeals panel and on which judicial review is sought" are the same—whether Martinez was in the course and scope of her employment at the time of her accident. *See id.* §§ 410.021, 410.302(b). The policy ground SORM argued in the administrative process and the statutory ground it argued in its motion for summary

judgment are both arguments that support resolving the issue in SORM's favor. Consequently, SORM was free to raise them at any time. Because the court of appeals expressed no opinion on the merits of SORM's statutory argument, neither need we. We reverse the court of appeals and remand to that court to consider the merits of Martinez's statutory argument and for further proceedings consistent with this opinion.

III

Martinez's Cross-Petition

Martinez raises two issues in her cross-petition. First, she points to the hearing officer's findings that Martinez's injury occurred while she was "furthering the business and affairs of the [e]mployer . . . as part of her normal work duties" and "in the course of her work." Martinez argues these findings demonstrate that her injury both arose out of and occurred in the course and scope of her employment. The court of appeals agreed that the officer's findings are relevant to the "course and scope of employment" element of the compensable-injury inquiry. *See* ___ S.W.3d at ___. But it held the findings were not relevant to the "arises out of employment" element. *Id.* Accordingly, the court of appeals agreed with the trial court that summary judgment on compensability was inappropriate. *See id.* Martinez argues the findings conclusively establish both elements.

Second, Martinez argues that because SORM did not challenge the findings, and that because the findings establish compensability, SORM cannot seek judicial review of any aspect of the compensability of her injury. The court of appeals did not reach this issue, but neither did it concede it. *See id.* ("[*E*]*ven if* SORM was required to appeal the hearing officer's factual findings . . . ." (emphasis added)). We address each issue in turn.

A. Contested Case Hearing Findings

The Labor Code's definition of "compensable injury" requires that the injury "arise[] out of and in the course and scope of employment." TEX. LAB. CODE § 401.011(10). Our precedent demonstrates that this requirement has two elements. *See, e.g.*, *Leordeanu v. Am. Prot. Ins. Co.*, 330 S.W.3d 239, 241 (Tex. 2010) (explaining that a similar requirement in the 1917 Texas Workers' Compensation Act "had two components"). First, the injury must "relate to or originate in . . . the employer's business." *SeaBright Ins. Co. v. Lopez*, 465 S.W.3d 637, 642 (Tex. 2015) (quoting *Leordeanu*, 330 S.W.3d at 241). The court of appeals referred to this as the "arises out of" element. *See* ___ S.W.3d at ___. Second, the injury must "occur in the furtherance of[] the employer's business." *Seabright*, 465 S.W.3d at 642 (quoting *Leordeanu*, 330 S.W.3d at 241). The court of appeals referred to this as the "course and scope" element.[8] *See* ___ S.W.3d at ___. For clarity, we use the same terms that the court of appeals did.

Martinez argues that the contested-case hearing's findings conclusively established both elements. Before determining whether the findings were conclusive, we must explore what they established. She relies on two findings of fact from the hearing officer's report: that she was "furthering the business and affairs of" her employer and that she was in "the course of her work"

[8] There are two ways to parse the phrase "arises out of and in the course and scope of employment." Both versions comprise the same two elements. The phrase could mean that the injury must "arise *out of* the course and scope" and must "arise *in* the course and scope." Or the phrase could mean that the injury must "arise out of employment" and must "[occur] in the course and scope of employment." Both versions capture the two elements that a workers' compensation claim has always required: origination and furtherance. *See* Act effective Mar. 28, 1917, 35th Leg., R.S., tit. 130, ch. 3, art. 8309, *printed in 2 Revised Civil Statutes of the State of Texas*, at 2391, 2414 (Austin, A. C. Baldwin & Sons 1925) (defining "course of employment" to require origination and furtherance); *see also Leordeanu*, 330 S.W.3d at 244 ("Although the [1917 Workers' Compensation] Act was completely overhauled in 1989, the operative language of section 401.011(12) largely tracks the 1917 definition of course of employment . . . . The revisions . . . appear to have been attempts at clarification rather than substantive changes."). Thus, it makes little difference that the court of appeals referred to the elements as "arises out of" and "course and scope" rather than "origination" and "furtherance."

when she fell. The first finding explicitly refers to "furtherance," which is the traditional way in which courts state the requirement's second element. *See, e.g.*, *Seabright*, 465 S.W.3d at 642. Similarly, the second finding mentions "course." We agree with the court of appeals that both findings relate to the "course and scope" (i.e., "furtherance") element of the compensability test. *See* ___ S.W.3d at ___.

Our conclusion finds support in the finding of fact that immediately follows those on which Martinez relies. Namely, the hearing officer also concluded that Martinez's injury "did not involve any instrumentality" of her employer. Injuries that involve an employer's instrumentality are more likely to arise out of employment than to arise by chance. Thus, it appears this finding relates to the "arises out of" element. The hearing officer's next finding offers further support. It states that Martinez's injury "did not arise out of nor [occur] in the course and scope of her employment." The officer's use of "nor" demonstrates that the report contemplated the distinction between the two elements. And the finding itself explicitly states the opposite of what Martinez urges that the report establishes. The report's conclusion of law undercuts Martinez's argument even further: Martinez "did not sustain a compensable injury."

We agree with the court of appeals that Martinez is not free to pick and choose among the hearing officer's findings of fact. *See id.* This is especially true when the conclusion she asks us to draw is contrary to some of the report's findings of fact, to its main conclusion of law, and to the very decision that the hearing officer used the findings to support. Since Martinez's argument—at most—established only the "course and scope" element, SORM certainly remained free to argue that the "arises out of" element precluded compensability. Thus, the court of appeals properly affirmed the trial court's denial of Martinez's motion for summary judgment. *See id.*

B. Preservation

The hearing officer's findings established, if anything, that Martinez was within the "course and scope" of employment when she fell. Our next task is to determine whether the Labor Code requires SORM to appeal those findings. We conclude it does not.

The Labor Code limits the trial court's judicial review to those "issues decided by the appeals panel." TEX. LAB. CODE § 410.302(b). As the court of appeals noted, a split exists in the appellate courts "on whether the term 'issues' encompasses each factual finding of a hearing officer at a contested case hearing, thereby requiring a party to appeal each adverse factual finding to avoid forfeiture of judicial review." *See* ___ S.W.3d at ___ (first citing *Zurich Am. Ins. Co. v. Dehose*, No. 01-13-00344-CV, 2014 WL 3512769, at *8–11 (Tex. App.—Houston [1st Dist.] July 15, 2014, pet. denied) (mem. op.); and then citing *Lopez v. Zenith Ins. Co.*, 229 S.W.3d 775, 778–79 (Tex. App.—Eastland 2007, pet. denied)).

Within the administrative review process, the hearing officer must determine whether benefits are due and must issue a decision that includes findings of fact as well as conclusions of law. TEX. LAB. CODE § 410.168(a). To appeal the officer's decision to the appeals panel, the appealing party must rebut "the decision of the [hearing officer] on each issue on which review is sought." *Id.* § 410.202(c). The appeals panel's decision may include a discussion of "errors at the contested case hearing" including "findings of fact for which insufficient evidence exists" and "findings of fact or conclusions of law regarding matters that were not properly before the [hearing officer]." *Id.* § 410.204(a-1)(3)(a), (c). Then, on judicial review, the Labor Code limits the de novo trial to "issues decided by the appeals panel." *Id.* § 410.302(b).

The Labor Code makes clear that a hearing officer's incorrect findings of fact are "errors" but not "issues." While issues require individual appeal, errors do not. *See id.* § 410.202(c). Accordingly, a party need not appeal every finding related to an issue in order to preserve the issue for judicial review. Because the trial court conducts review under the modified de novo standard, there is no requirement that it defer to the hearing officer's factual findings. Thus, a party's failure to challenge a factual finding does not preclude a trial court from reviewing the issue that the finding purportedly supports.

Consequently, even if the hearing officer's report did establish that Martinez was in the "course and scope of employment" when she fell, the officer's ultimate conclusions that Martinez "did not sustain a compensable injury" and "did not have [a] disability" are the only issues either party could have appealed. The officer resolved these issues in SORM's favor. As a result, on judicial review, SORM remained free to present arguments relating to both elements of compensability (i.e., that an injury must "arise" out of the "course and scope" of employment). *See id.* § 401.011(10).

IV

Conclusion

The line between issues and arguments may not always be easy to articulate, but the parties' actions usually point to where it lies. Edna Martinez injured herself while working from home. The foremost issue is whether her home is a location that can give rise to a workers' compensation claim. We remand to the court of appeals to consider all of SORM's arguments on this issue. By contrast, we agree with the court of appeals that the hearing officer's report establishes a line between the findings of origination and furtherance. And even if that were not so, the Labor Code

requires parties to appeal "issues," not findings—especially not findings that purportedly "support" an outcome contrary to the decision that the hearing officer renders. We affirm the court of appeals' decision upholding the trial court's denial of Martinez's motion for summary judgment.

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Jeffrey V. Brown
Justice

OPINION DELIVERED: December 15, 2017