

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F210517**

<b>MATTHEW J. SATTERFIELD, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>RICELAND FOODS, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>LIBERTY MUTUAL FIRE INSURANCE COMPANY, INSURANCE CARRIER/TPA</b>	<b>RESPONDENT</b>

**OPINION FILED NOVEMBER 26, 2003**

Hearing before Chief Administrative Law Judge David Greenbaum on November 7, 2003, at Forrest City, St. Francis County, Arkansas.

Claimant represented by Mr. Gary Davis, Attorney-at-Law, Little Rock, Arkansas.

Respondents represented by Mr. Michael E. Ryburn, Attorney-at-Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted November 7, 2003, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this case on October 1, 2003, and a Prehearing Order was filed on October 2, 2003. At the hearing, the parties announced that subject to an agreed change concerning the appropriate compensation rates, the issues, stipulations, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employment relationship existed at all relevant times, including September 10, 2002; that claimant earned sufficient wages to entitle him to compensation rates of \$306.00 per week for temporary total disability and \$230.00 per week for permanent partial disability in the event compensability was overcome; and that respondents had controverted the claim in its entirety.

The primary issue presented for determination concerned compensability. Although the parties did not stipulate that the claimant sustained an injury at the workplace on September 10, 2002, there is no genuine dispute that the claimant sustained a significant back injury during the course of his employment on September 10, 2002. Further, the nature and extent of claimant's injury is not disputed. Rather, the issue to be addressed is whether the claimant's injury was substantially occasioned by the use of illegal drugs.

Claimant contended, in summary, that he sustained a compensable injury as the result of a specific event identifiable in time and place of occurrence on September 10, 2002; that he was entitled to temporary total disability for the period beginning September 11, 2002, and continuing through the present, maintaining that his healing period had not ended; that respondents should be held responsible for all hospital, medical, and related expenses, together with continued, reasonably necessary medical treatment; and that a controverted attorney's fee should attach to any benefits awarded.

The respondents maintained that claimant's accident and resultant injury was substantially occasioned by the use of marijuana.

The record in this case is composed solely of the transcript of the November 7, 2003, hearing containing numerous exhibits.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has failed to prove, by a preponderance of the evidence, that he sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws. Specifically, a drug test conducted following the claimant's injury was positive for marijuana metabolites. The claimant has failed to introduce sufficient evidence to rebut the presumption created by A.C.A. §11-9-102(4)(B)(iv) that the accident resulting in claimant's injury was not substantially occasioned by the use of illegal drugs.

4. Respondents have controverted this claim in its entirety.

#### DISCUSSION

\_\_\_\_\_The basic facts surrounding how the claimant's accident and injury occurred are not disputed. Likewise, it is undisputed that the claimant's injury occurred while working for the respondent, Riceland Foods, Inc. The claimant candidly admitted to a history of chronic marijuana use. However, the claimant maintained that at the time of the accident, he had been "clean" for approximately three (3) months. The record reflects that the claimant took a pre-employment drug screen before going to work for the employer. The initial drug screen was obtained through a urine sample which may be manipulated and is not as revealing as drug screens obtained through blood analysis. The claimant indicated that "I had to detox for it just to pass it out of my system, to pass the drug test." which he maintained required abstaining for a month to a month and a half prior to the initial drug screen. The record reflects that the claimant then worked approximately six (6) weeks before the admitted incident and resulting injury occurred on or about September 10, 2002. After the accident, the claimant was taken to the emergency room at the Cross Ridge Hospital in Wynne, Arkansas, where a post-accident blood sample was taken. The blood screen tested positive for marijuana metabolites. The claimant has not challenged the drug test showing the presence of marijuana metabolites. (Tr.51, 70-73)(Resp. Ex. 1)

The respondents contend that claimant's accident and resulting injury was substantially occasioned by the use of marijuana. It relies primarily on the positive drug screen and the rebuttable presumption created by Ark. Code Ann. §11-9-102(4)(B) (Repl. 2002) which states, in part:

"Compensable injury" does not include:

(iv)(a) Injury where the accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of a physician's orders.

(b) The presence of alcohol, illegal drugs or prescription drugs used in contravention of a physician's orders shall create a rebuttable presumption that the injury or accident was substantially occasioned by the use of alcohol, illegal drugs or prescription drugs used in contravention of a physician's orders.

\* \* \* \* \*

(d) An employee shall not be entitled to compensation unless it is proved by a preponderance of the evidence that the alcohol, illegal drugs or prescription drugs used in contravention of a physician's orders did not substantially occasion the injury or accident.

The documented presence of marijuana in a worker's body creates a rebuttable presumption that his injury was substantially occasioned by the illegal use of drugs. *Weaver vs. Whitaker Furniture Company.*, 55 Ark. App. 400, 935 S.W.2d 584 (1996). Despite this presumption, a claimant may still be entitled to compensation if he proves, by a preponderance of the evidence, that the illegal use of drugs did not substantially occasion the injury or accident. *Billings vs. Plum Creek Timber Co.*, Full Commission Opinion, filed February 28,

2002 (E910817). Whether the presumption has been overcome is a question of fact for the Commission. *Express Human Resources III vs. Terry*, 61 Ark. App. 258, 968 S.W.2d 630 (1998).

Again, the claimant has not challenged the drug tests showing the presence of marijuana metabolites. The claimant apparently maintains that he was not impaired at the time of his accident, and that the accident was not substantially occasioned by his use of marijuana. There are basically two (2) ways to rebut the presumption that drug use substantially occasioned the claimant's injury. One way to rebut the presumption would be through expert testimony such as the testimony of a toxicologist that the level of marijuana metabolites were of such low concentration such that it could not reasonably impair and cause an accident. No expert testimony was offered. The primary evidence offered to rebut the presumption created by claimant's drug screen is the testimony of the claimant himself. A claimant's testimony is never considered uncontroverted. Indeed, the testimony of an interested party is always considered to be controverted. *Lambert vs. Gerber Products Co.*, 14 Ark. App. 88, 684 S.W.2d 842 (1985); *Nix vs. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994); *Continental Express vs. Harris*, 61 Ark. App. 198, 965 S.W.2d 84 (1998). It is the exclusive function of the Commission to determine the credibility of witnesses and the weight to be given their testimony. *Johnson vs. Riceland Foods*, 47 Ark. App. 71, 884

S.W.2d 626 (1994). Furthermore, the Commission is not required to believe the testimony of the claimant or other witnesses, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Morelock vs. Kearney Co.*, 48 Ark. App. 227, 894 S.W.2d 603 (1995).

I did not find the claimant to be a credible witness. Despite the claimant's assertion that he did not smoke marijuana for approximately three (3) months before his accident, the record as a whole does not support this contention. The record is replete with inconsistencies and contradictions which will be set out, in part, further below. The record reflects that the claimant violated company policy concerning the use of the manlift which the claimant was operating at the time of his injury. In fact, the claimant's course of conduct and actions surrounding the use of the manlift while wearing a backpack supports the conclusion that the claimant was impaired at the time. Further, the claimant's failure to utilize safety devices built into the operation of the manlift further reflects that the claimant was impaired. In addition, the testimony of co-workers called as corroborating witnesses by the claimant supports rather than rebuts the presumption that the use of illegal drugs substantially occasioned the accident.

The claimant's description of the events surrounding the incident is set out below:

Q Tell us what happened on September 10, 2002.

A I was – I just came down because the guy I was working with named Mike – I'm not sure of his last name. I think it's Mike Smith. He called me down there to help him do something. I'm not exactly sure right now what it was, but I went down there. I was done, so I went back up to the dryer floor. Well, it's not the dryer floor. It's called the top floor. I figured I'd take my lunch, and the fan that I was told I could use, because my fan had broke a couple of days before that, was up in my little office that I've got up there. It's kind of like a breakroom. I put the fan on it. I had my back pack on it, which contained my lunch, and just proceeded to go up the manlift, and I got stuck in between floors.

Q Let's stop for a second, Mr. Satterfield, and let's talk about the fan.

A Okay.

Q Did you work – most of your work – by the way, you worked graveyard shift, did you not?

A Yes, sir.

Q 7:00 p.m. in the evening until 7:00 a.m. in the morning?

A Yes, sir.

Q And when you say that you were working or using this fan, what is the purpose of this fan?

A It's just to clear out the offices. There's a lot of smoke – not smoke but there's a lot of dust and stuff that flies around up on the floor that I'm on, and you could turn the fan on to clear out the dust and stuff or to keep you cool. It's hot up on those higher levels, so whenever you get time to sit down, it's good to do it in front of a fan.

Q What do you do up there on that second level?

A Well, I do cleanup and I also route the rice into the bins they need to go into from the top floor.

Q Do you have occasions where you just sit down and observe and wait for some next process to take place and something like that?

A Yes, sir. There's only two ways at a time that you can get the rice into the bins, and it's on either side of the building. There's a – I don't know exactly what you would classify it as, but a running board that runs it, too. You've got at different sections open up these chutes to go into the bins, and that was my job, was to get these chutes to put in the bins because they are rotating. You can rotate them to put them in different bins, and my job was just to do that. If there was no rice – I mean, if both sides were going, I had nothing to do, because I already put them in there until the bins were full.

Q All right. Then you would sit down and wait for that to clear, then maybe restart the process?

A Yes, sir.

Q Okay. Mr. Satterfield, was it – you mentioned that there had been a fan that was broken?

A Yes, sir.

Q On this second floor area?

A Well, it's higher than two floors, but – it's about, if I had to guess, it's about six floors up, six or seven floors.

Q Okay. Is that fan transported between floors on occasion?

A The fan that broke wasn't, no.

Q All right. What about the fan that you had on the manlift when this accident took place?

A That was in Rick Holleman's office.

Q Okay. You said that you received permission to take the fan up to the second floor?

A Yes, sir.

Q Who did you talk to about that?

A Rick Holleman.

Q He said it was okay to take the fan up to the second floor?

A Yes, sir.

Q Okay. And can you describe the fan for us?

A It's an oscillating standing fan. It stands about five feet and has a diameter up here of about 13 inches.

Q All right. It's on a stand, I guess?

A Yes, sir.

Q All right. So the manlift platform that you stand on, how big is the manlift platform?

A To my best estimate, it's not very much bigger than a shoe size. Maybe just a little bit bigger depending on how big – I would say about 16 inches long and 16 inches wide. It wasn't very big.

Q How in the world could you stand on it and put a fan on it, just yourself – forget the backpack, how could you just stand on that platform with a fan?

A The fan fit perfectly on the manlift and I fit on it – the legs have an X shape on it and I put it down on the manlift and stepped on either side.

Q The legs on the fan –

A The legs of the fan, and I stood on either side.

Q You had to scoot yourself up next to that fan?

A Oh, yes.

Q You're getting in there tight to get that fan on?

A Yes, yes.

Q All right. But could you – had you transported that fan in the past?

A I hadn't transported that particular fan, but the same model fan is in – there's one in George Burnett's office. I had, a couple of days previous to this, transported that one up that manlift into that office, because I had asked Clay Sailor to use it that day, you know, and he said he wasn't using it.

Q In the same way that you were using Mr. Holleman's fan on this particular day or intending to use it anyw ay, you had used Mr. Burnett's fan?

A Yes, sir.

Q And transported it in the same way, correct?

A Yes, sir.

Q Okay. Now, you had the backpack with you?

A Yes, sir.

Q And I think it was Mr. Holleman that mentioned that is actually had cans of Coca-Cola and some chips in the backpack?

A Yes, sir, I had my lunch in there.

Q Is this a backpack with two straps like kids wear to school, that sort of thing?

A Yes, sir.

Q Book bag?

A Yes, sir.

Q So you had that on your back and you are scooted up close to this fan with your feet in between the X of the fan stand?

A Yes, sir.

Q All right. Now, you are standing on the platform and you are going to start the lift. How do you start it?

A By holding on with one hand and reach over with your right hand and tug on the rope.

Q Just in the same manner that Mr. Leonard was describing earlier?

A Yes, sir.

Q Okay. So if there is a problem, how do you stop the manlift?

A You reach over and pull on the rope and it stops it.

Q All right. And so you reached over, I would suppose, and you started the manlift and you start moving up toward the second platform, right?

A Yes, sir.

Q Now, what happened?

A As I was entering the hole to go up between the floors, I felt something tug on my back, and I realized that the concrete behind me had tugged on the backpack, the very start of the backpack where – I don't know if you are familiar but it has the two straps and then the one strap that you can hold it with your hands –

Q The loop on the top of it?

A Yes, the loop on the top of it. I felt that, you know, started pulling me down, so I reached over and I pulled the rope and it stopped for a second. Then the next thing I know, I was going again. I was moving again and I had to hold on, and the next thing I know, I'm laying on my back, you know. I had been

pushed – I guess I had been squeezed up and pushed out.

Q Mr. Satterfield, how tall are you?

A I'm roughly six feet.

Q How tall was the fan? Was it taller than you?

A No, sir.

Q Okay.

A It was about chest level.

Q All right, so it's right in here. I was thinking – right in here, okay.

A No.

Q So you reached over and grabbed the rope and did it stop for a second?

A Yes, sir.

Q Just as Mr. Leonard said?

A Yes, sir.

Q It would stop if you grabbed the rope?

A Yes, sir.

Q Okay, and then you let go of the rope?

A Yes, sir.

Q And it kicked back on?

A Yes, sir.

Q All right. So you are using your right hand when you

originally grab the rope to start it and when you grab it to stop?

A Yes, sir.

Q All right. Why did you not reach out and grab that rope again? You said you put both of your hands down on the bar in front of you?

A By that time I was being – I was being bent over and crushed, you know, going through. I couldn't do it anymore and the only thing that came to my mind was to hold on.

Q How far off the ground were you?

A I was a good 12 feet off the ground at least.

Q Were you kind of afraid maybe I'm going to fall off the thing?

A Yes, sir.

Q All right. So apparently the edge of the hole has contacted your backpack?

A Yes, sir.

Q And started to pull on you, true?

A Yes, sir.

Q And the manlift is moving?

A Yes, sir.

Q Operating, true?

A Yes.

Q All right. So then what happens?

A I reach over with my right hand to turn it off, like I said, and it wasn't even a split second that it turned off. It stopped moving

for a split second and then it quit, I mean, it started back up again, it starting moving. By that time it was too late because I had already felt me being drug backwards and everything else, and I thought the only thing I could do is maybe rip the backpack off, you know, maybe that's what's holding me. So I just buckled down and braced for impact, you know, and all this happened within a split second.

Q You had your faculties enough about you to grab that rope the first time?

A Yes, sir.

Q Okay. But then the second time it was too late?

A It was too late. I couldn't reach it.

Q All right. So what happens then?

A I come out and I'm laying on my back. The next thing that I remember after the extreme pain was laying on my back and hearing Mike Smith, I believe his last name is, calling because he heard a big bang. I guess the platform that I was standing on off the manlift had broken away and fell off.

Q Did you fall to the floor?

A If I did, it wasn't more than a foot because I ended up on top of the first floor.

Q Onto the –

A I got through and landed on – right about there is where I got off.

Q So you actually squeezed through the hole?

A Yes, sir.

Q And ended up on that platform?

A Yes, sir.

Q Okay. So when Mr. Holleman and Mr. Leonard see you – you were present in the courtroom while they were testifying – they came by to talk to you, you had your head propped up with the backpack. Where were you? Were you on the first floor or on that platform?

A I was on the first floor.

Q How did you get down to the first floor?

A I walked.

Q And did you walk – are there some stairs?

A There's stairs leading up to the first floor, yes.

Q The manlift is a convenience to avoid using the stairs, I guess?

A Well, to the very first floor. After that you have to use a manlift to get up to the higher floors.

Q All right. So were you conscious all this time, Mr. Satterfield?

A Yes, sir. (Tr.52-61)

The medical evidence reflects that the claimant sustained what has been diagnosed as a burst fracture of his low back as the result of the incident and resulting injury. The claimant's primary treating physician has been Dr. K. Dewayne Eubanks with Spine Arkansas, P.A., in Jonesboro, Arkansas. The claimant has undergone spinal stabilization, including instrumentation at multiple levels. The claimant was still wearing a back brace at the time of the within

hearing. Rather than conduct an exhaustive analysis of the medical evidence, suffice it to say that, if compensability was overcome, which is inconsistent with the findings and conclusions reached herein, the claimant would be entitled to the benefits claimed. (Cl. Ex. A, pp.1-19)

George Burnett, Rickey Holleman, and Jack Leonard were called as witnesses by the claimant. Each signed an Affidavit by Interrogatory concerning their observations of the claimant on September 10, 2002. Their affidavits were introduced without objection as "Claimant's Exhibits C through E", respectively. Mr. Burnett's affidavit and testimony proved to be of little probative value because it was determined that he did not actually see the claimant on the day of the accident. Both Rickey Holleman and Jack Leonard indicated in their affidavits that based upon their observations the claimant appeared impaired or intoxicated following the accident. The reasons for their conclusions were apparently based solely upon their observation that the claimant appeared to be extremely calm for someone who had been involved in an accident and injury. Neither made any other specific observations concerning the claimant's appearance or any specific finding of the presence of marijuana. However, Mr. Holleman did testify that he had reason to believe that the claimant used illegal drugs prior to the accident, asserting that approximately one week prior to the accident, the claimant inquired concerning whether he knew where the claimant might get some marijuana. I found Mr.

Holleman to be a credible witness. His testimony further erodes the claimant's credibility concerning being clean for almost three (3) months prior to the injury. (Tr.21)

Jack Leonard, an employee of the respondent and the manager of the facility where the claimant's accident occurred, also testified at the hearing. Mr. Leonard corroborated other testimony that the claimant violated company policy by wearing a backpack while operating the manlift. In addition, his testimony was illuminating because it reflects that the claimant could have avoided injury by simply pulling down on the manlift rope which would have lowered the manlift, thereby avoiding the accident. Rather than utilizing this safety device, the claimant, after stopping the manlift by grabbing the rope, then turned loose which caused the manlift to restart. The claimant's overall course of conduct in the operation of the manlift, as well as his failure to utilize the safety mechanism is further evidence of impairment. Portions of Mr. Leonard's testimony are set out below:

Q And are you familiar with this device that the Claimant was on when he was injured?

A Yes, sir.

Q We are going to get into this probably a little bit more with the Claimant, but from his deposition he called it a manlift. Is that what you call it?

A Yes, sir.

Q Could you explain what a manlift is?

A It is a device used to carry people from floor to floor within a plant.

Q Is it like a conveyor belt?

A You could say that, vertical.

Q A vertical conveyor belt?

A Yes.

Q And does a person stand on part of this belt for it to lift him up to the next floor?

A Yes, sir.

Q And to get to that next floor, do you have to go through some type of opening?

A Yes, sir.

Q And how big is that opening to get through?

A Oh, I never measured it, but if you want me – dimensions?

Q Well, for an example –

A Big enough for a pretty good-size man to go through it.

Q Okay. Are these manlifts dangerous?

A Yes, if used incorrectly.

Q Is there any specific company procedure about training people to use the manlift?

A Yes, sir.

Q Is that part of the employee's orientation?

A Yes, sir.

Q And when you train somebody to use the manlift, are there certain safety precautions that are supposed to be in place?

A Supposedly.

Q Are there things that you tell them to do and not to do while using the manlift?

A Yes, sir.

Q Tell me some of those things.

A Never carry anything up the manlift that will not fit in your pocket. Never play, no horseplay, don't sit on the steps backwards and ride up, which goes into horseplay, stuff like that.

Q Okay. Now, are you familiar with how this accident happened where Mr. Satterfield was injured?

A Yes, sir.

Q Did he have something on him that was bigger than something that would fit in his pocket?

A Yes, sir. (Tr.32-33)

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A You have a pull rope. You start and stop it anywhere from the time you enter the manlift, you can start and stop that manlift at any time.

Q With a pull rope?

A With a pull rope.

Q Okay. Mr. Leonard, I'm not trying to be difficult. We are just trying to visualize this. I'm not getting a very good picture. I don't know if Judge Greenbaum is getting a very good picture.

A There's a rope –

JUDGE GREENBAUM: I'm not conceptualizing any of this.

THE WITNESS: There's a rope that runs from the bottom to the top and a man that's on the manlift at any time can start and stop this manlift.

BY MR. DAVIS:

Q By doing?

A Just grabbing the rope.

Q And that will automatically – just grab the rope and it will stop the manlift?

A If you are not already stopped. If you are going down, if you grab it, it will automatically pull it down. Do you understand what I'm saying?

Q I think I do.

A If you are going up, you have to pull up. If you are going down, you pull down. So automatically when you grab it, your motion will stop it. (Tr.41-42)

A drug test immediately following the claimant's accident revealed the presence of marijuana metabolites. This created a rebuttable presumption that the claimant's accident was substantially occasioned by the use of illegal drugs. Despite this presumption, a claimant may still be entitled to compensation if he proves, by a preponderance of the evidence, that the illegal use of drugs did not substantially cause the accident. In determining whether a claimant has sustained his burden of proof, the Commission shall weight the evidence

impartially, without giving the benefit of the doubt to either party. A.C.A. §11-9-704(c)(4), *Wade vs. Mr. C. Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); and *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

The record as a whole supports rather than rebuts the presumption created by the positive drug test. Using the manlift to transport both a fan, as well as a backpack between floors not only violated company policy, but common sense. The claimant stopped the manlift when he felt his backpack became hung by grabbing the start/stop rope, but then for some unexplained reason, restarted the lift rather than attempting to lower same. The claimant asked a co-worker if he knew where he might purchase marijuana which is inconsistent with claimant's declaration that he was no longer a user of illegal drugs. In summary, there is no credible evidence other than the claimant's self-serving testimony to overcome the rebuttable presumption created under our Act.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to overcome the rebuttable presumption created by A.C.A. §11-9-102(4)(B)(iv)(b). Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM  
Chief Administrative Law Judge