

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F506710

RUSSELL GODWIN,
EMPLOYEE

CLAIMANT

FINZER ROLLER, INC.,
EMPLOYER

RESPONDENT

TRAVELERS INDEMNITY COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 26, 2006

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by HONORABLE JAMES W. STANLEY, Attorney at Law, North Little Rock, Arkansas.

The respondents were represented by HONORABLE PHILLIP CUFFMAN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on March 14, 2006 in Little Rock, Arkansas. A prehearing order was entered in this case on December 2, 2005. This prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties in the prehearing order and are hereby accepted:

1. That the employer-employee-carrier relationship existed on or about 6-29-05.

2. The compensation rates are \$264.00/198.00.
3. Some medical and temporary total disability benefits have been paid.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Compensability.
2. Additional medical.
3. Additional TTD.
4. Attorney's fees.
5. Penalty.

The claimant contends that he sustained a compensable injury arising out of and in the course of his employment with Respondent on June 29, 2005. The respondents contend that the claimant had a positive drug screen following his injury which constitutes the basis for the denial of the claim.

The record consists of the March 14, 2006 hearing transcript and the exhibits contained therein.

DISCUSSION

Arkansas Code Annotated § 11-9-102(4) (B) states in relevant part:

(B) "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 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 physician's orders.

(c) Every employee is deemed by his or her performance of services to have impliedly consented to reasonable and responsible testing by properly trained medical or law enforcement personnel for the presence of any of the aforementioned substances in the employee's body.

(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 utilized in contravention of the physician's orders did not substantially occasion the injury or accident.

In the present case, Mr. Godwin became injured on June 29, 2005, while pushing a machine weighing approximately 250 to 300 pounds across an uneven and slippery portion of floor caked with a mixture of rubber and methyl-ethyl-ketone. Mr. Godwin pushed the machine and got it rolling, then gave the machine a little extra jerk as it started to roll over clumps of rubber on the floor. As he did so, Mr. Godwin slipped and fell in a wet mixture of rubber and methyl-ethyl

ketone on the floor that had leaked from the machine while in use. Mr. Godwin experienced a hard blow to the left side of his body from his left hip to his left ankle in the fall.

Mr. Godwin was taken to the Joseph Medical Clinic shortly thereafter and that afternoon provided a post-accident urine sample for drug testing. In addition, Mr. Godwin was admitted and treated by Dr. Terry Green at the Central Arkansas Hospital for a femoral neck fracture in the left hip. Dr. Green performed internal fixation with cannulated bone screws to treat the fracture. Dr. Green subsequently testified in a February 27, 2006 deposition that Mr. Godwin's prognosis for long-term recovery is good, but that Mr. Godwin will require physical restrictions for approximately one year.

Mr. Godwin's post-accident urine sample tested positive for both cocaine metabolites and for marijuana metabolites. The respondents denied the present claim on that basis.

The claimant testified that he had not used cocaine for approximately three years and had not used marijuana for approximately two years at the time of the March 14, 2006 hearing. In addition, the claimant contends that the accident would have occurred regardless of whether or not the claimant had any drugs in his system. The claimant

contends that no proof was offered that he was under the influence of any drugs at the time the accident occurred. The respondents contend that the claimant was inattentive under circumstances where the claimant was previously aware that the machine leaked and posed a hazard.

After considering the documentary evidence indicating the presence of marijuana metabolites and cocaine metabolites in the claimant's body, the claimant's testimony that he had abstained from drug use for a lengthy period prior to June 29, 2005, and the claimant's testimony regarding earlier drug use, I find that the documentary evidence establishes as a preponderance of the evidence the presence of marijuana and cocaine metabolites in the claimant's body on June 29, 2005. Consequently, the claimant has the burden of establishing by a preponderance of the evidence that these illegal drugs did not substantially occasion his injury or accident. Ark. Code Ann. § 11-9-102(4)(B)(ive)(d)(Repl. 2002).

On this record, I also find that the claimant has failed to establish by a preponderance of the evidence that the illegal drugs did not substantially occasion his accident on June 29, 2005. In fact, the claimant acknowledged in his hearing testimony that he apparently

forgot about the floor being slippery. [T. p. 23]. In addition, the claimant acknowledged that on June 29, 2005, he was attempting by himself to push a piece of machinery ordinarily moved by two people. [T. p. 33]. The claimant's own testimony therefore supports a conclusion that his slip and fall was substantially occasioned by impaired judgement in (1) failing to remember that the floor was slippery and (2) attempting to move the heavy machine by himself when he should have requested and waited for another person to help. Accord Woodall v. Hunnicutt Construction, 340 Ark. 377, 12 S.W.3d 630 (2000) [Affirming a Commission finding that a scaffold collapse was attributable to a carpenter's impaired judgment where a co-worker did not nail down the scaffolding because the claimant-carpenter directed the co-worker not to do so]; Weaver v. Whitaker Furniture Co., 55 Ark. App. 400, 935 S.W.2d 584 (1996) [Affirming a Commission finding that a slip and fall type injury is of the type which can be influenced by the effect of forbidden substances, and rejecting the claimant's opinion that oil on his shoes caused the slip and fall]; Tidwell v. Four Thirteen, Inc., Full Workers' Compensation Commission, Opinion filed September 10, 2003 (F209567) [Finding the claimant's tripping over an exposed wire consistent with impaired

senses and falling off a trailer consistent with an impaired sense of reflex, an impaired sense of balance and a poor reaction time]; Bruso v. Haney Sandblasting, Full Workers' Compensation Commission, Opinion filed February 20, 2002 (F012579) [Finding claimant's failure to wear a safety belt consistent with impairment from being under the influence of marijuana and/or morphine].

Accordingly, I find that the claimant has failed to establish that he sustained a compensable injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employer-employee-carrier relationship existed between the parties on or about June 29, 2005.

2. The applicable compensation rates are \$264.00/\$198.00.

3. Some medical and temporary total disability benefits have been paid.

4. The preponderance of the credible evidence establishes the presence of marijuana metabolites and cocaine metabolites in the claimant's body on June 29, 2005.

5. The claimant has the burden of establishing by a preponderance of the evidence that these illegal drugs did not substantially occasion his injury or his accident on June 29, 2005.

6. The claimant has failed to establish by a preponderance of the evidence that the illegal drugs in his body on June 29, 2005 did not substantially occasion his slip and fall accident on June 29, 2005.

ORDER

For the reasons discussed herein, this claim must be and hereby is denied and dismissed.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge