

NOT DESIGNATED FOR PUBLICATION

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 JANUARY 26, 2007

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant represented by the HONORABLE JAMES W. STANLEY,
Attorney at Law, North Little Rock, Arkansas.

Respondents represented by the HONORABLE PHILLIP
CUFFMAN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed May 26, 2006. In said
order, the Administrative Law Judge made the following
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.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the Act; however, the claimant has failed

to establish the elements necessary to prove a compensable injury by a preponderance of the evidence.

Therefore we affirm and adopt the May 26, 2006 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority opinion which finds that the claimant's work-related injury was substantially occasioned by the use of illegal drugs. After a de novo review of the record, I find that the claimant's accident would have occurred regardless of whether the claimant was under the influence of illegal drugs. Therefore, I find that the claimant has rebutted the presumption that his injury

was substantially occasioned by the use of illegal drugs.

The claimant tested positive for marijuana and cocaine metabolites. The presence of these chemicals creates a rebuttable presumption that the injury or accident was substantially occasioned by illegal drugs. See, Ark. Code Ann. § 11-9-102(4)(B)(iv)(b), *supra*; Brown v. Alabama Elec. Co., 60 Ark. App. 138, 959 S.W.2d 753 (1998). But this is a rebuttable presumption. Whether the rebuttable presumption is overcome by the evidence is a question of fact for the Commission to determine. Woodall v. Hunnicutt Construction, 340 Ark. 377, 12 S.W.3d 630 (2000).

In ERC Contractor Yard & Sales v. Robertson, 335 Ark. 63, 977 S.W.2d 212 (1998), the Supreme Court considered the requisite causal relationship between the intoxicant and the accident in order to deny benefits. The court stated:

We, therefore, conclude that the plain and ordinary meaning of the phrase "substantially occasioned by the use of alcohol" requires that there be a direct causal link between the use of alcohol and the injury in order for the injury to be noncompensable. To conclude otherwise would involve the addition of words that do not appear in the text of Ark. Code Ann. § 11-9-102(5)(B)(iv).

Id. at 71.

The claimant's accident occurred when he slipped on a substance on the floor. The Majority concludes that simply because the claimant's drug screen returned as positive, because the claimant testified that he forgot the floor was slippery, and because the claimant was operating a heavy piece of machinery that allegedly usually required two people to move it, his accident was substantially occasioned by the use of illegal drugs.

I find the conclusion of the Majority to be erroneous for several reasons. First, there is no evidence that the claimant had ingested marijuana or cocaine on the date of the injury. Nor is there any evidence that he appeared to be impaired either before or after the accident. The claimant testified he had been working since 12:30 and that the accident occurred around 2:00. This indicates that if he appeared to be impaired, the respondents had ample opportunity to be aware of it. Instead, the record is completely silent as to any evidence that would indicate the claimant showed signs of being impaired at the time of the injury. Furthermore, there is no evidence to explain the results of the drug screen or to indicate whether the metabolite amounts in the claimant's system were

high enough to show that he was still under the influence of illegal drugs at the time of the accident.

Furthermore, I find that even if the claimant was under the influence of illegal drugs at the time of the accident, his accident was such that it still would have occurred. The claimant testified that the machine he was pushing leaked and that as he pushed it he fell. He testified,

A When I was pushing the machine, I was in front of it. It has rollers on it. When I started pushing it - and the machine weighed about 250 pounds empty. When it's full, it probably weighs about 300 pounds or a little bit more, depending on how much fluid is inside it.

So I pushed the machine and got it rolling. Then as it started to roll over the clumps of rubber and stuff on the floor, I gave it a little extra jerk. When I did, I pushed it pretty hard and my feet just slipped right out from underneath me.

In my opinion the aforementioned testimony is indicative that the claimant's accident would have occurred even if he was under the influence of illegal drugs.

Specifically, I note that the claimant was moving a heavy piece of equipment on a concrete surface that was slippery due to the employer's failure to fix a machine that was leaking. In my opinion, when considering the claimant's actions, in conjunction with the slippery

floor and the weight of the machine, it is difficult to imagine that being under the influence of illegal drugs would somehow cause the claimant to lose his footing and fall. Rather, I find that it is simply more plausible that the claimant fell because the floor was slippery and he was attempting to maneuver the machine over a slippery floor that had bumps on it due to past leaks.

I note the Majority's assertions that because the claimant testified he forgot the floor was slippery and was moving a machine usually maneuvered by two people, his actions were indicative of that of a person under the influence of illegal drugs. However, I find that this rationale is flawed. While the claimant testified that he "apparently forgot about it being so slippery", I find that testimony does not indicate he was under the influence of illegal drugs. Rather, this testimony simply seems to indicate that the claimant was so used to working on a slippery floor that he wasn't consciously thinking about the floor being slippery when the accident occurred.

With regard to the claimant's testimony that usually two people moved the machine, I note that the claimant's testimony was not that two people always moved the machine. Instead, he said that "Most" of the

time two people used the machine. This testimony indicates that on occasion one person moved the machine, and rebuts the proposition that the claimant was being careless by moving the machine by himself.

Finally, I note the claimant testified that he moved the machine by himself because the workers were in a "hurry". In my opinion, this testimony is indicative that if the claimant was somehow negligent or careless, it was due to being in a hurry rather than due to being impaired due to drug use.

Ultimately, I find that the claimant has overcome the rebuttable presumption that his accident was substantially occasioned by the use of illegal drugs. Accordingly, I must respectfully dissent.

PHILIP A. HOOD, Commissioner