

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F711606

MATTHEW EDMISTEN,
EMPLOYEE

CLAIMANT

BULL SHOALS LANDING,
EMPLOYER

RESPONDENT

AIG DOMESTIC CLAIMS,
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 14, 2010

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

Claimant represented by the HONORABLE FREDERICK S.
"RICK" SPENCER, Attorney at Law, Mountain Home,
Arkansas.

Respondents represented by the HONORABLE JARROD S.
PARRISH, 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 December 1, 2009. In
said order, the Administrative Law Judge made the
following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. The testimony of Steve Eastwold concerning statements Claimant allegedly made to him in the hospital and upon his release from care

will be admitted into evidence and given due weight.

4. The Arkansas Workers' Compensation Act is constitutional.
5. As a result of the drug test on November 1, 2007 showing the presence of marijuana metabolites in Claimant's system, a presumption exists under Ark. Code Ann. § 11-9-102(4)(B)(iv) (Repl. 2002) that his burn injuries suffered that same day were substantially occasioned by the use of illegal drugs. However, that presumption does not attach with respect to the test finding of the presence of morphine in light of the fact that Claimant's medical records show that he was given this drug at Baxter Regional Hospital after the explosion but prior to the administration of the drug test.
6. Claimant has failed to rebut the presumption under Ark. Code Ann. § 11-9-102(4)(B)(iv) (Repl. 2002) that his burn injuries were substantially occasioned by the use of drugs.
7. Claimant has thus failed to prove by a preponderance of the evidence that his burn injuries are compensable.
8. Because of the above finding concerning compensability, the balance of the issues in this case are moot and will not be addressed.

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 compensable injuries that are governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injuries are, indeed, injuries that are covered by the Act; however, the claimant has failed to establish the elements necessary to prove these compensable injuries by a preponderance of the evidence.

Therefore we affirm and adopt the December 1, 2009 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.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. Ark. Code Ann. §11-9-102(4)(B)(iv) states:

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. (Emphasis added)

Here, Mr. Edmisten and Mr. Prock used an acetylene torch to cut open an oil barrel, which blew up, resulting in terrible burns. They were given drug tests at the hospital and both turned up positive for marijuana, causing the claim to be denied due to the rebuttable presumption of Ark. Code Ann. §11-9-102(4)(B)(iv).

The only evidence of intoxication in this claim is the positive drug test. Mr. Prock testified that Mr. Edmisten was not intoxicated. Mr. Edmisten testified that Mr. Prock was not intoxicated. But as they are the two people being accused of being high, their denials really carry very little weight. The Commission is not required to believe the testimony of the claimant or any other witness. The testimony of an interested party is always considered to be controverted. Continental Express v. Harris, 61 Ark. App. 198, 965 S.W. 2d 811 (1998). However, Mr. Mike

Didway testified that he saw Mr. Edmisten and Mr. Prock that morning and they did not appear intoxicated. Their boss, Mr. Steve Eastwold, also an interested party, while insinuating that the claimant had been off smoking pot in Mr. Prock's Cherokee, admitted that if he had thought they were intoxicated when he instructed them to cut the barrels he would not have let them work. Therefore, the evidence of record preponderates in favor of a finding that the claimant was not intoxicated.

The evidence of record shows that Mr. Prock cut open oil barrels with an acetylene torch **all the time**. Mr. Prock testified that is how he always did it. Mr. Edmisten testified that is how they always did it. Mr. Didway testified that he had seen Mr. Prock do it that way before. Mr. Greg Aaron testified that he had seen Mr. Prock cut open oil barrels with an acetylene torch before. So even if the claimant and Mr. Prock were intoxicated, a finding I specifically do not make, it cannot be said that the incident was substantially occasioned by the use of marijuana. The accident was substantially occasioned by Mr. Prock's habit of cutting open oil barrels with an acetylene torch. Professor Larson explains in Larson's Workers' Compensation Desk Edition, §1.03(1):

The right to compensation benefits depends on one simple test: Was there a work-connected injury? Negligence, and for the most part, fault, are not in issue and cannot affect the result. Let the employer's conduct be flawless in its perfection, and let the employee's be abysmal in its clumsiness, rashness and ineptitude; if the accident arises out of and in the course of the employment, the employee receives an award.

See also Simmons First National Bank v. Thompson, 285 Ark. 275, 686 S.W. 2d 415 (1985).

Although the testimony of Mr. Didway and Mr. Eastwold establishes that the claimant and Mr. Prock were not intoxicated at the time of the incident, this is really beside the point, as the incident was not substantially occasioned by the use of marijuana. It was substantially occasioned by Mr. Prock's stupid habit of cutting open oil barrels with an acetylene torch. As such, the bar presented by Ark. Code Ann. §11-9-102(4)(B)(iv), does not apply to this claim.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner