SLIP OPINION

Cite as 2012 Ark. App. 471

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA12-78

CLAYTON R. HUDGENS APPELLANT	**Opinion Delivered** SEPTEMBER 12, 2012
V.	APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION [NO. F712830]
AID TEMPORARY SERVICES, INC., AMERICAN HOME ASSURANCE COMPANY, and CHARTIS INSURANCE COMPANY APPELLEES	AFFIRMED

JOSEPHINE LINKER HART, Judge

In a work-related incident, a bladed machine amputated the distal aspect of three fingers on Clayton R. Hudgens's right hand. A urine specimen collected from Hudgens on the day of the incident tested positive for marijuana metabolites. Hudgens sought to prove to the Commission that he sustained a "compensable injury." The Commission, however, found that it was not a compensable injury because Hudgens failed to overcome a statutory presumption that his injury was substantially occasioned by the use of illegal drugs. Hudgens appeals, arguing that he overcame this presumption by a preponderance of the evidence. We hold that the Commission's decision was supported by substantial evidence and affirm.[1]

[1]Hudgens also makes a number of constitutional arguments that his attorney has previously made when representing claimants in appeals to this court in other workers' compensation cases. We have uniformly rejected these arguments, *see, e.g.*, *Long v. Wal-Mart Stores, Inc.*, 98 Ark. App. 70, 250 S.W.3d 263 (2007), and counsel does not explain why we should revisit these holdings. Thus, we summarily affirm the Commission's decision on these points.

SLIP OPINION

A "compensable injury" does not include an "[i]njury where the accident was substantially occasioned by" the use of illegal drugs. Ark. Code Ann. § 11-9-102(4)(B)(iv)(*a*) (Repl. 2012). Further, the "presence" of illegal drugs "shall create a rebuttable presumption that the injury or accident was substantially occasioned by" the use of illegal drugs. Ark. Code Ann. § 11-9-102(4)(B)(iv)(*b*). An "employee shall not be entitled to compensation unless it is proved by a preponderance of the evidence that the . . . illegal drugs . . . did not substantially occasion the injury or accident." Ark. Code Ann. § 11-9-102(4)(B)(iv)(*d*). In this context, "substantially occasion" means that there must be a direct causal link between the use of the illegal drugs and the injury. *Waldrip v. Graco Corp.*, 101 Ark. App. 101, 270 S.W.3d 891 (2008). The question of whether an employee has overcome the rebuttable presumption is a question of fact for the Commission. *Id*. When the Commission denies coverage because the claimant failed to meet his burden of proof, the substantial-evidence standard of review requires that we affirm the Commission's decision if its opinion displays a substantial basis for the denial of relief. *Id*.

In his employment, Hudgens cut plastic using a bladed machine. Hudgens testified that he had been instructed by another employee that the proper method for cutting plastic with the machine involved placing plastic on the table underneath the blade and using one hand to push a button to engage the blade's engine while simultaneously using the other hand to operate a lever to bring the blade down and cut the plastic. In order for the blade to spin, the button had to be pressed and the blade had to be lowered. Two employees likewise testified

SLIP OPINION

that this was the proper method of operating the machine. Hudgens and another employee further agreed that the use of the two-handed method is a safety feature. Hudgens, however, admitted that when the injury occurred, he was operating the machine by pressing the button with one hand, using his elbow to push the lever, and using his other hand to push the plastic under the blade. Hudgens testified, "I guess I put my hand in a little too far and brought the blade down and cut my fingers." He further admitted that the injury resulted from a "misjudgment" of distance on his part and that he could have removed his hand from underneath the blade or stopped the blade by releasing the button. Hudgens admitted that he occasionally smoked marijuana and that marijuana intoxication made him less attentive, made it harder for him to concentrate, and made it more difficult for him to react quickly. A urine test established that he tested positive for marijuana metabolites on the day of the incident.

In an opinion adopted by the Commission, the administrative law judge found that Hudgens failed to rebut the presumption that his injury was substantially occasioned by the use of illegal drugs and thus he failed to prove that he sustained a compensable injury. On appeal, Hudgens argues that the injury was not the result of marijuana intoxication.

The Commission, however, had before it evidence that Hudgens, rather than using—as he had been instructed—the two-handed method that served as a safety feature, instead operated the machine by placing his hand underneath the blade while pressing the button with one hand and lowering the blade with his elbow. He admitted that he could have either removed his hand or released the button to prevent the injury. Further, Hudgens's

SLIP OPINION

urine test was positive for marijuana metabolites, he admitted that he occasionally smoked marijuana, and he admitted that marijuana made him less attentive, made it harder for him to concentrate, and made it more difficult for him to react quickly. The facts before us bear some resemblance to those in two other cases. In each case, this court affirmed the Commission's finding that a claimant failed to rebut the presumption that an injury resulting from the claimant's hand being caught in a machine was substantially occasioned by the use of marijuana. *See Townley v. Georgia Pac. Corp.*, 2012 Ark. App. 48, ___ S.W.3d ___ (affirming the denial of benefits where the claimant placed his hand into a machine despite being instructed not to do so); *Waldrip*, *supra* (affirming the denial of benefits where the claimant placed his hand in a press despite instruction to the contrary). Thus, we hold that substantial evidence supports the Commission's finding that Hudgens failed to rebut by a preponderance of the evidence the statutory presumption that his injury was substantially occasioned by the use of marijuana. Accordingly, we affirm the Commission's decision.

Affirmed.

GLADWIN and MARTIN, JJ., agree.

Frederick S. "Rick" Spencer, for appellant.

Glenn Lovett, Jr., PLC, by: *Glenn Lovett Jr.*, for appellees.