BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H405400

JEFFREY MARTINEZ, Employee	CLAIMANT
1st EMPLOYMENT STAFFING, Employer	RESPONDENT
ZURICH AMERICAN INS. CO., Carrier	RESPONDENT

OPINION FILED JANUARY 29, 2025

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by RICK BEHRING, JR., Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 13, 2025, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on October 9, 2024 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee/employer/carrier relationship existed among the parties on August 6, 2024.

3. Respondents have controverted this claim in its entirety.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's right wrist/hand on August 6, 2024.
2. Related medical.
3. Temporary total disability benefits from August 6, 2024 through a date yet to be determined.
4. Attorney's fee.
5. Shippers' defense.

At the time of the hearing the claimant reserved the issue of his entitlement to temporary total disability benefits. In addition, the respondent withdrew the Shippers' defense as an issue.

The claimant contends he sustained a compensable injury on August 6, 2024 and is entitled to medical treatment. Claimant reserves all other issues.

The respondents contend the Arkansas Workers' Compensation Commission has exclusive jurisdiction over this claim. The respondents have denied and controverted this claim in its entirety. The claimant cannot meet his burden of proving by a compensable injury as a result of a specific incident while performing employment services with the respondent employer on August 6, 2024. The claimant underwent a drug screen and tested positive for an illegal drug – marijuana. In the alternative, the claimant testified positive for a prescription drug used in contravention with the physician's orders is a safety sensitive position. The claimant cannot overcome his presumption that the accident was not substantially occasioned by the use of marijuana and, therefore, the claimant is not entitled to any benefits. In the alternative, the claimant was not providing employment services when performing a prohibited act at the time of the alleged incident.

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 A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on October 9, 2024 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his right wrist and hand on August 6, 2024. Specifically, claimant failed to rebut the statutory presumption that his injury was substantially occasioned by the use of illegal drugs (marijuana).

FACTUAL BACKGROUND

The claimant is a 21-year-old man who became employed by the respondent on July 30, 2024. Shortly thereafter, claimant was assigned to work at Hickory Springs Manufacturing (hereinafter known as "HSM") as a welder's helper. At HSM, claimant was placed in a position primarily operating a grinder and a drill press. Claimant's training on the grinder and drill press was performed by Genoveva Quintanilla. According to the testimony of Reyes Ruiz, Jr., the respondent's production supervisor: "He [claimant] was to learn how to operate the drill press machinery to provide a process called coping which took a notch out of the end of a tube so it could be processed further."

After undergoing an unknown number of days of training, the claimant was injured on August 6, 2024. On that date the claimant was operating the drill press when the glove

of his right hand got caught in the drill. Claimant was taken to the emergency room at Baptist Health and was diagnosed with fractures to his right hand and fingers. Claimant underwent a surgical repair on August 6, 2024, which included debridement of open fractures, pin stabilization of multiple fractures, carpal tunnel decompression, and hand fasiotomies. Later, claimant underwent a skin graft procedure on August 21, 2024, and underwent a pin removal procedure on October 24, 2024.

Claimant has filed this claim contending that he suffered a compensable injury to his right hand on August 6, 2024. He seeks payment of related medical expenses associated with that injury.

ADJUDICATION

Claimant contends that he suffered a compensable injury to his right hand on August 6, 2024, when his hand got caught in a drill press resulting in various injuries to the right hand. While claimant was in the hospital following his accident, he was given a urine drug screen test by Mashayla Martin, the Operations Manager for respondent. Martin testified that the hospital declined to perform a drug screen test, but she was given permission to visit claimant in the hospital and claimant agreed to give a statement and undergo a drug screen. Claimant gave a sample which returned positive for marijuana metabolites. Based upon the positive drug screen, respondent contends that claimant's claim for compensation benefits is barred by the provisions set forth in A.C.A. §11-9-102(4)(B)(iv) which provides:

> (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 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.

As noted, claimant underwent a drug screen which was positive for marijuana. This creates a rebuttable presumption that the injury was substantially occasioned by the use of illegal drugs. Accordingly, claimant has the burden of proving by a preponderance of the evidence that the illegal drugs did not substantially occasion his injury or accident.

Claimant testified that he had not smoked marijuana for about a month prior to his accident on August 6, 2024. A claimant's testimony is never considered uncontroverted, and his own self-serving testimony regarding the nature and extent of drug use is insufficient to overcome the presumption. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W. 2d 457 (1994); *Ester v. National Home Centers, Inc.*, 61 Ark. App. 91, 967 S.W. 2d 565 (1998). At the hearing, claimant also offered the testimony of his mother, Mayra Figueroa. Figueroa testified that claimant lives with her and she would normally see claimant before he went to work. She testified that she recalled seeing claimant on the

morning of August 6 and claimant appeared to be acting normal on that date. Figueroa also testified that she did not know what claimant did after he left the house that morning, and that although she had not seen claimant use marijuana, she knew that he did use it.

Claimant has offered various explanations for why his accident occurred. At one point claimant testified that the gloves he was wearing on the day of the accident were too large and did not properly fit. Claimant testified that respondent only had one size of glove available. Claimant's testimony was contradicted by the testimony of Ruiz who testified that respondent provides various work gloves in various styles and sizes. He testified that when claimant initially came to HSM he was given gloves and they appeared to fit. He further testified that claimant never came to him complaining about the fit of his gloves and that normally employees would get a fresh pair of gloves each morning. Likewise, Genoveva testified that HSM provided gloves in various sizes.

Claimant also testified that he did not recall getting any paperwork about the hazards to watch for when performing his job on the drill press and he did not recall Ruiz informing him that he needed to shut down the drill press any time he was handling something involving the drill press. However, Ruiz testified that when claimant initially arrived at HSM he went over a Job Safety Analysis which with respect to the drill press operation noted that hazards included rotating equipment with metal shavings potentially getting in the hands or eyes. The analysis also indicated that employees were to wear all proper personal protection equipment and to not wear any loose clothing while operating the drill press that could become entangled and pull you into the machine. Ruiz testified that claimant never complained about the training he was receiving or the equipment that he was using.

Claimant also testified that Genoveva did not always turn off the drill press while making adjustments. However, Genoveva testified that she always turned the machine off when something needed to be done and that she trained claimant to do the same.

> Q Why is it important to shut the machine off?
>
> A You have to turn it off every time before you put your hand in there because it is rotating.
>
> ***
>
> Q Did you ever put your hands near the drill when it was rotating?
>
> A No. While it is rotating, no. Never.
>
> Q Did you always turn it off if you needed to change a part or manipulate the pipe?
>
> A Yes.
>
> ***
>
> Q Did you train Mr. Martinez to do the same?
>
> A Yes. I would tell him never, never, never. Always turn it off.
>
> ***
>
> And I would tell him every time you move the mold, you have to turn it off. Every time you put your hands in there, you have to turn it off, always. And all the indications, what the process was like, you always have to turn the machine off in order to move something.

Claimant also acknowledged that at his deposition he testified that he believed that Genoveva had her hand on the drill press handle at the time of the accident. Likewise, claimant indicated at the hearing that he believed that Genoveva had her hand on the drill press handle while it was running at the time of the accident.

> Q So as you were there with Genoveva, what happened?

> A I was there with Genoveva and the drill press was running and as the drill press was running, I believe she had her hand on the lever, which in order - - I didn't - - I wasn't able to understand that she would be operating it or if she wanted me to point out to her if I should be operating it or not.
>
> And I was simply pointing out to her that I had been fastening it properly and my glove had got caught as I was in the action of explaining to her that I had done it as she had asked.

Again, Genoveva contradicted claimant's testimony. Genoveva testified that she was not working on the drill press machine with claimant at the time of the accident, but instead was operating a different machine which was next to the drill press.

> Q What were you doing when Mr. Martinez had his accident?
>
> A I was operating a different machine. I was working on a different machine. We were each on another machine.
>
> Q What machine were you operating?
>
> A Well, there is three machines there and the three machines are used depending on the mold we are going to make. You kind of fit them on each machine. I was on the second one, the middle one. He was on the first one where the accident happened.
>
> Well, and I headed over there. The details of the accident, I heard him scream and then I turned it off.
>
> Q Did you see the accident happen?
>
> A Exactly when it initiated, no. When he screamed, I turned it off.

Genoveva specifically testified that she was not touching the drill press when

claimant had his accident, and that she was not rushing claimant to perform his work at the time of the accident.

Finally, claimant acknowledged that the drill press machine was still running when he put his hand by the drill and that was contrary to his training and resulted in the injury.

> Q In the hundreds of times that you did the drill press, you were trained that you were supposed to shut the drill press off before you do anything with the pipe?
>
> A Correct.
>
> Q All right. And you had observed your trainer do that, correct, to turn off the machine before she adjusted the pipe?
>
> A As of when?
>
> Q Hundreds of times.
>
> A Correct.
>
> Q All right. And on August 6th, though, the machine was still running when you put your hand by the drill; is that correct?
>
> A Correct.
>
> Q And that is contrary to how you had been trained; is that correct?
>
> A Correct.
>
> Q And that is what ultimately caused you to have an injury; isn't that correct?
>
> A Yes.
>
> Q Regardless of what size gloves you had on, had the machine been shut off when you put your hand in there, you wouldn't have had an accident; is that correct?
>
> A Correct.
>
> ***
>
> Q To be fair, Mr. Martinez, it sounds like everything

happened fast. And if I am appreciating what you are saying here, you don't really have a clear recollection of exactly what happened when you had your accident; do you?

A Various parts are a little hazy.

Q Okay. But we do know this: before August 6th, you knew that you had to shut that machine off before you did anything with the pipe; correct?

A Correct.

Q And we know that because it is dangerous to leave it running when you put your hand by it; isn't that right?

A Yes.

***

Q And that is what Eva also trained you to do; is that correct?

A Yes.

Thus, at the time of his injury, claimant had been trained by Genoveva to turn the machine off before making any modifications or corrections. Claimant has acknowledged that leaving the machine running while making those corrections is contrary to his training. There is no credible evidence that the machine malfunctioned or that Genoveva accidently operated the drill press while claimant was making an adjustment. To the contrary, Genoveva was operating another machine and did not have her hands on the drill press claimant was operating at the time of his accident. Claimant's modification or correction of the drill press while it was still running was contrary to his training.

Based upon the foregoing evidence, I find that claimant has failed to prove by a preponderance of the evidence that his use of illegal drugs did not substantially occasion

his injury or accident on August 6, 2024. On that date claimant was making corrections to the drill press while he left the drill press running and placed his hand in close proximity to the drill which resulted in his injury. This was contrary to claimant's training as he has so acknowledged. Accordingly, I find that claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his right hand on August 6, 2024.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury while working for respondent at HSM on August 6, 2024. Therefore, his claim for compensation benefits is hereby denied and dismissed.

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of $820.25.

IT IS SO ORDERED.

____

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE