

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM № H302335

JOHN BOMAN, EMPLOYEE

CLAIMANT

CENTRAL MALONEY, INC., SELF-INSURED EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES, TPA

RESPONDENT

OPINION & ORDER FILED 10 JUNE 2025

Heard before Arkansas Workers' Compensation Commission Administrative Law Judge JayO. Howe on 13 March 2025 in Pine Bluff, Arkansas.

The claimant was represented by Mr. Gregory R. Giles.

The respondents were represented by Mr. Guy A. Wade.

STATEMENT OF THE CASE

A Prehearing Order was filed on 27 June 2024 and admitted to the hearing record without objection as Commission's Exhibit № 1. Consistent with that Order, the parties agreed to the following:

STIPULATIONS

1. The Commission has jurisdiction over this claim.
2. The self-insured employer/employee/TPA relationship existed at all relevant times, including on 2 December 2022, when the claimant suffered an injury in the workplace.
3. The claimant's average weekly wage of \$516.25 would entitle him to weekly benefits in the amounts of \$344 for temporary total disability (TTD) and \$258 for permanent partial disability (PPD).¹
4. The respondents deny that the claimant suffered a compensable injury and are, thus, not liable for any medical or indemnity benefits.

¹ These amounts were agreed to at the beginning of the hearing. [TR at 15.]

ISSUES

1. Whether the claimant sustained a compensable injury by specific incident to his left index finger.
2. Whether the claimant is entitled to reasonable and necessary medical treatment associated with a compensable injury.
3. Whether the claimant is entitled to TTD benefits from 3 December 2022 to 31 May 2023.
4. Whether the claimant is entitled to an attorney's fee.

All other issues have been reserved.

CONTENTIONS

The Prehearing Order incorporated by reference the following contentions from the parties' prehearing information:

The claimant contends that he suffered a compensable injury to his left index finger with partial amputation on 2 December 2022 during the course and scope of his employment with Central Maloney. He contends that the medical treatment he has received to date has been reasonable and necessary and related such that the respondents should be ordered to pay for those services.

The claimant contends that he is entitled to temporary total disability benefits from 3 December 2022 to on or about 31 May 2023, following completion of his physical therapy.²

The claimant is entitled to an attorney's fee.

The respondents contend that the claimant did not sustain a compensable injury within the course and scope of his employment. They contend that a positive drug test within two hours of the accident shows that the claimant was intoxicated at the time of the injury and that they are not responsible for the payment of any medical or indemnity benefits.

² The claimant withdrew and reserved a contention included in his prehearing filing that he was also entitled to PPD benefits.

FINDING OF FACTS AND CONCLUSIONS OF LAW

Having reviewed the record as a whole, including the evidence summarized below, and having heard testimony from the witness, observing his demeanor, I make the following findings of fact and conclusions of law under Ark. Code Ann. § 11-9-704:

1. The Commission has jurisdiction over this claim.
2. The stipulations as set forth above are accepted.
3. Because the claimant's post-accident drug screen returned positive for marijuana metabolites, a presumption exists under Ark. Code Ann. § 11-9-102(4)(B)(iv) that his injury was substantially occasioned by the use of illegal drugs.
4. The claimant has failed to rebut the presumption that his injury was substantially occasioned by the use of illegal drugs and has, therefore, failed to prove by a preponderance of the evidence that he suffered a compensable injury.
5. Because of the finding above, the claims for medical and indemnity benefits associated with a compensable injury are moot and will not be addressed.
6. The claim for a controverted attorney's fee is also moot and will not be addressed.

ADJUDICATION

The stipulated facts are outlined above and accepted. It is settled that the Commission, with the benefit of being in the presence of a witness and observing their demeanor, determines a witness' credibility and the appropriate weight to accord their statements. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999). A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness

but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

The claimant has failed to prove that he suffered a compensable injury on 2 December 2022. He was treated at a local emergency department shortly after the workplace accident. A urine drug screen obtained at the time resulted positive for marijuana metabolites. When illegal drugs are found to be present in an employee's body after a workplace accident, there is a rebuttable presumption that a causal link existed between the use of drugs and the injury. The claimant failed to prove by a preponderance of the evidence that the presence that a causal link did not exist between the drugs found in his system and the injury he sustained. His claim for a finding of a compensable injury and associated benefits must, therefore, fail.

SUMMARY OF THE EVIDENCE

The claimant was the only witness to testify. The record consists of the hearing transcript and the following exhibits: Commission's Exhibit № 1 (the 27 June 2024 Prehearing Order); Claimant's Exhibit № 1 (one index page and 76 pages of various forms and records); Claimant's Exhibit № 2 (a three-page abstract of the records in Claimant's Exhibit № 1); Respondents' Exhibit № 1 (one index page and 65 pages of medical records); Respondents' Exhibit № 2 (two pages of medical records that are also found at pages 60 and 61 of Respondents' Exhibit № 1; the pages in Respondents' Exhibit № 2 are more legible than those found in Respondents' Exhibit № 1); and Respondents' Exhibit № 3 (the transcript of Claimant's 19 September 2023 deposition).

Hearing Testimony

The claimant is fifty-eight years old with a high school diploma and about two years of college credits. He testified that he had been working for Respondent-employer Central Maloney, Inc., for about six months at the time of his injury. His first three months on the

job were through temporary placement agency; but he successfully converted to a full-time employee after working for three months and passing a drug test. The claimant worked as a stacker at Central Maloney's wood plant. He explained that Central Maloney produces components for electrical transformers and that he worked on the line that cut down lumber for use in shipping pallets. A worker on his line operated a table saw, cutting five-foot boards down into two smaller sections. The claimant and another worker would then remove the smaller board sections from the line and stack them off to the side.

According to the claimant, his shift ran from 7:00 AM until 3:30 PM, with a 30-minute lunch break usually taking place around noon. He testified that his injury occurred "after lunch. Maybe, around 1:30." [TR at 27.] The claimant stated that his job was to stack the cut board sections; but at the time he hurt himself, he was working at the saw while the worker ordinarily responsible for cutting was on a bathroom break.

Q: And describe for us what happened? Tell us what happened on that day as you were directing the wood into the saw?

A: Well, as I was pushing the wood through, I was keeping my—you know, keeping my eye on my hands and my right hand, you know, as I'm pushing, you know. There was just a little push, and I just lost the step to go—you know, I—I just got caught.

Q: So...

Judge: Your left hand got caught?

A: My left—you know, I'm watching my right hand... and my left hand, you know, somehow got caught, you know, and I don't know how it missed the other four fingers....

[TR at 30.]

After reporting the injury, the claimant was taken to the emergency department at Jefferson Regional Medical Center by the company nurse. He testified, "my finger was cut to the bone, barely hanging off. I mean on a scale of 1 to 10, it's a 13." [TR at 34.] The claimant further testified that a representative from the respondents arrived and requested a urine sample.

Q: Did you try to give her a sample there in the room, while she watched or did you go [to] a bathroom to do that?

A: I went to the bathroom.

Q: And tell us what happened in the bathroom.

A: I went to the bathroom with the cup and put water in it.

Q: Did you put any urine in the cup?

A: I attempted to.

Q: Did you get some urine in the cup?

A: I might of got a little.

Q: And why did you put water in the cup at that time?

A: I was in [distress]. I mean, they – she was telling me they were gonna do—

[TR at 36.] He explained that he believed he would be denied all treatment unless and until he provided some sort of sample. So he put water in the cup. The claimant stated that the representative, aware of his attempted deception, threw away the water-filled cup. “She asked me for another sample, but by then, I gave my hand to the nurse, and she gave that shot, and then, she just got upset and walked out.” [TR at 41.] He denied providing another urine sample. His finger was sewn up by a nurse and he was discharged from the emergency department.

The claimant testified that his finger required a follow-up procedure a couple of days later. He was restricted to light duty afterwards but testified that he was terminated after the accident.

He continued to seek treatment, including outpatient therapy, on his own. He denied being able to work at the time and had not yet worked at the time of his last physician visit on 20 April 2023. He sought to draw unemployment benefits around that time, but benefits were not awarded. He acknowledged doing some odd jobs for money, but stated that his injury limited his work options.

The claimant admitted past marijuana use. But he denied using marijuana at the time of his accident. “No, not for at least seven months, because I had a—is – December was my 90 probation, ‘cause I was coming up for a bonus; so I knew I was gonna be tested.” [TR

at 46.] He denied any job performance issues or concerns about his sobriety while on the job.

On cross-examination, the claimant admitted that he was not truthful during his deposition when he claimed that he had earned an associate's degree in criminal justice. He also acknowledged that the documentation showed that the accident occurred at 11:00 AM and before lunch, not after lunch and around 1:30 PM as he had earlier testified. He could not account for a discrepancy in his hearing testimony about applying for unemployment benefits versus denying the same while providing answers under oath in discovery.

Discussing the specimen collection paperwork [Resp. Ex. № 2], the claimant acknowledged his correct Social Security Number, that the phone number written on the form "might have been [his] old number" and what appeared to be his written name and signature. [TR at 58.] He denied, however, that he willingly or intentionally signed his name. "I was—when I was at the hospital, the lady took my hand and was making me write to sign some papers there, but I didn't know what I was signing." [TR at 59.] The claimant tried to explain his differing testimony on whether the sample cup he provided contained only tap water or tap water and some urine. Regardless of the sample's ultimate constitution, he made it clear that he did not intend to provide a valid sample at the time it had been requested.

The claimant did not remember seeing the drug screen results at his deposition; nor did he recall his explanation given at the time for the positive result—that he had been around others who were smoking marijuana. He also acknowledged that in his deposition he testified that he had not smoked marijuana in a year versus the seven months he had testified about earlier at the hearing. The claimant denied having a medical marijuana card.

Medical Evidence

The specimen collection forms include the claimant's name and Social Security Number. Boxes are checked indicating that his identification was verified and that the "Reason for Test" was "Post-Accident." The claimant's printed name, signature, and a 2 December 2022 date appear at the bottom of the form. It also shows "Location: ER" and "EMPLOYER: Central Maloney." The Specimen Identification Number is listed as 2966809.

[Resp. Ex. № 2.]

The identifying information on the drug testing report matched that from the specimen collection forms. The relevant portions of that report include:

Urine Substance Abuse Panel

...	
Amphetamines	Negative
Cocaine Metabolites	Negative
Marijuana Metabolites	Positive
Opiates	Negative
Phencyclidine	Negative

Urine Quantitative Results

MARIJUANA METABOLITE	184 ng/mL
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The detection threshold for marijuana at the Initial Test Level was 50 ng/mL and the threshold for the MS Confirm Test Level was 15 ng/mL.

[Resp. Ex. № 1 at 65.]

DISCUSSION

The claimant has alleged that he sustained a compensable injury to his left index finger on 2 December 2022. The respondents have denied liability under Ark. Code Ann. § 11-9-102(4)(B)(iv), which provides:

(B) "Compensable injury" does not include:

...

- (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.

The presence of marijuana metabolites in the claimant's body after the accident creates the presumption that his injury was substantially occasioned by his use of that substance. He must, therefore, prove 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). The phrase "substantially occasioned" by the use of illegal drugs requires that there be a direct causal link between the use of the drugs and the injury in order for the injury to be noncompensable. *Waldrip v. Graco Corp.*, 101 Ark. App. 101, 270 S.W.3d 891 (2008) (citing *ERC Contractor Yard & Sales v. Robertson*, 335 Ark. 63, 977 S.W.2d 212 (1998)).

The claimant did not put on any evidence showing that the accident was not related to the presence of marijuana in his system. He could not explain how or why the accident happened, besides that he was not looking at his left hand when it came into contact with the saw blade. Nor did he make any effort to justify why he was performing another employee's work duties—running a table saw when his job was, admittedly, to be at the other end of the line stacking boards—at the time of the accident.

Instead, he argued that the drug testing result that showed marijuana in his system must be fraudulent because he (1) filled the specimen cup with only or mostly tap water from the hospital restroom and (2) he supposedly witnessed his specimen cup being thrown into the trash by the respondent's representative responsible for collecting his sample. That same representative, he said, forged or coerced his signature on the specimen collection forms. He acknowledged, however, that the identifying information on the specimen collection forms matched the identifying information on the testing report and that his signature did appear on the specimen collection forms. I do not find the claimant to be a credible witness.

The claimant was not even credible on the most basic of details around his injury—the time that it occurred. Despite numerous records in evidence clearly showing that he was injured around 11:00 in the morning, before his lunch break, he testified on direct examination that the accident occurred around 1:30 in the afternoon, which would have been after his lunch break for that day. He was asked again on cross-examination about the time of the accident, and his testimony remained out of step with the verifiable facts of the matter.

The claimant did not deny past marijuana use, though his stories around how long it had been since his last time using and the accident varied. At his deposition, the claimant suggested that if his sample was positive for marijuana, it must have been from being around others who were smoking it. At the hearing, though, he refused to entertain the notion that his sample was even tested. And he denied having any recollection about the positive drug result being discussed at his deposition.

Regarding the urine specimen that was collected and tested, his testimony again differs from the credible evidence in the record. My review of the medical evidence does not support his story about treatment being withheld until he provided a urine sample. Nor do

those records relate anything about a confrontation around an adulterated sample being disposed of and his inability or refusal to provide a valid sample for testing. Instead, the evidence shows that his identity was confirmed as the donor of a collected specimen and that the identifying information on the test report (that shows marijuana metabolites in his system) matches that of the collected specimen.

In short, the credible evidence establishes the presumption that the claimant's injury was substantially occasioned by illegal drugs; and the claimant has failed to rebut that presumption with the necessary preponderance of evidence to the contrary. His injury is, therefore, not compensable. His claim must be denied and dismissed, accordingly. Because he has failed to prove by a preponderance of the evidence that he suffered a compensable injury, his remaining claims need not be addressed.

CONCLUSION

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury. Accordingly, his claim is DENIED and DISMISSED.

IT IS SO ORDERED.

JayO. Howe
Administrative Law Judge