

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
May 17, 2006 Session

**BOBBY CROWDER v. MORNINGSTAR MANUFACTURING, INC, ET AL.**

**Direct Appeal from the Circuit Court for Hardin County  
No. 3835 C. Creed McGinley, Judge**

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**No. W2005-01609-WC-R3-CV - Mailed August 3, 2006; Filed September 12, 2006**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Tennessee Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this appeal, the employer's insurer insists the evidence preponderates against the trial court's finding that the employee's injury was not proximately caused by intoxication from the use of an illegal drug, marijuana. The panel has concluded the judgment of the trial court should be affirmed.

**Tenn. Code Ann. § 50-6-225(e) (2002 Supp.) Appeal as of Right; Judgment of the Circuit Court Affirmed**

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and J. S. (STEVE) DANIEL, SR. J., joined.

Sean Antone Hunt, Spicer, Flynn & Rudstrom, Memphis, Tennessee, for the appellants, Morningstar Manufacturing, Inc. and Travelers Property Casualty Company of America

Steve Beal, Lexington, Tennessee, for the appellee, Bobby Crowder

**MEMORANDUM OPINION**

The employee or claimant, Bobby Crowder, initiated this civil action to recover workers' compensation benefits for a work-related injury in which he received second and third degree burns to both hands and other parts of his body. The employer denied liability. The only issue submitted to the trial court was whether the employee's injury was proximately caused by intoxication from the use of marijuana. After considering the evidence, the trial court resolved the issue in favor of the injured worker, Mr. Crowder. The employer and its insurer have appealed, contending the preponderance of the evidence is otherwise.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Gov't of Sumner County, 908 S.W.2d 921, 922 (Tenn. Workers' Comp. Panel 1995). Conclusions of law are subject to de novo review on appeal without any presumption of correctness. Hill v. Wilson Sporting Goods Co., 104 S.W.3d 844, 846 (Tenn. Workers' Comp Panel 2002). Issues of statutory construction are solely questions of law. Id. Where the trial court has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, McCaleb v. Saturn Corp., 910 S.W.2d 412, 415 (Tenn. Workers' Comp. Panel 1995), because it is the trial court which had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Indus., Ltd., 996 S.W.2d 173, 178 (Tenn. 1999). The trial court's findings with respect to credibility and weight of the evidence may generally be inferred from the manner in which the court resolves conflicts in the testimony and decides the case. Tobitt v. Bridgestone/Firestone, Inc., 59 S.W.3d 57 (Tenn. 2001). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial court. Id. at 61. Where the medical testimony in a workers' compensation case is presented by deposition, the reviewing court may make an independent assessment of the medical proof to determine where the preponderance of the proof lies. Bridges v. Liberty Ins. Co. of Hartford, 101 S.W.3d 64, 67 (Tenn. Workers' Comp Panel 2000). Our independent examination of the record, giving due deference to the findings of the trial court, reveals the following.

The claimant is a married forty-four year old high school graduate with limited vocational training and experience. He had been working for the employer, Morningstar Manufacturing, Inc., for approximately five years when he suffered severe burn injuries from a work-related accident.

On and prior to the date of injury, the claimant's duties included the use of flammable chemicals, including acetone and gelcoat, in the process of manufacturing fiberglass parts for vehicles. On February 6, 2004, he arrived at work in time to begin working at 7:00 a. m. and, according to his uncontradicted testimony, performed his assigned duties for three to four hours without leaving his work station. His duty on that day was to trim, roll and repair parts for a Boss Hoss, a three-wheeled motorcycle. When paint splashed on his shirt, he attempted to remove it with acetone. When his supervisor urged him to work faster so the employer could make its payroll, he used a handheld blow dryer to make the part on which he was working dry faster and negligently caught his shirt on fire. He extinguished the fire with his hands. The episode caused him to suffer second and third degree burns to his abdomen and hands. The accident occurred at approximately 10:15 a. m. Although the employer had, in the past, provided protective aprons for its employees, it did not do so on February 6, 2004. A co-worker speculated that the claimant may have intentionally aimed the dryer at his shirt to dry the acetone, but the claimant denied it, saying the dryer sparked as a result of a brief electrical surge occurring when he turned the dryer to high speed at the urging of the supervisor.

He was taken to a local doctor, then transported to Vanderbilt University Medical Center, where he received medical care for his burns. At some point after the injury, testing revealed THC, or evidence of marijuana in his blood or urine. Dr. David Stafford testified the use of a heat gun to dry the claimant's shirt would be a bad decision, but refused to say whether or not the marijuana would cause the claimant to make the decision. The record contains no other evidence of a causal relationship between the use of marijuana and the injury. Co-workers testified, without contradiction, that they noticed nothing unusual about the claimant's behavior preceding the accident.

The employer contends the evidence preponderates against the trial court's finding and in favor of a finding that the use of marijuana, an illegal drug, was a proximate cause of the claimant's injuries, or, alternatively, the Panel should overturn existing law in order to deny workers' compensation benefits to the claimant.

Workers' compensation benefits are payable according to a well-defined scheme or schedule and without regard to fault of the employer or care exercised by the employee. GAF Bldg. Materials v. George, 47 S.W.3d 430, 432 (Tenn. Workers' Comp. Panel 2001). The only exceptions are cases where the employee is guilty of willful misconduct, intentional self-inflicted injury, intoxication or use of illegal drugs, or willful failure or refusal to use a safety appliance or to perform a duty required by law. Tenn. Code Ann. § 50-6-110(a). In order to defeat an injured employee's claim for benefits because of intoxication, the employer must prove the employee's intoxication was a proximate cause of the injury or death. Overall v. Southern Subaru Star, Inc., 545 S.W.2d 1, 4 (Tenn. 1976). Evidence that the alcohol content in the injured or deceased workers' blood equaled or exceeded 0.10 percent is not sufficient to establish intoxication as a proximate cause. Wooten Transports, Inc. v. Hunter, 535 S.W.2d 858, 861 (Tenn. 1976).

The same rule has been applied in a number of unpublished opinions to the use of illegal drugs. See e.g., Fireman's Fund Ins. Co. v. Mills, No.03S01-9601-CH-00008 (Tenn. Dec 18, 1996). However, in cases where the employer has implemented a drug-free workplace, pursuant to Tenn. Code Ann. § 50-9-101 et seq., if the injured employee has, at the time of the injury, a blood alcohol concentration level equal, as determined by blood or breath testing, to or greater than eight hundredths of one percent by weight for non-safety sensitive positions, and four hundredths of one percent weight for safety sensitive positions, or if the injured employee has a positive confirmation of a drug as defined in Tenn Code Ann. §50-9-103, it is rebuttably presumed that such drug or alcohol was the proximate cause of the injury, unless the employer had actual knowledge of and acquiesced in the employee's presence at the workplace while under the influence of such alcohol or drug, in which case the burden of proof is on the employer and there is no such presumption. Tenn. Code Ann. § 50-6-110(c)(1). If the injured worker refuses to submit to a drug test, it is presumed, in the absence of a preponderance of the evidence to the contrary, that the proximate cause of the injury was the influence of drugs, as defined in Tenn. Code Ann. § 50-9-103. Tenn. Code Ann. § 50-6-110(c)(2). Our independent examination of the record reveals no evidence that Morningstar Manufacturing, Inc. has implemented a drug-free workplace pursuant to the above statute. Thus, the statute is inapplicable to the present case.

From our examination of the record, we cannot say the evidence preponderates against the trial court's finding that the claimant was negligent, but that use of illegal drugs was not a proximate cause of the accidental injury. We also decline the invitation to overturn the rule that places the burden of proof on the employer, it being consistent with the general rule concerning affirmative defenses.

The injured employee seeks a ruling that the appeal is frivolous. When it appears that an appeal in a workers' compensation case is frivolous or taken solely for delay, the reviewing court may, upon motion of either party or on its own initiative, award damages against the appellant and in favor of the appellee without remand, for a liquidated amount. Tenn. Code Ann. § 50-6-225(i); Tenn. Code Ann. § 27-1-122; Wells v. Sentry Ins. Co., 834 S.W.2d 935 (Tenn. 1992). The Panel is not persuaded the appeal is frivolous or taken solely for the purpose of delay.

The judgment is therefore affirmed. Costs on appeal are taxed to the appellant and its sureties, in which execution may issue.

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JOE C. LOSER, JR., SPECIAL JUDGE

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**JUDGMENT ORDER**

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to the Appellants, Morningstar Manufacturing, Inc., and Travelers Property Casualty Company of America, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

