

ARKANSAS COURT OF APPEALS

DIVISIONS II
No. CA11-795

STACY GENTRY

APPELLANT

V.

ARKANSAS OIL FIELD SERVICES &
AIG CLAIMS SERVICES

APPELLEES

Opinion Delivered December 14, 2011

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [F703691]

REVERSED AND REMANDED

DAVID M. GLOVER, Judge

This is the second time this workers' compensation case has been before our court. Appellant Stacy Gentry injured his left ankle while working for appellee Arkansas Oil Field Services. The injury occurred when several casing pipes, weighing several hundred pounds each, crushed his ankle after they rolled off a forklift too quickly, and Gentry was unable to stop them. Medical testing after the accident established that Gentry tested positive for methamphetamine and amphetamines.¹ The Commission denied Gentry benefits, merely stating that he had failed to rebut the statutory presumption that the presence of illegal drugs had substantially occasioned his injury; he appealed that decision, and this court reversed and remanded to the Commission "for the Commission to render findings of fact on whether Gentry rebutted the presumption that his accident or injury

¹While there was also morphine in Gentry's body at the time of the drug test, medical records indicated that he was given that medication when he was initially seen at Ozark Health Medical Center, a fact noted by the Commission.



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was substantially occasioned by his ingestion of illegal substances.” *Gentry v. Arkansas Oil Field Servs.*, 2011 Ark. App. 306, at 5 (*Gentry I*). Specifically, this court held:

The Commission erred by focusing solely on whether Gentry was truthful about ingestion of illegal substances. This issue was resolved against Gentry, and it is this fact that triggered the statutory presumption. But there is a secondary question, which is whether he rebutted the presumption that his accident or injury was substantially occasioned by his ingestion of illegal substances—a question regarding the direct causal link. See *ERC Contractor Yard & Sales v. Robertson*, 335 Ark. 63, 977 S.W.2d 212 (1998). That Gentry was dishonest about drug use does not answer the causation question. In addition, the Commission omitted any discussion regarding Gentry’s co-worker Andrew Hines, whose testimony bore on causation. The Commission may not arbitrarily disregard the testimony of any witness.

Id. at 4–5.

Upon remand, the Commission again denied benefits, finding that there was not enough evidence of record to rebut the statutory presumption that Gentry’s injury was substantially occasioned by the presence of illegal drugs in his system. And once again, Gentry appeals, arguing that substantial evidence does not support the Commission’s decision. We agree, and we reverse and remand for an award of benefits.

An injury is not a compensable injury if the accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of doctor’s orders. Ark. Code Ann. § 11-9-102(4)(B)(iv)(a) (Supp. 2009). 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 a physician’s orders. Ark. Code Ann. § 11-9-102(4)(B)(iv)(b). The question of whether an employee



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has overcome the rebuttable presumption is a question of fact for the Commission. *Systems Contracting Corp. v. Reeves*, 85 Ark. App. 286, 151 S.W.3d 18 (2004). A claimant's testimony is never considered to be uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994).

On appeal, we view the evidence in the light most favorable to the Commission's decision and affirm if the decision is supported by substantial evidence. *Telling Industries v. Petty*, 2010 Ark. App. 602. 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; substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Waldrip v. Graco Corp.*, 101 Ark. App. 101, 270 S.W.3d 891 (2007). It is the function of the Commission to determine the credibility of the witnesses and the weight to be given their testimony; once the Commission has made its decision on issues of credibility, the appellate court is bound by that decision. *Telling Indus., supra*.

The Commission's second opinion is strikingly similar to its first opinion; however, it adds that there was a company policy against climbing on top of the pipes that went into effect months before Gentry started working for Arkansas Oil Field Services, and that Bill Williamson, the owner, testified that there was no reason for Gentry to be on the pipes because they could be cleaned from the ground. The Commission is factually incorrect—according to Williamson's deposition testimony, the prohibition against



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standing on the pipes only came into effect one or two months prior to Gentry's injury, not "months before" Gentry started working for Arkansas Oil Field Services. Further, there was testimony from Gentry, Hines, and even Mr. Williamson, that being on top of the pipes to clean them was a common occurrence before the new policy was implemented.

Pursuant to this court's directive, the Commission on remand also added its discussion of Andrew Hines's testimony. It noted that Hines was a co-worker and childhood friend of Gentry's, and that Hines had testified that he had stood on the pipes when there was only one rack, but that he had not done so when there were two racks (as there were on the day of Gentry's injury). The Commission pointed out that Hines, when asked if he had been told not to stand on the pipes, said no, but then said it was "the easiest way [he] had seen to do it [clean the pipe]." The Commission also found that it was "of significant note that Mr. Hines had been terminated by the respondent employer for smoking marijuana" and stated that the fact that Gentry and Hines were childhood friends called his testimony into question. We fail to see any correlation between the reason why Hines no longer works for Arkansas Oil Field Services or the fact that he and Gentry were childhood friends and the issue in this case—whether Gentry's injury was substantially occasioned by his use of illegal drugs.

The Commission also added the following to its opinion on remand:

The claimant's testimony regarding his drug use is not credible. He had stolen from Mr. Williamson in the past, and Mr. Williamson had witnessed the claimant using methamphetamine. The claimant told Mrs. Williamson that he had used



drugs on the way to Conway Regional. Dr. Simmons' medical report clearly supports that the claimant's positive test for amphetamines was not attributable to the legitimate use of over-the-counter cold medicines. The claimant's assertion he took cold medicine the night before is simply not plausible, nor is it supported by the report of Dr. Simmons. Further, Mr. Hines' testimony was that the claimant could have avoided getting hit if he had jumped off the rack. When we consider all of this evidence, there is not enough evidence of record to rebut the statutory presumption that the claimant's injury was substantially occasioned by the presence of illegal drugs in his system.

In *Gentry I*, this court decided that the issue of whether there were illegal drugs in Gentry's body was decided against him; therefore, we fail to see any correlation between Mr. Williamson's testimony that Gentry had stolen from him (even if taken as true) and whether Gentry had rebutted the presumption that illegal drugs had substantially occasioned his accident. Furthermore, the Commission mischaracterizes Mr. Williamson's testimony concerning seeing Gentry use methamphetamine—it was Mr. Williamson's testimony that he saw Gentry use methamphetamine *after* the accident, not before. In fact, Mr. Williamson testified that he had never seen Gentry appear intoxicated or under the influence at work. Likewise, the finding by the Commission that Gentry told Mrs. Williamson he used the drugs on the way to Conway Regional after the accident, while deemed by the Commission to be important, is really of no moment—if he took the drugs on the way to the hospital, as reported by Mrs. Williamson, that would have been *after* the accident and could not have caused the accident, thus it tended to rebut the presumption. Lastly, the Commission's reliance upon Hines's testimony that Gentry could have jumped—from a height of at least twelve feet in the air—to avoid being hit by the pipes is simply not a reasonable conclusion. When the pipes were dropped too quickly onto the



rack, Gentry was faced with two undesirable options—either attempt to stop several hundred pounds of pipe or jump off two racks that were twelve to fifteen feet in the air. The Commission’s reliance on Gentry’s failure to jump from the racks in order to deny him benefits is simply not reasonable.

Here, the dissenting commissioner states:

The majority opinion does not address the causation question because the facts are in favor of a finding that the claimant rebutted the presumption. In fact, there is absolutely no connection between the claimant’s inability to avoid being struck by the pipe and the presence of drugs in his system. The claimant and Mr. Hines both testified that there was no way the claimant could have avoided being injured once the forks were tilted too steeply and the gravel holding the pipes gave way. The claimant testified that both he and crew members on the ground tried to get the forklift driver’s attention by shouting. Once that effort failed, and the pipes began to tumble onto the rack and toward the claimant, his choices were few. His options were to jump over the oncoming pipes or jump off the rack to avoid them. Three or four pipes were coming at him at once, each one with a diameter of five-and-one-half inches. Consequently, leaping over them was clearly impracticable. At the time, he was positioned in the center of the rack and 12 to 15 feet away from the forklift; for that reason, plus the speed of the pipes, running either to his left or right and jumping off either side was not a promising option either. Claimant instead elected to run backwards toward the rear of the rack, by the stops. When overtaken by the pipes, he put up his right foot in a futile effort to at least slow them. This resulted in the right foot being knocked away, and the pipe striking his left leg. Simply put, the actions of the forklift driver caused the accident, not the presence of drugs in the claimant’s system. The claimant’s (or Mr. Hines’s) credibility had nothing to do with causation.

We agree. The Commission did not consider the causation issue, even after being specifically directed to do so in *Gentry I*. Instead, it again reverted to the credibility of Gentry and now Hines, neither of which has any bearing on the issue of causation.

Reversed and remanded for an award of benefits.

HART and MARTIN, JJ., agree.