

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE  
(July 3, 1996 Session)

**FILED**  
**December 18, 1996**  
**Cecil Crowson, Jr.**  
Appellate Court Clerk

FIREMAN'S FUND INSURANCE )  
COMPANY, )  
)  
Plaintiff-Appellee, )  
v. )  
TAYLOR BARTON MILLS, )  
)  
Defendant-Appellant. )

HAMBLEN CHANCERY  
Hon. Dennis H. Inman,  
Chancellor.  
No. 03S01-9601-CH-00008

For Appellant:

Sherman Ames  
Gillenwater, Nichol & Ames  
Knoxville, Tennessee

For Appellee:

David N. Wedeking  
Amy V. Hollars  
Hodges, Doughty & Carson  
Knoxville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Penny J. White, Associate Justice, Supreme Court  
Roger E. Thayer, Special Judge  
Joe C. Loser, Jr., Special Judge

REVERSED AND REMANDED

Loser, Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employee contends the evidence preponderates against the trial court's finding that his injury was caused by intoxication. The panel concludes the judgment should be reversed.

On February 15, 1995, the employee or claimant, Mills, was working at his job as a machinist using a large lathe to bore a specifically sized hole into a fifty inch bull gear. After stopping the lathe to take a measurement, he accidentally - perhaps negligently - brushed against the lathe's starter button. The lathe started and the claimant's clothing was caught in the turning lathe. As a result, he was injured.

Tests done at the University of Tennessee Medical Center shortly after the accident revealed a high level of cannaboid concentration from probable chronic use of marijuana. The claimant admits to being a chronic user of marijuana and had admittedly smoked two or three "joints" on the evening before the accident.

Additionally, two witnesses testified that they thought they saw him from some one hundred feet away, sharing a joint with another employee on the morning of the accident, before beginning work. The claimant and other employee denied it. The employer knew Mills was a heavy marijuana user and had fired him for thirty days on a previous occasion for "suspected" use of the substance, but re-hired him 30 days later at a higher rate of pay.

An expert, without examining the claimant, opined from lab test results that marijuana intoxication was a possible contributing cause of his

accidental injury. Witnesses who observed the claimant working before the injury, testified without equivocation that he did not appear to them to be intoxicated and was operating the lathe normally. The claimant denied being intoxicated, but was wearing an oversized and bulky sweater which the lathe first caught.

Despite his addiction, the trial judge observed, "Mr. Mills in practically every sense is an employer's dream employee. He doesn't report to work early, he reports to work hours early. He's paid on an hourly rate, yet he goes in the supervisor's office looking for work. He exercised initiative, he was a self-motivator...."

The trial court found that intoxication was a proximate contributing cause and, based on the statute, disallowed the employee's claim for workers' compensation benefits. Appellate review is de novo upon the record of the trial judge, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). This tribunal is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921 (Tenn. 1995).

It has long been the rule in Tennessee that workers' compensation benefits are payable without regard to the fault of the employer or the care exercised by the employee. Morrison v. Tennessee Consolidated Coal Co., 162 Tenn. 523, 39 S.W.2d 272 (1931); Lincoln Memorial University v. Sutton, 163 Tenn. 298, 43 S.W.2d 195 (1931). One of the purposes of the Workers' Compensation Act is to provide the injured worker with compensation for his loss of earning capacity without imposing on him the burden of establishing liability under traditional principles of negligence. Crane Company v. Jamieson, 192 Tenn. 41, 237 S.W.2d 546 (1951). Another is to place upon

industry, rather than society, the ultimate cost of risks incident to, and injuries and death resulting from, the production and distribution of goods and services. Franklin v. Stone and Webster Engineering, 183 Tenn. 155, 191 S.W.2d 431 (1946). Common law defenses which exist in tort actions are not available for claims under the Workers' Compensation Act. Tenn. Code Ann. section 50-6-101 *et seq.*

Notwithstanding those principles, an employer may refuse to pay workers' compensation benefits for an injury or death due to the employee's willful or intentional self-inflicted injury, or due to intoxication or willful refusal to use a safety appliance or perform a duty required by law. Tenn Code Ann. section 50-6-110. In order to defeat an injured employee's claim for benefits because of intoxication, the employer must prove that the employee had voluntarily become intoxicated and such intoxication was the proximate cause of the injury or death. Overall v. Southern Subaru Star, Inc., 545 S.W.2d 1 (Tenn. 1976). Moreover, it has been held that scientific evidence that the employee's blood contained a high level of intoxicants is insufficient to establish intoxication as the proximate cause. Gentry v. The Lilly Co., 225 Tenn. 708, 476 S.W.2d 252 (1971); Wooten Transports, Inc. v. Hunter, 535 S.W.2d 858 (Tenn. 1976).

In light of the undisputed proof that the claimant was operating the machine normally immediately before the accident and from a consideration of the above principles of law, the panel concludes that the evidence preponderates against the trial court's finding of intoxication as the proximate cause of the claimant's injury. The judgment of the trial court is accordingly reversed and the case remanded to the trial court for such further proceedings as may be consistent with this opinion. Costs on appeal are taxed to the plaintiff-appellee.

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Joe C. Loser, Jr., Judge

CONCUR:

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Penny J. White, Associate Justice

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Roger E. Thayer, Judge



N THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

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COMPANY, )  
 ) Hamblen Chancery, No. 94-82  
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 ) Hon. Dennis H. Inman,  
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V. ) No. 03S01-9601-CH-00008  
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TAYLOR BARTON MILLS, )  
 )  
 )  
Defendant-Appellant. ) REVERSED AND REMANDED.

JUDGMENT ORDER

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well taken and should be denied; 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 will be paid by plaintiff-appellee, for which execution may issue if necessary.

IT IS SO ORDERED this \_\_\_ day of December, 1996.

PER CURIAM

White, J. - Not participating.

