

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
June 27, 2016 Session

**JAMES AUSTIN v. ROACH SAWMILL & LUMBER CO.**

**Appeal from the Circuit Court for Hardin County  
No. 4660 Charles C. McGinley, Judge**

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**No. W2015-02225-SC-WCM-WC – Mailed August 5, 2016; Filed October 26, 2016**

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On June 27, 2013, James Austin (“Employee”) operated a piece of machinery in the course of his employment with Roach Sawmill & Lumber Company (“Employer”). The machine trapped his right hand, injuring Employee and resulting in the amputation of his right ring finger. In a post-injury drug screen, Employee tested positive for amphetamine, nordiazepam, oxazepam, temazepam and alpha-hydroxyalprazolam. Employer operated as a drug-free workplace program as described in Tennessee Code Annotated section 50-9-101 *et seq.* The trial court found that Employee did not rebut the presumption that the drugs were the proximate cause of his injury and dismissed the action. Tenn. Code Ann. § 50-6-110(c)(1) (Supp. 2012). Employee appealed, asserting that the evidence preponderates against the trial court’s decision. The Supreme Court referred this appeal to the Special Workers’ Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law pursuant to Tennessee Supreme Court Rule 51. We affirm the judgment.

**Tenn. Code Ann. § 50-6-225(a) (2014) Appeal as of Right;  
Judgment of the Circuit Court Affirmed**

WILLIAM B. ACREE, JR., SP.J., delivered the opinion of the court, in which ROGER A. PAGE, J. and BRANDON O. GIBSON, J., joined.

Terry A. Wood, Adamsville, Tennessee, for the appellant, James Austin.

Lee Anne Murray, Nashville, Tennessee, for the appellee, Roach Sawmill & Lumber Co.

## OPINION

### Factual and Procedural Background

Employee worked for Employer for nineteen years. He began as a lumber stacker but later became a sawyer.<sup>1</sup> For the last twelve years of his employment, he operated a “hydraulic log turner,” known as a “Cooper Scragg Mill.” The mill is a sophisticated, computer-controlled machine consisting of a cab for the operator and three extensions, known as “turners,” that place logs into proper position before being sawed. From the cab, the operator controls the turners by entering codes into a computer and operates the saw with a joystick. The turners can only be operated from the computer panel. To permit cleaning of the mill area, at the end of each shift, the operator raises the turners, places 4” x 6” x 12” blocks underneath each turner, then lowers the turners onto the blocks. This procedure permits the night cleanup crew to sweep sawdust from the area. Accumulated sawdust is a fire hazard and causes other problems if not regularly removed.

At the beginning of a shift, the operator turns on the mill’s hydraulic system; inputs a code to raise the turners; leaves the cab and removes the blocks to a safe area; and then returns to the cab to begin the process of turning and sawing logs. Employee initiated this process on the morning of June 27, 2013. He testified that, as he was removing the block from under the first turner, it descended and pinned his hand in the machine. It took several minutes for another employee to release his hand from the machine. Employee’s theory of why the accident occurred “was a malfunction in this temple sonic rod or a short that runs in the wire beside it. That’s the only way that it could cause it to come down like that.” However, Employee admitted he had no electrical background or training.

Dr. Michael Dolan, an orthopedic surgeon, treated Employee and amputated the ring finger of Employee’s right hand. Dr. Dolan released Employee to full-duty work on August 21, 2013. He assigned 13% permanent anatomical impairment to the arm which is equivalent to 8% to the body as a whole.

On the morning of the accident, hospital personnel administered a post-injury urine drug screen. Lab results indicated the presence of several medications not prescribed to Employee: amphetamine, nordiazepam, oxazepam, temazepam, and alpha-hydroxyalprazolam. Employee did not dispute that Employer was a drug-free workplace

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<sup>1</sup> Dictionary.com defines “sawyer” as “a person who saws wood, especially as an occupation.”

as defined by the workers' compensation law. Upon receipt of the results of the drug screen, Employer's insurance carrier denied Employee's workers' compensation claim. At trial and in his deposition testimony, Employee testified that two days before his injury, he took one Xanax pill; and one day before the injury he took one Adderall pill. Employee testified these were the only medications he took that were not prescribed to him. He denied taking any other non-prescribed medications and stated that his ability to perform his job was not impaired on the morning of the accident.

Mark Roach, owner of Employer since 1982, testified he previously worked as a sawyer and operated the mill that injured Employee. Employer purchased the "Cooper Scragg Mill" in 2012, and Employee had operated it since that time. Prior to the 2012 purchase, Employee operated a very similar machine. Mr. Roach agreed with Employee's description of the procedure of placing blocks under the turners at the end of the day and removing them the next morning. Mr. Roach testified that the turners would not lower if the operator entered the correct code to raise them.

After Employee's injury, Mr. Roach conducted an investigation of the machine. He spoke to Scotty White, who regularly operated the machine and became the primary operator after Employee's injury; Jeff Bridges, the company electrician; and, perhaps, one other employee. Based on his investigation, Mr. Roach concluded no short circuit existed. The machine continued to function without repairs.

Dr. Donna Seger, a medical toxicologist, testified at trial. She is board certified in medical toxicology by the American Board of Medical Toxicology. She was previously board certified in emergency medicine. She is a professor of clinical and emergency medicine at Vanderbilt University Medical Center. In addition to teaching medical students, she maintains a clinical practice. She is also the medical director for the Tennessee Poison Center.

Dr. Seger reviewed Employee's post-injury drug screen at Employer's request. She noted the date of urine collection was June 27, 2013, at 6:30 a.m. The sample was positive for amphetamine, nordiazepam, oxazepam, temazepam, and alpha-hydroxyalprazolam.

Dr. Seger stated the amphetamine was likely from the Adderall admittedly taken by Employee on the day before the accident. The amount was consistent with that explanation. She opined, if taken the previous day, it was unlikely the amphetamine affected Employee at the time of his injury.

Dr. Seger testified the nordiazepam is both a benzodiazepine and a metabolite of many benzodiazepines. She explained alpha-hydroxyalprazolam is a metabolite of Xanax. She testified Employee took either nordiazepam or another benzodiazepine that would have metabolized into nordiazepam as well as Xanax.

From that information, Dr. Seger concluded Employee took some combination of medications prior to his injury. She identified several possible combinations of drugs: “Xanax and Valium, or Xanax and diazepam, oxazepam and diazepam, or Xanax and temazepam, and nordiazepam...are the three scenarios which would give this drug screen.” Dr. Seger testified Employee’s drug usage impacted his cognitive and executive ability as well as his psychomotor reaction time. Dr. Seger opined the drugs found in Employee’s system would cause delayed reaction to stimulus and affect his ability to input codes on a computer panel. She refuted Employee’s account of his drug usage and testified the presence of Xanax in Employee’s drug screen was inconsistent with his testimony he took one pill two days prior to the injury. According to Dr. Seger, Xanax cannot be detected more than twenty-four hours after it is taken. As to oxazepam, she opined if Employee had not taken any in a day, he had taken a “boatload” earlier because there was still a lot of it in his system at the time of urine collection.

The trial court issued findings from the bench. The court found Employee failed to rebut the presumption of causation created by the drug-free workplace law. The court found Dr. Seger’s testimony particularly persuasive, especially as to the conflict between the drug screen results and Employee’s testimony concerning his use of unprescribed medications in the days before the accident. The court noted Employee had not only failed to rebut the statutory presumption by clear and convincing evidence but Employee failed to rebut the presumption by even a preponderance of the evidence. The court entered judgment in accordance with those findings. Employee appealed and contends the trial court erred by failing to find he did not rebut the statutory presumption.

### **Analysis**

The standard of review of issues of fact in a workers’ compensation case is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(a)(2) (2014). When credibility and weight to be given testimony are involved, appellate courts give considerable deference to the trial court when the trial judge observed the witnesses’ demeanor and heard in-court testimony. Madden v. Holland Group of Tenn., 277 S.W.3d 896, 900 (Tenn. 2009). A trial court’s conclusions of law are reviewed de novo upon the record with no presumption of correctness. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

The trial and appeal of this action center on Tennessee Code Annotated section 50-6-110(c)(1) (Supp. 2012), which provided at the time of this injury,

In cases where the employer has implemented a drug-free workplace pursuant to chapter 9 of this title, if the injured employee has, at the time of the injury ... a positive confirmation of a drug as defined in § 50-9-103, then it is presumed that the drug ... was the proximate cause of the injury. This presumption may be rebutted by clear and convincing evidence that the drug or alcohol was not the proximate cause of injury.

Tenn. Code Ann. § 50-6-110(c)(1) (Supp. 2012).

The term clear and convincing evidence is defined in the Tennessee Pattern Jury Instruction, Civil 2.41: the party having the burden of establishing clear and convincing evidence “must show that the proposed conclusion is highly probable and that there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.”

Tennessee Code Annotated section 50-9-103(6) (Supp. 2012), referenced in section 50-6-110(c)(1), defined a drug as “any controlled substance subject to testing pursuant to drug testing regulations adopted by the United States department of transportation.” The parties do not dispute section 50-6-110(c)(1) is applicable in this case.

The question presented to the trial court, and to this Panel, is whether or not Employee rebutted by clear and convincing evidence the presumption the drugs revealed in his drug screen were the proximate cause of his injury. The trial court concluded he did not, and we agree with the trial court’s conclusion.

The evidence submitted by Employee to rebut the presumption set out in section 50-6-110(c)(1) consisted entirely of his own testimony. He offered no other testimony, lay or expert, to support his theory of a malfunction of the machine. Employee asserted the turner must have malfunctioned but presented no evidence that it malfunctioned. He explained that once the turner rose, it could not descend until entry of a new code in the control panel. He testified the turner behaved peculiarly in the weeks preceding his injury. Employee argues this testimony establishes his injury was the result of a mechanical or electrical malfunction.

In response to those assertions, Employer introduced the testimony of Mr. Roach who testified if an incorrect code was entered, it would be possible for the turner to raise

and lower automatically. In addition, Mr. Roach testified that his own investigation of the machine revealed no evidence of malfunction, and he found no reason to repair the machine in the following months. The conflicting testimony of these two witnesses and the subsequent lack of any repairs on the equipment fail to provide a high probability the machine malfunctioned.

Employee also asserted he was not impaired on the morning of his injury. He testified he had only taken one Xanax pill two days before the accident and one Adderall pill the day before the accident. Those assertions were directly refuted by the testimony of the expert medical witness, Dr. Seger. She testified the results of the drug screen were inconsistent with Employee's version of events because they showed he had taken Xanax and at least one other benzodiazepine shortly before the accident and in much greater quantity than he claimed. She opined the levels of benzodiazepines revealed by the drug screen were sufficient to negatively affect Employee's cognition, executive function, and the speed of his reaction to stimulus. Employee presented no expert medical evidence to rebut Dr. Seger's opinion, and the trial court found her live testimony to be "particularly persuasive."

A trial court's findings on credibility and weight of the evidence may be inferred from the manner in which the court resolves the conflicts in the testimony and decides the case. Interstate Mech. Contractors, Inc. v. McIntosh, 229 S.W.3d 674, 678 (Tenn. 2007) (citing Rhodes v. Capital City Ins. Co., 154 S.W.3d 43, 46 (Tenn. 2004)). The trial court stated the presumption would not be rebutted even if the burden was by a preponderance of the evidence. It is apparent the trial court found Employee's testimony did not clearly and convincingly rebut the presumption the multiple drugs in Employee's system were the proximate cause of his injury. We give great deference to a trial court's findings as to the credibility of live testimony. See Madden, 277 S.W.3d at 900. We conclude the trial court correctly found Employee failed to sustain his burden of proof.

### **Conclusion**

The judgment of the trial court is affirmed. Costs are taxed to James Austin and his surety, for which execution may issue if necessary.

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WILLIAM B. ACREE, JR., SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE  
AT JACKSON

**JAMES AUSTIN v. ROACH SAWMILL & LUMBER CO.**

**Circuit Court for Hardin County  
No. 4660**

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**No. W2015-02225-SC-WCM-WC – Filed October 26, 2016**

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**JUDGMENT ORDER**

This case is before the Court upon the motion for review filed by James Austin pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(A)(ii), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well taken and is, therefore, denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to James Austin and his surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

ROGER A. PAGE, J., not participating