

Workmen's Compensation Benefits Denied for Presumed Drug Use?

This case study summarizes a recent matter in which a worker was injured while on the job, then later denied Workmen's Compensation benefits when drug use was alleged. It illustrates the key importance of rebutting presumptions through objective assessment of clear and convincing toxicological evidence.

A lineman working on power lines from a bucket truck received a serious electrical shock, severely injuring his arm and torso. The foreman heard a loud snap, then saw smoke rising from where the man had been working. He ran over and found him in the bucket screaming in pain and foaming at the mouth with severe burns to his right arm, stomach and chest.

The foreman and a co-worker immediately lowered the bucket and called 911. They were instructed to remove the lineman from the bucket and lay him on the ground. Emergency Medical Services (EMS) personnel arriving soon thereafter called for a trauma alert and arranged rapid transport to the hospital emergency department via helicopter.

According to the EMS records, the electrical charge entered the right arm and exited the abdomen, causing burns and deep tissue damage. The lineman was given morphine and flown directly to the hospital. Upon arrival, he was stabilized and transported to a burn unit where doctors elected to place him in a medically-induced coma to prevent swelling of the brain. Surgery was performed shortly thereafter with amputation of the right arm.



A lineman working on power lines received a serious electrical shock.^(a)

The Employer Intercedes

None of the medical records indicated any influence of alcohol or illegal substances, nor were there any records of suggestive odors or behavior patterns consistent with intoxication. The foreman later testified that, prior to work, the lineman appeared normal; his eyes were not bloodshot, there was no slurring of speech or symptoms of intoxication. A co-worker witness also testified that there had been no suspicious odors and the lineman did not appear to be impaired prior to his injury.

However, later interviews with witnesses by company agents suggested that the lineman did not appear to be wearing insulating rubber gloves as required. The foreman stated that, at some point, the lineman must have removed his rubber gloves while in the bucket working on the transformer (based on the burn marks).

As the company required drug testing in the event of injury or suspicion of use, the company's drug compliance coordinator contacted a Medical Review Officer (MRO). A sample collector visited the hospital to obtain a 5-panel urine drug screen. A subpoena was required as the lineman was still in a coma, and this could only be done through a blood draw and unconscious catheter collection. The samples purportedly tested positive for marijuana metabolites. Subsequently, the officer mailed the lineman a form letter in which an item was circled in red pen which said: *"You may have forfeited your rights to receive medical and indemnity benefits due to either your refusal to be tested or the results of your recent drug test."*

After awakening in the hospital and being interviewed, the lineman admitted to using marijuana recreationally several days prior to the incident as well as having had marijuana "either in the truck or on his person" at the time of the accident. This was corroborated by evidence found at the scene by the attending police officer. This consisted of a lunchbox containing a glass smoking pipe with residue and other paraphernalia as well as a plastic bag containing a green leafy substance (later testing positive as marijuana).

However, the lineman vehemently denied that he had been smoking marijuana before or at the time of the accident or that he was intoxicated while on the job. He also denied being informed about the possibility that he might lose his medical and indemnity benefits.

Toxicological Assessment

Upon learning that the report filed with the state by his employer had resulted in denial of Workmen's Compensation benefits, the lineman filed a grievance. His counsel retained Dr. Sawyer to perform an objective toxicological assessment.

Dr. Sawyer conducted an extensive review of all available records including witness statements, the raw laboratory data package and records of the attending EMS, police and emergency room personnel. He noted numerous, significant discrepancies in the laboratory data and the manner in which the hospital samples were collected. He also noted erroneous conclusions with respect to the manner in which the test results had been interpreted by the company.

For example, although the lineman's urine sample tested positive for marijuana metabolites, the sample was collected in a catheter bag not approved for this purpose which violated the generally-accepted sample collection criteria. The company reported that a blood sample had been "gathered" from the laboratory, but it had no proper chain-of-custody procedures, no date, time or custody seal. Additionally, the company personnel who reported to the state were not qualified to offer toxicological opinions.

Of particular significance was the fact that both the urine and blood samples were unreliable because they both tested negative for opiates. This was an important finding as both the EMS and hospital had administered heavy amounts of opiates (morphine, hydromorphone, etc.) prior to collection. Additionally, although the test results of the urine screen were positive for marijuana metabolite, the blood failed to indicate the presence of delta-9-tetrahydrocannabinol ("THC"), the active ingredient in marijuana responsible for its intoxicating effects.

Workmen's Compensation Hearing

Dr. Sawyer had produced a written assessment, but was asked to deliver his testimony in person at the hearing. In addition to his assessment conclusions, Dr. Sawyer testified that the blood and urine results were inconsistent with the opiates administered by the EMS and hospital. He also noted that the blood and urine samples suffered from chain-of-custody and sample collection deficiencies. Of particular note was the revelation that the confirmation test data was initially negative and the mass spectrometer data appeared to have been "doctored" to pass.

With respect to the lineman, Dr. Sawyer pointed out that the samples did not reveal an elevated carboxyhemoglobin level consistent with smoking marijuana prior to or at the time of the accident. However, the results did support the contention that the lineman had smoked marijuana several days before. This was also consistent with his testimony and his statements in the hospital.

Company counsel previously attempted to exclude Dr. Sawyer's testimony based on technical factors, but the Administrative Law Judge ruled that the scientific basis of Dr. Sawyer's opinions was properly cited and that counsel's arguments were "unpersuasive." Based on the available information and the weight of objective evidence, Dr. Sawyer testified that it was his opinion to within a reasonable degree of toxicological certainty that the lineman was not under the influence of drugs at the time of the accident.

Outcome

The judge cited Dr. Sawyer's toxicological assessment as presenting plausible evidence with respect to the actual quantitative amount and chemical nature of the marijuana metabolite found in the test results as well as offering persuasive evidence with respect to the lineman's lack of drug influence. He further ruled that the employer failed to establish the necessary proof to assert a presumption of intoxication at the time of the accident.

The judge ruled that the lineman's injury occurred within the proper scope of employment and that he was entitled to receive Workmen's Compensation benefits. However, the judge reduced the monetary award by 25% for the lineman's failure to wear the protective gloves that might have avoided the accident altogether.

(Disclaimer: Toxicology case studies are impartial and objective summaries of toxicological matters in which TCAS was retained for the purpose of assessing health-based factors which, in some cases, led to a determination of causation. No names or identifying information have been provided due to privacy and legal considerations. In the above matter, Dr. Sawyer was retained by plaintiff.)



Images

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A Message from Dr. William R. Sawyer Chief Toxicologist, TCAS, LLC



"Workmen's Compensation cases sometimes involve refuting assumptions and assertions through scrupulous attention to detail. Objective, peer-reviewed methods must be applied to produce credible toxicological evidence."

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