

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

MICHAEL G. TRENT :
 :
 Plaintiff - Appellee :
 :
 -vs- :
 :
 STARK METAL SALES, INC., :
 :
 Defendant - Appellant :
 :
 And :
 :
 ADMINISTRATOR, OHIO BUREAU :
 OF WORKERS COMPENSATION :
 :
 Defendant –Appellee :

JUDGES:
Hon. W. Scott Gwin, P.J.
Hon. Sheila G. Farmer, J.
Hon. Craig R. Baldwin, J.

Case No. 2014CA00141

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court
of Common Pleas, Case No.
2013 CV 02568

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

March 23, 2015

APPEARANCES:

For Plaintiff-Appellee Michael Trent

For Defendant-Appellant

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Baldwin, J.

{¶1} Appellant Stark Metal Sales, Inc., appeals a judgment of the Stark County Common Pleas Court affirming a decision of appellee Ohio Bureau of Workers' Compensation finding that appellee Michael G. Trent was entitled to workers' compensation benefits for injuries received in the course and scope of his employment with appellant.

STATEMENT OF FACTS AND CASE

{¶2} On June 30, 2011, Trent was injured while working at appellant's facility when a large piece of steel fell on his legs. He was transported to Alliance Community Hospital. Nursing notes from the hospital indicate that when he was informed that he would be subject to a urine drug screen, Trent indicated that he would not be able to urinate because he had done so before the injury occurred. A subsequent urine screen was performed by AultWorks Occupational Medicine on July 6, 2011. Trent tested positive for marijuana metabolite.

{¶3} Trent filed a claim for worker's compensation benefits. The Industrial Commission of Ohio allowed his claim. Appellant appealed the allowance of the claim to the Stark County Common Pleas Court.

{¶4} Prior to trial, Trent filed a motion in limine requesting the court to exclude any testimony concerning drug testing. The court granted the motion in limine, stating:

{¶5} "The Court notes that marijuana metabolites can remain present in the body well beyond the six-day period at play in this matter and that Defendant provides no evidence or argument taken from the medical records to show when Plaintiff may have used marijuana. . . While the evidence of marijuana metabolites may be relevant

to this matter, coupled with the proper expert testimony explaining those results, the prejudicial value considering all the circumstances surrounding Plaintiff's drug screen outweighs the relevance." Judgment entry, April 4, 2014.

{¶6} The case proceeded to jury trial. During voir dire, appellant asked prospective jurors whether any of them worked in a drug free workplace. Upon inquiry from the court, counsel for appellant represented that he intended to present testimony that before being transported to the hospital on the day of the injury, Trent told another employee that he could not pass the drug screen test. The trial court indicated that the evidence would not be admissible because it was unfairly prejudicial, and allowed appellant to proffer the evidence outside the hearing of the jury.

{¶7} During the proffer, Trent testified on cross-examination that before he was transported to the hospital, he told Dan Dimit that he couldn't pass the urine test because he had smoked marijuana, and he believed it would still be in his system. He admitted that he did not comply with the employee manual's drug free workplace provision. He testified that he did not use marijuana on the day of the injury, and the last time he used marijuana was probably a couple of weeks before the injury.

{¶8} Appellant further represented to the court by way of proffer that Lloyd Payne, a manager employed by appellant, would testify that Trent said he didn't want medical care or treatment after the injury because he could not pass the urine test. Appellant also represented that Dan Dimit, plant manager at the time of the accident, would testify that Trent acknowledged he had smoked marijuana and did not want to go to the hospital because he could not pass the urine test.

{¶9} The trial court found that there was no evidence to support appellant's claim that Trent was not in the scope and course of his employment when he was injured, and directed a verdict in favor of appellees.

{¶10} Appellant assigns a single error:

{¶11} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT PREVENTED APPELLANT FROM SUBMITTING WITNESS TESTIMONY AT TRIAL THAT APPELLEE INFORMED COWORKERS HE WOULD NOT PASS A DRUG SCREEN, RESULTING IN A MATERIAL PREJUDICE TO APPELLANT'S CASE."

{¶12} The admission or exclusion of relevant evidence rests within the sound discretion of the trial court. *State v. Sage*, 31 Ohio St. 3d 173, 180, 510 N.E.2d 353, 358 (1987). "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140, 1142 (1983).

{¶13} The trial court found that the evidence was unfairly prejudicial. Evid. R. 403(A) states, "Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury."

{¶14} Appellant argues that by having marijuana in his system, Trent violated a provision of the employee handbook, which states, "Employees will not be allowed to work with prohibited drugs in their system." Appellant argues that by violating this provision, Trent was not in the scope and course of his employment at the time he was injured. Appellant also argues that Trent's statements that he could not pass the urine

test were relevant to demonstrate that he was under the influence of marijuana at the time of the injury.

{¶15} Regarding eligibility for compensation for a work injury, R.C. 4123.54 provides in pertinent part:

(A) Except as otherwise provided in divisions (I) and (K) of this section, every employee, who is injured or who contracts an occupational disease, and the dependents of each employee who is killed, or dies as the result of an occupational disease contracted in the course of employment, wherever such injury has occurred or occupational disease has been contracted, provided the same were not:

(2) Caused by the employee being intoxicated or under the influence of a controlled substance not prescribed by a physician where the intoxication or being under the influence of the controlled substance not prescribed by a physician was the proximate cause of the injury, is entitled to receive, either directly from the employee's self-insuring employer as provided in section 4123.35 of the Revised Code, or from the state insurance fund, the compensation for loss sustained on account of the injury, occupational disease, or death, and the medical, nurse, and hospital

services and medicines, and the amount of funeral expenses in case of death, as are provided by this chapter.

(B) For the purpose of this section, provided that an employer has posted written notice to employees that the results of, or the employee's refusal to submit to, any chemical test described under this division may affect the employee's eligibility for compensation and benefits pursuant to this chapter and Chapter 4121. of the Revised Code, there is a rebuttable presumption that an employee is intoxicated or under the influence of a controlled substance not prescribed by the employee's physician and that being intoxicated or under the influence of a controlled substance not prescribed by the employee's physician is the proximate cause of an injury under either of the following conditions:

(1) When any one or more of the following is true:

(b) The employee, through a qualifying chemical test administered within thirty-two hours of an injury, is determined to have one of the following controlled substances not prescribed by the employee's physician in the employee's system that tests above the following levels in an enzyme multiplied immunoassay technique screening test and above the levels established in division (B)(1)(c) of

this section in a gas chromatography mass spectrometry
test[.]

{¶16} It is undisputed that a qualifying chemical test was not administered within thirty-two hours of the injury, and therefore the rebuttable presumption that he was under the influence of a controlled substance did not arise in the instant case.

{¶17} Regardless of whether Trent violated a workplace rule by having marijuana metabolites in his system at the workplace, R.C. 4123.54(A)(2) provides that he is entitled to workers' compensation benefits unless his drug use was the proximate cause of the injury. While appellant proffered evidence that Trent indicated to other employees that he could not pass the urine drug screen on the day of the accident because of marijuana use, his proffered testimony indicated that he had not smoked marijuana on the day of the accident, and had last smoked marijuana several weeks before the accident. The proffered evidence did not demonstrate that he was under the influence of marijuana on the date of the accident and that his marijuana use was the proximate cause of the accident. The trial court did not abuse its discretion in excluding the evidence on the basis that its prejudicial effect outweighed its probative value.

{¶18} The assignment of error is overruled. The judgment of the Stark County Common Pleas Court is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Gwin, P.J. and

Farmer, J. concur.