

Is Worker Entitled to Worker's Comp if Injured Violating a Safety Rule?



SITUATION

A factory worker violates a safety policy by entering a 'No Go Zone' in the plant to adjust some tangled wiring located on an uneven and unstable surface. He trips while maneuvering around the tangled wires and falls, suffering head and wrist injuries. The employer requires the worker to take a post-incident drug test, which is positive for cocaine. But he claims he took the drug during the prior weekend and wasn't high when he fell. He also claims that although he and other workers had previously entered the No Go Zone, the employer hadn't enforced the No Go Zone rules against them. The employer challenges the workers' comp claim.

QUESTION

Is the worker entitled to worker's comp for his injuries'

- A. No, because he got hurt while he was violating a safety rule.
- B. No, because he failed a drug test after the incident.
- C. Yes, because his safety infraction didn't amount to serious and willful misconduct.
- D. Yes, because he was hurt on the job.

ANSWER

C. A worker who violates a safety rule and gets hurt can still be entitled to workers' comp if his actions weren't serious and willful misconduct.

This hypothetical is based on an actual workers' comp appeal in Alberta in which an injured worker tested positive for cocaine after suffering workplace injuries that occurred when he entered a designated 'No Go Zone' in violation of safety rules. The Alberta Appeals Commission ruled workers' comp covered the injuries.

The Commission explained that workers' comp law provides compensation to an

injured worker unless his conduct removes him from the course of employment or the injury is 'primarily attributable to the serious and willful misconduct of the worker.' Serious and willful misconduct includes a 'deliberate and unreasonable' violation of a well-known and enforced safety law or policy. In addition, impairment due to drugs or alcohol may remove a worker from the course of employment if it's the sole cause of the incident and isn't permitted or condoned by the employer.

The Commission found that there was no evidence the worker was impaired when he was injured or that impairment was the sole cause of the incident, despite the positive drug test. There also wasn't enough evidence to show he intended to cause the incident or injury or affect others' safety. And there were safety hazards present that at least contributed to the incident. Finally, the employer hadn't consistently enforced the 'No Go Zone' rules. Although the worker's actions may have been 'ill-advised,' the Commission said they didn't take him out of the course of employment or equate to serious or willful misconduct. Thus, workers' comp covered his injuries.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because simply violating a safety rule alone isn't enough to bar worker's comp. The evidence must show that the worker engaged in serious and willful misconduct—that is, he intended to cause the incident or the resulting injury or to affect the safety of co-workers or other people. In this case, there's no evidence the worker intended to cause the incident. For example, if he drove a vehicle into a wall, that action would likely be considered intentional conduct intending to cause an injury or harm. Instead, he was trying to fix tangled wiring, albeit in an unwise and unsafe manner, and simply fell on an uneven floor, which doesn't rise to the level of serious and willful misconduct.

B is wrong because a failed drug test doesn't automatically mean an injury isn't covered by workers' comp. First, a positive drug test doesn't necessarily mean the worker was impaired when he got hurt. Here, there was no evidence that the worker was actually high when he fell. (For more on drug and alcohol testing, see 'Drug & Alcohol Testing, Part 1: What Are the Legal Limits on Testing Policies' July 2010.) Second, an employer must prohibit intoxication or impairment. For example, if an employer allows sales staff to drink at the worksite while entertaining clients, the intoxication may be permitted by the employer and thus not grounds for barring workers' comp. Lastly, the impairment must be the sole or primary cause of the incident to warrant denial of workers' comp. So if a worker is so impaired that he falls down while walking on a flat, unobstructed surface, it's likely that impairment was the sole or primary cause of his fall. Here, the worker was attempting to untangle wiring and tripped. The unstable surface and tangled wiring presented safety hazards and thus impairment (if there was any) wasn't the sole or primary cause of the incident.

D is wrong because not every workplace injury is covered by worker's comp. A worker can be denied benefits if the injury is the result of serious and willful misconduct, such as dangerous horseplay, or solely or primarily caused by impairment. As noted, the conduct here wasn't serious and willful misconduct and there was no evidence any impairment contributed to the worker's injuries.

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