

No. 2019-CC-00743

JEROME PARSON

VS.

TRUCK PARTS & EQUIPMENT, INC. AND LCTA WORKERS' COMP.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND
CIRCUIT, OFFICE OF WORKERS' COMPENSATION, DISTRICT 1E

PER CURIAM

GRANTED. La. R.S. 23:1081 sets forth defenses to a claim for worker's compensation benefits, and disallows compensation for an injury caused by the injured employee's intoxication at the time of the injury. La. R.S. 23:1081(1)(b).¹ However, the statute also provides that all drug testing must be verified or confirmed by certain methods before the result of the test "can be used as a basis for any disqualification pursuant to this Section." La. R.S. 23:1081(9)(e).²

¹ La. R.S. 23:1081(1)(b) provides: "(1) No compensation shall be allowed for an injury caused:

(b) by the injured employee's intoxication at the time of the injury, unless the employee's intoxication resulted from activities which were in pursuit of the employer's interests or in which the employer procured the intoxicating beverage or substance and encouraged its use during the employee's work hours, or ***."

² La. R.S. 23:1081(9)(e) provides:

"(9) All sample collection and testing for drugs under this Chapter shall be performed in accordance with rules and regulations adopted by the assistant secretary which ensure the following:

(e) Sample testing shall conform to scientifically accepted analytical methods and procedures. **Testing shall include verification or confirmation of any positive test result** by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical method, before the result of any test may be used as a basis for any disqualification pursuant to this Section. Test results which do not exclude the possibility of passive inhalation of marijuana may not be used as a basis for disqualification under this Chapter. However, test results which indicate that the concentration of total urinary cannabinoids as determined by immunoassay equals or exceeds fifty nanograms/ml shall exclude the possibility of passive inhalation." (Emphasis added).

In this case, Jerome Parson (“Claimant”) alleged he was injured on November 25, 2016, as a result of an accident incurred during the course of his employment with Truck Parts and Equipment, Inc. (“Employer”). A drug test administered the following day came back positive. No confirmation testing was performed. Claimant filed a Disputed Claim for Compensation on August 22, 2017. The employer filed an answer, asserting an affirmative defense on the ground claimant was intoxicated at the time of the accident. Claimant filed a motion for summary judgment and a motion to strike the affirmative defense, asserting the drug test was unconfirmed and therefore inadmissible under La. R.S. 23:1081(9)(e).

The OWC judge granted the motion for summary judgment but denied the motion to strike. Concerned his employer would attempt to use the unconfirmed drug test as evidence to prove claimant was intoxicated as part of a fraud defense under La. R.S. 23:1208,³ claimant subsequently filed a motion in limine, asserting the unconfirmed drug test was inadmissible for any purpose, including the employer’s fraud claim under La. R.S. 23:1208. The OWC judge granted the motion in limine, reasoning:

Okay. After reviewing the case submitted by [the employer], considering the evidence and argument of both counsel, the court finds that the defendants are able to use any admissible evidence to support a defense of intoxication and fraud except the evidence concerning the drug test results or any reports relying on those results. The unconfirmed, unverified drug test administered to claimant cannot be used to assist defendants in meeting its burden of proving intoxication or fraud. This court cannot exclude the test due to its failure to meet statutory requirements and then allow it simply because defendants chose a new defense to present. Therefore, the motion in limine is granted.

On review, the majority of the court of appeal⁴ granted the employer’s writ application and reversed the ruling of the OWC judge, stating:

³ La. R.S. 23:1208(A) provides: “It shall be unlawful for any person, for the purpose of obtaining or defeating any benefit or payment under the provisions of this Chapter, either for himself or for any other person, to willfully make a false statement or representation.”

⁴ Judge Stephens dissented without reasons.

The applicants, Truck Parts & Equipment, Inc., and LCTA Workers' Comp, seek supervisory review of two rulings made by the workers' compensation judge granting a motion in limine to exclude an unconfirmed drug screen from evidence for all purposes and the denial of a motion to reconsider this ruling.

La. R.S. 23:1081 specifically lays out the requirements for the use of drug screens to prove an intoxication defense and how the employer may avail themselves of the presumption. Specifically, La. R.S. 23:1081(9)(e) requires confirmation testing before a positive test can be used as a basis for disqualification for purposes of an intoxication defense only. The statute does not provide authority for the exclusion of the unconfirmed drug screens from evidence for use of a fraud claim under La. R.S. 23:1208. Rather, the use of such evidence goes to the weight and not the admissibility of the evidence. In excluding the unconfirmed drug screen from evidence for all purposes, the workers' compensation judge abused her discretion.

Accordingly, the writ application is hereby granted and the rulings granting the motion in limine and denying the motion to reconsider are reversed.

We find the court of appeal erred in reversing the ruling of the OWC judge. Given the gravity of denying compensation benefits to an injured worker, the evidence used to prove disqualification or forfeiture of those benefits must be deemed competent. It is undisputed that unconfirmed drug test results cannot be used as a basis for disqualification pursuant to La. R.S. 23:1081. It would be illogical to prohibit the unconfirmed drug test to be used to deny a claimant benefits under §1081, yet allow the same unconfirmed drug test to be used as proof of fraud to ban a claimant's benefits under §1208. The unconfirmed test results are equally unreliable in both circumstances. *See Young v. Supplier Servs., LLC*, 13-670 (La. App. 3 Cir. 4/2/14), 141 So. 3d 288, 291-92. Thus, we find the OWC judge correctly granted claimant's motion in limine.

We therefore reverse the ruling of the court of appeal and reinstate the ruling of the OWC judge.