MARIJUANA AND INTOXICATION CASES BY STATE

CITATION	DESCRIPTION	STATE
EDMISTEN v. BULL SHOALS LANDING, 2014 Ark. 89; 2014 Ark. LEXIS 147 (AR 2014)	On November 1, 2007, Edmisten and Greg Prock were injured at work while Edmisten was holding the lid of a 55-gallon drum as Prock opened the drum with an acetylene torch; the drum exploded, severely burning both Edmisten and Prock. Edmisten and Prock were taken to the hospital, where they both tested positive for marijuana. The Commission denied Edmisten's claim for benefits based on a finding that Edmisten tested positive [**2] for illegal drugs after the accident and that he failed to rebut the statutory presumption that the accident was substantially [*2] occasioned by his drug use. Edmisten originally appealed the Commission's decision to the court of appeals, which affirmed. See Edmisten v. Bull Shoals Landing, 2012 Ark. App. 44, 388 S.W.3d 416. Edmisten then petitioned this court for review, which we granted. Edmisten presented evidence that no one saw him impaired as a result of drug intoxication on the day of the accident and that it was Prock's habit, as a welder for Bull Shoals, to open barrels with [*14] a cutting torch. Aside from the positive drug test—from which Bull Shoals had already received the benefit of the presumption—the only other "evidence" of impairment that day was Eastwold's testimony that Edmisten and Prock were in Prock's vehicle when he told them to cut the barrels and that the two would not look at him. We conclude that the Commission's decision that Edmisten failed to rebut the presumption that his accident was not substantially occasioned by the use of illegal drugs is not supported by substantial evidence. We are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. Accordingly, we reverse the decision of the Commission [**24] and remand for a determination of benefits.	AR
Grammatico v. Industrial Commission, 211 Ariz. 67, 117 P.3d 786, 2005 Ariz. Lexis 154 (AZ 2005)	The Arizona Supreme Court invalidated a statute requiring an employee who fails a post-accident drug test to prove that the drug use did not contribute to his injury. An injury is only found to be non-compensable if an inherent risk or danger of the job played no part in the injury. Here Grammatico tested positive for marijuana, amphetamines, and methamphetamines, which he admitted using two days prior to the date of injury while off work but his accident was caused by an inherent risk or danger of the job so his accident was compensable.	AZ
Barnett v. State Farm General Insurance Company, 200 Cal. App. 4th 536, 132 Cal. Rptr. 3d 742, 2011 Cal. App. LEXIS 1356 (Cal. App. 4th Dist. 2011)	No coverage for theft loss where police take and destroy marijuana plants.	CA
City of Riverside, Plaintiff and Respondent, v. Inland Empire Patients Health And Wellness Center, Inc., *56 Cal. 4th 729, 156 Cal. Rptr. 3d 409, 300 P.3d 494, 2013 Cal. LEXIS 4003(CA 2013)*	The plaintiff city brought a nuisance action against a medical marijuana dispensary operated by the defendants. The trial court issued a preliminary injunction against the distribution of marijuana from the facility because the city's zoning prohibition of medical marijuana dispensaries was not preempted by state law. The court held that the Compassionate Use Act (CUA), Health & Saf. Code, § 11362.5, and the Medical Marijuana Program (MMP), Health & Saf. Code, § 11362.7 et seq., did not expressly or impliedly preempt the city's zoning provisions allowing the city to declare a medical marijuana dispensary to be a prohibited use and a public nuisance, anywhere within the city limits.	CA

MARIJUANA AND INTOXICATION CASES BY STATE

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***Cockrell v. Farmers Insurance and Liberty Mutual Insurance Company**, (2012 Ca. Wrk. Comp. P.D. LEXIS 456)*	*A California workers' compensation judge (WCJ) ordered the carrier to reimburse claimant for the costs associated with purchasing marijuana that had been self-procured. The WCJ further ruled that the cost to be paid would be the lesser of the fee schedule for medications being replaced by the medical marijuana or the actual expense of the marijuana. The carrier filed a petition for reconsideration. Upon granting reconsideration, the panel noted that the WCJ had not considered the application of Health and Safety Code Section 11362.785(d), stating, "nothing in this article shall require a governmental, private or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana." The matter was sent back to the WCJ for further consideration of the Health and Safety Code.*	*CA*
Ross v. Ragingwire Telecommunications, Inc., *42 Cal. 4th 920, 70 Cal. Rptr. 3d 382, 174 P.3d 200, 2008 Cal. LEXIS 784 (CA 2008)*	The California Supreme Court held that it is not a violation of California law for an employer to terminate an employee who tests positive for marijuana, even though the employee was prescribed the marijuana for medical purposes under California's Compassionate Use Act of 1996. The Compassionate Use Act only gives persons who use medical marijuana a defense to criminal possession of marijuana. The Court recognized the Federal Statutes and held that no state law could completely legalize marijuana for medical purposes because the drug remains illegal under federal law.	CA
Saskatchewan Court of Queen's Bench – Cary Heilman	The injured worker should have his case heard on the merits to determine if Workers' Compensation pays for his medical marijuana. Health Canada authorized the medical marijuana card since 2002 for his back pain and spasms. Of note, the Worker's Compensation Board in Quebec ordered to pay for medical marijuana as any other prescribed drug. In Ontario ordered to do the same on a claim-by-claim basis.	CN

MARIJUANA AND INTOXICATION CASES BY STATE

CITATION	DESCRIPTION	STATE
<u>Apex Transportation, Inc. v. Vigil</u>, 2014 Colo. App. LEXIS 441 **(CO Ct. of App. 2014)**	The claimant worked as a truck driver for Apex for five and a half years. In February 2011, claimant sustained an injury to his shoulder. He refused medical attention at the time because it was "Apex's busiest season" and he "thought the pain would go away." When the pain did not subside, claimant obtained a pain pill from his brother, but did not take the pill immediately. About a week later, claimant took the pain pill. The next day at work, the pain returned, and claimant decided to formally report the injury to the employer. He was sent to employer's workers' compensation health care provider to be examined and treated. Under the employer's policies, any employee who sustains a work-related injury must submit to a drug test when initially examined. The test proved positive for morphine, the pain pill claimant received from his brother. Because employer has a "no tolerance" policy for drugs, he was immediately terminated. There was no issue regarding termination on that basis. Several days after being terminated, the claimant returned to the medical clinic and was seen by a physician. Although the physician found claimant had not suffered a permanent impairment, he noted that claimant sustained a "severe spasm of the whole girdle." He was prescribed pain medication, and ordered claimant "off work." The Claimant then sought TTD benefits. After a hearing, the ALJ found that claimant's termination from employment was volitional. He further found that claimant had failed to establish that his condition had worsened after he was terminated. The ALJ therefore denied claimant's request for TTD benefits. Here the Court of Appeals agreed with the ALJ's findings.	CO
<u>Coats v. Dish Network, L.L.C.</u>, 303 P.3d 147, 2013 Colo. App. LEXIS 616 (Co. Ct. App. Div. A, 2013) *cert granted* 2014 Colo. LEXIS 40 (CO 2014)	Plaintiff employee, who was fired after he tested positive for marijuana, sued defendant employer, claiming that his termination violated Colorado's Lawful Activities Statute, Colo. Rev. Stat. § 24-34-402.5 (2012). The appellate court held that federally prohibited but state-licensed medical marijuana use is not "lawful activity" under § 24-34-402.5 because medical marijuana use was, at the time of his termination, subject to and prohibited by federal law.	CO
<u>Beinor v. Indus. Claim Appeals Office of CO & Serv. Group, Inc.</u>, 262 P.3d 970, 2011 Colo. App. LEXIS 1398 (Co. Ct. App. Div. 7, 2011) *cert denied* Without published opinion 2012 Colo. LEXIS 355 (CO 2012)	The plaintiff employee was terminated for testing positive for marijuana in violation of the employer's zero-tolerance drug policy. The Court held that the employee could be denied unemployment compensation benefits even though the employee's use of marijuana was "medical use" as defined in Colo. Const. art. XVIII, § 14. Although the medical certification permitting the possession and use of marijuana protects the employee from state criminal prosecution, it did not preclude him from being denied unemployment benefits based on a separation from employment for testing positive for marijuana in violation of the employer's drug policy.	CO

MARIJUANA AND INTOXICATION CASES BY STATE

CITATION	DESCRIPTION	STATE
Recchi America Inc. v. Hall, 692 So. 2d 153, 1997 Fla. LEXIS 301 (FL 1997)	The employee sustained work-related injuries during the course of his employment. Despite undisputed evidence that the employee was not responsible for his injuries, the Judge denied the employee's workers' compensation benefits pursuant to Fla. Stat. ch. 440.09(3) because a urine test administered shortly after the accident revealed the presence of inactive marijuana metabolites in appellee's system. That statute provides that no compensation shall be payable if the injury was occasioned primarily by the intoxication of the employee. The statute created a presumption that if there was at the time of the injury 0.10 percent or more by weight of alcohol in the employee's blood, or if the employee has a positive confirmation of a drug as defined in this act, it shall be presumed that the injury was occasioned primarily by the intoxication of, or by the influence of the drug upon, the employee. This presumption may be rebutted by clear and convincing evidence that the intoxication or influence of the drug did not contribute to the injury. The Court held that the presumption portion of Fla. Stat. ch. 440.09(3) violated due process. The court declared the presumption unconstitutional, reworded the statute, and awarded benefits to the employee.	FL
Kendrix v. Hollingsworth Concrete Prods, Inc., 274 Ga. 210, 553 S.E.2d 270, 2001 Ga. LEXIS 649 (GA 2001)	The employee was denied workers' compensation benefits because he had marijuana and cocaine in his system less than eight hours after the accident. In an attempt to get benefits the employee argued that Ga. Code Ann. § 34-9-17(b)(2), violated equal protection under the State and Federal constitutions. The basis for this argument was that the statute applied a presumption that controlled substances if present caused the industrial accident, but did not apply that same presumption if the controlled substances were taken pursuant to a prescription and medical instructions. The Supreme Court of Georgia held that when a controlled substance was given by prescription, the use of that drug was regulated by several factors that were not present when a drug was taken illegally and held that those factors provided a rational basis for distinguishing between controlled substances taken by prescription and those taken illegally. The Supreme Court also held that distinguishing between legal and illegal drug use bore a direct relationship to the legitimate government objective of promoting a safe workplace and furthered the State's legitimate goal of reducing workplace accidents and increasing productivity by discouraging illegal drug use.	GA
Barbara Tracy, Plaintiff, v. USAA Casualty Insurance Company, Defendant, 2012 U.S. Dist. LEXIS 35913 (U.S. Dist. Ct. HI 2012)	A Hawaiian federal court found that Tracy, the insured, was permitted by the state of Hawaii to possess and grow marijuana for medical use. Her 12 plants were stolen and she filed a claim under her homeowner's policy valuing the plants at $45,600. The court ruled that an insurer has no obligation to pay for stolen marijuana plants, even though the policy provided coverage for trees, shrubs and other plants on the premises, because the use of marijuana for medical purposes is still illegal under the Federal Controlled Substances Act (CSA).	HI

MARIJUANA AND INTOXICATION CASES BY STATE

CITATION	DESCRIPTION	STATE
Phillips v. Continental Tire of The Americas, LLC.,2014 U.S. App. LEXIS 2841 (7th Cir. IL 2014)	An employer was properly granted summary judgment in a terminated employee's retaliation action, arising from his refusal to take a drug test upon his initiation of a workers' compensation claim, because the employee failed to affirmatively show that the discharge was motivated by his pursuit of a workers' compensation claim. The drug testing policy covered many other situations in which the employer faced potential legal exposure, such that it did not single out workers' compensation claimants for testing and it did not treat similarly situated injured employees differently based on whether they initiated such a claim.	IL
Szarek, Inc. v. The Workers' Comp.Comm'n,396 IL. App. 3d 597; 919 N.E.2d 43; 2009 Ill. App. LEXIS 1046 (IL App. Ct. 3rd. Dist. 2009); *Rehearing denied* by Szarek, Inc. v. Workers' Comp. Comm'n (Rub), 2009 Ill. App. LEXIS 1725 (Ill. App. Ct. 3d Dist. 2009)	Szarek, an apprentice carpenter, fell through a 9-foot stairwell hole and suffered paraplegia. Claimant tested positive for marijuana and cocaine. The doctor found that the intoxication was significant but could not state that it was the only causal factor in the accident. The court found against the employer's claim that recovery should be denied as scientific evidence establishes marijuana usage. They found that even if the marijuana contributed to the accident, it was not the sole cause - the existence of the hole constituted a work-related risk.	IL
Foos v. Terminix & Zurich America Ins. Co., 277 Kan. 687; 89 P.3d 546; 2004 Kan. LEXIS 263 (KS 2004)	The employee worked as a pest control technician. The employer assigned him a vehicle to use on his route. The employee was involved in a motor vehicle accident. At the hospital, tests revealed that the employee's blood contained opiates and alcohol. The Supreme Court of Kansas held that an award of workers' compensation benefits to the employee was not proper because of the "intoxication exception" to providing workers compensation benefits. Even though the employee suffered injury during the course and scope of his employment and at the time of his injury, he was engaged in an activity contemplated by the employer while traveling on a public highway, the court held that the employer established that the employee was impaired due to alcohol and that the employee's consumption of alcohol contributed to his injury, so the employee was not entitled to workers' compensation benefits.	KS
Creole Steel, Inc. v. Stewart, 86 So. 3d 757; 2012 La. App. LEXIS 282 (LA App. Ct. 3rd Cir. 2012)	The Louisiana Court of Appeals affirmed the workers compensation judge finding that the prescription drug Marinol (medical THC) was a necessary medical expense and that the claimant should be reimbursed for the prescription for the money he had paid for it in the past. He was ordered to an IME to see if there was an alternative treatment for his future care.	LA
Casias v. Wal-Mart Stores, Inc., 695 F.3d 428; 2012 U.S.App. LEXIS 19634 (6th Cir. MI 2012)	Plaintiff employee was terminated for failing a drug test. The employee filed suit for wrongful termination and violation of the Michigan Medical Marihuana Act (MMMA), Mich. Comp. Laws § 333.26421 et seq. The U.S. District Court denied the employee's motion to remand the action to state court and dismissed the case for failure to state a claim. The 6th Circuit Court affirmed the decision. The Court found that the statute relied upon, (the MMMA), did not apply to private businesses.	MI

MARIJUANA AND INTOXICATION CASES BY STATE

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Beck v. TGM Broadband Cable Services Inc., Accident Fund Ins. Co. of America, 2007 MIWCLR (LRP) LEXIS 60 2007 *affirmed* 480 Mich. 1187; 747 N.W.2d 278; 2008 Mich. LEXIS 736 (MI 2008)	The Commission affirmed the magistrate's decision granting an open award for catastrophic injuries sustained by a cable installer in a motor vehicle accident. It was undisputed that the plaintiff's post-injury urine test was positive for the presence of marijuana. He in fact acknowledged smoking marijuana on a daily basis, including the evening before the accident, but denied smoking marijuana on the day of the motor vehicle accident or being intoxicated at the time of the motor vehicle accident. The magistrate made a reasoned choice to accept the testimony of the plaintiff and the plaintiff's expert witness over that presented by the defense. As the magistrate's choice regarding the medical testimony was reasonable and well articulated, the Commission was statutorily bound to affirm.	MI
Ewer v. Awr, Inc. & Sfm Mut. Ins. Co., 68 W.C.D. 121; 2008 MN Wrk. Comp. LEXIS 6 (MN Work. Comp. Ct. App. 2008)	Where it was supported by the expert opinion of a toxicologist and by the testimony of the employee that his fall from a roof was due to its wet surface and not to the effects of any use of marijuana or cocaine, the compensation judge's conclusion that the employee's fall from a roof and consequent injury were not due to intoxication was not clearly erroneous and unsupported by substantial evidence and as such required affirmance.	MN
Archibald v. Metropolitan Mechanical Contractors, 2000 MN Work. Comp. LEXIS 357 (MN Work. Comp. Ct. App. 2000)	The expert testimony supports the arbitrator's conclusion that evidence of marijuana use more than 48 hours prior to the employee's injury would have been of no probative value in proving that the employee was intoxicated or that the intoxication, if any, was the proximate cause of the employee's injury. The arbitrator, accordingly, properly denied the employer and insurer's motion to dismiss the employee's petition based on the assertion of his right against self-incrimination.	MN
Hopkins v. Unins. Employers Fund, v. Russell A. Kilpatrick, 359 Mont. 381; 251 P.3d 118; 2011 Mont. Lexis 51 (MT 2011)	The Montana Supreme Court upheld the Workers' Compensation Court ruling that $65,000 in medical bills should be covered by WC after the injured worker was mauled by a bear. The carrier denied the claim as Hopkins smoked marijuana before entering a bear enclosure at the Great Bear Adventures. The Court reasoned that; "[w]hile his use of marijuana to kick off a day of working around grizzly bears was ill-advised, to say the least and mind-bogglingly stupid to say the most, there was no evidence presented regarding Hopkins' level of impairment. Grizzlies are equal opportunity maulers without regard to marijuana consumption.	MT
Johnson v. Columbia Falls Aluminum Co., 2009 Mont. Lexis 120 (CO 2009)	Montana ruled that the Medical Marijuana Act does not require employers to accommodate an employee's use of the drug. Johnson tested positive for Marijuana and was suspended. He was given another chance to return to work if he tested clean. Johnson declined to take the retest and was fired. He claimed that the company violated the Montana Human Rights Act when it failed to accommodate his marijuana use. The Supreme Court noted that Montana's Medical Marijuana Act, Mont. Code Ann. §§ 50-46-101-210, did not provide an employee with an express or implied private right of action against an employer. The MMA could not be construed to require employers to accommodate the medical use of marijuana in any workplace, Mont. Code Ann. § 50-46-205(2).	MT

MARIJUANA AND INTOXICATION CASES BY STATE

CITATION	DESCRIPTION	STATE
Willey v. Williamson Produce,149 N.C. App. 74; 562 S.E.2d 1; 2002 N.C. App. LEXIS 139 (NC Ct. App. 2002) *reversed by* 357 N.C. 41, 577 S.E.2d 622, 2003 N.C. LEXIS 309 (NC 2003)	Plaintiff guardian ad litem sought workers' compensation death benefits for a deceased employee's dependent. Benefits were initially denied; the commission reversed and awarded benefits. Defendants appealed. The employee was driving a truck for the employer in the course of his employment when he was killed in an accident. Witnesses testified that he was driving erratically and weaving. The defendants' toxicologist testified that, based on evidence of cocaine metabolites and marijuana in the employee's urine, he was impaired by drugs and that his impairment caused the accident. There was a toxicologist for the plaintiff who opined that the amount of cocaine in the decedent's system could not be determined nor could the time of ingestion of the cocaine. The appellate court held that once the employer proved the employee used cocaine, it was presumed he was impaired, and the guardian failed to rebut this presumption with any evidence of non-impairment, as his expert merely speculated. The Supreme Court found that the commission erred (1) by not making fact findings on the impairment issue, the witnesses' testimony, or as to the lack of evidence presented by the guardian; (2) by giving no weight to the defendants' toxicologist's opinion; and (3) by ruling that defendants failed to prove the employee's death was proximately caused by his impairment. The Supreme Court held that the opinion and award of the commission should be reversed, and the case remanded for findings of fact on the issue of the employee's impairment and resolution of the issue of whether such impairment was a proximate cause of the accident.	NC
Schroeder v. Interim Services And GAB Robbins North American, Inc., 2001 NE Wrk. Comp. LEXIS 49 (NE WC Ct. 2001)	Claimant sustained an on the job injury. His post-accident drug test was positive for marijuana. Claimant stated he did not smoke on the day of the accident. His employer presented evidence of his marijuana intoxication as an affirmative defense to his claim. The court found that claimant was not intoxicated when he was on the job during the morning hours leading up to and including the accident. The court rejected the employer's toxicology expert and found that there was no evidence of physical or objectively observable behavior or physical body condition in any of the evidence that would lead to a finding that the accident was caused by claimant's intoxication or impaired actions.	NE
Cormier v. Cambridge Tool & Manufacturing Co., Docket No. 2012-L-0575 Decision not Reported	Claimant testified that she was prescribed multiple medications for pain, which included Dilaudid and Opana. She feared complications from the opioids and decided to try medical marijuana, which she obtained from another physician. The marijuana lessened the amount of opioids she needed to maintain her daily activities. Claimant acknowledged that the marijuana usage was in violation of her pain management contract, and her pain doctor knew of but disapproved of the marijuana usage. In order to receive the medical marijuana claimant had to pay for a license as well as the marijuana. She sought reimbursement for the medical marijuana expenses and pre-approval of future marijuana expenses. Reimbursement was denied. Claimant's medical evidence did not provide a credible medical opinion from the treating physician recommending prescription medication in the form of medical marijuana.	NH

MARIJUANA AND INTOXICATION CASES BY STATE

CITATION	DESCRIPTION	STATE
Charlie Davis v N.J. Transit Agency	A New Jersey Transit clerk who was suspended for using medical marijuana to treat his end-stage renal failure has sued the agency. He was compelled to change positions and the new position he applied for required a drug test, which he failed due to his medical marijuana usage. He was informed that he could not work at any job for the NJ transit unless he completed drug rehabilitation. The agency argues that even though the drug is legal for certain patients in the state, it is prohibited under Federal Railroad Administration and Federal Transit Administration guidelines. He said that the Federal Transportation Department does not consider marijuana use acceptable, even when it is allowed by state law for people with medical conditions.	NJ
Thompson v. Wiltsie Construction Company, Inc.,72 A.D.3d 1373; 898 N.Y.S.2d 739; 2010 N.Y. App. Div. LEXIS 3182 (NY App. Div. 3rd Dept. 2010)	Claimant fell and injured both feet. He tested positive for a high level of marijuana 18 hours post-accident. A co-worker testified that the claimant did not smoke marijuana on the day of the accident but admitted to his using marijuana a couple of days earlier. A co-worker, his employer, EMT's at the scene and the hospital intake forms all stated that he appeared normal on day of accident. Despite the finding of marijuana in the urine test, the employer had not met its burden and shown that employee's intoxication was the sole cause of an otherwise compensable accident.	NY
Clevenger v. Ohio Staff Leasing, Inc., 2009 Ohio App. LEXIS 2626 OH CT of App. 10th Dist. Franklin Cty. 2009)	Following his injury, the claimant provided a urine sample for a post-accident drug test. The results of that test were positive for marijuana. He was then terminated from his employment. The Commission concluded that the claimant was not entitled to TTD compensation, finding that he had voluntarily abandoned his employment when he violated the employer's drug free workplace policy. In recommending that the court grant the writ, the magistrate noted that the policy at issue provided that workers' compensation benefits could only be withheld if, after a thorough investigation, the employer proved that the claimant's use of drugs was the direct or root cause of his accident. Since there was no evidence in the record to establish this, the claimant remained eligible for TTD compensation. As a result, the Commission abused its discretion by denying him TTD compensation upon a finding that he had voluntarily abandoned his employment. The court examined the magistrate's decision, independently reviewed the evidence, and adopted the magistrate's decision as its own, finding no error of law or other defect on the face of the decision.	OH
Danstar Builders, Inc. v. Industrial Commission of Ohio., 108 Ohio St. 3d 315; 843 N.E.2d 761; 2006 Ohio LEXIS 652 (OH 2006)	The worker died in a fall from the roof of a house he was working on. The contractor claimed the worker used marijuana before he fell and that he was not the contractor's employee. The Supreme Court held that even if marijuana was used, a witness testified that the worker slipped on a patch of ice on the roof, so the accident was not caused by a lack of equilibrium, and the worker's loss of balance, regardless of the cause, would have been ameliorated by the presence of required safety devices, so the proximate cause of the worker's fatal injuries was the lack of appropriate safety equipment.	OH

MARIJUANA AND INTOXICATION CASES BY STATE

CITATION	DESCRIPTION	STATE
Hogg v. Oklahoma County Juvenile Bureau, 2012 OK 107; 292 P.3d 29; 2012 Okla. LEXIS 115 (OK 2012)	Hogg, a prison guard, sustained neck and shoulder injuries while subduing a belligerent inmate. He reported his injury 4 days later and took a drug test per State policy. The results showed marijuana in his system. A repeat test was performed with the same result. Hogg denied smoking but stated he was present when others had smoked. The board denied him workers' compensation benefits. Hogg appealed to the Supreme Court who found that benefits should be reinstated because he proved that his injuries were not caused by the presence of marijuana in his system (even though the statute states workers who test positive are presumed ineligible). That presumption as here could be overcome by proof that drugs did not contribute to the injury.	OK
Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries, 230 P.3d 518 (2010), 348 Ore. 159; 2010 Ore. LEXIS 272 348	The employee worked as a drill press operator. He used medical marijuana daily, although not at work. Knowing that he would have to pass a drug test, the employee told his supervisor that he had a registry identification card under the Oregon Medical Marijuana Act and used marijuana for a medical problem. He was discharged. The ALJ ruled that the employer violated Or. Rev. Stat. § 659A.112(2)(e), (f) by failing to engage in a meaningful interactive process with the employee to find a reasonable accommodation for an otherwise qualified disabled person. On review, the Supreme Court of Oregon held that the federal Controlled Substances Act, 21 U.S.C.S. § 801 et seq., preempted the Oregon Medical Marijuana Act to the extent that state law affirmatively authorized the use of medical marijuana. Because the employee was engaged in illegal drug use and the employer discharged him for that reason, the protections of Or. Rev. Stat. § 659A.112 did not apply.	OR
Jones v. Roger Sexton & Michael Blanton, Employer, 2004 SC Wrk. Comp. LEXIS 837 (SC Work. Comp. Comm. 2005)	The hearing commissioner failed to find that the injured worker was smoking marijuana and was in an impaired condition at the time of the accident.	SC
Davidson v. Business Personnel Solutions, 2011 Tenn. LEXIS 1213 (Sup Ct TN 2011)	Davidson was part of a tree trimming crew, injured when he fell out of an 8-10 foot tree. On the day of the injury, the Supervisor called a Safety meeting before sending the crew out and told the employees not to climb the trees because the necessary equipment was not available. Despite the warning, Davidson climbed the tree and fell. An employee witness said it appeared as if he "stepped into the air." Another employee stated that Davidson smoked pot before reporting to the job site. The hospital that administered drug test showed marijuana use and a doctor testified that the THC level was one of the more elevated that he had seen. The doctor testified that Davidson was a chronic pot smoker and was impaired at the time of the injury. Davidson denied he smoked on the morning of the fall, but admitted using marijuana regularly. The employer did not have a "drug-free workplace policy" so the employer bears the burden of establishing that intoxication due to marijuana, was the cause of the injury to avoid having to pay benefits. If the employer did have such policy, then a positive drug test creates the presumption that drug use was the cause of the injury. The Tennessee Supreme Court ruled that as there was no other explanation for Davidson's fall, it followed that his intoxication was a direct cause of injury. Therefore, benefits were correctly denied.	TN

MARIJUANA AND INTOXICATION CASES BY STATE

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American Interstate Ins. Co. v. Hinson, 172 S.W.3d 108; 2005 Tex. App. LEXIS 6350 (TX Ct. App. 2005)	The employee was working with fellow employees as a steel connector on a raising gang at a paper mill. He fell from a steel structure. He admitted that he was a habitual marijuana user. His workers' compensation claim was denied at the administrative level. During the jury trial, he testified that he had normal use of his mental and physical faculties at the time of his injury. The expert testimony of a doctor was not conclusive on whether the employee was intoxicated at the time of the injury. His opinions were largely conclusory, without a sufficient showing between the data relied upon and the opinion offered. A urinalysis taken at a point in time after the accident was also inconclusive. Based on the evidence, the jury did not err by finding that the employee was not intoxicated at the time of his injury under Tex. Lab. Code Ann. § 401.013(a) (Supp. 2005).	TX
Michael Lartique Wayne v. Sonic, Unpublished	An employee injured in a robbery broke his leg, requiring surgery. Sonic opted out of the State's WC plan. Through their own plan, the employee was denied workers' compensation benefits because he failed a mandatory drug test. He smoked pot a few days before the robbery. The employee said that he was not under the influence on the day of the robbery. Sonic reported that although they would not pay for his care under the WC plan that because they care about their employees they were open to paying the medical bills.	TX
Lawson v. Lickey, 2008 VA Wrk. Comp. LEXIS 60 (VA Work. Comp. Comm. 2008)	The claim is not barred pursuant to Virginia Code 65.2-306 by the claimant's marijuana use. The injured worker smoked marijuana earlier in the day at the job site but was observed to have fallen off the roof of a structure when a roofing tile slipped out from under his feet. The Court found that there was no proof that the marijuana use caused or contributed to his injury.	VA
Hall Electrical Co. v. McFerrin, 2006 Va. App. LEXIS 424	Plaintiff and its insurer appealed a decision of the Workers' Compensation Commission finding that the employer failed to prove that claimant's marijuana intoxication barred his claim for benefits pursuant to Code § 65.2-306. On appeal, the court affirmed the WCC decision.	VA
Roe v. Teletech Customer Care Management, 152 Wn. App. 388; 216 P.3d 1055; 2009 Wash. App. LEXIS 2354 (WA Ct. App. Div. 2d 2009)	On appeal, the employee contended Washington's Medical Use of Marijuana Act, Wash. Rev. Code ch. 69.51A, implied a civil cause of action to sue an employer who violated the Act's provisions. Alternatively, she contended the Act expressed a public policy favoring medical marijuana use. The appellate court disagreed, holding that the Act provided only a defense to criminal prosecution for the medical use of marijuana in compliance with its provisions; the Act neither implied a private right of action nor expressed a public policy to establish a cause of action for wrongful termination of employment. As such, the appellate court held that the trial court did not err when it granted the employer's summary judgment motion.	WA
Kochendorfer v. Metropolitan Property & Casualty Insurance Company, (U.S. D.C. WA West. Dist. 2011)	A Washington state court found in favor of the insured a property owner and ordered the carrier to pay for the loss to residential property for damage caused by a marijuana growing operation conducted by the tenants of the property and a resulting fire. The carrier lost on appeal.	WA