



When pot IS the workplace: new compensability ruling in Oregon

By Nathan R. Goin and Amy C. Osenar ■ April 7, 2017

Since the November election, one in five Americans live in a state where recreational marijuana is now legal. The potential for impaired workers is high (pun intended), but potentially higher for marijuana dispensary employees. In February 2017, the Oregon Workers' Compensation Board affirmed an Administrative Law Judge's ruling of compensability for injuries sustained by a marijuana-impaired dispensary worker.

In *Brooke A. Woodard*¹, the receptionist for a marijuana dispensary was injured following a sampling session organized by the store manager. The claimant suffered a panic attack as a result of ingesting marijuana and injured herself after climbing over a 15-foot chain link fence while fleeing from the store.

The ALJ concluded that the claimant was a subject worker; her injury did not result from engaging in a recreational or social activity primarily for her personal pleasure²; and her injury arose out of and occurred in the course of her employment.

In resolving the case, the Board reviewed the applicability of *DePew v. SAIF*³, which provides that claimants of an illegal enterprise are not subject workers, to the factual circumstances of *Woodard*. Unlike the illegal gambling operation in *DePew*, the Board concluded the claimant had been hired as a receptionist for a legal enterprise despite the federal government's classification of marijuana as a Class 1 illegal substance. The Board went on to conclude the claimant understood she would be paid for her employment, was on the work schedule and took part in the sampling activities as part of her training prior to the dispensary's opening. The claim was thus felt to be compensable.

The Board also addressed an exclusion of coverage based on social or recreational activities as outlined in *Roberts v. SAIF*⁴. After considering this issue, the Board concluded that while the claimant was not compelled to participate in smoking marijuana, the activity was incidental to her work as she was scheduled to work after the event to prepare the dispensary for opening. As such, the Board concluded personal pleasure was not the fundamental reason for her ingestion of marijuana, analogizing her activities to injuries that occur during employer-mandated breaks such as in *U.S. Bank v. Pohrman*⁵ and *Laura Brown*.⁶

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Because the employer was itself a dispensary, this case may be unique to employers who sell marijuana. However, the Board's acknowledgement that a marijuana dispensary is a legal enterprise is another step toward mainstream acceptance of marijuana usage and thus may impact future decisions involving marijuana intoxication in the workplace.

In addition to the numerous in-house continuing education seminars presented by Reinisch Wilson Weier PC regarding pot in the workplace, Matthew Fisher will also be presenting this topic at the annual [PRIMA conference](#) held June 4-7, 2017, in Phoenix. ■

¹ 69 Van Natta 266 (2017)

² ORS 656.005(7)(b)(B)

³ 74 Or App 557 (1985)

⁴ 341 Or 48, 52 (2006)

⁵ 272 Or App 31, 37-38 (2015)

⁶ 68 Van Natta 774, 778 (2016)

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