



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**KOMALESTEWA V. INDUSTRIAL COMMISSION
NO. CV-04-0364-PR**

PARTIES AND COUNSEL:

Petitioner: Austin Komalestewa, represented by Don A. Fendon

Respondents: Stoneville Pedigree Seed and Wausau Insurance Companies, represented by Donald L. Cross, of Cross & Lieberman

FACTS:

Austin Komalestewa was at work, tending to a conveyor belt when the belt “bogged down.” When he crawled under the belt to put pressure on the drum (something employees commonly did when the belt needed fixing), his arm got caught in the belt, resulting in serious injury and a two-month hospitalization. Komalestewa’s employer, Stoneville Pedigree Seed, and its workers’ compensation carrier, Wausau Insurance Companies, denied Komalestewa’s claim for workers’ compensation benefits.

At the ensuing hearing before the Industrial Commission, Komalestewa admitted having four vodka drinks the night before his accident. He stated he went to bed about 10 p.m. and got up at 5 a.m. His wife testified that she was asleep when Komalestewa arrived home the night before, but he did not appear to be either drunk or hung over the next morning, nor did she smell alcohol on him when she kissed him goodbye. Komalestewa’s coworkers also testified that they saw no signs that he had been drinking or was hung over.

Mary Richard, a registered nurse, interviewed Komalestewa in the hospital a week after the injury. She testified that notes from the emergency transport team indicated Komalestewa had alcohol on his breath at the time of his transport; he had tremors under anesthesia; and he was treated for “DTs.” William Collier, a forensic scientist and toxicologist, testified that the results of a blood test showed Komalestewa’s blood alcohol content at the time of the accident was at least 0.176 percent, at which level he would have had “significant . . . critical judgment impairment, muscular incoordination . . . considerably longer reaction time, . . . and [would have] made the wrong choices in a panic situation.” Collier opined that Komalestewa’s level of intoxication at the time of the injury was a significant contributing factor to the accident.

The administrative law judge discounted the testimony of Komalestewa’s coworkers and accepted Collier’s expert opinion. Applying A.R.S. § 23-1021(C), which precludes compensation for injuries in which alcohol was “a substantial contributing cause,” the administrative law judge concluded the claim was not compensable. Komalestewa sought appellate review.

The court of appeals affirmed the administrative law judge’s award. It began its analysis

with a brief history of A.R.S. § 23-1021. Before 1996, § 23-1021(A) entitled an employee to benefits for an injury arising out of and in the course of employment unless the injury was “purposely self-inflicted.” Applying this version of the statute, Arizona courts held that, before a claim could be determined to be noncompensable based on intoxication, an employee had to be so impaired as to have abandoned his job. In 1996, the legislature added subsection (C), providing that an employee’s injury is not compensable “if the impairment of the employee is due to the employee’s use of alcohol . . . and is a substantial contributing cause of the employee’s personal injury” In 1999, § 23-1021 was further amended by adding subsection (H)(2), which defines a “substantial contributing cause” as “anything more than a slight contributing cause.”

The court rejected Komalestewa’s argument that the intent of the statutory amendments was to make a claim noncompensable where alcohol use was the *actual* cause of the accident. The plain language of the statute indicates that if alcohol was anything more than a slight contributing cause of the injury, the claim is not compensable. The court also found sufficient evidence in the record to support the administrative law judge’s determination that Komalestewa was impaired by his use of alcohol and that his impairment was a substantial contributing cause of his injury. The administrative law judge acted within his discretion in determining the credibility of the witnesses, and in finding the statutory requirements under § 23-1021(C) were met.

The court also rejected Komalestewa’s argument that §§ 23-1021(C) and (H)(2), as applied in this case, violate Art. 18, § 8 of the Arizona Constitution by injecting the concept of fault into a no-fault system of workers’ compensation law. While the court recognized that the legislature may not alter the constitutional concept of legal causation, it agreed with the dissent in *Grammatico v. Industrial Commission*, 208 Ariz. 10 (2004), that the constitution does not preclude regulation of *necessary* versus *unnecessary* employment-related risks and a determination that the latter is noncompensable. [See Case Summary in *Grammatico v. Industrial Commission*.] The test is whether the risk was necessary or inherent in the employment. Because the constitution is silent as to whether an otherwise necessary risk undertaken in the course of employment ceases to be “necessary” and no longer arises out of employment when an employee’s intoxication substantially contributes to his injury, there is no constitutional impediment to the legislative determination expressed in § 23-1021(C) that employers should not be required to compensate impaired employees who are injured due to their use of alcohol or drugs. This approach gives full recognition to the strong presumption of constitutionality that statutes bear, and also fulfills the court’s duty to harmonize constitutional provisions and statutes when possible, something the majority in *Grammatico* failed to do.

ISSUES:

1. Whether A.R.S. §§ 23-1021(C) and (H)(2), which state that a claim is not compensable if an injured worker’s alcohol impairment is “anything more than a slight contributing cause” of the injury, violate Art. 18, § 8, of the Arizona Constitution.
2. Whether the administrative law judge erred in determining that Mr. Komalestewa’s consumption of alcohol was a substantial contributing cause of his injury.

STATUTES AND CONSTITUTIONAL PROVISIONS:

See Case Summary in *Grammatico v. Industrial Commission*, No. CV-04-0197-PR.

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.