

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F301859

JARED L. CULBERTSON,
EMPLOYEE

CLAIMANT

MARTY ROBERSON,
D/B/A ROBERSON AND ASSOCIATES,
D/B/A THE WORKROOM,
UNINSURED EMPLOYER

RESPONDENT

OPINION FILED JANUARY 22, 2004

Hearing conducted before ADMINISTRATIVE LAW JUDGE, MARK CHURCHWELL at Searcy, White County, Arkansas.

The claimant was PRO SE.

The respondent was not present.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on November 26, 2003 in Searcy, Arkansas. A prehearing order was entered in this case on April 28, 2003. This prehearing order contained no stipulations but outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing.

Pursuant to the parties' prehearing filings, the issues to be litigated and resolved at the present time were limited to the following:

1. Jurisdiction.
2. Employer/employee relationship.

3. Number of employees.
4. Date and nature of alleged compensable injury.
5. Medical expenses.

DISCUSSION

Jurisdiction

Under Ark. Code Ann. § 11-9-707(1), there is a statutory prima facie presumption that the Commission has jurisdiction over any claims filed before the Commission. Before the Commission can assume jurisdiction over the claim, there must be a statutory basis for entertaining the claim, and the application of the Arkansas Workers' Compensation Act must not violate federal constitutional principles, particularly the full faith and credit clause. International Paper Co. v. Tidwell, 250 Ark. 623, 466 S.W.2d 488 (1971); McKeag v. Hunt Transportation, Inc., 36 Ark. App. 46, 818 S.W.2d 581 (1991). In consideration of these federal constitutional principles, Professor Larson has set forth six grounds on which jurisdiction has been asserted, which the Arkansas courts have relied upon in deciding such issues. 4A. Larson, Larson's Workmen's Compensation, § 86.10 (1993); Tidwell, supra. Those six grounds are:

- (1) Place where the injury occurred;
- (2) Place of making the contract;

- (3) Place where the employment relation exists or is carried out;
- (4) Place where the industry is localized;
- (5) Place where the employee resides; or
- (6) Place whose statute the parties expressly adopted by contract.

In the present case, the respondent's framing business where the claimant worked and became injured was located at 1215 East Race Street in Searcy, Arkansas. The claimant learned of the job opening through the job office of Harding University at Searcy, Arkansas, and the claimant was a student of Harding University at the time of his employment and injury. The claimant has therefore satisfied the first five listed criteria, and there is no evidence in the record that the parties expressly adopted the laws of any other state in the claimant's employment. I therefore find that Arkansas has jurisdiction of this claim.

Employer/Employee Relationship

The determination of whether, at the time of an injury, an individual was an independent contractor or an employee depends on the facts of the case. Franklin v. Arkansas Kraft, Inc., 5 Ark. App. 264, 635 S.W.2d 286 (1982). Ordinarily, no one feature of the relationship is

determinative. Carter v. Ward Body Works, Inc., 245 Ark. 515, 439 S.W.2d 286 (1969). The right to control the method and manner of the work is the traditional test applied in Arkansas when considering whether an individual was an employee or an independent contractor. The ultimate question with the right to control test is whether the employer has the right to control, not whether the employer actually exercises control. Wright v. Tyson Foods, Inc., 28 Ark. App. 261, 773 S.W.2d 110 (1989). However, the courts have also considered the "relative nature of the work" test in addition to the right to control test. Sandy v. Salter, 260 Ark. 486, 541 S.W.2d 929 (1976); Sands v. Stombaugh, 11 Ark. App. 38, 665 S.W.2d 902 (1984); Franklin, supra; Silvicraft, Inc. v. Lambert, 10 Ark. App. 28, 661 S.W.2d 403 (1983). The main consideration of the relative nature of the work test is "the relationship between the claimant's own occupation and the regular business of the asserted employer." Salter, supra; Lambert, supra.

Consequently, the resolution of whether an individual is an independent contractor or an employee requires an analysis of the factors related to the employer's right to control and of factors related to the relationship of the work to the asserted employer's business. In making a

determination, the Commission must look at the factors outlined in D. B. Griffen Warehouse, Inc. v. Sanders, 336 Ark. 456, 986 S.W.2d 836 (1999):

the extent of control which, by the agreement, the master may exercise over the details of the work;

whether or not the one employed is engaged in a distinct occupation or business;

the kind of occupation, with reference to whether in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

the skill required in the particular occupation;

whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;

the length of time for which the person is employed;

the method of payment, whether by the time or by the job; whether or not the work is a part of the regular business of the employer;

whether or not the parties believe they are creating the relation of master and servant; and whether the principal is or is not in business.

See also Aloha Pools & Spas, Inc. v. Wausau, 342 Ark. 398, 39 S.W.3d 440 (2000).

These are not all of the factors which may conceivably be relevant in a given case, and it may not be necessary for the Commission to consider all of these factors in some cases. The relative weight to be given to the various

factors must be determined by the Commission. Franklin, supra. However, the Supreme Court has stated that the "right of control" is the principal factor in determining whether the relationship is one of agency or independent contractor. Sanders, supra.

In the present case, the claimant, a college student, was hired to work part-time building frames in the framing business. Under these circumstances, the claimant was not engaged in a distinct "occupation" or "business". The claimant described a low skill line of work which was done under supervision. The work of the claimant in building frames was likewise a part of the regular business of the framing business for whom the frames were made. In short, I see no evidence in the record which would indicate to me that the claimant was an independent contractor. All of the relevant evidence in the record instead indicates that the claimant was a part-time employee at The Workroom.

Number of Employees

In order for an employer to be subject to the Arkansas Workers' Compensation Act, the employer must carry on an employment in which three or more employees are regularly employed in the course of business. See Ark. Code Ann. 11-9-102(11) (A) (Repl. 2002); Stone v. Patel, 26 Ark. App.

54, 759 S.W.2d 579 (1988). Wright v. ABC Air, Inc., 44 Ark. App. 5, 864 S.W.2d 871 (1993).

In the present case, at the time of the claimant's accident, there were four part-time employees working at The Workroom. The requirement of Ark. Code Ann. § 11-9-102(11) (A) (Repl. 2002) has therefore been met in the this case.

Date and Nature of Alleged Compensable Injury

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. § 11-9-102(4) (A) (i) (Repl. 2002) must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. If the claimant fails to establish by a preponderance of the

evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the claimant sustained an injury arising out of and during the course of his employment on September 7, 2002, when a nail sticking out of a large frame fell across his leg and slit his leg open above the knee. The slit-injury caused internal harm to the physical body causing a need for immediate medical treatment, including stitches at the hospital. The existence of the injury is established by the September 7, 2002 medical reports from Central Arkansas Hospital, which objectively document both the existence and extent of the laceration described by the claimant, as well as the laceration's treatment with sutures. The nail incident and laceration on September 7, 2002 likewise satisfy the statutory requirement of an injury which is caused by a specific incident and identifiable by time and place of occurrence. The claimant has therefore established each of the requirements necessary to establish the occurrence of a compensable injury.

Medical Expenses

I find that the medical treatment and sutures that the claimant received at Central Arkansas Hospital on September 7, 2002 was reasonably necessary to treat his work-related laceration injury. I therefore find that the respondent, Marty Roberson, is liable for those expenses in accordance with the fee schedule established by the Commission.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim for benefits.
2. The claimant was an employee of Marty Roberson and not an independent contractor.
3. The respondent had sufficient regular employees to be covered by the Arkansas Workers' Compensation Act.
4. The claimant sustained a compensable laceration injury.
5. The respondent is liable for the medical expenses at issue in this claim in accordance with the fee schedule established by the Commission.

AWARD

The respondent is directed to pay benefits in accordance with the findings of fact set forth herein.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge