

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F213363

DENNIS G. DAVIS, EMPLOYEE

CLAIMANT

J & J DRIVE-AWAY, EMPLOYER

RESPONDENT

**TIG INSURANCE COMPANY,
INSURANCE CARRIER**

RESPONDENT NO. 1

**HARTFORD INSURANCE COMPANY,
INSURANCE CARRIER**

RESPONDENT NO. 2

OPINION FILED FEBRUARY 12, 2004

Hearing before Administrative Law Judge Dail Stiles on January 15, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Jay N. Tolley, Attorney at Law, Fayetteville, Arkansas.

Respondent No. 1 represented by Mr. Robert L. Henry, III, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Mr. A. Gene Williams, Attorney at Law, Little Rock, Arkansas.

A hearing was held on January 15, 2004, to determine the compensability of the claim filed herein.

There were no stipulations.

It was agreed by the parties at hearing that TIG Insurance Company, Respondent No. 1, had no liability for the claim filed herein, and by agreement of the parties, the respondent TIG Insurance Company, was dismissed from this claim.

The claimant contends that he was an employee of the respondent herein on October 19, 2000. The claimant contends he sustained a compensable injury arising out of and during the course and scope of his employment on October 19, 2000, and is entitled to temporary total disability benefits from that date through a date yet to be determined. The claimant further contends he is entitled to attendant medical benefits and attorney's fees.

Respondent No. 2, Hartford Insurance Company, controverts the claim in its entirety contending that the claimant was an independent contractor and not an employee of the respondent J & J Drive-Away.

STATEMENT OF THE CASE

The claimant testified that he first began his working relationship with the respondent J & J Drive-Away in February of 1999.

On October 19, 2000, the claimant was in Perryville, Arkansas, to pick up some trucks and get them ready to piggyback to a port in Florida. The claimant had removed an air shield from the top of the cab of a truck and had the air shield resting on his shoulders. The claimant said that he felt his neck pop, and he became dizzy. The claimant said he went back to his motel room and rested and then finished preparing the trucks for transport and eventually got them to Florida.

The claimant testified that since October 19, 2000, he has had problems with his neck and numbness in his left arm that begins at his shoulder and extends all the way down into his hand.

The claimant said he first sought medical treatment from a chiropractor somewhere in Alabama, although, he doesn't remember the town or the doctor's name.

After the claimant returned to his home in Missouri, he started seeking medical treatment there.

The claimant said that he reported the injury to Leon Cagle, the dispatcher for the respondent J & J Drive-Away, located in Overland Park, Kansas.

There is essentially no dispute between the parties relative to the claimant sustaining an injury on October 19, 2000, the reporting of same and medical treatment that followed.

When the claimant first began his working relationship with the respondent J & J Drive-Away on February 11, 1999, he signed a Contract Hauler's Agreement, which states in the first paragraph:

The relationship of Hauler to Broker under this agreement is that of an independent contractor, and not that of an employee of Broker. Except as otherwise provided in this agreement, Hauler is to determine the manner, details and means of performing the services and conforming with regulatory requirements and specifications of the customer. . . .

The agreement went on to say that the claimant would be responsible for paying for workers' compensation insurance.

The claimant testified on cross-examination that he had the right to turn down any job that might be offered to him by J & J Drive-Away. Essentially, the claimant testified that if it was not going to be profitable to him, he could turn the job offer down.

The claimant testified that certain tools were required in transporting trucks and certain pieces of equipment to hitch the trucks up to piggyback them. The claimant said that all those tools required to perform the job belonged to him. The claimant further testified that at times one would have to employ the services of a wrecker to lift the trucks into place to piggyback, and that the expenses of paying for the wrecker were always borne by the claimant. The claimant testified that he used various means to get from his home in Missouri to a particular site to pick up vehicles, including commercial transportation and car rentals. On the job in Perryville, for instance, the claimant had rented a car at the Little Rock airport and had driven himself to Perryville to get the trucks ready for transport and had then returned the rental car to the Little Rock airport and returned to Perryville by taxi.

The claimant testified that on the job emanating from Perryville and ending in Florida, he was to be paid by the mile. The claimant testified, however,

that there were different ways to be paid for a job, and that he had been paid in different ways other than mileage.

The following exchange took place on cross-examination:

Q. So you would get the call and decide if you wanted to take the job. If you did, you'd rent your own car and go to where it was?

A. Yes.

Q. Just like you told us in this job, all that comes right out of your pocket; is that right?

A. Yes.

Q. And that's expense you just have to bear; is that right?

A. Yes.

Q. You had your own tools?

A. Yes.

Q. When you got to where you were to pick up the truck, it was up to you to decide how to hook those trucks up; is that right?

A. Yes.

Q. You weren't just a truck driver, obviously. You knew something about the mechanical set up of these trucks; didn't you?

A. Yes.

When asked on direct examination at hearing as to how he understood his employment status with J & J Drive-Away, the claimant responded that he felt like he was an employee of J & J Drive-Away.

It was also ascertained on cross-examination that the claimant had a separate insurance policy which paid medical and indemnity benefits for approximately two years, and it was after those benefits ran out, that claimant

decided to make a workers' compensation claim for the injuries he sustained on October 19, 2000.

FINDINGS OF FACT

1. The claimant's status to the respondent J & J Drive-Away on October 19, 2000, was that of an independent contractor as opposed to an employee.

2. Because it is found that the claimant is an independent contractor as opposed to an employee, any benefits he seeks in this claim are barred.

DISCUSSION

The Arkansas Court of Appeals has discussed factors to be considered in making a determination whether an injured person is an employee or an independent contractor. Some of the factors to be considered are:

(1) The right to control the means and the method by which the work is done;

(2) The right to terminate the employment without liability;

(3) The method of payment, whether by time, job, piece or other unit of measurement;

(4) The furnishing, or the obligation to furnish, the necessary tools, equipment and materials;

(5) Whether the person employed is engaged in a distinct occupation or business;

(6) The skill required in a particular occupation;

(7) Whether the employer is in business;

(8) Whether the work is an integral part of the regular business of the employer;

(9) The length of time for which the person is employed.

The Court went on to say:

These are not all the factors which may conceivably be considered in a given case, and it may not be

necessary in some cases for the Commission to consider all of these factors. Traditionally, the “right to control” test has been sufficient to decide most of the cases, although many variations of “control” have probably been squeezed into that test.

See Franklin v. Arkansas Kraft, Inc., 5 Ark. App. 264 (1982).

In the instant case, the claimant provided all his own tools and provided a certain mechanical expertise which was required in performing the job he did for the respondent J & J Drive-Away. The claimant had the option to refuse these offers to transport vehicles for the respondent J & J Drive-Away if he chose. The method by which the claimant was paid varied from job to job.

The respondent J & J Drive-Away exercised almost no control over how the claimant performed the job. They simply advised him that a job was available, and he took it from there.

While the Contract Hauler’s Agreement entered into between the claimant and J & J Drive-Away signed by the claimant on February 11, 1999, is not dispositive in this case, it is significant evidence demonstrating what the claimant’s understanding should have been relative to his status to J & J Drive-Away. The Contract Hauler’s Agreement is unambiguous and clearly places the claimant in an independent contractor status as opposed to that of an employee.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

DAIL STILES
Administrative Law Judge