

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F401841

MONTGOMERY HYLTON		CLAIMANT
CONNER CUSTOM HOMES	NO. 1	RESPONDENT
LIBERTY MUTUAL INSURANCE COMPANY, INSURANCE CARRIER	NO. 1	RESPONDENT
C & R CONSTRUCTION COMPANY UNINSURED	NO. 2	RESPONDENT

OPINION FILED NOVEMBER 19, 2004

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by CONRAD ODOM, Attorney, Fayetteville, Arkansas.

Respondents No. 1 represented by JAMES ARNOLD, II, Attorney, Fort Smith, Arkansas.

Respondents No. 2 not represented or appearing at hearing.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on September 13, 2004, in Springdale, Arkansas. A pre-hearing order was entered in this case on April 27, 2004. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Immediately prior to the commencement of the hearing, the claimant announced that he was only seeking temporary total disability benefits for the period of February 25, 2004 through April 22, 2004. A copy of the pre-hearing order with this amendment noted thereon, was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. The claim is controverted in its entirety.
2. On February 24, 2004, the claimant fell from a ceiling joist, injuring his scalp and left wrist.
3. On February 24, 2004, Conner Custom Homes was insured by Liberty Mutual Insurance Company.
4. On February 24, 2004, C & R Construction Company was an uninsured subcontractor

of Conner Custom Homes.

By agreement of the parties the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant was an employee of C&R Construction Company at the time of his fall.
2. Whether the claimant would be a statutory employee of Conner Custom Homes at the time of his fall.
3. The claimant's entitlement to medical expenses, temporary total disability benefits from February 25, 2004 through April 22, 2004, and attorney's fees.
4. Liability for such benefits as between the parties.

In regard to these issues, the claimant contends:

- (a) Claimant contends that he is employed by C&R Construction which was a subcontractor of Conner Custom Homes on February 24, 2004.
- (b) On that date, work was being done at the Greystone subdivision in Springdale, Arkansas
- (c) On that date, claimant was walking on the construction site when a board gave way. The claimant fell in excess of 10 feet to the floor striking his head and sustained a severe injury to his left wrist and hand.
- (d) Claimant was taken to Northwest Medical Center where he received 12 plus staples in his head. He was treated by Dr. Terry Sites who referred him to Dr. Peter Heinzelmann. Dr. Peter Heinzelmann performed surgery at the North Hills Surgical Center.
- (e) That Conner Custom Homes is the general contractor for the job site and that C&R Construction does not have workers' compensation insurance.

In regard to these issues, the respondents Conner Custom Homes and Liberty Mutual Insurance Company contends:

"The respondent, Conner Custom Homes, will contend that the employee-employer carrier relationship did not exist between Montgomery Hylton, Conner Custom Homes, and Liberty Mutual Insurance Company on February 24, 2004."

In regard to these issues, the respondent C& R Construction Company has stated no contentions.

DISCUSSION

_____ The first issue to be addressed is the question of whether the claimant was an employee of C&R Construction Company at the time of his accidental fall and resulting injuries on February 24, 2004. The burden rests upon the claimant to prove the existence of this employee-employer relationship.

The only direct evidence presented to prove this relationship is the claimant's own testimony. In his testimony, he described C&R Construction Company as framing contractors, who worked primarily for Conner Custom Homes. To the best of his knowledge, C&R Construction Company was a partnership, owned by Gary Crow and Dennis Ramsley.

The claimant testified that he was hired as a carpenter by Mr. Crow, in April or May of 2003. Under this employment agreement, he was to be paid at the rate of \$12.00 per hour. He testified that he worked an average of 40 hours per week. However, no withholding or deductions were made from his pay and he was paid in cash.

The claimant stated that he provided his own personal equipment, which consisted of a nail apron, tool belt, and hammer. He stated that all other equipment, such as saws, other power equipment and power cards were all provided by C&R Construction. C&R Construction also provided necessary materials.

The claimant testified that his day to day activities were directed by Dennis Ramsley. He stated that Mr. Ramsley determined the hours, assigned the particular job duties, and otherwise generally supervised the activities being performed. The claimant stated that the crew supervised by Mr. Ramsley consisted of himself and four other workers. He stated that Mr. Ramsley had the authority to fire and replace any of these workers, including himself.

In the present case, as in most cases, the relationship between the claimant and C&R Construction Company has characteristics of both an independent contractual relationship and an employment relationship. However, after consideration of all the evidence presented, I find that the vast majority of these characteristics support the existence of an employee-employer

relationship between the claimant and C&R Construction Company. In support of an independent contractual relationship, are only the facts that the claimant possesses particular skills (i.e. a carpenter) and no withholding was made from the wages he received for his services. However, the relationship between the claimant and C&R Construction Company was not limited to any particular period of time or specific project, but was of indefinite duration. Clearly, either party could have terminated this relationship at will, without incurring any liability for such action. It is further apparent that C&R Construction Company actually exercised the right to control the day to day activities performed by the claimant. Finally, it is obvious that the services of the claimant and other similarly situated individuals were absolutely essential in order for C&R Construction Company to carry out its regular business.

The stipulations and evidence shows that at the time of his injuries on February 24, 2004, the claimant was performing for C&R Construction Company that were in furtherance of its contract with Conner Custom Homes. As C&R Construction Company was an uninsured subcontractor at that time, Conner Custom Homes became the claimant's statutory employer, Ark. Code Ann. §11-9-402. Under the provisions of this subsection, Conner Custom Homes also becomes liable for appropriate workers' compensation benefits for the claimant's accidental injuries. However, pursuant to subdivision (b) (1) of this subsection, Conner Custom Homes is also given the right to recover any workers' compensation benefits it might be required to pay from C&R Construction Company.

Although it was not indicated to be a disputed issue, for the purposes of clarity, a brief discussion of the "compensability" of the claimant's injuries would be appropriate. Clearly, the claimant's injuries to his head/scalp and left wrist are "established" by the medical evidence and supported by "objective findings." It is further apparent that these injuries occurred while the claimant was performing employment services for C&R Construction Company, in furtherance of its contract with Conner Custom Homes. The evidence shows that these injuries arose out of and occurred in the course of his employment, were caused by a specific incident, are identifiable by and

place of occurrence, caused both internal and external physical harm to his body, and resulted in both the need for medical services and temporary disability. Therefore, these injuries clearly represent “compensable injuries” within the meaning of the Act.

Finally, it becomes necessary to determine the nature and extent of benefits to which the claimant is entitled for these compensable injuries. At the present time, this includes the payment of expenses incurred for medical services and temporary total disability benefits.

The evidence presented shows that the medical services rendered to the claimant by and at the direction of the Northwest Medical Center, Dr. Terry Sites, Dr. Peter Heinzlmann, Washington Regional Medical Center, and North Hill Surgery Center for his scalp/head and wrist injuries represent “reasonably necessary medical services” for these injuries. All of these medical services were necessitated by or related to these compensable injuries. The type of services provided were also of a nature commonly recognized and employed by the general medical community of this area for the evaluation and treatment of injuries such as those experienced by the claimant. Pursuant to Ark. Code Ann. § 11-9-508, the respondents are liable for the expense of these services, subject to the medical fee schedule established by this Commission.

The claimant’s primary compensable injury was to a portion of his body that is scheduled under Ark. Code Ann. § 11-9-521. Therefore, the claimant would be entitled to temporary total disability benefits from the day following the injury until the end of his healing period or he returned to work, whichever occurs sooner.

The duration of the healing period is a medical question, which must be resolved upon the basis of the greater weight of the medical evidence presented. In the present case, the medical evidence shows that the claimant continued within his healing period from the effects of his compensable wrist injury through June 8, 2004.

However, the claimant’s testimony shows that he returned to work for another employer on or about April 22, 2004. Therefore, he would be entitled to temporary total disability benefits for his compensable injuries from February 25, 2004 through April 22, 2004. The appropriate

weekly rate for such temporary total disability would be \$320.00.

The claimant's testimony shows that during his period of temporary total disability, he received cash payments from C&R Construction Company and that these payments averaged approximately \$150.00 per week. It also appears from the claimant's testimony that he understood these cash payments to be made "in lieu of" workers' compensation benefits. Thus, the respondents would be entitled to credit for these benefits against the temporary total disability benefits herein awarded.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On February 24, 2004, the relationship of employee-uninsured employer existed between the claimant and C&R Construction Company.
3. On February 24, 2004, the relationship of general contractor/subcontractor existed between Conner Custom Homes and C&R Construction Company.
4. On February 24, 2004, the claimant was a statutory employee of Conner Custom Homes, under Ark. Code Ann. §1-9-402..
5. On February 24, 2004, the claimant sustained compensable injuries to his head/scalp and left wrist.
6. On February 24, 2004, the claimant earned wages sufficient to entitle him to weekly compensation rates of \$320.00 for total disability and \$240.00 for permanent partial disability.
7. The medical services rendered to the claimant by and at the direction of the Northwest Medical Center, Dr. Terry Sites, Dr. Peter Heinzelmann, Washington Regional Medical Center, and North Hill Surgery Center, represent reasonably necessary medical services for the claimant's compensable injury. Pursuant to Ark. Code Ann. §11-9-508, the expense of these services are the liability of all the respondents herein (subject to the medical fee schedule established by this

Commission).

8. The claimant was rendered temporary totally disabled as a result of his compensable injuries for the period of February 25, 2004 through April 22, 2004.
9. During the period of February 25, 2004 through April 22, 2004, the respondents C&R Construction Company paid the claimant certain amounts in lieu of temporary total disability benefits. The respondents are entitled to a credit for these amounts against the temporary total disability benefits herein awarded.
10. Pursuant to the provisions of Ark. Code Ann. § 11-9-402(b) the respondents, Conner Custom Homes and Liberty Mutual Insurance Company is entitled to recover any amounts they are required to pay in this claim from respondent C&R Construction Company.
11. All respondents have controverted this claim in its entirety.
12. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on all temporary total disability benefits herein awarded.

ORDER

The respondents Conner Custom Homes, Liberty Mutual Insurance Company, and C&R Construction Company are jointly and severally liable to the claimant for temporary total disability benefits, at the weekly rate of \$320.00, for the period of February 25, 2004 through April 22, 2004.

These respondents shall be entitled to credit for payments made to the claimant by C&R Construction Company during this period.

The respondents Conner Custom Homes, Liberty Mutual Insurance Company, and C&R Construction Company are jointly and severally liable for the expenses incurred by the claimant for reasonably necessary medical services provided him for his compensable injuries by and at the direction of the Northwest Medical Center, Dr. Terry Sites, Dr. Peter Heinzelmann, Washington Regional Medical Center, and North Hills Surgery Center This liability is subject to the medical fee schedule established by this Commission.

The respondents, Conner Custom Homes, Liberty Mutual Insurance Company and C&R Construction Company are jointly and severally liable to the claimant's attorney for the maximum statutory attorney's fee on the temporary total disability benefits herein awarded. One-half of this fee is the obligation of these respondents in addition to such benefits. The remaining one-half of this fee is to be withheld by the respondents from such benefits.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

Respondents Conner Custom Homes and Liberty Mutual Insurance Company are entitled to reimbursement from respondent C&R Construction Company for any and all benefits they may be required to pay in this claim.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge