

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F313601

RODGER L. SPRAYBERRY	CLAIMANT
WILLIAM & ROXANN DAVIS CO. LLC	RESPONDENT
AMERICAN HOME ASSURANCE, TPA	RESPONDENT

OPINION FILED OCTOBER 26, 2005

Hearing before Administrative Law Judge J. Mark White on October 6, 2005, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Nelson Shaw, Attorney at Law, Texarkana, Texas.

Respondents represented by Mr. Frank Newell, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 6, 2005, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on August 22, 2005, and a Prehearing Order was entered that same day. A copy of the August 22, 2005, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that on December 11, 2003, the claimant

sustained burn injuries; and that although some benefits were paid, the respondents now controvert this claim in its entirety.

The parties agreed that the issues to be presented were whether the claimant was an employee of the respondent; determination of the claimant's average weekly wage and corresponding compensation rate; whether the claimant sustained a compensable injury; whether the claimant is entitled to temporary total disability benefits; whether medical treatment has been reasonably necessary in connection with the compensable injury; whether the claimant is entitled to permanent partial disability benefits; and attorney's fees.

The claimant contends that he sustained a compensable injury; and that he is entitled to permanent partial disability benefits, attorney's fees, and any outstanding medical bills.

Respondents contend that the claimant was not an employee of respondents when injured; that the claimant was not performing employment services when injured; that the claimant did not sustain an injury arising out of and in the course of his employment; that under the terms of Ark. Code Ann. § 11-9-102 (9)(A), the claimant is not an employee covered by the Workers' Compensation Act; that the claimant is entitled to no additional benefits; that the claimant's compensation rate is \$52 weekly; that respondent-carrier paid TTD benefits at the rate of \$100 weekly

through February 19, 2004, for a total TTD payment of \$1,000; that at \$52 weekly, \$1,000 is 19.23 weeks or 4.5 months of TTD benefits; that if this claim is found compensable, respondents ask that any TTD paid after claimant could return to work be recharacterized as PPD benefits; that claimant was released to return to work by one of his treating physicians on February 4, 2004; that Dr. Teoh placed claimant at MMI as of October 4, 2004; and that Dr. Holladay placed claimant at MMI as of December 27, 2004.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that he

was an employee of the respondent.

4. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury.
5. The respondents have controverted this claim in its entirety.

DISCUSSION

The claimant sustained severe burn injuries while working at a Holiday Inn owned by the respondents. At the time of his injury, the claimant was a resident of the Maud Restitution Center in Maud, Texas. The claimant described the Center as “a half-way house where you go to work and if you ain’t working then you are in like lock down.” The claimant was criminally prosecuted and convicted of selling marijuana, and his parole officer recommended the Restitution Center as a means to shorten the claimant’s parole. The claimant testified he was obligated to stay at the Center for two years to satisfy the conditions of his parole.

The Center makes its inmates available for temporary manual labor in the surrounding area. Payments for services rendered are made directly to the Center, not the inmates, and the Center determines which inmates are sent to the outside work sites. The claimant testified that he was paid only \$15 every two week by the Center, and that all other moneys paid for his outside work were paid to the Center.

An employee as defined by the Workers' Compensation Act is one "employed in the service of an employer under any contract of hire or apprenticeship, written or oral, expressed or implied." ARK. CODE ANN. § 11-9-102 (9)(A). Specifically excluded from the definition of "employee" is "one who is required to perform work for a municipality or county or the state or federal government upon having been convicted of a criminal offense or while incarcerated." *Id.*

It appears plain from the facts that the claimant falls squarely within the exclusion set forth above – he was required to perform work for the Restitution Center due to his criminal conviction. On this basis alone, the present claim must fail. But I also note that even if this claim did not fall within the exclusion, there is simply no evidence of any contract for hire, whether express or implied, between the claimant and the respondent.

For there to be an enforceable contract, it must be shown that there was both an offer and an acceptance. *See, e.g., Gibson v. Boyd*, 206 Ark. 48, 172 S.W.2d 928 (1943). The claimant's performance of services alone is insufficient to show the existence of a contract. *Cf. Shuffield v. Hunter*, 268 Ark. 1003, 597 S.W.2d 852 (1980) (holding there to be no contract between real estate broker and property owner where broker successfully sold land even though owner had never agreed to

employ the broker). It is plain there was no agreement as to any salary – the claimant initially testified he was paid \$6.50 per hour, but he later acknowledged that this figure was merely a guess, his (mistaken) estimate of the current minimum wage. The claimant was in fact paid only \$15 every two weeks by the Restitution Center. The respondent did not offer the claimant employment, but instead asked the Center to provide temporary labor. The claimant accepted no offer from the respondent, and it is not clear from the record whether the claimant could have refused the work assignments made by the Center. In short, there is no evidence of any agreement whatsoever between the claimant and the respondent.

Therefore, given the above, I find that the claimant has failed to prove by a preponderance of the evidence that he was an employee of the respondent. Because he was not an employee, the claimant has no lawful claim for benefits for this injury. To be compensable, an injury must be shown to have arisen out of and in the course of employment. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). If the claimant fails to prove this element, or any other element of compensability, the claim must be denied. *Id.* If the claimant was not an employee of the respondent, then by definition his injury cannot have arisen out of and in the course of employment. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury.

AWARD

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge