

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F408499

COY CLARK,  
EMPLOYEE

CLAIMANT

L & W TRUCKING,  
UNINSURED EMPLOYER

RESPONDENT

**OPINION FILED MARCH 9, 2007**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Hope, Hempstead County, Arkansas.

The claimant was represented by HONORABLE CHARLES R. PADGHAM, Attorney at Law, Hot Springs, Arkansas.

The respondent was represented by HONORABLE WALTER A. MURRAY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on January 4, 2007 in Hope, Arkansas. A prehearing order was entered in this case on September 12, 2006. A copy of this prehearing order set out 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 record.

There were no stipulations submitted by the parties either in the prehearing order or at the start of the hearing.

By agreement of the parties, the issues to be litigated are limited to the following:

1. Whether the Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Whether the respondent is an employer subject to the Workers' Compensation Act.
3. Whether the claimant sustained a compensable injury while under the employment of the respondent.
4. Controversion and attorney's fees.
5. Whether the present claim is barred by the statute of limitations.

The record consists of the January 4, 2007 hearing transcript and the exhibits contained therein.

### **DISCUSSION**

#### **1. 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 claimant is an Arkansas resident. L and W Trucking uses an Arkansas mailing address. On June 5, 2003, the claimant picked up the logging truck he was to drive in Stamps, Arkansas. This workers' compensation claim arises out of an automobile accident that occurred on Highway 2 near El Dorado, Arkansas. Under these circumstances, I find that the Arkansas Workers' Compensation Commission has jurisdiction

to determine the facts which establish the applicability or non-applicability of the Arkansas Workers' Compensation Law to the injury and accident at issue. See Johnson v. Union Pacific Railroad, 352 Ark. 534, 104 S.W.3d 745 (2003); WENCO Franchise Mngm't, Inc. v. Chamness, 341 Ark. 86, 13 S.W.3d 903 (2000); VanWagoner v. Beverly Enters., 334 Ark. 12, 970 S.W.2d 810 (1998.)

## **2. Applicability Of The Arkansas Workers' Compensation Law.**

The claimant must prove by a preponderance of the evidence that the respondent employed the requisite number of employees to be covered by the Arkansas Workers' Compensation Law. Under the current law, an injured worker must generally establish that the respondent regularly employed three or more employees. Ark. Code Ann. § 11-9-102(11) (A) (Supp. 2003). The term "employee" includes a sole proprietor who devotes full time to the proprietorship or a partner who devotes full time to the partnership. Ark. Code Ann. § 11-9-102(9) (B) (Supp. 2003).

As construed by the Arkansas Supreme Court, the phrase "regularly employs" is not synonymous with "constancy." Wallace v. Wells, 221 Ark. 750, 255 S.W.2d 970 (1953); Aerial Crop Care, Inc. v. Landry, 235 Ark. 406, 306 S.W.2d 185 (1962). Instead, it is sufficient if the demands of the

business are such that the requisite number of workers are regularly employed, although some or all of the workers may be employed only periodically. In this regard, the Arkansas Supreme Court quoted the following language from Mobile Liners v. McConnell, 220 Ala. 562, 126 So. 626:

The word `regularly' is not synonymous with `constancy.' There are businesses of importance which employ numbers of men regularly, who employ none of them continuously. And a number of businesses, as this, will require a large number of employees, nearly all or a large number of whom are employees only periodically, for the reason that the needs of the business require their services only at intervals or periods, whenever the business is in active operation.

In the present case, the claimant has failed to establish by a preponderance of the evidence that L & W Trucking had three employees at the time of his accident. In fact, the claimant testified that he had no idea how many employees that L & W has. [T. 31] Robin Davis testified that she was the sole owner of L & W Trucking. [T. 42] Ms. Davis testified that she was not on the payroll. [T. 43] Ms. Davis testified that Mr. Clark was the only employee of L & W Trucking when he had his accident. There is nothing in Mr. Clark's testimony or in the documentary record which persuades me that Ms. Davis in fact was not the owner, or that Ms. Davis had any other potential employees other than Mr. Clark.

Alternatively, the requisite number of employees in order to be covered by the Arkansas Workers' Compensation Law is only one employee if the employee is employed by a subcontractor. Ark. Code Ann. § 11-9-102(11)(D). Further, the requisite number of employees to be covered by the Arkansas Workers' Compensation Law is only one employee if the employee is employed by a contractor who subcontracts any part of his or her contract. Ark. Code Ann. § 11-9-102(11)(C).

In the present case, there is insufficient evidence in the record to establish that L & W Trucking was either a contractor or a sub-contractor with respect to the logs Mr. Clark hauled to the mill on June 5, 2003. Ms. Davis testified that Dale Tatum was "the guy that we were pulling for." [T. 46] However, Ms. Davis did not elaborate, and at any rate she was not responding to any question regarding a possible contractual or sub-contractual relationship between L & W Trucking and any other party. On this record, it would require speculation and conjecture to find that L & W Trucking was either a contractor or a sub-contractor with regard to the work that Mr. Clark was performing for the company on June 5, 2003.

The claimant has therefore failed to establish that the Arkansas Workers' Compensation Law applied to the L & W Trucking operation on this record as either an employer, as an employer/contractor, or as an employer/sub-contractor.

**3. Employee Versus Independent Contractor And Statute Of Limitations Defense**

Because the claimant has failed to establish that L & W Trucking had three employees, so as to be subject to the Arkansas Workers' Compensation Law pursuant to Ark. Code Ann. § 11-9-102(11)(A), and since the claimant has failed to establish that L & W Trucking was either a contractor or a subcontractor with respect to the logs Mr. Clark was hauling, even if the claimant were presumed to be an employee of L & W, I find moot the respondent's statute of limitations defense and the respondent's contention that the claimant was in fact an independent contractor, rather than an employee, within the meaning of the Arkansas Workers' Compensation Law.

**4. Payment Of The Court Reporter's Bill**

Commission Rule 099.20 provides that the expense of taking and transcribing a hearing before an administrative law judge shall be borne by the respondents. However, the provisions of the rule do not apply in the case of an

uninsured employer found not to be subject to the workers' compensation laws. See Rule 099.20(V.)

Since I conclude on this record that the uninsured respondent in this case is not subject to the Arkansas Workers' Compensation Law with respect to the time period and claim filed herein, I am directing the Court Reporter to forward his bill for the hearing to me to submit to the Arkansas Workers' Compensation Commission to seek payment by the Commission.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction to determine the facts which establish the applicability or non-applicability of the Arkansas Workers' Compensation Law to the injury and accident at issue in this claim.

2. The claimant has failed to establish by a preponderance of the evidence that the respondent employed the requisite number of employees to be covered by the Arkansas Workers' Compensation Law under Arkansas Code Annotated § 11-9-102(11)(A), or that the respondent was a contractor or subcontractor subject to the provisions of Arkansas Code Annotated § 11-9-102(C) or (D).

3. Pursuant to Commission Rule 099.20, because I find that the uninsured respondent in this case is not subject to the Arkansas Workers' Compensation Law with respect to the claim filed herein, the respondent is not subject to the provisions of Commission Rule 099.20 regarding payment of a court reporter's bill.

4. Because the claimant has failed to establish that the Arkansas Workers' Compensation Law applies to this claim, even if the claimant is presumed to have been an employee of L & W Trucking, I find moot the respondent's statute of limitations defense and the respondent's contention that the claimant was in fact an independent contractor and not an employee of L & W Trucking at the time of his injury.

**ORDER**

For the reasons discussed herein, this claim for workers' compensation benefits must be, and hereby is, denied in its entirety.

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge