

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F303498 (07/10/02)**

<b>CURTIS TAYLOR, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>J.W.'S AUTO SALES, LLC., UNINSURED EMPLOYER</b>	<b>RESPONDENT</b>
<b>THE ESTATE OF J.W. HALL, DECEASED</b>	<b>RESPONDENT</b>

**OPINION FILED OCTOBER 15, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on October 12, 2007, at Oceola, Mississippi County, Arkansas.

Claimant represented by the HONORABLE H. OSCAR HIRBY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE CHARLES A. BANKS, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-style claim to determine the claimant's entitlement to workers' compensation benefits. On August 14, 2007, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects the issues to be addressed during the course of the hearing and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1. Respondent-employer stipulated that on July 10, 2002, it employed the required number of employees to bring its operation within the jurisdiction of the Arkansas Workers' Compensation Commission and that it did not have a policy of workers' compensation

insurance coverage.

The testimony of Curtis Taylor, Judy Wilson, Percy Sanders, and Gary Hopper, coupled with medical reports and other documents comprise the record in this claim. Prior to the hearing in this claim respondent filed a Motion to Dismiss the claim pursuant to Rule 099.13 for want of prosecution. The June 13, 2007, Motion to Dismiss, the claimant's July 20, 2007, response thereto, and the July 24, 2007, ruling denying the motion have been bluebacked and designated a part of the record as Commission Exhibit #2.

### **DISCUSSION**

Curtis S. Taylor, the claimant, with a date of birth of October 10, 1974, has a ninth grade education. Claimant asserts that he was employed by respondent-employer approximately two (2) months prior to sustaining work-related injuries in a fall from building of respondent-employer on July 10, 2002.

Claimant acknowledged that he has performed construction and manual labor jobs throughout his employment history. Claimant denies that he held himself out as a self-employed painter or the owner of such a business prior to July 10, 2002. The testimony in the record reflects that J.W. Hall owned J.W.'s Auto Sales, LLC., as well as 14 rent houses. Claimant maintains that the first job that he performed after he was employed by respondent was to hang a door on one of the rent houses. Claimant asserts that his hours as a employee of respondent were from 7:00 a.m. to 5:30 P.M., Monday through Friday, and a half day on Saturday. Claimant acknowledged that he was not an automotive mechanic nor was he a car salesman for J.W.'s Auto Sales.

Claimant's testimony reflects that in addition to performing repair and maintenance work

on the rent houses and buildings of respondent he also performed tasks associated with the J.W.'s Auto Sales. Regarding the afore, the claimant testified that he pull parts from old vehicles to be used in the maintenance and repair of vehicles in the automotive shop; that he picked up parts from the parts store to be used in the automotive shop; and that gave customers ride. Claimant further testified that he was paid a salary of \$300.00, per week in cash by respondent. Claimant that the afore tasks were performed by him within the course and scope of his employment both before and after his July 10, 2002, accident.

Claimant's testimony reflects that respondent furnished the supplies and equipment used to perform his assigned job task. Specifically, claimant testified that when performing repair or maintenance on the rent houses or building on the automotive lot, paint, brushes, rollers and any supplies were furnished by respondent. The claimant did testify that he felt that he could refuse to perform an assigned task if he wanted.

It is undisputed that the claimant sustained injuries on July 10, 2002, when he fell from building which was located on the premiss of J.W.'S Auto Sales while painting the roof. At the time of the July 10, 2002, fall, Eugene Logan and Gary Hopper were also on the roof painting. Both the claimant and Mr. Hopper fell off the roof, however only the claimant sustained injuries with required medical treatment. The claimant's injuries were to his shoulder, neck, arm, and wrist.

Claimant acknowledged that prior to July 10, 2002, he had purchased vehicles from J.W.'S Auto Sales. Further, whiled the claimant had worked for various painting and construction contractors prior to July 10, 2002, he denies that he held himself out as a painting contractor or was responsible for securing a Certificate of Non-Coverage from the Arkansas

Workers' Compensation Commission. The record reflects the presence of a Certificate of Non-Coverage issued to Curtis Taylor for Taylors Painting dba Taylors Painting, as a sole proprietor with an approval date of 02/15/2001, and expiration date of 02/15/2003. The certificate reflects the claimant's address as P.O. Box 9043, Victoria, Ar. Claimant confirmed that while he resides in Keiser, Arkansas he has maintained the post office box in Victoria, Ark. Claimant offered that during the time period reflected in the Certificate of Non-Coverage he was employed by Stretcher Brothers Painting who was performing a painting job at the Nucor Steel Plant. Claimant profess to have no knowledge of the issuance of the Certificate of Non-Coverage.

Percy Sanders testified that is an automotive mechanic and was employed by J.W.'S Auto Sales as such for a period of six to seven years. Mr. Sanders has worked as an automotive mechanic for more than 50 years. Mr. Sanders testified that as a mechanic for respondent he discharged his employment duties in the shop. The testimony of Mr. Sanders further reflects that during his employment with respondent he was paid a salary. Mr. Sanders provided testimony regarding a conversation he overheard between the claimant and Mr. J.W. Hall. Mr. Sanders maintains that as he was walking from one building to another he heard the claimant ask Mr. Hall if he had any work for him to do, to which Mr. Hall pointed to the building and told the claimant that he could paint the top of the building and that he would be on his own. Mr. Sanders also maintain that Mr. Hall informed the claimant that he did not have insurance if he fell of the building. Mr. Sanders' testimony reflects that it was his impression that the claimant fell off of the building the first day that was there. Mr. Sanders acknowledged that he did not see the accident. Mr. Sanders also testified that he has suffered a light stroke since the July 2002, accident which has affected his memory.

Mr. Gary Hopper's testimony reflects that he is currently employed at Nestles Foods. Mr. Hopper testified that he performed work for J.W. Hall and was paid in cash for the work performed. Mr. Hopper's testimony reflects that he was paid by Mr. Hall by the project or task completed; that there were no fixed hours; that his work consisted on painting and working on the rent houses of Mr. Hall. Mr. Hopper testified that he was instructed by Mr. Hall to help the claimant paint the roof of the building on the morning of the July 10, 2002, accident. Mr. Sanders also provided credible testimony regarding the mechanics of the July 10, 2002, accident in which he and the claimant fell from the roof of the building. Mr. Sanders, like the claimant, was not an automotive mechanic or an automotive salesman and did not perform either task for respondent-employer.

Ms. Judy Wilson testified that she commenced her employment with respondent-employer on January 7, 2002. Ms. Wilson's job title in her employment with respondent-employer was that of Title Clerk. Ms. Wilson explained that her duties included collecting money, providing receipts and titles for customers. The testimony of Ms. Wilson reflects that the first contact of the claimant with respondent-employer was as a customer. Specifically, claimant purchased several vehicles from respondent J.W.'S Auto Sales.

Ms. Wilson noted that in purchasing a vehicle information was obtained on the clamant with each purchase, as with all customers. The information obtained by respondent at the time of a purchase of a vehicle by a customer included the customers's date of birth, social security number, address, and employment status. Respondent's records relative to the clamant reflects that on April 28, 2000 he purchased a vehicle and listed his employer as David \_\_\_\_\_. On January 20, 2001, claimant purchased another vehicle and identified Nucor as his employer. On

April 10, 2002, claimant purchased another vehicle and listed his employment status as “Self” employed. When the claimant purchased another vehicle from respondent on February 17, 2003, he was employed by respondent and was identified as such in the business records of same. (RX. #2).

Ms. Wilson’s testimony reflects that she was present at the time the claimant presented to Mr. J.W. Hall at the automotive office and solicited work. Ms. Wilson testified that the claimant asked Mr. Hall for work on behalf of his company/business. Ms. Wilson’s testimony reflects that Mr. Hall informed the claimant that he did not have any work for him other than painting the roof of a building on the premises of the automotive lot. Further, Ms. Wilson asserts that the claimant was informed by Mr. Hall what while he would supply the paint, the claimant would be responsible for the labor. Ms. Wilson testified that the claimant informed Mr. Hall that he had someone in mind to help paint the roof. Ms. Wilson’s testimony reflects that on the morning that the claimant was to paint the roof of the building he informed Mr. Hall that the laborer that he had plan to help with the building was not available. Ms. Wilson testified that it was at that time that Mr. Hall instructed Mr. Hopper and Mr. Logan to help the claimant paint the roof.

The credible testimony of Ms. Wilson reflects that the claimant did not become an employee of respondent-employer until after the July 10, 2002, accidental fall from the roof which resulted in the injuries that are the subject of the present claim. The testimony reflects that following the claimant’s injuries from the accident he returned to the premises of respondent-employer and requested employment. At the time of he afore claimant was physically restricted due to his injuries. Claimant was hired by respondent-employer to perform the duties of runner, which included picking up automotive parts from the parts store, transporting customers of

respondent-employer and running errands. Once the claimant became an employee of respondent in August 2002, he was furnished a uniform and provided regular hours of work.. The routine business records of respondent-employer are corroborative of the afore. When the claimant purchased an automobile from J.W.'S Auto Sales on February 17, 2003, his employer was identified as respondent-employer. (RX. #2).

Claimant remained in the employment of respondent-employer through March/April 2004. Ms. Wilson testified that the claimant ceased reporting for work in March/April 2004. Contrary to the assertion of the claimant, Ms. Wilson testified that the claimant was not fired by respondent. Claimant attributed the ending of his employment with respondent-employer to the fact that he had filed a claim for workers' compensation benefits growing out of the July 10, 2002, accident following which respondent made his continued working for same intolerable.

Since leaving the employment of respondent-employer in March/April 2004, the testimony in the record reflects that the claimant has been performed jobs in the construction/painting industry. Claimant candidly identified his various employers since the leaving the employment of respondent-employer. While claimant maintained the he experienced physical limitations as a result of the injuries suffered in the July 10, 2002, accident, there is no evidence in the record to reflect that he was unable to perform the assigned job duties in his subsequent employments. It is noteworthy that the claimant's employments subsequent to March/April 2004, were in the same industry as that preceding the July 10, 2002, accident. Indeed, the only period that the claimant has been removed from the construction/painting industry was that point in time following the July 10, 2002, accident when he was an employee of respondent-employer. The duties that he performed during the afore were markedly different

that those in the construction/painting industry.

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical records and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

### **FINDINGS**

1. On July 10, 2002, respondent-employer J.W.'s Auto Sales, LLC., employed three or more employees regularly in the course of business so as to bring its operation under the jurisdiction of the Arkansas Workers' Compensation Act and the Arkansas Workers' Compensation Commission.

2. On July 10, 2002, respondent did not have in place a policy of workers' compensation insurance in place nor was it an authorized self-insured employer. Respondent was an uninsured employer on July 10, 2002.

3. On July 10, 2002, the claimant was not an employee within the meaning of the Arkansas Workers' Compensation Law, but rather an independent contractor.

### **CONCLUSION**

On July 10, 2002, claimant sustained injuries to his shoulder, neck, arm and wrist growing out of a fall from the roof of a building located on the premises of respondent-employer. Claimant contends that he was an employee of respondent-employer at the time of the July 10, 2002, accidental fall and that the injuries sustained in the fall arose out of and in the course of his employment. Claimant seeks corresponding workers' compensation benefits to include medical, temporary total and temporary partial disability benefits as well as controverted attorney fees. Respondent denies that the claimant was an employee of same at the time that he sustained his

injuries in the July 10, 2002, accidental fall.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of injuries having been sustained subsequent to the effective date of the afore provisions. In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4)(A)(i) (Repl. 2002). Should the claimant fail to establish by a preponderance of the evidence any of the requirements for establishing compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W. 2d 876 (1997).

In the instant claim the primary question is whether the claimant was an employee on July 10, 2002, at the time he sustained the accidental injuries which are the subject of this claim. As noted above, it is undisputed that the claimant suffered debilitating injuries, when while painting the roof of a building on the premises of respondent-employer he slipped and fell as he was reaching for another individual who was in the process of falling.

Respondent-employer was in the business of selling automobiles. In addition to selling automobiles respondent-employer also maintained an automobile repair shop on the premises. Respondent employed automobile salesmen, title clerks, and mechanics regularly in the course of

its business. Claimant did not perform either of the afore tasks on or prior to July 10, 2002.

The credible evidence further reflects that J.W. Hall, the owner of J.W.'S Auto Sales, LLC., also owned fourteen rent houses, which required maintenance and upkeep. With regard to the afore, the evidence in the record reflects that Gary Hopper and Eugene Logan performed "handyman" type chores on the rent houses of J.W. Hall, and were paid for the work that they completed. There credible evidence reflects that the afore individuals were not employed by J.W.'S Auto Sales, LLC., did not work regular hours, and were only paid for the work that they performed.

The evidence preponderates that the claimant was not an employee of respondent-employer on or before July 10, 2002. The claimant had done business with respondent-employer as a customer, having purchased at least three automobiles from same prior to July 2002. In purchasing the automobiles claimant was provided information regarding his employment status. Claimant purchased automobiles from respondent-employer on April 28, 2000; January 20, 2001; and April 10, 2002. At the time of the April 10, 2002, automobile purchase claimant identified his employment status as self-employed. (RX. #2).

Corroborative of the claimant's self employment status is the presence in the record of Certificate of Non-Coverage issued by the Arkansas Workers' Compensation Commission which identifies the claimant as operating "Taylors Painting dba Taylors Painting" as a sole proprietor. The approval date of the Certificate of Non-Coverage is February 15, 2001, which was approximately one month following the claimant's January 20, 2001, purchase of a vehicle from respondent-employer wherein he identified his employer as Nucor, a steel mill in the Blytheville areas. Claimant testified that he was working for a large area painting contractor who was doing

the painting at the steel mill. The Certificate of Non-Coverage clearly reflects that as of February 15, 2001, claimant held himself as sole proprietor doing business as Taylor Painting. The expiration date of the Certificate of Non-Coverage was February 15, 2003.

The business ledger relative to the claimant's purchases of vehicles from respondent-employer prior to July 10, 2002, the existence of the Certificate of Non-Coverage which identifies the claimant as a sole proprietor doing business as Taylors Painting, coupled with the credible testimony of Ms. Wilson, Mr. Sanders, and Mr. Hopper preponderates that the claimant was not an employee of respondent-employer on or before July 10, 2002. On July 10, 2002, claimant held himself out as sole proprietor doing business as Taylors Painting and procured the job painting the roof of the building on the premises of respondent-employer in that capacity. Claimant was to furnish the labor for painting the roof and respondent-employer to furnish the supplies. When the claimant was unable to provide the labor to perform the job, respondent-employer instructed Mr. Hopper and Mr. Logan to assist the claimant. Claimant sustained his injuries while in the process of painting the roof of the building in his capacity as a sole proprietor doing business as Taylors Painting, and not as an employee of respondent-employer J.W.'S Auto Sales, LLC.

In determining whether a particular claimant is, or is not, an independent contractor, the Courts in Arkansas have designated a number of factors to be considered. Among the factors that may be considered, depending upon the facts of the given case are: the right to control the means by which the work is done; the right to terminate the employment without liability; the method of payment, whether by time, job, piece, or other unit of measurement; the furnishing, or the obligation to furnish, the necessary tools, equipment, and materials; whether the person

employed is engaged in a distinct occupation or business; the skills required to do a particular occupation; whether the employer is in business; whether the work is an integral part of the regular business of the employer; and the length of time for which the person is employed.

*Franklin v. Arkansas Craft, Inc.*, 5 Ark. 264, 635 S.W. 2d 286 (1982). In considering the afore factors, the Commission and the Courts have frequently placed emphasis upon the amount of control an employer has exercised over the claimant, sometimes referred to as the relative nature of the work test. *Silvicraft, Inc. v. Lambert*, 10 Ark. App. 28, 661 S.W. 2d 403 (1983).

In the instant claim, in addition to the presence of the Certificate of Non-Coverage, which identified the claimant's business as a sole proprietor doing business as Taylors Painting, it is noted that respondent-employer was in the business of automobile sales. Claimant was a painter. The job on which the claimant sustained his injuries was not one of selling automobiles or an activity which was an integral part of respondent's business. The evidence preponderates that the claimant was not an employee of respondent-employer on July 10, 2002, at the time he sustained the injuries which serve as the basis for the present claim. The evidence preponderates that on July 10, 2002, the claimant was an independent contractor when he suffered the injuries as a result of an accidental fall from the roof of the building on the premises of respondent-employer which he had been hired to paint in his capacity as Taylors Painting. This claim is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**Andrew L. Blood, ADMINISTRATIVE LAW JUDGE**