

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F609387**

**JEFFREY L. MARTIN,  
EMPLOYEE**

**CLAIMANT**

**LINAM'S FLOOR COVERING, INC.,  
AND ROBERT E. LINAM, INDIVIDUALLY,  
AND D/B/A LINAM'S FLOOR COVERING,  
UNINSURED EMPLOYER**

**RESPONDENT**

**OPINION FILED JANUARY 30, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE RICHARD B. CALAWAY, on November 27, 2007, at Little Rock, Pulaski County, Arkansas. Submitted for ruling before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on January 14, 2008.

Claimant represented by the HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

Respondent represented by the HONORABLE GARY J. BARRETT, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A pre-hearing conference was conducted in the above-style claim, from which a Pre-hearing Order of September 28, 2007, was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to same. The Pre-hearing Order is herein designated Commission Exhibit #1.

The testimony of Jeffrey L. Martin, the claimant, and Robert E. Linam, coupled with medical reports and other documents comprise the record in this claim.

**DISCUSSION**

\_\_\_\_\_ Jeffrey L. Martin, the claimant, with a date of birth of September 6, 1983, completed the eleventh grade and later obtained a GED. Claimant has one (1) year of plumbing experience.

On August 11, 2006, the claimant sustained injuries to the fingers of his left hand while working in Russellville. Claimant testified regarding the circumstances surrounding his initial contact with respondent Robert E. Linam:

Approximately Monday or Tuesday of the week beforehand. I met him through my ex-girlfriend now - it was her Dad. I guess it was the warehouse where he went to get all his floor stuff that her Dad was the manager or one of the high people, and he had set it up for me and helped me get the job. (T. 12).

The testimony of the claimant reflects that he negotiated with respondent-Robert Linam concerning the job. The negotiations took place at the claimant's resident. Claimant explained regarding the negotiations:

He just asked me what experience I had. I told him I had about a year or year-and-a-half experience, that I'd just been working for another floor covering company, I'd recently moved from North Little Rock to Jacksonville, so that was the reason for me not steadily working with the floor covering that I was working with, that I needed another job. Like I said, he had asked me my experience. I told him. He said, well, I'll give you a shot a see what, you know, what you know and what you don't know, and he said, I'll see you in the morning, and he came to pick me up after that. (T. 12-13).

Claimant's recollection was that he was to be paid \$8.00, per hour, working five (5) days per week.

The testimony of the claimant reflects that respondent-Robert Linam did indeed pick him up the following morning in his four-door pickup truck. The claimant testified that the pickup had a sign on it and had in tow a big white trailer with all the tools in it, with a sign on it reflecting Linam's Floor Coverings. Claimant was taken to some apartment where work was

being performed:

No, sir, we went to some apartment where the tile was already laid in the bathroom and the kitchen was already prepped. As we were wiping the grout off of the tile in the bathroom, he was doing the kitchen. And then we came behind him and finished, you know, cleaning up the kitchen and cleaning off all the old grout and everything. We then proceeded from there to another job site and finished up some little job that he had already started that was almost completed. (T. 13-14).

Claimant testified was supervised by respondent-Robert Linam when he began working on the first job site at the apartments. Claimant noted that Kyle Howell was already present and working when he arrived at the apartment job site. Claimant maintains that respondent-Robert Linam performed work at the apartment job site which consisted of laying the tile in the kitchen while he and Mr. Howell were cleaning the grout on the bathroom floor.

The testimony of the claimant reflects that respondent-Robert Linam provided the tools that were used at the job site and that he was picked up and transported to the job site by Mr. Linam. Claimant observed that most mornings that Mr. Linam picked him up, Mr. Howell was already in the vehicle. Claimant testified that during his first day of work for respondent, he worked from 8:00 or 8:30 am. until 5:30 p.m., and that Mr. Linam was present on the job site the entire time, both supervising and laying flooring.

On the second day of his employment with respondent he was picked up at his residence and taken to Russellville. Claimant noted that they laid carpet at another house. The same three individuals worked together the second day of his employment with respondent. Claimant worked slightly fewer hours on the second day.

The testimony of the claimant reflects that the third day of his employment with respondent was August 11, 2006, the date of his accident. Claimant's testimony reflects:

We took out to go to Russellville. He had told me that morning when he picked me up that we had a job out of town that we should be able to finish today, and that's where we proceeded. We jumped on the highway and went to Russellville to the job site. (T. 16-17).

The claimant's testimony reflects that the crew consisted of the same three-men crew as the first two (2) days of his employment.

The claimant elaborated further regarding his employment agreement with respondent- Robert Linam:

My agreement was that he would pay me by the hour for everything that we did. To find out exactly where my standing was, like I said, he quoted that he would start me out at, from my understanding, was \$8.00 an hour, and we would go from there on my experience. You know, he would boost me up on my experience. As we proceeded to go to work the first day, he asked me if I had any self-insurance, and I told him, no, that I'd, you know, I've always worked under somebody. I've never been a self-employer or subcontractor. And so, he said something about a weaver for contractor insurance or something that . . .

Yeah, something like that [Certificate of Non-Coverage] - said I needed to go sign - and that was the first day - he said we would go take care of that tomorrow and then the second day, we went back to work and still never went to sign the paper. (T. 17-18).

Claimant testified that he had never owned his own company or business, never placed an ad in the paper saying that he would work for people, has never formed a partnership or incorporated a business, and has never employed employees.

In describing the events of August 11, 2006, the day of his accidental injury, the testimony of the claimant reflects:

That morning started out - it was real nice. The lady that - whose job we were at - was actually at home. You know, she was a real friendly person. We were laying carpet in the back three bedrooms and an office there, so that would be four complete rooms, and in the hallway, we were laying, what they call hardwood flooring, but they're actually slats that

lock together. Approximately middle of the day, maybe a little after, Mr. Linam was in the hallway, laying the floor. He was putting down the wood slats, and had asked me to make a cut, which I had been doing all day, you know, I'd been cutting the boards for him and everything. He asked me to make a two-inch cut off of a four-foot board. I proceeded to go out in the garage area where the shop - were the saw and everything was set up - and proceeded to make that cut, and that's when the incident happened.

I was running the board down. Like I said, it's probably about a five-inch width. I was walking the board down the saw and about mid-way or a little over mid-way, there was I guess, a knot or something in the board where it kind of had jerked the board up. And when it jerked the board, my hand got jerked with it, and it just made contact with the saw.

I cut my right - or my left middle finger, I'd cut my left index finger almost all the way off, and it had slashed my left thumb up. (T. 18-19).

The claimant was transported by respondent-Robert Linam to St. Mary's Medical Center for treatment of his injury. Claimant was referred by the physicians at St. Mary's Medical Center to the physicians at OrthoArkansas, in Little Rock, for further treatment of his injuries. Claimant was off work from August 11, 2006 through October 26, 2006, as a result of the injuries.

Claimant asserts that following the accident he informed respondent-Robert Linam that he still needed to work. Claimant offered that he told Mr Linam that he still had one good hand and that he could perform such tasks as clean-up or whatever he needed to be done. Claimant asserts that Mr. Linam agreed to allow him to continue work and said he would see him the next morning. The testimony of the claimant reflects, regarding the afore:

The next morning, he showed up. I'd already talked to the doctor, cause I'd told him the day before that, you know, they had referred me to Ortho of Arkansas. I had called Ortho of Arkansas and they said they needed a \$200.00 co-pay. So he shows up the next morning, 20 minutes before my appointment to be down there. He was actually coming to take me to my doctor's appointment. And he came up, and I told him what the doctor said - that I needed a \$200.00 co-pay -and he said, well, I just don't

think I can pay that this morning - can you not borrow it? And I told him, seeing as how I'm in Jacksonville and all my family lives in Little Rock and North Little Rock, I highly doubt it, with me only having 20 minutes to get to my doctor's appointment. And so, he said, well, I just don't think I can afford it today. And I said, well, that's fine, I'll figure something out. So, he left. And I called the doctor's office and Dr. Sims, which is whose care I was under at Ortho of Arkansas, said if you can just bring like a \$50.00 co-pay, we will go ahead and see you. And so, that's what I did that same day. (T. 21-22).

The claimant testified regarding a subsequent conversation he had with respondent-

Robert Linam:

Yes, sir, the next day, is when I contacted - I talked to my Mon that evening after I left from Ortho of Arkansas. She said that I needed to, at least, talk to a lawyer and know my rights in case he tried to back out of on me with helping me with my medical bills. So, I did. I proceeded to talk to Brad Hendricks, and he gave me a bunch legal advice and told me that I, at least, needed to make him aware that I had talked to a lawyer. So the next morning, he shows up and I asked him, could I speak to you a minute. You know, he showed up to pick me up for work. I said, may I speak to you for a second, and he said, yeah, sure, so he walks in the house. I said, I'm not trying to be rude, I'm not trying to, you know, be hateful or nothing, but I did want to make you aware that I've talked to a lawyer. Right then, he jumped to his, you know - he just, you know, it kind of shocked him. He's like, well, if you want to fight legal battles, we'll fight legal battles, and that's when he turned around and walked out and I've not talked to him since. (T. 22).

The testimony of the claimant reflects that he was paid by respondent with a check.

Respondent-Robert Linam transported the claimant to the emergency room of St. Mary's Medical Center following the August 11, 2006, accident. Claimant's testimony reflects, regarding the signed guarantee to pay executed by respondent-Robert Linam:

On the trip to the hospital, I guess he thought about it or was worried about going in there with him not having insurance or me not having insurance, and telling them that I was actually on a job site. He said, just let them - if they ask you, just tell them you was helping a friend and I will take care of the medical bills. And so that's what I proceeded to do, so I

guess they just automatically decided, you know, that he was a friend or whatever . . . . (T. 23-24).

Claimant further testified regarding the circumstances surrounding respondent-Robert Linam signing the hospital documents:

They had laid them [documents] on the side of the bed, and I had my hand soaking in something, and that's when he proceeded to pick up the papers and was looking over them and started signing - cause I - I also signed several papers there, too. (T. 24).

The claimant testified that there was no discussion about why Mr. Linam was signing the papers.

Claimant noted that he did not realize that Mr. Linam had signed on the responsible party until later on down the road.

During cross-examination claimant denied that he had ever been a subcontractor. The testimony of the claimant reflects that during his employment with respondent he was able to drive:

I believe - at that time, I believe is when I'd just gotten my driver's permit back - I mean, not my permit, but restricted to working and hospital and emergencies only. (T. 26).

Claimant acknowledged that he did not own a vehicle.

The testimony of the claimant reflects that prior to his employment by respondent he worked for Paul's Plumbing, which is his father's business. Claimant added that prior to the afore he was employed for almost a year at Floor 'N More out of Benton.

Claimant acknowledged that he did provide some of his own tools on the jobs that he performed with respondent:

I had a carpet knife and, you know, a few hand tools - no actual tool tools. I had my little pouch that I carried with me for my floor cutting, which everybody that lays floors is kind of responsible

for their own knife. (T. 27).

Claimant testified regarding the circumstances surrounding the check which was issued to him by

Mr. Linam:

I'm not real sure how he did that. Like I said, when he wrote that check out was after we had left the hospital. It was so I could go into Wal-Mart and cash the check and fill my prescriptions, which he also did for me - he filled my prescriptions after we left St. Mary's. (T. 27).

Claimant acknowledged that Mr. Linam's signature on the guarantee of payment documents from the St. Mary's Regional Medical Center emergency room visit is as a "friend or witness". (CX #1, 12-13).

The testimony of the claimant reflects that he was released in October 2006, to return to work by his doctor relative to the August 11, 2006, injury. Claimant concedes that is possible that in December 2006, he informed respondent's attorney that he had been working for his father for the last three (3) months. Claimant was released from medical treatment to return to work by his treating physician relative to the August 11, 2006, injury on October 26, 2006.

Claimant explained his December 2006, statement regarding returning to work:

Like me and my dad toy you in mediation, it was between two and three months. I don't know exact dates. I couldn't tell you exactly. I know once I was able to go back to work, I went immediately back to work, because of the simple fact that a person can't afford to take off for four, five, or six months without . . . (T. 30).

The testimony of the claimant reflects that it was his understanding that he was "working under" Mr. Linam. With respect to any postings or signs identifying his employer, claimant's testimony reflects:

I'm not positive of that. I know there were signs on the vehicles and the trailer, but I'm not positive of what they said. I never actually

paid that close attention. (T. 31).

Robert Edward Linam testified that he is the owner of Linam' Floor Covering, Inc., along with his wife, and that it is a family business which was incorporated in April 2005. The testimony of Mr. Linam reflects that respondent is strictly in the business of floor covering. Mr. Linam maintains that Linam's Flooring has independent contractors, explaining:

Depending on the job, will determine what I need. I won't use, specifically, the same person - there's sand and finish people, carpet people. I try to stay just on hard surface, brick, finished wood, and ceramic tile. (T. 34).

In terms of controlling his independent contractors relative to his jobs Mr. Linam testified:

I give them a time frame in which we need to complete the Job, and they have to see that that's fit, but then they go to their other jobs and taker of those. (T. 34).

Mr. Linam maintains that the claimant was an independent contractor who was between work for Floors 'N More during the time period that he was injured. Mr. Linam's testimony reflects regarding the claimant's pay:

With all my - the contractors that I hired, I do the same with everybody so nobody's feelings get hurt. I start them out at \$7.00 an hour, because that way I'm not losing any money, trying to teach somebody, and I evaluate for 30 days, what they can or cannot do. After 30 days, we assess how good or not so good they do, and we adjust their pay from there. (T. 34).

Regarding the check that was issued to the claimant on August 11, 2006, Mr. Linam testified:

Before I was incorporated, I was a sole proprietor. In order to cash the checks or deposit the checks that I was written, it had to say Linam's Floor Covering. So, instead of incorporating, back in '98 or '99, whenever I started doing the work, I set up that account. Once I incorporated, I hadn't gotten another account switched over to correct it, saying Linam's Floor Covering, and I was still writing checks off of that particular account. (T. 35).

Mr. Linam noted that he paid everybody through that specific account. Mr. Linam testified that Linam's Floor Covering, Inc., has its own tax ID number.

Mr. Linam's testimony reflects, regarding his contact with the claimant and the work arrangement:

Okay. We did make an agreement as far as pay. It was on the telephone, it wasn't in person.

Correct. I explained to him what I expected - what the company expected, if you may. As far as, no holes in your pants, no vulgarities on the shirts; we are working in people's houses; and we need to be presentable. We discussed the rate of pay. Like I said, I started everybody at \$7.00, and then adjust from there. He did not have transportation so, with that, I live in Jacksonville, he lived in Jacksonville, it was readily easy for me to pick him up. Kyle always drove from Cabot in to my house, if we were working in the Little Rock area, to keep from having so many vehicles on the job site. And he was correct, we did - Wednesday and Thursday, we went to two other jobs. And then Friday, we loaded up and went to Russellville. Mr. Martin explained to me his expertise was carpet. That was the majority of what he did. Like he said, we had four rooms of carpet. He was running tack strip, putting pad down up there, and me and Mr. Howell were putting the wood in the hallway. It was glued down. Toward the end of the day, Jeff had completed his job duties and asked if there was anything he could help us with to finish up and go home. This was around, I believe, the two to three o'clock mark, and I was down to the last couple of cuts. Kyle was making some at the time. I give him the last two cuts to go out and make those cuts. And he had explained that the board had gotten kind of jammed up, like he said, but he had reached over the blade to pull it out, rather than backing it out, and that's where his fingers got caught. (T. 36-37).

Mr. Linam testified that at the time of the claimant's accident the homeowner was not there but rather at a friend's house. Mr. Linam asserts that he called the homeowner, who is nurse, and that she came down to the house, helped wrap the claimant's wound, put some ice on it, and thereafter led them to St. Mary's Medical Center.

Mr. Linam acknowledged that once he arrived at the hospital with the claimant he signed

some paperwork so that the claimant could obtain medical treatment:

Yes, like he said, his hand was soaking in a solution to clean the cut out, and then they brought in all of the registration papers that needed to be filled out. And him only having one hand, it was difficult for him to do anything, so they handed them to me to fill them out. I was just going through signing where the lady said to sign. She was going over the paperwork with me. I guess, I mean, that's proof in the paperwork, I did sign where it says that I'm responsible. If I'd have known, I would have - wouldn't have signed anything. (T. 38).

Mr. Linam concedes that the guarantee to pay the medical bill that he signed was him personally and as a friend, and not as the claimant's employer. Mr. Linam maintains that he has not been contacted by St. Mary's Regional Medical Center regarding the payment of the claimant's medical bill.

Mr. Linam testified that he did help the claimant get some prescriptions in connection with the injury. Mr. Linam explained:

Yes. At the time, he was tight on money because he had been off for a while, in which, through the same account that I wrote his payroll, I also paid for the prescriptions from Wal-Mart. (T. 39).

Mr. Linam testified that at the time he had no idea whether he would be reimbursed for the money expended on the claimant's prescriptions.

Regarding his decision not to rehire the claimant, Mr. Linam testified:

There was a piece of jewelry stolen on the job. He was the new employee, didn't know the customers. The initial customer I've known for 12 - 13 -13 years, and my helper, who had been with me for a year, had known the customer, as well. He brought that up to my attention on Monday - Dave did - which is the homeowner. And both guys were in the vehicle. And that was true, we were headed to take him to the doctor. And, at that point, Dave said, look, you know, I'm not one to cause a bunch of problems with you . . .

Yes, there was a ring stolen. There was a police report filed. (T. 40).

Mr. Linam attributes the afore as the reason he did not rehire the claimant rather than the fact that the claimant sustained an injury and secured the services of an attorney.

Mr. Linam maintains that while Mr. Howell has worked with him for about a year he was free to go to other jobs, and in fact did so. Mr. Linam denied that he was a salaried employee of Linam's Floor Covering on the job site. Mr. Linam testified that he does not get an independent contractor's release, but rather gets a K-1 at the end of the year. Mr. Linam maintains that while on the job site he "kind of help supervise" and "do some of the helping work that needs to be done". (T. 41). Mr. Linam testified, "everyone has their duties and I try to make sure that it goes along as best as possible". (T. 41). Regarding any instructions to the claimant with respect to manner in which he performed the task of laying carpet, the testimony of Mr. Linam reflects:

I showed him the four rooms that needed to be carpeted. He Got the tack strip out, or, I don't know, I might have got the tack strip out of the trailer, and then he started putting down tact strip and pad.

I did, yes. I did periodically check on him because, being a new contractor, you know, making sure that he . . . (T. 42).

Mr. Linam maintains that he has all his independent contractors sign waivers. Mr. Linam testified, "now they've got all- a contractor's agreement" with Linam's Floor Covering, Inc. Mr. Linam insist that at the time of the claimant's injury he was doing business as Linam's Floor Covering, Inc., an S-Corp. Mr. Linam denies that there are signs on either his truck or trailer. Mr. Linam maintains that when goes to a job he represents himself as Robert Linam's Floor Covering, Inc., adding that he even has shirts with that name on the chest. Mr. Linam concedes that he did not have the shirts at the time of the claimant's August 11, 2006, accident.

Mr. Linam maintains that at the time of the claimant's August 11, 2006, accident there

were two (2) people working underneath Linam's Floor Covering, Inc., the claimant and Kyle Howell. Respondent asserts that the two (2) were independent contractors on the jobs hired out by Linam's Floor Covering, Inc., to finish the floors.

During cross-examination, Mr. Linam testified that he had been doing floors for twelve (12) years, since 1995. Mr. Linam concedes that in doing floor covering, he does remodels, re-do houses, new houses, ever how he can get the business. (T. 46). Mr. Linam's testimony reflects that he does not purchase the material itself, but rather, "I'm contracting labor". (T. 46). Mr. Linam added:

To be able to purchase the material, you have to have a store front. That's the way all of the distributors require. I mean, I guess you could go buy it from Home Depot, if you wanted to, but, to be able to sell the flooring material, you have to have a store front, and I do contract labor. (T. 46-47).

The testimony of Mr. Linam reflects that on new construction the prime contractor or the builder has to buy the flooring material. If it the homeowner, then the homeowner purchases the floor covering material.

Mr. Linam testified that some of the tools of the trade in his business included table saws, disc sanders, laser levels. Mr. Linam denied that individuals working on his jobs bring their little tools and he furnish everything else:

No, sir, they have limited tools, you know, some of them might have knee-kickers, some of them might have a power stretcher, you know, some of them might have a chalk (phonetic) saw, you know, for installing wood. But, the larger equipment, like I said, I do have those. (T. 48).

Mr. Linam acknowledged that he also furnishes the job site. Mr. Linam concedes that while he was a supervisor of the claimant and Mr. Howell, he was a working supervisor. On the job site

of the claimant's injury Mr. Linam acknowledged that they were all there together putting in flooring. Further, Mr. Linam concedes that he was performing "construction-type work". (T. 49).

Though incorporated for over a year prior to the August 11, 2006, injury of the claimant, Mr. Linam acknowledged that he paid the claimant with a check which reflected "Robert Linam, d/b/a Linam's Floor Covering". (T. 49). Mr. Linam's testimony reflects that he is the president, treasurer, and secretary of the corporation, with his wife as vice-president. On redirect, Mr. Linam testified that he is not in the construction business, but strictly floor covering.

The testimony of Mr. Linam reflects that he did some of the work, supervised the work, and periodically checked on the quality of the work that was being performed at the job site. When questioned regarding the action he would take if the worker was performing the job in a way that he did not want, Mr Linam responded:

Well, I'd let them know that was improper and then if they had questions, show them how to do it - how to do it right.

My main goal was to make sure the customer was happy. If I could catch it first, before the customer saw it, it makes everybody's life easier. (T. 53).

Mr. Linam concedes that he did have the ability to tell the worker how to do a task if they were not doing it the way he thought they should do it. Mr. Linam also confirmed that when he took a job he hired people to do it on an hourly basis, unless otherwise determined, noting that some people preferred piece-work price. Mr. Linam most usual way of payment was hourly.

Regarding the afore, the testimony of Mr. Linam reflects:

Hourly, because piece-work - that means they had to work to get paid. Hourly, they could sluff off and do what they want, basically. (T. 53-54).

Regarding the point in time that he changed over his checking account to a corporate account, claimant testified:

I don't remember the specific date. I put them both in the same - I had them separate - my personal in one bank, and the business in the other, and then, whenever I finally joined them, I just closed the Arvest one and re-opened at First Arkansas with the correct heading. (T. 54).

Mr. Linam acknowledged that there were no records maintained by the corporation regarding the employment of the claimant. The testimony of Mr. Linam reflects that he and his wife had a general agreement that anyone hired would be paid \$7.00, per hour. Mr. Linam added:

Yes, sir. And then, after that, I discussed with her their progress and we went from there - and then I notified whoever it was at the time. (T. 55).

Mr. Linam noted the prior to the present workers' compensation claim, his employment arrangement consisted of "a work of faith and a handshake on all of our agreement". Further he would take down the individual's Social Security number and address in order to prepare a 1099 Form.

Mr. Linam testified that he requested people to get a Certificate of Non-Coverage. The testimony of Mr. Linam reflects that he now has a contract the individuals sign stating that they are sub-contractors of Linam's Floor Covering. Mr. Linam testified that he had a Certificate of Non-Coverage for the business which was current through December 2006, however once he was incorporated he was informed by the Arkansas Workers' Compensation Commission personnel

that he was not allowed to one.

Further, Mr. Linam noted that he has since secured a policy of workers' compensation insurance, which excludes him. Mr. Linam testified that he is uncertain who is covered under his policy, explaining:

It's - I'm really not sure who is covered. The place that I contract through said that I have to have a workers' comp policy now, because I no longer contract through Swaim's Elite Flooring. I'm contracting for Carpet One Commercial. (T. 57).

Mr. Linam was questioned regarding Swaim's Elite Flooring:

It's just a flooring - a place that sells floor covering. They would deal with the customers, measure the jobs, figure all the material, and then they would say, okay, Ms. Jones, has 500 feet of tile she needs laid on this date, give me all the information, I will contact her to make sure I can and make sure I can get in, and go do the job. (T. 57).

Mr. Linam noted that Swaim's Elite Flooring had already negotiated the price by the time he got involved. Swaim's Elite Flooring got the deal and thereafter asked Mr. Linam to go do the job, for which they took a cut and gave the rest to him. Regarding his arrangement with Swaim's Elite Flooring, Mr. Linam testified:

I had originally signed a - I don't - what is it - a W-3, whatever, for the sub-contract labor - not an - he didn't hold out taxes. He just paid me 1099 - or, excuse me - you know, made it out to . . . (T. 58).

On re-cross examination, Mr. Linam acknowledged that he was an independent contractor for Swaim's Elite Flooring. With respect to paperwork or documentation of the arrangement, Mr. Linam testified:

Yes, whatever the paperwork they needed to make a 1099 for me, but Aminco Designs had one, as well as Taylor Creek, and also, Carpet One. There was numerous stores that had that same piece of paper. (T. 59).

The testimony of Mr. Linam reflects that his arrangement with the afore businesses was by the job:

Well, depending on who's got the better job, who's got the job at the time, the majority of my work came from Swaim's - we're family - first cousins - but he got slow, so I started doing work for Aminco, Taylor Creek, and Carpet One, as well. (T. 59).

Mr. Linam testified that he has been doing business with Swaim's Elite Flooring for roughly three (3) years. Mr. Linam noted that when he first signed agreement with Swaim's Elite Flooring, he did so as "d/b/a Linam's Floor Covering. Mr. Linam testified that after he was incorporated he furnished is corporate paper so that he could file it on the EIN of respondent.

The testimony of Mr. Linam reflects that the job on which the claimant sustained his injury was not one procured through Swaim's Elite Flooring:

That was a job that the individual - Dave works -he's the warehouse manager for my distributor, and he come to me, personally. He purchased the material from his office and said, hey, man, I know it's a long way, but will you do mine - I heard you're the best. (T. 62).

Mr Linam further identified the homeowners as Dave and Vicki Lay. Mr. Linam's testimony reflects that the August 11, 2006, Russellville job was not the typical work arrangement in that it was a pay-direct and was not through anyone else. The other two (2) jobs that the claimant worked on prior to the August 11, 2006, Russellville job were Swaim's Elite Flooring or someone else. Respondent noted that the majority of his work was had through Swaim's Elite Flooring or someone else that had already negotiated the deal and farmed it out to him.

The record reflects that three (3) checks issued on August 11, 2006, two of which were to or on behalf of the claimant and one to Kyle Howell. Check number 2083 was in the amount of \$203.00, for labor was written to the claimant on the Arvest Bank account of "Robert E. Linam,

DBA Linam's Floor Covering". Check number 2084, in the amount of \$132.38, was made payable to Wal-Mart for a prescription relative to the claimant's injury. Check number 2085 in the amount of \$423.00, was made payable to Kyle Howell for "labor". The notation of the former reflects that Mr. Howell was paid \$9.00, per hour for 47 hours of work. (JX. #1). Further the record reflects the presence of a Certificate of Good Standing issued by the Arkansas Secretary of State reflecting that Linam's Floor Covering Inc., filed Article of Incorporation on April 25, 2005, and is qualified to transact business in the State. (RX. #1).

The claimant was seen at the emergency department of St. Mary's Regional Medical Center for lacerations on his left hand on August 11, 2006. (CX #1, p. 1-5). The record also reflects the presence of a Financial Responsibility Agreement relative to the claimant's August 11, 2006, St. Mary's Regional Medical Center emergency room visit, which was executed by Robert E. Linam. (CX. #1, p. 12-13).

The medical in the record reflects that the claimant was seen at OrthoArkansas on August 15, 2006, by Dr. Marty Siems, relative to the August 11, 2006, injury to his left hand. (CX. #1, p. 6). The claimant was seen on one other occasion by Dr. Siems on August 22, 2006, before being released from the care on same during his final visit of October 26, 2006. The claimant was assessed with a 32% impairment to the left index finger. (CX #1, p. 8).

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

### **FINDINGS**

1. On August 11, 2006, and at all times pertinent thereto respondent was engaged in

the building or building repair work and employed two ( 2) or more employee, thereby bringing its operation within the jurisdiction of the Arkansas Workers's Compensation Commission, pursuant to Ark. Code Ann. §11-9-102 (11)(B).

2. On August 11, 2006, the relationship of employee-employer existed between the claimant and Robert E. Linam, d/b/a Linam's Flour Covering. Respondent did not have in place a policy of workers' compensation insurance nor was he an authorized self-insured employer on August 1, 2006, but rather was an uninsured employer.

3. On August 11, 2006, the claimant earned an hourly wage rate of \$7.00, per hour for a 40 hour work week, which generates an average weekly wage of \$280.00, and weekly compensation benefit rates of \$187.00/\$154.00, for temporary total/permanent partial disability.

4. On August 11, 2006, the claimant sustained an injury arising out of and in the course of his employment.

5. The claimant was temporary totally disabled for the period commencing August 12, 2006, and continuing through October 26, 2006, for a total of eleven (11) weeks, and correspondingly entitled to the payment of \$2,057.00, in indemnity benefits.

6. The claimant reached the end of his healing period on October 26, 2006, with a 32% permanent impairment to the left index finger entitling him to corresponding indemnity benefits in the amount of \$2,119.04.

7. The respondent shall pay all reasonable hospital and medical expenses arising out of the August 11, 2006, compensable injury of the claimant.

8. The respondent has controverted this claim in its entirety.

### **CONCLUSIONS**

The parties acknowledged that claimant sustained injuries to the fingers of his left hand on August 11, 2006, which required medical treatment, resulted in a period of temporary total disability, and a 32% permanent impairment to the left index finger. Claimant maintains that he was an employee of respondent at the time of his injuries and is entitled to corresponding workers' compensation benefits. Respondent takes the position that it did not employ the required number of employees to bring its operation within the jurisdiction of the Arkansas Workers' Compensation Commission and preview of the Arkansas Workers' Compensation Act. Further, respondent maintains that he claimant was not an employee of same, but rather an independent contractor.

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 an injury having been sustained subsequent to the effective date of the afore provision.

The parties stipulated that the claimant sustained injuries to the fingers of his left hand on August 11, 2006. Further, the claimant has been assessed with a 32% permanent physical impairment to the left index finger as a result of the injury. There is not a disputed regarding the reasonableness and necessity of the medical treatment received by the claimant as result of the August 11, 2006, injury.

While there is some dispute regarding the proper identity of the respondent, the evidence preponderated that Linam's Floor Covering, Inc., has been properly incorporated since April 25, 2005. Nevertheless the evidence preponderates that the job on which the claimant sustained his August 11, 2006, injury was at the behest of and in the employment of Robert E. Linam d/b/a Linam's Floor Covering and not that of Linam's Floor Covering, Inc.,.

Ark. Code Ann. §11-9-102 (10) defines “Employer” as any individual, partnership, limited liability company, association, or corporation carrying on any employment, the receiver or trustee of same, or the legal representative of a deceased employer. Ark. Code Ann. §11-9-102 (11), defines employment. The afore reflects, in pertinent part:

(B) Every employment in which two (2) or more employees are employed by any person engaged in building or building repair work.

(C) Every employment in which one (1) or more employees are employed by a contractor who subcontracts any part of his or her contract; and

(D) Every employment in which one (1) or more employees are employed by a subcontractor;

The evidence in the record reflects that Linam’s Floor Covering, Inc., is in the “building and building repair” trade. Linam’s Floor Covering, Inc., is in the business of installing tile, carpeting, in residences, apartments, businesses. Further, the evidence reflects that the contracts for such installations were arranged to other businesses, Swaim’s Elite Flooring and Carpet One. Indeed, the evidence reflects that the two (2) jobs on which the claimant had worked prior to the August 11, 2006, Russellville job were procured through the afore arrangement. The contracts were entered by the businesses and farmed out to the Linam’s Floor Covering, Inc. In the afore instance, Linam’s Floor Covering, Inc., was the subcontractor.

A subcontractor is one who enters into a contract with a person for the performance of work such a person has already contracted to perform. In other words, subcontracting is merely “farming out” to others all or part of work contracted to be performed by the original contractor.

*Bailey v. Simmons*, 6 Ark. App. 193, 196, 639 S.W.2d 526, 528 (1982). The courts have noted

that if a person or entity performs all or part of a contract that another party procured it is a subcontractor. Further, whether the subcontracting party operates independently is of no consequence. A party or entity can be both an independent contractor and a subcontractor - - the singular requirement for one to be a subcontractor is to perform all or part of another's contractual obligation to a third party. *Id.*

In the instance of the August 11, 2006, Russellville job, Robert E. Linam did not obtain the contract through a third party but rather directly from the owner of the property. Mr. Linam described the afore as a "direct pay" job. The job entailed laying carpeting and hardwood flooring in a private residence of Dave and Vicki Lay. Robert E. Linam, d/b/a Linam's Floor Covering was the contractor for Russellville job. The checks issued on August 11, 2006, to the claimant and Kyle Howell for "labor" were drawn on an account at Arvest Bank which identified the payor as "Robert E. Linam, D/B/A Linam's Floor Covering". Respondent also wrote a check to Wal-Mart for prescriptions in connection with the claimant's August 11, 2006, injury on the same account. It is clear that the amount of the checks covered the work performed by the claimant and Kyle Howell as employees of the subcontractor, Linam's Floor Covering, Inc., as well as that performed on August 11, 2006, for Robert E. Linam d/b/a Linam's Floor Covering at the Russellville job.

The assertion of respondent that the claimant was an independent contractor is not persuasive. Factors to consider in determining whether an injured worker is an employee or independent contractor include:

- (1) the right to control the means and 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; and
- (9) the length of time for which the person is employed.

*Riddell Flying Service v. Callahan*, 90 Ark. App. 388, at 391-92, 206 S.W.3d 284, at 287-88, (2005). The right to exercise control is the ultimate question in determining whether a person or entity is an independent contractor. In the instance claim the evidence preponderates that the claimant and Kyle Howell were employees of Robert E. Linam, d/b/a Linam's Floor covering on August 11, 2006, when the clamant sustained his compensable injury. Respondent furnished transportation, and necessary tools to perform the job. The claimant was paid by the hour. Respondent had the right to exercise control over the claimant and to terminate the employment without liability.

While the claimant was encouraged to obtain a Certificate of Non-Coverage by respondent, such documents are only effective for sole proprietors or partners in a partnership at the time the certificate is applied for. The Certificate of Non-Coverage is not intended as a waiver to avoid an employer's statutory obligation to provide workers' compensation coverage to his employees. The claimant has never owned a business, been self-employed, or a partner in a partnership. It is clear that Mr. Linam's encouragement of the claimant to obtain a Certificate of Non-Coverage was an effort of his part to avoid providing workers' compensation coverage for his employee.

The evidence in the record reflects that the actions of Mr Linam following the claimant's August 11, 2006, injury is equally telling. Mr. Linam directed the claimant to inform medical personnel at the emergency room of St. Mary's Regional Medical Center that the injury was sustained while "helping a friend" rather than performing work for wages on a job site. Likewise, when executing the financial guarantee in connection with the medical treatment received by the claimant at the emergency room Mr. Linam signed the same as "friend" rather than in the persona as an employer or office of an incorporated entity.

Claimant's assertion that the respondent should be estopped to deny liability for the claimant's medical treatment at the emergency room on the basis of the execution of the financial guarantee is not persuasive. The doctrine of estoppel is applicable in workers' compensation proceeding if the following elements are established: the party to be estopped must know the facts; he must intend that his conduct shall be acted upon or must act so that the party asserting the estoppel has a right to believe the other party so intended; the party asserting the estoppel must be ignorant of the true facts; and the party asserting the estoppel must rely on the other party's conduct to his injury. *Southern Hospitalities v. Britain*, 54 Ark. App. 318, 925 S.W.2d 810 (1996). Claimant candidly acknowledged that he was unaware that Mr. Linam had signed the financial guarantee, and as such did not rely on same to his injury.

The parties have stipulate that the claimant was injured on the job site in Russellville on August 11, 2006, that the injury required medical treatment which was reasonably necessary in connection with the injury, that the claimant was temporarily totally disable from the date of the injury until October 26, 2006, and that the injury resulted in a permanent physical impairment of 32% to the left index finger. Respondent controverted this claim in its entirety.

**AWARD**

\_\_\_\_\_Respondent Robert E. Linam, d/b/a Linam's Floor Covering is herein ordered and directed to pay temporary total disability benefits to the claimant at the weekly compensation benefit rate of \$187.00, for a period of eleven (11) weeks, (from August 12, 2006 through October 26, 2006), in the total amount of \$2057.00. Said sums accrued shall be paid in lump with discount.

Respondent Robert E. Linam, d/b/a Linam's Floor Covering is further ordered to pay to the claimant permanent partial disability benefits, at the weekly compensation benefit rate of \$154.00, to correspond with the claimant's 32% permanent physical impairment to the left index finger, totaling \$2,119.04. Said sums accrued shall be paid in lump without discount.

Respondent Robert E. Linam, d/b/a Linam's Floor Covering shall pay all reasonable, necessary and related medical expenses, to include medical related mileage, in connection with the claimant's August 11, 2006, compensable injury.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted indemnity benefits herein awarded, pursuant to Ark. Code Ann. §11-9-715.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

**IT IS SO ORDERED.**

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