

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F105853

DAVID A. KNAPP, EMPLOYEE	CLAIMANT
HOOTEN LOGGING COMPANY, UNINSURED EMPLOYER	RESPONDENT NO. 1
RANSOM LOGGING, INC., EMPLOYER	RESPONDENT NO. 2
BITUMINOUS INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT NO. 2

OPINION FILED AUGUST 18, 2003

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE NEAL HART, Attorney at Law, Little Rock, Arkansas.

Respondent No. 1 represented by HONORABLE BILL H. WALMSLEY, Attorney at Law, Batesville, Arkansas.

Respondent No. 2 represented by HONORABLE RANDY MURPHY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed

OPINION AND ORDER

Respondent No. 1 and Respondent No. 2 appeal a decision of the Administrative Law Judge filed on October 10, 2002, finding that the claimant was an employee of Hooten Logging, and that Ransom Logging was a prime contractor and that Ransom Logging is liable for the claimant's workers' compensation injury. Further, the Administrative Law Judge found that the claimant proved by a

preponderance of the evidence that he sustained a compensable injury. Based upon our de novo review of the record, we find that the claimant has failed to prove by a preponderance of the evidence that he was an employee of Hooten Logging. We find that the claimant was an independent contractor. Therefore, Ransom Logging's relationship with Hooten Logging is of no consequence to the claimant's injury. Accordingly, we reverse the decision of the Administrative Law Judge.

The claimant has worked as a timber cutter for himself since he was 13 years old. In 1999, the claimant began performing services as a timber cutter for Hooten Logging. On May 15, 2001, the claimant sustained injuries when a tree fell and struck him. The issue presently before the Full Commission is whether or not the claimant was an independent contractor or an employee of Hooten Logging Company. If the claimant was an employee, he would be able to receive workers' compensation benefits from Hooten Logging. However, Hooten Logging is an uninsured employer. Therefore, the claimant could receive benefits from Ransom Logging under the provisions of Ark. Code Ann. §11-9-402(a), which provides:

Where a subcontractor fails to secure compensation required by this chapter, the prime contractor shall be liable for compensation to the employees of the subcontractor.

In order for Ransom Logging to be liable as a statutory employer, the claimant must first show that Hooten Logging was a subcontractor for Ransom Logging. However, our review of the evidence indicates that the claimant was an independent contractor.

The determination of whether, at the time of an injury, an individual was an independent contractor or an employee depends on the facts of the case. Franklin v. Arkansas Kraft, Inc., 5 Ark. App. 264, 635 S.W.2d 286 (1982). Ordinarily, no one feature of the relationship is determinative. Carter v. Ward Body Works, Inc., 245 Ark. 515, 439 S.W.2d 286 (1969). The right to control the method and manner of the work is the traditional test applied in Arkansas when considering whether an individual was an employee or an independent contractor. The ultimate question with the right to control test is whether the employer has the right to control, not whether the employer actually exercises control. Wright v. Tyson Foods, Inc., 28 Ark. App. 261, 773 S.W.2d 110 (1989). However, the courts have also considered the "relative nature of the work" test in addition to the right to control test. Sandy v. Salter, 260 Ark. 486, 541 S.W.2d 929 (1976); Sands v. Stombaugh, 11 Ark. App. 38, 665 S.W.2d 902 (1984); *Franklin, Supra*; *Silvicraft, Inc. v. Lambert*, 10 Ark. App. 28, 661 S.W.2d 403 (1983). The main consideration of the relative nature of

the work test is "the relationship between the claimant's own occupation and the regular business of the asserted employer." Salter, Supra; Lambert, Supra.

Consequently, the resolution of whether an individual is an independent contractor or an employee requires an analysis of the factors related to the employer's right to control and of factors related to the relationship of the work to the asserted employer's business. In making a determination, the Commission must look at the factors outlined in D. B. Griffen Warehouse, Inc. v. Sanders, 336 Ark. 456, 986 S.W.2d 836 (1999):

1. the extent of control which, by the agreement, the master may exercise over the details of the work;
2. whether or not the one employed is engaged in a distinct occupation or business;
3. the kind of occupation, with reference to whether in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
4. the skill required in the particular occupation;
5. whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;
6. the length of time for which the person is employed;
7. the method of payment, whether by the time or by the job;

8. whether or not the work is a part of the regular business of the employer;
9. whether or not the parties believe they are creating the relation of master and servant; and
10. whether the principal is or is not in business.

See also Aloha Pools & Spas, Inc. v. Wausau, 342 Ark. 398, 39 S.W.3d 440 (2000).

These are not all of the factors which may conceivably be relevant in a given case, and it may not be necessary for the Commission to consider all of these factors in some cases. The relative weight to be given to the various factors must be determined by the Commission. Franklin, supra. However, the Supreme Court has stated that the "right of control" is the principal factor in determining whether the relationship is one of agency or independent contractor. Sanders, supra. Applying these factors to the present claim, I find the preponderance of the evidence establishes that the claimant was an independent contractor and not an employee.

Mr. Hooten, the owner of Hooten Logging, testified at the hearing that the claimant was an independent contractor, not an employee. His testimony reflects:

Q. Was Mr. Knapp hired as a contract laborer?

A. Yes, sir.

Q. Did he supervise his own work, once he was shown where to work.

A. Yes, sir.

Q. Did he control his own activities in the woods.

A. Yes, sir.

Mr. Hooten further testified:

Q. Now, you testified that Mr. Knapp was a good timber cutter. And you heard him testify that he's done it since age 13?

A. Yes, sir.

Q. And he knows way more about cutting timber than you do; doesn't he?

A. Yes, sir.

Q. And he didn't need you to tell him how to cut timber; did he?

A. No, sir.

Q. And you didn't supervise his work?

A. No, sir.

Q. You basically just told him, "We've got a tract of land over here. You're on your own; cut it." He was paid by the ton initially, and then it was converted to day pay; right?

A. Yes, sir.

Further, the claimant also testified that he knew he was classified as a self-employed employee and, therefore, had to file his income taxes in that manner. In fact, the claimant's income tax filings indicated that he was a self-employed proprietor. The claimant received a 1099 Form from

Hooten Logging, as opposed to a W-2 Form. No income tax, social security, or Medicaid was withheld from his income and the claimant never asked that these items be withheld from his checks. He filed his income tax return as a self-employed proprietor of a business called Knapp Logging. The claimant deducted \$2,957 in business expenses in 2000. While the claimant attempted to blame his accountant, he acknowledged that he knew he was filing as a self-employed tax payer and signed his return.

Therefore, when we consider all the evidence, I find that the claimant has failed to prove by a preponderance of the evidence that he was an employee of Hooten Logging Company. We would note that the facts in this case are much more compelling than the case of Jeffrey R. Myatt v. Harold Hendrix, d/b/a Hendrix Farms, et. al., Full Commission Opinion filed June 17, 2003 (Claim No. F109991). Even if we were to find that the claimant was an employee of Hooten Logging, a finding which we do not make, the relationship between Hooten Logging and Ransom Logging and International Paper Company was analogous to the relationship in the Myatt case.

Therefore, we hereby reverse the decision of the Administrative Law Judge. This claim is denied and dismissed.

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IT IS SO ORDERED.

OLAN W. REEVES, Chairman

JOE E. YATES, Commissioner

Commissioner Turner dissents.