

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F804939

FREDDIE REID, EMPLOYEE	CLAIMANT
J. B. HUNT TRANSPORT, EMPLOYER	RESPONDENT
AIG DOMESTIC CLAIMS, INC., INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 30, 2009

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

Claimant represented by the HONORABLE STEPHEN SHARUM, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE JOSEPH PURVIS, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed June 10, 2009. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on November 5, 2008, and contained in a pre-hearing order filed November 6, 2008, are hereby accepted as fact.

2. The employee/employer relationship existed between the claimant and respondent on May 26, 2006.
3. The claimant suffered a compensable injury to his lower back on May 26, 2008 (sic) (2006).
4. The medical evidence introduced into evidence regarding treatment of the claimant's compensable lumbar injury is reasonable and necessary.
5. The respondents shall bear the cost of the medical treatment related to the claimant's compensable low back injury.
6. The claimant is entitled to temporary total disability from May 20, 2008, until November 17, 2008, at a rate of \$488 per week which shall be paid by the respondents.
7. The claimant's attorney is entitled to a fee in this matter as set out in the Arkansas Workers' Compensation Act.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the June 10, 2009, decision of the Administrative Law Judge, including all

findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

PHILIP A. HOOD, Commissioner

Chairman Bell concurs.

CONCURRING OPINION

While I concur that the administrative law judge's decision should be affirmed and adopted, I write separately to address the increasingly common circumstance where an individual has signed documents identifying himself as an independent contractor, but where the respondent exercises control over the doing of the work or the right to control. The spirit, intent, and plain language of Arkansas law is to make invalid any agreement by an employee to waive his or her right to compensation. See Ark. Code Ann. §11-9-108(a) (Repl. 2002). Historically, the courts have not enforced agreements between parties which amounted to contractual agreements limiting a claimant's right to workers' compensation benefits. See *Air Compressor Equip. v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000); *Bryan v. Ford, Bacon & Davis*, 246 Ark. 327, 438 S.W.2d 472 (1969). In determining whether a claimant is an employee or independent contractor, the precedent that the Commission will adhere to is the legal standard most recently announced by the Court of Appeals in *Steinert, d/b/a Hurricane Express, Inc. v. Arkansas Workers' Compensation Commission*, No. CA09-149 (Nov. 4, 2009).

A. WATSON BELL, Chairman

Commissioner McKinney concurs.

CONCURRING OPINION

In light of Steinart d/b/a/ Hurricane Express, Inc. v. Arkansas Workers' Compensation Commission, 2009 Ark. App. 719, ___ S.W.3d ___ (2009), I am constrained to concur in the finding that the claimant was an employee and not an independent contractor. The evidence in both Steinart and the present case unequivocally established the intent to create an independent contractor relationship and not that of employer-employee. Despite the explicit intent of the parties, the Court held in Steinart that the exercise of extensive control over the drivers created an employer-employee relationship for workers' compensation purposes. Even though much of this control is mandated by the Department of Transportation regulations, it is this control, nonetheless, that brings the relationship within the realm of employer-employee. Conceivably there are means through which a motor carrier may relinquish some of this control such as through a bidding process; however, it is clear from this recent decision that for our purposes the exercise of control will carry more weight in the determination of employment status than the intent of the parties.

Therefore, I respectfully concur in the majority opinion.

KAREN H. MCKINNEY, Commissioner