

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F809431

RICHARD D. BLOCK, EMPLOYEE	CLAIMANT
J & W SCRAP METAL, EMPLOYER	RESPONDENT NO. 1
COMMERCE & INDUSTRY INSURANCE, AIG DOMESTIC CLAIMS, CARRIER/TPA	RESPONDENT NO. 1
DIAZ SCRAP METAL, INC. UNINSURED EMPLOYER	RESPONDENT NO. 2

OPINION FILED JUNE 3, 2010

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

Claimant represented by the HONORABLE STEVEN McNEELY, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 was represented by the HONORABLE JAMES A. McLARTY, III, Attorney at Law, Newport, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed December 23, 2009.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the claim.

2. The claimant was involved in a roll-over incident on August 11, 2008.
3. The claimant suffered a neck injury on said date.
4. The claimant is entitled to the maximum compensation rates.
5. This claim has been controverted in its entirety.
6. The claimant was an independent contractor rather than an employee of either J&W Scrap Metal or Diaz Scrap Metal.
7. All issues not litigated are reserved under the 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 of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

---

A. WATSON BELL, Chairman

---

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant was an employee of J&W Scrap Metal.

There is no fixed formula for determining whether a person is an employee or an independent contractor; thus, the determination must be based on the particular facts of each case. Arkansas Transit Homes v. Aetna Life & Cos. 341 Ark. 317, 16 S.W. 3d 545 (2000). Although no one factor of the relationship is determinative, the "right of control" is the principal factor. Cloverleaf Express v. Fouts, 91 Ark. App. 4, 207 S.W. 3d 576 (2005).

An independent contractor is one who contracts to do a job according to his own method and without being

subject to the control of the other party, except as to the result of the work. Ark. Transit Homes, supra. The control at issue is primarily the control of the means of accomplishing the work. Id. The issue of whether one is an employee or an independent contractor is analyzed under two separate tests: (1) the control test; and (2) the relative nature of the work test. Cloverleaf Express v. Fouts, 91 Ark. App. 4, 207 S.W. 3d 576 (2005).

In Riddell Flying Service v. Callahan, 90 Ark. App. 388, 206 S.W. 3d 284 (2005), the Court of Appeals set out numerous factors that may be considered in determining whether an injured person is an employee or an independent contractor for coverage purposes. Included in these factors are:

- (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 measure;
- (4) the furnishing, or the obligation to furnish, the necessary tools, equipment, and materials;
- (5) whether the person employed is 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.

Id. At 391-92, 206 S.W. 3d at 287-88.

The ultimate question in determining whether a person or entity is an independent contractor is not whether the employer actually exercises control over the doing of the work, but whether he has the right to control the work. See Irvan v. Bounds, 205 Ark. 752, 170 S.W. 2d 674 (1943); Dairy Farmers of Am. V. Coker, 98 Ark. App. 400, 255 S.W. 3d 905 (2007); Wright v. Tyson Foods, Inc. 28 Ark. App. 261, 773 S.W. 2d 110 (1989).

Here, J&W Scrap is in the business of buying and selling scrap metal. They have 10 to 14 trucks operating in this business. It is undisputed that the hauling is essential to their business. The respondent took out insurance on the claimant's truck so that he could run scrap for them. The claimant could not haul for anyone else under the respondent's insurance policy. In order to run a load

for any other entity, the claimant would have to have purchased other insurance, removed the J&W signage, unhooked from their trailer, and acquired his own or somebody else's DOT licensing. This is not a likely scenario. The facts are that the claimant worked for J&W Scrap. J&W told him where to pick up the loads and where to deliver the loads. During the time period that claimant worked for J&W, he did not haul for anyone else. The main dispatcher, Jason Walker, testified that out of the 10 drivers they had, he was not aware of any of them driving for anyone else.

In conclusion, I find that the facts of this claim dictate a finding that the claimant was an employee of J&W Scrap Metal. I would award workers' compensation benefits accordingly.

For the aforementioned reasons I must respectfully dissent.

---

PHILIP A. HOOD, Commissioner