

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F905269

CHARLES RASDON,
EMPLOYEE

CLAIMANT

HENDERSON'S HOME IMPROVEMENTS,
EMPLOYER

RESPONDENT

CINCINNATI INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 19, 2010

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

Claimant represented by the HONORABLE M. JARED MEDLOCK,
Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE WILLIAM C.
FRYE, Attorney at Law, North Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed June 2, 2010. 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 24, 2009, and contained in a pre-hearing order filed November 24, 2009, are hereby accepted as fact.
2. The claimant failed to prove by a preponderance of the evidence that the employee-employer relationship existed between the claimant and respondent on May 20, 2009.

3. The claimant has failed to prove by a preponderance of the evidence that the injuries he alleges to have occurred on May 20, 2009, are compensable injuries.
4. The claimant has failed to prove by a preponderance of the evidence that he is entitled to any benefits in this matter.

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.

The claimant alleges that he sustained compensable injuries that are governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injuries are, indeed, injuries that are covered by the Act; however, the claimant has failed to establish the elements necessary to prove these compensable injuries by a preponderance of the evidence.

Therefore we affirm and adopt the June 2, 2010 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 proved by a preponderance of the evidence that the employee-employer relationship existed between the claimant and respondent on May 20, 2009.

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, the day before the claimant fell off the ladder, he was employed by the respondent to do general labor work. He was paid \$12 an hour. On the date of injury, the claimant was to begin roofing, for which he would be paid \$13 per square. However, at the time of the injury, the claimant had not yet begun roofing. He was nailing flashing to wood, which is general labor

work. The respondent, in fact, paid the claimant \$12 per hour for the work he was performing when he fell off the ladder. The respondent had total control over the claimant's work. He told the claimant to report to work by 8:00 a.m. Although the claimant brought a roofing hatchet and a tool belt to perform roofing work, he was not using these tools when the ladder incident occurred. The respondent owned the ladder. The respondent, in fact, owned all the tools the claimant was using, the nail gun, the flashing, the compressor, and the ladder. If the claimant had indeed been performing roofing work at the time of injury, it could be said that he was an independent contractor. But, it is clear that he was performing general labor work for which he had been employed at \$12 per hour. As such, the claimant is an employee of the respondent.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner