

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F909396

JOSEPH WOODMANCY, EMPLOYEE	CLAIMANT
FRAMCO, INC., EMPLOYER	RESPONDENT NO. 1
CHARTIS CLAIMS, INC., INSURANCE CARRIER	RESPONDENT NO. 1
J & S FRAMING	RESPONDENT NO. 2

OPINION FILED APRIL 19, 2011

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

Claimant represented by the HONORABLE EVELYN BROOKS, Attorney at Law, Fayetteville, Arkansas.

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

Respondent No. 2 not participating.
Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed December 20, 2010.

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

1. The stipulations agreed to by the parties at the prehearing conference conducted on June 3, 2010, and contained in a pre-hearing order filed June 4, 2010, are hereby accepted as fact.
2. The claimant failed to prove that the employee employer relationship existed between Framco and himself.

3. The other issues are moot in that the claimant was not an employee of the respondent.

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 Framco, Inc.

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 claimant was being paid without withholdings, through his corporation, J & S Framing, a framing business, for which he has workers' compensation insurance from which the claimant is excluded by a certificate of non-coverage. Despite this fact, in the relationship between Framco and the claimant, the claimant was an employee. The fact that the corporation exists, and the nature of payment does not change the fact that

Framco had the right of control in this relationship. The claimant did what his supervisor told him to do, and he did it where his supervisor told him to do it. The claimant was injured while installing ceiling tiles. This is not work of the type done by the business J & S Framing, it is however, work of the type done by the business, Framco, Inc.. The claimant was paid the same amount as all other employees of Framco. He did not bid the job. The tools for the job, beyond a basic tool belt, were provided by the general contractor, not by J & S Framing.

In conclusion, I find that the facts of this case show that the claimant was working as an employee of Framco, Inc., not as an employee of J & S Framing. I would award workers' compensation benefits accordingly.

PHILIP A. HOOD, Commissioner