

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H 003775**

ROGELIO BRIESENORODRIGUEZ, EMPLOYEE	CLAIMANT
ANGELO ROOFING, LLC, EMPLOYER	RESPONDENT
TECHNOLOGY INSURANCE COMPANY/ AmTRUST NORTH AMERICA, INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 29, 2022

Hearing before Administrative Law Judge, James D. Kennedy, on the 15TH day of February, 2022, in Little Rock, Pulaski County, Arkansas.

Claimant is *Pro Se*.

Respondents are represented by Mr. William C. Frye, Attorney-at-Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 15th day of February, 2022, to determine the issue of the employment relationship between the claimant and the respondent and consequently the compensability of a back injury. Everything else was reserved. A copy of the Pre-hearing order was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

The claimant's and respondent's contentions were all set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. At the time of the hearing, the claimant contended that he was an employee of the respondent and while employed, suffered a compensable back injury. The respondents contended that the claimant was not an employee and that any injury to the back was not compensable. The sole witness was the claimant. From a review of the

record as a whole, and having had an opportunity to observe the testimony and demeanor of the witness, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. 11-9-704.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That the claimant has failed to satisfy the required burden of proof, by a preponderance of the evidence, that he was an employee of the respondent, Angelo Roofing, LLC, and that consequently, the injury is not compensable. As a result of this finding, all other issues are moot.
3. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Prehearing Order, along with the Prehearing Questionnaires of the parties were admitted into the record without objection. The claimant provided he did not have any documents to enter into the record and the only documents he had seen were medical reports which he had sent in. The claimant was made aware of the fact that the documents that he mailed directly to the Commission did not make the documents part of the record and the record was what would be reviewed for issuing an Opinion. It was explained to the claimant that he had the burden of proof. The claimant stated he was asking for help to pay his medical bills and that he once hired an attorney who told him he should receive \$438.00 per week, but he had never received anything. He also stated that as late as the day before the hearing, he had talked to three (3) different attorneys, and "they don't want to take my case but I don't know why." He went on to state that Angelo had hired him, provided him a chainsaw to cut the tree down, and gave him a \$100 bill, and he had returned some change back. (Tr. 5-7)

He testified that he fell out of a tree and he told Angelo to call 9-1-1 and then Angelo's wife told him to call 9-1-1. Since the accident, the claimant stated he can't walk much and his back hurts. "So now I've got ten plates with five screws on either side, or five plates with 10 screws, five on either side. And the maximum weight I can pick up now is 40 pounds, and that's for the rest of my life." The claimant went on to testify that he was born in 1968 and his lower back was hurt and he also broke both of his shoulders. (Tr. 8 - 10)

Under cross-examination, the claimant remembered that his deposition had been taken by ZOOM at his previous lawyer's office. Prior to the accident, the claimant worked for Tolleson Conveyor, where he installed conveyor belt systems for \$23.00 an hour, plus a *per diem* of \$700.00 per week. The claimant admitted that he had called Tolleson to return to work and was told he needed to obtain a release from his doctor. Since he needed to return to work, he testified his doctor released him more or less reluctantly, and he returned to work on the 26th of October, 2020. Tolleson then sent him to Honeywell, and he later left Honeywell and went to work for Hytek. (Tr. 11 -13)

The claimant admitted he had been hired by Tolleson and had not quit working for them at the time of the accident. Tolleson gave him a week to get to Nashville for the next job, so he stopped in Arkansas to see his children. During his Arkansas stay, the accident involving the tree occurred. At the time of the accident, the claimant agreed he was employed by Tolleson and was between jobs. He also agreed that Palomino had called him to take down a tree and he had initially stated that he could not, because he was on his way to Nashville, but when Palomino later called back, he agreed to cut down the tree and that was when the accident occurred. The claimant testified he was to

receive \$300.00 for the job. He also admitted that Angelo Roofing is a roofing company and that he was not performing a roofing job at the time of the accident, but was cutting down a tree at Palomino's house. The claimant admitted that he had previously worked as a landscaper. He also admitted that he was waiting on health insurance from Tolleson, his employer. (Tr. 14 - 15) He also agreed that at the end of his deposition, he stated he was taking down a tree which was a one-time job, and then heading on to work for Tolleson. (Tr. 16)

DISCUSSION AND ADJUDICATION OF ISSUES

The claimant has the burden of proving, by a preponderance of the evidence, that he is entitled to compensation benefits for his injuries under the Arkansas workers' compensation law. In determining whether the claimant has sustained his burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann, §11-9-704. *Wade v. Mr. Cavananugh's*, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. *Weldon v. Pierce Brothers Construction Co.*, 54 Ark. App. 344, 925 S.W.2d 179 (1996).

In the current matter, there appears to be no issue as to the facts of the matter or the actions of the claimant. The claimant was employed by Tolleson, a company that works with conveyor belts. The claimant had been working for Tolleson on a job in Phoenix and was given a week to get to Nashville, Tennessee, to work on another Tolleson project. He stopped in Arkansas to see his children and while in Arkansas, was asked by an individual to cut down a tree located near a home. Apparently, the person that recruited the claimant to cut down the tree also owned, operated, or worked for a

roofing company. The claimant admitted he was not performing roofing services at the time of the accident, while cutting down the tree. He testified at one point that he had been paid \$100.00 and had returned some change, and also testified that he was to receive \$300.00 to cut down the tree that he fell out of and which caused his injuries.

Regardless of the amount to be paid to the claimant, the determination of whether an employer-employee relationship existed is a threshold jurisdictional issue that must be determined based on the facts of the case. *Entergy, Arkansas, Inc. v Pope County Circuit Court*, 2014 Ark. 506, 452 S.W.3d 81. One who hires an independent contractor is not responsible for his workers' compensation coverage and claims because an employer-employee relationship does not exist. *Brookshire Grocery Co. v. Morgan*, 2018 Ark 62, 539 S.W.3d. The phrase "in the course of employment" and "employment services" are not defined in the Workers' Compensation Act. Consequently, it falls to the court to define these terms in a manner that neither broadens nor narrows the scope of the Act. See, *Hudak – Lee v. Baxter County Regional Hospital & Risk Mgmt. Res.*, 2011 Ark. 31, 378 S.W.3d 77 (2011).

Here, there is insufficient evidence that an employer-employee relationship existed between the claimant and the respondent-employer. The claimant admitted he was employed by another company and was given a week to get to the next job. He also admitted he was to be paid a set amount for the job of cutting down a tree (although the amount is not clear from the testimony) and that he was not working as a roofer for the respondent-employer roofing company. Where the evidence of record is devoid of proof that the claimant was an employee, the claimant is an independent contractor.

Alternatively, the facts of record fail to establish that an employer-employee relationship existed between the claimant and the respondent-employer, Angelo Roofing, LLC.

Based upon the available evidence, and after weighing it impartially, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof, by a preponderance of the evidence, that he was an employee of the respondent, Angelo Roofing, LLC, at the time of the accident. Consequently, the claimant's injuries are not compensable.

If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge