

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G906072

JACEN GANN,  
EMPLOYEE

CLAIMANT

CK ASPHALT, LLC,  
EMPLOYER

RESPONDENT NO. 1

FARMINGTON CASUALTY CO./  
TRAVELERS, INS. CO., CARRIER/TPA

RESPONDENT NO. 1

BOBBY KENNEDY CONSTRUCTION CO.,  
EMPLOYER

RESPONDENT NO. 2

FARMINGTON CASUALTY CO./,  
TRAVELERS INS. CO., CARRIER/TPA

RESPONDENT NO. 2

OPINION FILED AUGUST 24, 2023

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

Claimant represented by the HONORABLE LAURA BETH YORK, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE AMY C. MARKHAM, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE DAVID M. DONOVAN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

ORDER

The Arkansas Court of Appeals has reversed the Commission in the above-styled matter and has remanded for an order consistent with the Court's opinion. *Jacen Gann v. CK Asphalt*, 2023 Ark. App. 218.

The parties stipulated that the claimant "was injured while working on the job" on September 12, 2019. The parties stipulated that the Circuit Court of Van Buren County, Arkansas, Civil Division – 1<sup>st</sup> transferred the

case to the Arkansas Workers' Compensation Commission for the limited purpose of determining the employment relationship between the defendants Michael Dorton and Bobby Kennedy Construction Company.

The parties subsequently agreed to litigate the following issue before the Commission: "1. The sole issue before the Arkansas Workers' Compensation Commission at this time is the determination of the employment relationship between Jacen Gann, the plaintiff/claimant, and Bobby Kennedy Construction, the defendant/respondent."

After a hearing, an administrative law judge filed an opinion on September 9, 2021. The administrative law judge found, among other things, that the claimant "was a dual or special employee of Bobby Kennedy Construction Company, Inc. as well as CK Asphalt, LLC, at the time of the work-related accident. Consequently, Bobby Kennedy Construction, Inc. is entitled to the exclusive remedy provisions of the Arkansas Workers' Compensation law, specifically Ark. Code Ann. §11-9-105." A majority of the Full Commission affirmed and adopted the administrative law judge's decision in an opinion filed February 1, 2022.

The Arkansas Court of Appeals has held that the Commission erred in concluding that an employment relationship existed between the claimant and Bobby Kennedy Construction Company. The Court of Appeals has expressly held that because the record "does not support the finding that

Gann has made a contract for hire, express or implied, with BKC for purposes of the exclusive-remedy provision of Arkansas Code Annotated section 11-9-105(Repl. 2012), we reverse and remand for an order consistent with this opinion.”

Pursuant to the mandate from the Arkansas Court of Appeals, the Full Commission reverses the administrative law judge’s finding that the defendant Bobby Kennedy Construction, Inc. is entitled to the exclusive remedy provisions of Ark. Code Ann. §11-9-105(Repl. 2012). We find that the claimant did not make a contract for hire, express or implied, with Bobby Kennedy Construction for purposes of the exclusive remedy provision of Ark. Code Ann. §11-9-105(Repl. 2012).

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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M. SCOTT WILLHITE, Commissioner

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MICHAEL R. MAYTON, Commissioner