BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H303124

DAVID OTWELL, EMPLOYEE	**CLAIMANT**
JERRY LYNN ROBERSON	**RESPONDENT**
EMPLOYERS REFERRED INSURANCE CO., CARRIER/TPA	**RESPONDENT**

OPINION FILED NOVEMBER 1, 2024

Hearing before Administrative Law Judge, James D. Kennedy, on the 18TH day of September 2024, in Mountain Home, Arkansas.

Claimant is represented by Rick Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents are represented by James A. Arnold, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 18th day of September 2024, in Mountain Home, Arkansas, to determine the issue of the existence of an employee/employer carrier relation and if the relationship existed, the compensability for injuries to the claimant's back, both hands and wrists, along with reasonable and necessary medical care. The issues of TTD, an impairment rating, and attorney fees were reserved. A copy of the Pre-hearing Order dated June 4, 2024, as well as the response to the Prehearing Questionnaire by both the Claimant and the Respondent were made part of the record without objection.

From a review of the record as a whole, to include medical reports and other matters properly before the Commission and having had an opportunity to observe the

testimony and demeanor of the witnesses, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. 11-9-704.

FINDINGS OF FACT AND CONCLUSSIONS 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 to show that an employer/employee carrier relationship existed on June 25, 2025, the date of the injury.
3. That all other issues are moot.
4. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The claimant, David Lawrence, was the initial witness to testify. He worked almost 30 years in construction as a journeyman and testified that he was working for Jerry Roberson, the respondent, on June 25, 2022, on a house the claimant stated he had been told was going to be used as rental property. This was the property where he was working when the injury occurred. This property was going to be the respondent's first rental property per the testimony of the claimant. The respondent also had a cell phone repair facility. The claimant also worked for CNS Contracting, Monday through Thursday. On Fridays, Saturdays, and some Sundays, he worked on the house owned by the respondent. (Tr. 8, 9) The claimant stated that he had previously worked on a house owned by the respondent which he resided back in 2021 and 2022, while working for M

& A Jones/CNS Contracting, and that they did some odds and ends on the house and redid a bathroom. “After he saw what me and Tom could do, he approached us both and asked us if we could build a house for him was - - or build a rental property for him.” He had the property and plans picked out. The respondent bought all of the materials, unless there was something that we might have forgotten, and he then reimbursed us for it. In regard to the tools, the respondent furnished generators, air compressors, miscellaneous hand and power tools, and some scaffolding with the scaffold boards. (Tr. 10, 11) The respondent had the right to hire and fire, and he paid us in cash, paying around $30.00 an hour and we only worked on the rental property. “If there was something that we needed, he would get it for us.” He went on to state that he had worked on the rental property from roughly January through his fall which occurred in June. (Tr. 12, 13)

In regard to the fall, he testified that he was painting the two-story house down by the river. While on a ladder painting the second story, the ladder somehow slipped and the claimant fell 25 feet, landing on his chest. He knew something was really - wrong and stated he had broken his L1 and shattered his L2. They eventually loaded him in an ambulance and took him to a med flight. In regard to workers’ compensation insurance, the claimant stated that the second week out there, the respondent told him and the other workers that he had coverage. (Tr. 14, 15)

The claimant was then questioned about a series of text messages between the claimant and the respondent. The claimant went on to state that he could no longer work like he was doing and at the time of the hearing he pointed out he was in a wheelchair and that he had been in it since his fall. He admitted that he could walk some with crutches and that he could move both legs, but he had control of one leg more than the other. He

went on to state that he really did not have any real control of one leg. He also testified that he had no bladder sensation, so he was required to cath and had issues with bowel movements. He also stated he had worked for M & A Jones for over 20 years. (Tr. 16 – 18) He didn't know if the respondent ever used the term employee with him, but he was sure that he had asked him to quit M & A Jones to take on a full-time responsibility for the construction he wanted.

Under cross examination, the following questioning then occurred:

Q: Okay. And on page 45 of the deposition, we talked about the insurance and your - - it says my question. "Did Jerry have a conversation with all three of you about getting insurance?" And you said, "The first week we were out there, there was no talk. The second week we were there, Jerry came back and said I've got Insurance on you guys, but did not specify the kind of insurance." You just said that he told you that he had workers' comp. He didn't tell you that he had workers' comp, did he?

A: I didn't say that. I didn't say it was workers' comp. I said he had insurance on us.

Q: Do you know what builder's risk is?

A: Kind of. Sort of.

Q: Okay. Do you know that Tom Moore asked him to get builder's risk so you could lock the M & A tools up inside the cabin?

A: We didn't leave M & A tools on the job site.

Q: Because you never got the locks installed, correct?

A: No, we had locks on the doors.

Q: Okay. You've been in construction all your life?

A: Yes, sir.

Q: You have a full-time 40-hour week job with M & A construction, now CNS, but the same bunch, they just changed on them.

A: Yes.

Q: And you have been doing that for 22 or 24 years?

A: Yes, sir.

Q: Your entire life has been in the construction carpentry business, correct?

A: Yes, sir.

Q. Okay. And that's what you were doing on this property that Jerry Roberson had?

A: Yes, sir.

Q: The same thing you've done all your life?

A: Yes, sir.

Q: Okay. Now, the first time you ever worked for Jerry was on the house that he and Sandy were living in, correct?

A: Correct.

Q: And your testimony here today and in your deposition was that Jerry asked Tom to come do some work on his house and Tom asked Jerry, I need some help. I know a guy at work. Is it okay if we bring him? Is that how that happened, right?

A: That's how that happened on his house, yes.

(Tr. 22, 23)

The claimant went on to state he had worked probably eight or ten days maybe, on Jerry and Sandy's home. He also stated that he was aware that the respondent had a cell phone business, knew he did not have a construction company, and knew he didn't hold himself out as a construction company. He also agreed he was never paid a dime by the cell phone company. (Tr. 24, 25) After the eight or ten days where he helped remodel Jerry and Sandy's house, he didn't do anything for the respondent for four months or so and during that period of time, he continued working for M & A. He also thought he had other side jobs during that period of time, where he would be paid cash just like the respondent did, and he was not aware of any of them having workers' compensation that covered him. Tom and he continued to be crew leaders with M & A during that time-period while performing the side job for the respondent on Friday and Saturdays. He also admitted to having one other side job during that time period where he worked for someone else doing carpentry. He admitted he didn't write any of the invoices, but that Tom Moore was the one who filled them out. (Tr. 27 – 29) The claimant

also admitted that the invoices that Tom filled out and gave to the respondent and which are before the Commission, had labor for three men, for two days, and that was how the respondent paid him. (Tr. 31) The claimant also agreed that they supplied some of the ladders and the respondent supplied some of them and they also used a ladder off the M & A truck. Some of the tools came off the M & A truck, including a laser. (Tr. 32) The respondent was paying for two M & A Jones trucks to be on site, in case somebody needed to go into town to get something. The claimant admitted that on occasion, they would use some of the M & A Construction tools, but stated they tended to use their own personal tools stored in the trucks. (Tr. 33)

In regard to the directions given by the respondent, the claimant admitted that the respondent ran a full-time cell company in Batesville, and he was not on site ten hours a day like they were. He also admitted that in regard to the texts, some consisted of asking if the claimant or his partner needed the respondent to pick up something in town. The items that the respondent picked up were to assist the claimant and his partners and keep them on the job site. The respondent would sometimes ask if they could do this or that and sometimes, they would do it and sometimes they would tell him that it did not make any sense. The claimant admitted that the respondent did not instruct them on how to paint, how to hang trusses, or how to roof, due to the fact they were in the construction business. The claimant also admitted that Tom, Jim, and he were all hired because they were carpenters and the respondent wasn't. (Tr. 34 – 37) The claimant was allowed to go work for someone else if he was not working for the claimant on those days. (Tr. 38) He also admitted that he was able to walk about 200 feet with forearm crutches and was working as a superintendent for M & A Construction.

On redirect, the claimant stated that the respondent told them where to work and paid them. (Tr. 39)

At this point, the claimant rested, and the respondents called the respondent, Jerry Roberson, who stated that he used to own Cell Phone Central back in 2021 and 2022, and that he had owned the business since 2010, before he sold it. The business fixed "cell phones, I-Pads, computers, anything electronic." He sold the business to his manager sometime around January of 2023. The business did not do anything that wasn't related to technological devices. The business did not own any real estate, nor did it have anything to do with construction. Prior to the cell phone business, the respondent stated that he was a landscaper. He was at one time an electrician's helper and worked as an equipment operator in the past. He had no carpentry skills or skills of any kind that translated into the construction of a home or residence. He owned no rental property in 2022.

The respondent admitted meeting Thomas Moore when he was getting his hair cut by Thomas Moore's wife and he mentioned a project where they were attempting to fix a floor in the home he lived in with his wife. Thomas Moore's wife pointed to a picture of her husband and stated that he did work like that. (Tr. 42 - 44) Thomas Moore ultimately performed the work on the house where they were living, which they sold at the end of 2022. The respondent went on to state that Tom and the claimant performed renovations to the house which included filling gaps in the sheet rock, working in the bathroom, and just general stuff around the house so they could sell it. The respondent stated that he assumed Tom brought the claimant along to have extra help. (Tr. 45, 46)

In regard to the property by the river where the accident occurred, the respondent stated he had owned the property since 2009, and after they sold their other remaining property, the only property left was the river property where the accident occurred and which they were going to live in. The respondent testified that he had contacted Thomas about building on the property and was told to bring the plans over, which he did. (Tr. 47, 48) The respondent was questioned about the invoices in regard to the project and stated that Thomas would provide the invoices on Saturday, and he would then pay them. He would give Tom the money and he had no idea how much the others were paid or how much he kept for himself. He went on to state that the M & A Construction trucks were brought out every Friday and Saturday and they were full of tools. He also stated he had no workers' compensation insurance but admitted that there was in fact a discussion about insurance. He was looking into purchasing builders' risk for the property. The respondent admitted to supplying the air compressor and the generator which were already on site and hooked up to his camper. He went on to explain that solar panels would not power a coffee pot. He also admitted to providing a baker's scaffolding that he had bought at a yard sale, but that they never used it. (Tr. 49 - 52) In regard to supplies, the respondent stated that Tom would call or text, and the supplies would be dropped off, and he "would go into town six days a week to check on the phone store so I had a jeep and trailer and so a lot of times I would be called or texted and told to pick up supplies." He went on to state that a lot of the texts were in regard to picking up supplies. He was relying on Thomas and his crew to build a serviceable building but admitted to picking out paint colors and tile and things of that nature. The respondent denied that Tom, the claimant, or Jim Halstead, had anything to do with the cell phone business. The

respondent denied supervising the claimant's work on the day of the accident or any other day. (Tr. 53, 54)

Under cross examination, the respondent denied ever filing a 1099 with the IRS. (Tr. 55) He did admit that when he resided at 90 Moore Avenue, he did say that he might build a house on it to rent but "I never said for sure that we were going to build anything until the other two houses sold." He denied there being a possibility of rentals for income purposes at that point. (Tr. 56) The respondent also denied making house calls in the cell phone business and further stated that his employees never went to homes or businesses to assist in installation and getting things to work right. "They come to us. No, we are not a "go to you" business."" (Tr. 58) The respondent was also asked "And did you not direct sometimes to them to do something other than what they wanted to do?" He responded "No. They didn't listen to a word I said." (Tr. 59)

On redirect, the respondent confirmed he was not on the building site when the accident happened but was down on the river a couple of hundred yards away. (Tr. 60)

The claimant was then recalled, and he stated he had been told multiple times that the property was a rental house, and that he had even been told that a purchased vehicle charger would allow an extra $20.00 rent charge. In regard to the skills of the respondent, the claimant replied, "He said he wasn't an expert and that's why he hired us." (Tr. 63) The claimant also testified that he was sure the respondent sometimes got things for the project although he couldn't recall 100% but that "He was in charge." The claimant was also asked about workers' compensation insurance and was he ever told that it was in place, and he responded "No, sir. He did not." (Tr. 64)

Claimant submitted Medical Exhibit One which was admitted without objection. The exhibit provided that the claimant was presented to UAMS by med flight on June 25, 2022, with a closed unstable burst fracture of the second lumbar vertebra, with multiple fractures of ribs, bilaterally which were confirmed by the MRI and which also showed compression fractures of the L1 and L4 vertebral bodies and severe canal compression with increased T2 hypersensitivity. There was no evidence of traumatic injury to the thoracic spine. Surgery was performed on June 26, 2022, and the postoperative diagnoses provided for vertebral fractures of the L1, 2, 3 and 4 with a T12 spinous and laminar fracture. A burst fracture and a three-column injury at L2 resulted in a neurologic deficit. Additionally, two large traumatic dural tears with exposed nerve roots required a neural patch. Left ankle imaging provided for no fracture or dislocation. Imaging of the right wrist provided for a well corticated bone fragment along the dorsum of the wrist, which could have been secondary to a triquetral fracture. (Cl. Ex. 1, P. 1 – 9)

The claimant also submitted 25 pages of text messages without objection. The texts consisted of the respondent requesting guidance on items to pick up, such as how long “a piece of rigid” should he get or asking where an item was going to be obtained, along with questions about doors and windows with the respondent requesting a picture and responding upon receipt of a photo, that it “looks good.” One text asked the claimant whether he would suggest an indoor or outdoor tankless water heater and he responded that an outdoor model would save on venting. Another text was sent in regard to breakers and who should purchase them. Another text requested the respondent stop and obtain nails and the respondent requested a picture so he would know which ones to pick up. At one point, the respondent discovered a DeWalt nail gun and asked the claimant if he

needed it. The respondent was asked if he had contacted Batesville Glass at one point and he responded that they would be out to the project on Friday or Saturday. The respondent was also asked about picking out can-lights and providing a layout for them, along with the speakers and ceiling fan. The respondent was also asked about a light or vanity light above a sink and also about caulking the siding. There were also texts about paying for items and a picture of a cotton mouth or a copper head snake in a hole. (CL. Ex. 2, P. 1 – 25)

The respondents also submitted 21 pages of non-medical exhibits without objection. The items consisted of the Contracting license for Thomas Moore. (Resp. Ex. 1, P. 1) In addition, invoices directed to the respondent Jerry Roberson for the labor of three men, the cost of two trucks, and a variety of materials and other items were introduced. (Resp. Ex. 1, P. 2 -17) A photo of the M & A Jones truck was also introduced as well as a photo of the house under construction. (Resp. Ex. 1, P. 18, 19) A list of the Cell Phone Central Employees was also introduced, which did not include the name of the claimant. (Resp. Ex. 1, P. 20, 21)

The respondents also summitted the deposition of the claimant dated July 12, 2023, which was admitted without objection. The claimant testified under direct in the deposition that he had learned in his apprentice program back in the 90's how to basically do anything as far as construction for a commercial job. He stated that as a general contractor, "we could take it from the ground up" and that he had been in the construction field ever since, after starting in 1994. He also stated that he had never been a general contractor. (Resp. Ex. 3, P. 6) He admitted that he was working for M & A Jones Construction, where he is still employed and that he had been with them for 22 years.

(Resp. Ex. 3, P. 9) While working for M & A Jones, the claimant stated he answered to Kyle Johnson, the senior project manager, and to Arch Jones, the owner of the company until the end of 2021. At that time, C & S Contracting took over the ownership. This company only performed commercial work. (Resp. Ex. 3, P. 12 -13)

The claimant stated the first house that he worked on for the respondent was a home where he was living, and that Tom Moore was working on the house and needed help and asked the claimant to assist him. He went on to explain that the house where the injury occurred was a rental house. They started building that house with the help of Jim Halstead, who was also an employee of M & A Jones. All three of them were employed by M & A Jones. He affirmed that he never worked for the respondent's business in Batesville and the project where he fell was a residence and not a commercial building and that M & A was not doing this job. (Resp. Ex. 3, P. 15 – 20)

The claimant went on to state that he worked four tens for M & A Construction and then would work Friday and Saturday on the residence. They had agreed to a rate to be paid by the respondent, and were paid in cash, and he and Tom were paid the same, $30.00 an hour. He thought Jim was also paid the same. He did not see the respondent pay any of the tradesmen, but he was aware that the respondent did hire someone to put on the roof and finish the sheetrock. (Resp. Ex. 3, P. 21, 22) No one from the respondent's companies came around and gave instructions, only the respondent. He would come and tell us what he wanted. He did not tell us how to apply the paint or the Sheetrock or how to put up the trusses. The claimant admitted that he was not told when to start and end work but did state that the respondent wanted the house built as fast as possible. The respondent also supplied the materials and air compressors, table saws, generators,

scaffolds, and scaffold boards. (Resp. Ex. 3, P. 23, 24) The claimant also thought that they might have used some tools owned by M & A Jones. “For the most part, we used our personal tools or his tools.” “Well, a carpenter always uses his personal tools.” (Resp. Ex. 3, P. 25)

In regard to payment, Tom would prepare one invoice and give it the respondent. The claimant could not remember if he was ever paid separately by the respondent, but did remember that the respondent would give them money to pay Jim. (Resp. Ex 3, P. 28) The claimant stated that it was his understanding, that the house where the accident occurred was going to be used for something like an Airbnb or a Vrbo rental. He further stated that the respondent never indicated that he was going to use it. However, it was his understanding that he was building it for himself. (Resp. Ex. 3, P. 42, 43)

Under examination by the claimant’s attorney, the claimant stated that the respondent approached both of them at the same time to go to work and build the house. The claimant also stated he was part of the process preparing the invoices, although Thomas always gave the invoice to the respondent. The claimant also testified that they would be told by the respondent when he wanted something finished by a certain time. (Resp. Ex. 3, P. 44 – 46)

DISCUSSION AND ADJUDICATION OF ISSUES

In determining whether the claimant has sustained his required 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. Cavanaugh’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).

The claimant bears the burden of proof in establishing entitlement to benefits under the Arkansas Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. Dalton v. Allen Engineering Co., 66 Ark. App. 201, 635 S.W. 2d 823 (1982). Preponderance of the evidence means the evidence having greater weight or convincing force. Metropolitan Nat'l Bank v. La Sher Oil Co., 81 Ark App. 263, 101 S.W.3d 252 (2003). Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. Powers v. City of Fayetteville, 97 Ark. App. 251, 248 S.W.3d 516 (2007). Where there are contradictions in the evidence, it is within the Commissions' province to reconcile conflicting evidence and to determine the true facts. Cedar Chem. Co. v. Knight, 99 Ark. App. 162, 258 S.W.3d 394 (2007). However, the Commission may not arbitrarily disregard the testimony of any witness. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 184 S.W.3d 31 (2004).

In the present matter, all parties agreed that the claimant suffered serious injuries when he fell from a ladder where he was painting on the second floor of a construction project where the property was owned by the respondent. The primary question before the Commission is to determine if an employee/employer carrier relationship existed at the time of the injury. The testimony provided that the claimant had worked in the construction carpentry business his entire life and had worked for M & A Construction (also called CNS Contracting due to a change in ownership) for over 20 years. He would work for four ten-hour days, Monday through Thursday for M & A Construction, and then

was allowed to find side jobs to work on during his own time. He was allowed to use the construction trucks of M & A Construction along with the tools on the truck, plus additional tools of the company such as a laser on the side jobs. The claimant testified that “a carpenter always uses his personal tools” but that he also used a generator, an air compressor and a table saw that were stored on the site of the construction on the property that were owned by the respondent.

The claimant became acquainted with the respondent on a previous job repairing a home which the respondent lived in with his wife, and at the time of the accident he was working with two other M & A employees on a house which they were constructing on the river for the respondent. The claimant testified he understood that the property was going to be rental property, but the respondent testified that since he had sold all of his other property, he intended for the construction to become his residence.

The claimant testified there had been some discussion with all the parties involved that the respondent was going to obtain insurance but admitted that workers’ compensation insurance was not specifically mentioned. The claimant also testified that he had worked on other side projects where there was no workers’ compensation insurance covering them. The respondent testified he had mentioned insurance and that he had looked into builder’s risk insurance.

In regard to the actual project, the invoices were always submitted and prepared by Thomas Moore, one of the claimant’s co-workers on the project, and they provided for the number of men working (usually two or three), two trucks, and any materials which they purchased. The claimant testified he assisted in preparing the invoices and he thought that the third worker, Jim, was paid the same as Tom and he were. The invoices

were always paid in cash by the respondent on a Saturday. The respondent paid for most of the supplies.

In regard to supervision on the project, a number of text messages were entered into the record, and the majority of them involved the respondent picking up additional supplies in town at the instruction of the claimant and his co-workers. The respondent admitted that he was in town every day due to his computer business, that he had a Jeep and trailer, and he would attempt to pick up items for the construction, in an attempt to keep the claimant and his partners on the job site. A few of the text messages asked about how an item would appear such as windows. One text discussed the discovery of snakes in a hole near the construction. The claimant stated in his deposition in regard to the skills of the respondent that “He wasn’t an expert and that’s why he hired us.” The claimant also admitted that the respondent never instructed them on how to paint, how to hang trusses, or how to roof, due to the fact they were in the construction business. The respondent admitted to picking out paint colors and tile and things of that nature.

In regard to the respondents’ business, Cell Phone Central, the claimant admitted he was never paid by the company and the evidence provided he was not listed as an employee. The company owned no property and made no house calls. The respondent testified his customers for the cell phone business came to the business and that it was not a “go to your business.” The business, which was sold in January of 2023, repaired cell phones, I-Pads, computers and everything electronic. The business owned no real estate nor had anything to do with construction.

The following are factors that are to be weighed in drawing the line between an independent contractor and an employee: (1) the extent of control, which by the

agreement, the master may exercise over the details of the work; (2) whether or not the one employed is engaged in a distinct occupation or business; and (3) whether or not the work is a part of the regular business of the employer. An independent contractor is one who contracts to do a job according to his own method without being subject to the control of the other party, except as to the result of the work. The right to control is the principal factor in determining whether one is an employer or an independent contractor. The right to control and not the actual control determines the relationship. See ConAgra Foods, Inc. v. Draper, 372 Ark. 361, 276 S.W. 3d 244 (2008) In workers' compensation law, an independent contractor is one who contracts to do a job according to his or her own method and without being subject to the control of the other party, except as to the result of the work. There is no fixed method by which to determine whether a person is an employee or an independent contractor. However, some factors guide the court's inquiry. They are as follows: (a) the extent of control which, by the agreement, the master may exercise over the details of the work, (b) whether or not the one employed is engaged in a distinct occupation or business. (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision, (d) the skill required in the particular occupation, (e) whether the employer or the workman the supplies the instrumentalities, tools, and the place of work for the person doing the work, (f) the length of time for which the person is employed, (g) the method of payment, whether by the time or by the job, (h) whether the work is part of the regular business of the employer, (i) whether the parties believe they are creating the relation of master and servant; and (j) whether the principle is in the same business as

the alleged independent contractor. See Davis v. Ed Hickman, P.A., 220 Ark. App. 188, 598 S.W. 3d. 70, 2020)

Here it is clear that the respondent's business, electronic repairs, had no connection to the construction business and that construction was clearly not part of the regular business of the respondent, and clearly a distinct occupation with a totally separate skill set. The claimant admitted in his deposition that they were hired due to the fact "He wasn't an expert and that's why he hired us" in a reference to the respondent. The text messages showed that the respondent primarily was contacted to pick up supplies in town, and that he often had to ask questions in regard to what to pick up. Further, although some of the respondent's tools were used, the claimant also admitted using some of the construction company's tools were also used and stated that as a carpenter, they primarily used their own tools.

Based upon the above evidence and the applicable law, and after weighing the evidence impartially, without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof to prove by a preponderance of the evidence that an employee/employer carrier relationship existed at the time of the claimant's accident. Consequently, all other issues are moot. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

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JAMES D. KENNEDY
Administrative Law Judge