

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H005977

BILLY WADDLE, Employee

CLAIMANT

INTERSTATE CONTRACTING & COATING, LLC,
Uninsured Employer

RESPONDENT

OPINION FILED OCTOBER 19, 2021

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JARID M. KINDER, Attorney at Law, Ozark, Arkansas.

Respondent not represented by counsel and not appearing at hearing.

STATEMENT OF THE CASE

On July 22, 2021, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on April 21, 2021, and an Amended Pre-hearing Order was filed on June 2, 2021. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

There were no stipulations entered into between the parties.

The issues to be litigated are limited to the following:

1. Whether or not the Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Whether or not Interstate Contracting & Coating, LLC maintained workers' compensation insurance coverage on the date of the incident in question.
3. Whether or not the Exclusive Remedy Provision of A.C.A. §11-9-105 bars suit in Circuit Court.
4. The claimant reserves all other issues.

Claimant's contentions are:

“1. The Claimant, Billy Waddle, sustained a back injury on July 28, 2019, while working for Interstate Contracting & Coating in Hackett, Arkansas.

2. Upon information and belief, the Respondent, Interstate Contracting and Coating, LLC, did not have Workers Compensation Coverage on July 29, 2019.

3. Under A.C.A §11-9-105(b)(1), *“if an employer fails to secure the payment of compensation as required by this chapter, an injured employee, or his or her legal representative in case death results from the injury, may, at his option, elect to claim compensation under this chapter or to maintain a legal action in court for damages on account of the injury or death.”*

4. As the Respondent failed to maintain Workers' Compensation insurance coverage, the Exclusive Remedy Provision of A.C.A §11-9-105 does not apply and the Claimant is free to exercise his right to sue the Respondents in Circuit Court.”

Respondent, Interstate Contracting & Coating, LLC, failed to appear at the hearing and failed to set forth any contentions on its behalf.

The claimant in this matter is a 43-year-old male who alleges that he sustained a back injury on July 28, 2019 while working for Interstate Contracting & Coating, LLC. The claimant alleged in direct testimony that he was suspended from a water tower in Hackett, Arkansas painting the outside of the tower when the rope gave way and he fell several feet to the ground, landing on his back. I note that the claimant was the only party present at the hearing in this matter as the respondent failed to appear at the July 22, 2021 hearing in Fort Smith, Arkansas, at the Sebastian County Courthouse. I also note that the respondent did not participate in the pre-hearing conference regarding this matter.

The claimant has asked the Commission to determine whether it has jurisdiction of this claim. While the respondent did not appear for the hearing in this matter, a deposition was taken of Tommy Manley on March 31, 2021 and introduced into the record as Claimant's Exhibit 3. Mr. Manley testified

that he was a supervisor for Interstate Contracting & Coating, LLC, particularly for the Hackett water tank job, and that himself and two other men, including the claimant, were working on that job site.

The claimant has also introduced an affidavit of Pamela Nelson, who is the age of majority and lives near the water tower in Hackett, Arkansas. Following is a portion of that affidavit found at Claimant's Exhibit 2, pages 15 and 16:

“On June 29, 2019, I remember seeing a work crew painting the water tower by my home in Hackett, Arkansas. I further remember seeing Billy Waddle suspended from said water tower working. Sometime around midday I heard Mr. Waddle fall from the water tower. After walking over to the tower, I found Mr. Waddle laying on the ground.”

Arkansas Code Annotated §11-9-707 titled “Presumptions” states:

“In any proceeding for the enforcement of a claim for compensation, the following prima facie presumptions shall exist:

- (1) That the Workers' Compensation Commission has jurisdiction;
- (2) That sufficient notice was given; and
- (3) That the injury was not occasioned by the willful intention of the injured employee to bring about the injury of himself or herself or another.”

I find nothing in the record before the Commission that would rebut the prima facie presumption for the Commission's jurisdiction in this matter.

The claimant has asked the Commission to determine whether or not Interstate Contracting & Coating, LLC maintained workers' compensation insurance on the date of the incident in question. In Mr. Manley's deposition he was asked about workers' compensation insurance by the claimant's attorney as follows:

Q So I am going to ask you some specific questions about what you understood of the LLC to have as far as workers' compensation insurance. Did Interstate Contracting & Coating, LLC - - and I will just say LLC.

A Okay.

Q Did LLC maintain workers' compensation insurance?

A Yes, sir.

Q Okay. Who did they maintain insurance through?

A Texas Mutual.

Q And when was that policy good through?

A I would have to go back and look at it because I don't remember dates. You know, I would just have to look at the paperwork because they send out a certificate, you know.

Q Now, it's my understanding whenever you work with cities that you usually will have to provide proof that you have workers' compensation insurance.

A Yes.

Q Is that correct?

A Yes, sir.

Q And did you provide proof to the City of Hackett that you had workers' compensation insurance?

A I don't know how the law is in the State of Arkansas, but when you turn in - - when you do a contract agreement - -

Q Okay.

A - - I think the insurance has changed where you can't actually hand this individual your certificate. It has to come from the insurance carrier, so I am sure they sent one.

Q Okay. Do you maintain that the LLC had workers' compensation insurance on June 29th of 2019?

A To the best of my knowledge it did, yes.

Q And it's your testimony today that was through an insurance company called Texas Mutual?

A Yes.

Q Do you happen have a copy of that policy?

A No, sir, but I can get it.

Q Okay. And you would have no problem, assuming your lawyer has no objection, if I request that document?

A I just told you I would get it.

At the hearing the claimant was asked about trying to obtain workers' compensation benefits from this accident as follows:

Q Now, did you attempt to get workers' compensation out of this incident?

A I did, yes, sir.

Q Is that why you hired my office?

A Yes, sir.

Q Okay. Why did you not get workers' compensation - - or why did you not get workers' compensation benefits? What is your understanding of that?

A Tommy didn't have the correct insurance he should have had on the job. They all should of - - that is mandatory. You should have that, you know, insurance for us guys, you know, for even the City.

Q Now, at the time of the incident, did you know that Interstate Contracting & Coating, LLC, did not have workers' compensation insurance?

A No, sir, I didn't.

The claimant admitted a document found at Claimant's Exhibit 2, Page 19, which appears to be from Texas Mutual workers' compensation insurance to Tommy George Insurance Agencies, Inc. DBA: West Texas Insurance Agency in Amarillo, Texas. The document is dated June 18, 2019 and regards Interstate Contracting & Coating, LLC d/b/a Manley Paintings workers' compensation policy which has a policy period of October 19, 2018 to October 19, 2019, which given the claimant's alleged injury date in July of 2019 would fall in the policy period. However, the document goes on to state: "The above-mentioned policy canceled on 6/18/19. No current coverage is in effect with Texas Mutual Insurance

Company.” Given this information, there would have not been workers’ compensation coverage present from Texas Mutual at the time the claimant alleges his injury in July of 2019.

The claimant has asked the Commission to determine whether or not the exclusive remedy provision of A.C.A. §11-9-105 bars suit in Circuit Court.

(a)(1) The rights and remedies granted to an employee subject to the provisions of this chapter, on account of injury or death, shall be exclusive of all other rights and remedies of the employee, his or her legal representative, dependents, next of kin, or anyone otherwise entitled to recover damages from the employer, or any principal, officer, director, stockholder, or partner acting in his or her capacity as an employer, or prime contractor of the employer, on account of the injury or death, and the negligent acts of a coemployee shall not be imputed to the employer.

(2) A role, capacity, or persona of any employer, principal, officer, director, or stockholder other than that existing in the role of employer of the employee shall not be relevant for consideration for purposes of this chapter, and the remedies and rights provided by this chapter shall in fact be exclusive regardless of the multiple roles, capacities, or personas the employer may be deemed to have.

(b)(1) However, if an employer fails to secure the payment of compensation as required by this chapter, an injured employee, or his or her legal representative in case death results from the injury, may, at his or her option, elect to claim compensation under this chapter or to maintain a legal action in court for damages on account of the injury or death.

I find that the employer, Interstate Contracting & Coating, LLC, has failed to secure the payment of compensation as required by the Arkansas Workers’ Compensation Act; as a result, the claimant in this matter may choose to proceed forward under the Workers’ Compensation Act as the Commission would have jurisdiction or the claimant could choose to move forward through the Circuit Court system for damages he alleges in this incident.

From a review of the record as a whole, to include medical reports, documents, and other matters

properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Interstate Contracting & Coating, LLC, did not maintain proper workers' compensation insurance coverage during the month of July 2019.
3. The claimant does not have to follow the exclusive remedy provision of A.C.A. §11-9-105, but instead has the ability to elect whether or not he chooses to proceed forward under the Workers' Compensation Act as the Commission would have jurisdiction or the claimant may elect to move forward through the Circuit Court system for the damages he alleges in this incident.
4. The claimant is entitled to reserve all other issues at this time.

ORDER

Interstate Contracting & Coating, LLC did not maintain proper workers' compensation insurance coverage during the month of July 2019; therefore, the claimant does not have to follow the exclusive remedy provision of A.C.A. §11-9-105. Claimant has the ability to elect whether or not he chooses to proceed forward under the Workers' Compensation Act as the Commission would have jurisdiction or the claimant may elect to move forward through the Circuit Court system for the damages he alleges in this incident.

The respondent, Interstate Contracting Coating, LLC, is responsible for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$271.30.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**