
UTAH LABOR COMMISSION

RICHARD NORRIS,

Petitioner,

vs.

**HAROLD VAN ADAMS and/or
UNINSURED EMPLOYERS FUND,**

Respondent.

**ORDER AMENDING
ALJ'S DECISION and
AFFIRMING DENIAL
OF BENEFITS**

Case No. 06-0127

Richard Norris asks the Utah Labor Commission to review Administrative Law Judge Lima's denial of benefits to Mr. Norris under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to § 63G-4-301 of the Utah Administrative Procedures Act and § 34A-2-801(3) of the Utah Workers' Compensation Act.

BACKGROUND AND ISSUE PRESENTED

Mr. Norris claims workers' compensation benefits from Harold Van Adams and the Uninsured Employers Fund ("UEF") for a back injury that allegedly occurred on December 26, 2005. Judge Lima held an evidentiary hearing and found Mr. Norris was an employee of Mr. Van Adams but at the time of the accident, Mr. Norris was no longer an employee. Therefore Judge Lima denied benefits.

In his motion for review Mr. Norris argues that he was Mr. Van Adams' employee at the time of the accident and entitled to benefits. He further argues that it was error for Judge Lima to dismiss his claim with prejudice. Mr. Van Adams and the UEF argue that Mr. Norris was hired as an independent contractor and was never an employee. They further argue that even if the Commission found Mr. Norris was Mr. Van Adams' employee, this relationship ended on December 23, 2005. Therefore Mr. Norris's injury of December 26, 2005, did not arise out of and in the course of his employment and is not compensable.

FINDINGS OF FACT

The Commission adopts Judge Lima's findings of facts. The facts relevant to the issues in the motion for review can be summarized as follows:

On November 22, 2005, Mr. Warburton, Mr. Van Adams' agent, offered to pay Mr. Norris \$1,500 to "fix up" three vacant and vandalized apartments. This amount included labor and

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supplies.¹ The project required Mr. Norris to repair drywall, plumbing, furnaces, and perform sandblasting. Mr. Norris was given \$600 initially and was asked to keep a record of the hours he worked and copies of any receipts for materials he purchased. Mr. Norris began working on the apartments using his own truck and tools, including his air compressor for sandblasting. Some cleaning supplies were already available, as was a trailer for hauling away waste, and Mr. Warburton instructed Mr. Norton that he could use these.

On November 27, 2005, Mr. Warburton visited the apartments and was upset by the lack of progress on the units. Mr. Norris also provided Mr. Warburton receipts for work and material that exceeded the allotted \$1,500 budget. Mr. Warburton then left town for approximately a week. When he returned, Mr. Norton presented his summary for work time and supply receipts totaling approximately \$4,500. On December 6, 2005, Mr. Warburton and Mr. Van Adams paid Mr. Norton \$4,000 and then surveyed the project, which was still incomplete. Mr. Norton was told to wrap up the job and he responded he would in one day.

Mr. Warburton was then bed ridden for the next ten days due to pneumonia and was not able to get to the site. When he was better he visited the site once a week, up until December 23, 2005. On that date, while Mr. Van Adams visited the property, Mr. Norris asked for an additional \$9,800. Mr. Van Adams refused, advising him he was already paid, and ordered him off the rental property. Mr. Norris threatened Mr. Van Adams physically and later, sent him letters threatening to make reports to INS.

On December 26, 2005, Mr. Norris was at the job site lifting his air compressor into his truck when he allegedly injured his back. On January 27, 2006, Mr. Norris first reported back pain, among other ailments, to his doctor.

DISCUSSION AND CONCLUSION OF LAW

The issue before the Commissioner is whether Mr. Norris was an employee of Mr. Van Adams and injured in the course of his employment or whether he was an independent contractor and therefore not entitled to benefits. Section 34A-2-103(7)(a) of the Workers' Compensation Act provides "[i]f any person who is an employer procures any work to be done wholly or in part for the employer by a contractor over whose work the employer retains supervision or control, and this work is a part or process in the trade or business of the employer" the contractor is considered an employee of the original employer.

In Bennett v. Industrial Commission of Utah, 726 P.2d 427 (1986), the Utah Supreme Court held:

¹ The Commission notes Mr. Norris testified that he was offered \$40 an hour to complete the project. However, after reviewing the evidentiary record, the Commission finds the other testimony more credible.

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Many factors have been applied in determining the right to control. Among those factors are actual supervision of the worker, the extent of the supervision, the method of payment, the furnishing of equipment for the worker, and the right to terminate the worker. Although these factors are not inclusive, they are relevant in many cases . . .

Id. at 430 (citations omitted).

In this case, Mr. Norris was advised he would be paid a certain amount of money to perform a job—cleaning and fixing up three vacant and vandalized units. When the supplies exceeded that initial amount, Mr. Van Adams authorized another payment and advised him to get it done. Mr. Norris provided his own tools for the work, used his own truck, and was responsible for purchasing most of the supplies for the work, with the exception of the cleaning supplies that he was told he could use. Mr. Norris had no supervision over his work and he decided his own work schedule for completing the project. Several days after starting the project, Mr. Warburton came to see the progress and expressed his frustration that it was taking so long. He visited the site approximately three additional times over the next few weeks, on one occasion accompanied by Mr. Van Adams wherein they expressed additional frustration with the delay. This minimal interaction did not amount to any form of supervision over Mr. Norris. Further, the work Mr. Norris performed was not “part or process in the trade or business” of Mr. Van Adams’ business, as required under the statute. The Commission finds under the facts of this case that Mr. Norris acted as an independent contractor and was not an employee of Mr. Van Adams.²

Mr. Norris also argues that his claim should not be dismissed with prejudice. However, Mr. Norris had the opportunity to fully argue and litigate his claim and was unsuccessful. The facts show he is not entitled to workers’ compensation benefits. Thus, it was appropriate to dismiss the claim with prejudice.

Finally, Mr. Norris argues that the principals of workers’ compensation law in this state required the Commission to liberally construe the law in favor of awarding benefits. However, this principal does not relieve Mr. Norris from establishing he is entitled to benefits by a preponderance of the evidence, which he did not do.

The Commission concludes that because Mr. Norris was not an employee injured in the course of his employment, he is not entitled to workers’ compensation benefits for his injuries. The Commission hereby amends Judge Lima’s decision to conclude that Mr. Norris was not an employee of Mr. Van Adams either prior to or at the time of the alleged injury, and affirms her decision denying benefits.

² The Commission notes that regardless of whether Mr. Norris had proven he was an employee of Mr. Van Adams, the employment relationship had ended at the time of the accident. Thus, Mr. Norris would still not have been entitled to workers’ compensation benefits.

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ORDER

The Commission amends Judge Lima's decision, as consistent with this order, and affirms Judge Lima's decision denying benefits. It is so ordered.

Dated this 28th day of August, 2009.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.