
UTAH LABOR COMMISSION

JULLE THI DUONG,

Petitioner,

vs.

**HAWAII NAILS II and/or UNINSURED
EMPLOYERS FUND,**

Respondent.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 08-0180

Julle Thi Duong asks the Utah Labor Commissioner to review Administrative Law Judge Lima's denial of benefits to Ms. Duong under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commissioner 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

Ms. Duong claims workers' compensation benefits from Hawaii Nails II ("Hawaii Nails") and the Uninsured Employers Fund, for a work accident that occurred on January 25, 2008, injuring her right hip. Following an evidentiary hearing, Judge Lima found that Ms. Duong was not an employee of Hawaii Nails, but rather an independent contractor and therefore not entitled to workers' compensation benefits.

In her motion for review, Ms. Duong disputes Judge Lima's conclusion that Ms. Duong was an independent contractor.

FINDINGS OF FACT

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

Ms. Duong worked part-time at Hawaii Nails as a nail technician. Hawaii Nails made the appointments for Ms. Duong as well as took care of general accounting. Ms. Duong was paid a weekly commission of 60% of all money paid for her services. Besides her work at the salon, she also worked full-time with another company. Ms. Duong was able to choose when she wanted to come in to the salon and was not on any fixed schedule, working one month for 11 days and another month only eight days because she was working for two weeks at another salon. She provided and maintained her own work tools, although Hawaii Nails provided some basic items, such as the

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manicure tables and pedicure chairs. Hawaii Nails did not supervise or instruct Ms. Duong on how to perform her work services and she was responsible for paying her own licensing fees.

On January 25, 2008, Ms. Duong injured her right hip when she slipped and fell on the floor while working at Hawaii Nails.

DISCUSSION AND CONCLUSION OF LAW

The only issue before the Commissioner is whether Ms. Duong was an employee of Hawaii Nails who was injured by accident out of and in the course of her employment or whether she was an independent contractor and therefore not entitled to benefits. Judge Lima considered several factors in her decision, such as the employer's right to control the work of the employee and methods of payments and furnishing of equipment, and concluded that Ms. Duong was not an employee of Hawaii Nails.

The Commissioner has reviewed the record and finds Judge Lima's decision is well supported by the facts. Ms. Duong was in control of her own schedule, with no supervision or control from Hawaii Nails as to when she worked, how often, or the overall quality of her services. Although she did not get paid directly for her services from the clients, she agreed to have Hawaii Nails handle the financial aspects and pay her 60% commission for the services she provided. Therefore the Commissioner concurs with Judge Lima's findings that Ms. Duong was an independent contractor and affirms Judge Lima's decision denying benefits.

ORDER

The Commissioner affirms Judge Lima's decision. It is so ordered.

Dated this 31st day of March, 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.