BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

| | |
|---|---|
| PAUL HEFLEY,<br>Claimant,<br>vs.<br>FEVOLD FARM SERVICE,<br>Employer,<br>and<br>GRINNELL MUTUAL,<br>Insurance Carrier,<br>Defendants. | File No. 20700470.01<br>ARBITRATION DECISION<br>Head Note No.: 1402.10 |

## STATEMENT OF THE CASE

Paul Hefley, claimant, filed a petition for arbitration against Fevold Farm Service, as the employer and its workers' compensation insurance carrier, Grinnell Mutual. This case came before the undersigned for an arbitration hearing on April 5, 2021. Due to the ongoing pandemic in the state of Iowa and pursuant to an order of the Iowa Workers' Compensation Commissioner, this case was tried using the CourtCall videoconference platform.

The parties filed a hearing report before the scheduled hearing. On the hearing report, the parties entered into a few stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 12. Claimant testified on his own behalf. No other witnesses testified at trial.

Counsel for the parties requested an opportunity to file post-hearing briefs. This request was granted and both parties filed briefs simultaneously on April 30, 2021. The case was considered fully submitted to the undersigned on that date.

## STATEMENT OF THE ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether an employer-employee relationship existed between claimant and Fevold Farm Service on October 23, 2018, the alleged date of injury.

2. Whether claimant sustained an injury, which arose out of and in the course of employment on October 23, 2018.

3. Whether claimant is entitled to an award of temporary disability, or healing period, benefits from October 23, 2018 through January 23, 2019.

4. Whether the alleged October 23, 2018 injury caused permanent disability and, if so, claimant's entitlement to permanent disability benefits.

5. The proper commencement date for permanent disability benefits, if any.

6. Whether claimant is entitled to payment, reimbursement, or satisfaction of past medical expenses.

7. Whether claimant is entitled to reimbursement for an independent medical evaluation pursuant to Iowa Code section 85.39.

8. Whether costs should be assessed against either party and, if so, in what amount.

## FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Paul Hefley, claimant, is a 67-year-old gentleman. (Transcript, page 67) He worked as a truck driver for Fevold Farm Service over two separate periods. The most recent employment period with this employer began in approximately 2016. (Tr., pp. 17-18) Mr. Hefley drove a grain truck for Fevold Farm Service and took directions from the owners, Joel Fevold and Jim Fevold. (Tr., p. 16)

In August 2018, Fevold Farm Service quit doing business. (Joint Ex. 8, p. 87; Joint Ex. 10, p. 6) Instead, Joel Fevold and his brother, Jim Fevold, split the business's assets. (Tr., p. 16) The trucks previously owned by Fevold Farm Service were transferred to ECF Trucking. (Joint Ex. 9, p. 30; Joint Ex. 10, p. 15) The sole owner of ECF Trucking, Elaine Fevold, testified that the new company started doing business in August 2018. (Joint Ex. 9, p. 22; Joint Ex. 10, p. 7)

As part of the transfer of assets, the Fevold Farm Service signs were removed from claimant's truck and replaced with ECF Trucking signage. (Tr., pp. 26-27) Claimant was aware of the split between Joel and Jim Fevold. (Tr., pp. 16, 27) He was also aware that the signage on his truck changed. (Tr., pp. 26-27) Although claimant received payments from various accounts thereafter, he was aware that he received at least some payments from ECF Trucking and that he no longer reported to Joel Fevold. (Tr., pp. 23, 26-28) Claimant received W-2 tax forms from ECF Trucking after the transfer of assets. (Joint Ex. 2)

Knowing that the signage on the trucks had changed and knowing that the employer was changing to avoid something, claimant continued working for ECF Trucking as a truck driver from August 2018 until October 23, 2018. On October 23, 2018, claimant was performing typical truck driver duties and was climbing onto his truck and trailer to verify that his load was properly distributed and loaded. While doing so, claimant slipped and fell approximately four feet to the ground. Mr. Hefley sustained fractured ribs as a result of the fall and required medical care, including a stay at a rehabilitation facility. (Tr., pp. 19-20; Joint Ex. 3, pp. 16-18)

Claimant ultimately was able to return to work for ECF Trucking after recovering from his injuries. (Transcript, p. 18) He continued working for ECF Trucking until that company closed in April 2019. Elaine Fevold notified claimant of his termination from ECF Trucking. (Tr., p. 30) Claimant then found new employment driving a grain truck for higher wages within one week of being terminated by ECF Trucking. (Tr., p. 31)

The initial question or dispute in this case is whether claimant has proven an employer-employee relationship with Fevold Farm Service on October 23, 2018. I find that claimant knew that Fevold Farm Service transferred ownership of the truck he drove in August 2018. I find that claimant knew ECF Trucking became the new owner and employer as of August 2018. (Joint Ex. 11, p. 35)

Claimant knew the signage on his truck changed as of August 2018 to represent ownership and operation of the truck by ECF Trucking. (Tr., pp. 26-27) Claimant implicitly, if not explicitly, agreed or consented to the new employment relationship with ECF Trucking between August 2018 and his alleged injury date of October 23, 2018. I find ECF Trucking employed Mr. Hefley on October 23, 2018. He was not employed or in an employment relationship with Fevold Farm Service on October 23, 2018. These findings render all other factual disputes or issues moot.

## CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

In this case, claimant asserts he should be considered to be an employee of Fevold Farm Service at the time of his alleged injury on October 23, 2018. I found that ownership of the truck claimant was driving changed in August 2018. The alleged employer, Fevold Farm Service, no longer owned the truck claimant was climbing on at the time of his alleged injury. Instead, that truck had transferred to ECF Trucking, a new legal entity. Claimant knew the transfer had occurred. He acknowledged that signage had changed on the truck and that the former owners of Fevold Farm Service had split up their ownership interests and transferred assets to ECF Trucking. Mr. Hefley knew or should have known that ECF Trucking owned his truck on the alleged date of injury and that he was driving for ECF Trucking on that date.

Factors to consider in determining whether an employer-employee relationship exists are: (1) the right of selection, or to employ at will, (2) responsibility for payment of

wages by the employer, (3) the right to discharge or terminate the relationship, (4) the right to control the work, and (5) identity of the employer as the authority in charge of the work or for whose benefit it is performed. The overriding issue is the intention of the parties. Caterpillar Tractor Co. v. Shook, 313 N.W.2d 503, 505 (Iowa 1981).

In this case, ECF Trucking issued W-2's to claimant. (Joint Ex. 2) Clearly, ECF Trucking had the responsibility of payment of claimant's wages, though claimant testified that payments were made from various accounts at times. The second factor weighs slightly against a finding that Fevold Farm Service was claimant's employer, though there are mixed facts on this factor. Elaine Fevold ultimately terminated claimant's employment, demonstrating ECF Trucking's right to employ claimant at will and to discharge or terminate the relationship. Both the first and third factors favor a conclusion that claimant was an employee of ECF Trucking but not an employee of Fevold Farm Service on the alleged date of injury.

Claimant recognized that Ms. Fevold was the principle owner of ECF Trucking and recognized her authority to terminate the employment relationship, or terminate his employment. The fifth factor favors a conclusion that claimant was an employee of ECF and not an employee of Fevold Farm Service on the alleged date of injury.

Claimant also recognized that he was no longer to report to Joel Fevold once Fevold Farm Service split. Claimant clearly knew that the identity of the employer or authority in charge changed in August 2018. Therefore, the fifth factor of the above test suggests that ECF Trucking was the proper employer and that claimant was not an employee of Fevold Farm Service on October 23, 20218. Coupled with the changing of the signage on his truck, claimant should have known that the employer was no longer Fevold Farm Service and had changed to ECF Trucking. Certainly, once he received a check from ECF Trucking he would be aware some changes were made.

Ultimately, there is little dispute that assets were transferred from Fevold Farm Service to ECF Trucking, including the truck that claimant drove. There is really no dispute that the direct or primary owner of the employer changed when the transfer was made from Fevold Farm Service to ECF Trucking. I conclude that, as of October 23, 2018, claimant was an employee of ECF Trucking. Claimant was not an employee of Fevold Farm Service on the date of his alleged injury.

Claimant challenges the above, asserting that the transfer of assets from Fevold Farm Service to ECF Trucking was fraudulent and should be voided under Iowa Code Chapter 684. Chapter 684 of the Iowa Code is known as the Iowa Uniform Voidable Transactions Act. See Iowa Code section 684.15. It provides certain remedies to creditors when assets are transferred fraudulently.

Claimant asserts a fraudulent transfer of assets occurred in this situation between Fevold Farm Service and ECF Trucking. Claimant presents a relatively straight-forward and convincing argument that the transfer of truck assets from Fevold Farm Service to ECF Trucking was made between family members (known as "insiders" under the Code) and that the transfer of assets was made without consideration or

receipt of a reasonably equivalent value in exchange for the transfer. See Iowa Code section 684.4(1)(b). Claimant also presents a fairly strong case that the transfer was made when the owners of Fevold Farm Service likely knew or had reason to believe the company would incur debts that were beyond its ability to pay, particularly given a large lawsuit or judgment pending against Fevold Farm Service when the transfer of assets was made. See Iowa Code section 684.4(1)(a); 684.4(1)(b)(2).

Even if I assume claimant presents a strong and convincing case of a fraudulent transfer of assets from Fevold Farm Service to ECF Trucking, claimant still faces three uphill challenges. First, the Iowa Uniform Voidable Transactions Act only provides remedies to creditors. Claimant must be a creditor of Fevold Farm Service for the statute to apply. Claimant's argument skips the initial requirement to prove liability and establish that he is a creditor of Fevold Farm Service. Instead, he attempts to use the Iowa Uniform Voidable Transactions Act to establish an employment relationship. That is not the intended use of the Act or a remedy provided for in that statute.

The Uniform Voidable Transactions Act voids transfer of assets so that creditors may access those assets to satisfy a debt. Nothing in the Act voids a transfer of an employee to a different employer or requires that business conducted by a subsequent employer is deemed to have been conducted on behalf of the predecessor company. In this sense, I do not believe the Iowa Uniform Voidable Transactions Act is applicable, can be utilized, or relied upon to establish an employer-employee relationship between claimant and Fevold Farm Service in October 2018.

Second, it is not apparent that this agency has authority or jurisdiction to consider or rule upon claims asserted under the Iowa Uniform Voidable Transaction Act. Having concluded that the proper employer is ECF Trucking, there is no award to be entered against Fevold Farm Service. Voiding the transfer of assets from Fevold Farm Service to ECF Trucking does not change the identity of the employer at the time of the alleged injury.

Voiding the transfers would return the assets owned by ECF Trucking to Fevold Farm Service for its creditors to access and utilize to satisfy their debts. Voiding the transfer would not change the employer on October 23, 2018 and would actually leave fewer assets for claimant to claim a credit against if he proved an injury against ECF Trucking. Use of the Iowa Uniform Voidable Transaction Act would only make sense if the employer on October 23, 2018 were Fevold Farm Service. In this case, I concluded the proper employer was ECF Trucking. Therefore, I conclude that it is not necessary and would not change the result of this case for the undersigned to consider the Iowa Uniform Voidable Transaction Act claim asserted by claimant.

Finally, I conclude that this agency does not have original jurisdiction to consider a claim under the Iowa Uniform Voidable Transaction Act. As the head of an administrative agency established by statute, the Iowa Workers' Compensation Commissioner does not have equitable powers and possesses no inherent power beyond such authority conferred upon him by statute or necessarily inferred from a power expressly conferred. Cincinnati Ins. Companies v. Kirk, 801 N.W.2d 856 (Iowa

2011). Allegations of fraud involve separate claims that are collateral to a worker's compensation claim and are not claims within the workers' compensation commissioner's jurisdiction. Id. Jurisdiction to hear and decide a fraud claim, such as under the Iowa Uniform Voidable Transaction Act, would reside with a court of general jurisdiction (i.e., the Iowa District Court) and such a claim would likely be part of the entry and/or enforcement of a judgment resulting from an award of this agency. Id.; Iowa Code section 86.42. Again, this would be collateral to an award from this agency but not within the jurisdiction of this agency to decide. Accordingly, I conclude that this agency does not have jurisdiction to entertain or decide the claimant's asserted claim under the Iowa Uniform Voidable Transaction Act.

Claimant alleged Fevold Farm Service as the employer in this case. Although the transfer of assets from Fevold Farm Service may have been for nefarious purposes and potentially constitutes a fraudulent transfer, I nevertheless conclude that claimant's employment transferred from Fevold Farm Service to ECF Trucking in August 2018. Therefore, I conclude that Fevold Farm Service was not the claimant's employer on the alleged date of injury.

Having reached this conclusion, I further conclude that claimant failed to prove an employer-employee relationship with Fevold Farm Service on October 23, 2018. Therefore, claimant has not asserted a cognizable claim for benefits against the named employer. I conclude that all other issues are moot and that the claim for benefits should be dismissed with prejudice without an award of benefits against the named employer, Fevold Farm Service.

Claimant asserts a claim for costs. Costs are assessed at the discretion of the agency. Iowa Code section 86.40; 876 IAC 4.33. Having concluded that claimant failed to establish a compensable claim against the named employer, I conclude that his request for costs should be denied.

Defendants were initially ordered to pay the cost of the transcript for the hearing. The transcription costs should be assessed as a cost pursuant to 876 IAC 4.33(2). In this instance, claimant failed to prove a compensable claim against the named employer. I conclude the cost of the hearing transcript should be assessed against the claimant.

## ORDER

THEREFORE, IT IS ORDERED:

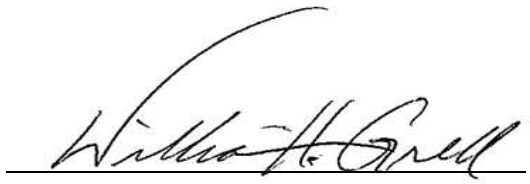
Claimant takes nothing.

Within seven (7) days of the filing of this decision, defendants shall file a copy of the court reporter's statement for transcription of the hearing transcript.

Claimant shall reimburse defendants for the cost of the hearing transcript as a cost pursuant to 876 IAC 4.33(2).

Any other costs incurred by the parties shall be assessed to and paid by the party that initially bore the cost.

Signed and filed this __8th___ day of October, 2021.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Janece Valentine (via WCES)

Stephen Spencer (via WCES)

**Right to Appeal:** This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.