

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ATLANTIC STATES INSURANCE COMPANY AND PRO PLATINUM CONSTRUCTION AND REMODELING, LLC,	Case No. CVCV060094
Petitioners,  vs.  STEPHEN CORBIN,  Respondent.	<b>ORDER ON JUDICIAL REVIEW</b>

Petitioners Atlantic States Insurance Company and Pro Platinum Construction and Remodeling Inc. (together, Petitioner) filed a petition for judicial review (the Petition) from a final decision of the Iowa workers' compensation commissioner (the Commissioner).

Telephonic oral argument was held on September 4, 2020. Petitioner was represented by attorney William H. Larson for attorney Timothy Clausen. Respondent was represented by attorney Paul Salabert, Jr. Oral argument was not reported.

Upon review of the Petition and the court file, including the certified agency record, and after careful consideration of the respective arguments of counsel, the court enters the following Order.

**BACKGROUND FACTS AND PROCEEDINGS**

Respondent filed a workers' compensation claim against Petitioner following a workplace injury to Respondent's right leg. This matter proceeded to an arbitration hearing on July 26, 2018, in front of a deputy commissioner (the Deputy). Contested issues at hearing included: (1) whether an employer-employee relationship existed

between Petitioner and Respondent at the time of the alleged injury; (2) the extent of Respondent's entitlement to industrial disability/permanent partial disability benefits; and (3) the extent of Respondent's entitlement to medical benefits. The Deputy entered an arbitration decision on February 28, 2019, for Respondent. Petitioners sought intra-agency review. The Commissioner entered an appeal decision on April 6, 2020, affirming the Deputy's decision.

The single issue for the court to decide on judicial review is whether the Commissioner erred in finding that an employer-employee relationship existed between Petitioner and Respondent at the time of Respondent's work related injury.

The following facts were found by the Deputy at the arbitration hearing and affirmed by the Commissioner: Respondent testified that he was 35 years old. (Tr. at p. 9). He is not married and has no children. (Tr. at p. 9). He lives in Williamsburg, Iowa. (Tr. at p. 9). He completed the twelfth grade and has no other certificates or degrees. (Tr. at pp. 9-10). Prior to working for Petitioner, Respondent worked doing lawn care, manual labor, and some retail work. (Tr. at p. 10).

Respondent began working for Petitioner on July 18, 2016. (Tr. at p. 11). Respondent is an LLC operated by Mike Moulds and his wife. (Tr. at p. 65). Respondent located his employment through his brother who worked for Petitioner. (Tr. at p. 11).

Respondent testified that prior to starting work for Petitioner he did not negotiate his pay. He was told by Mr. Moulds that he would be paid \$12.00 an hour. (Tr. at p. 12). He would work 40 hour per week and usually would work overtime. (Tr. at p. 12). He was hired to do a variety of tasks including setting mobile homes, working with sub-contractors like ServiceMaster, and doing demolition work. (Tr. at p. 12).

Respondent testified that prior to working for Petitioner he did not have a separate business doing that type of work. (Tr. at pp. 12-13; 83). In fact, Respondent had not done that type of work prior to working for Petitioner. (Tr. at p. 13). He was not working anywhere else while employed with Petitioner. (Tr. at p. 13). While working for Petitioner, Respondent did not have any employees and didn't pay any employees. (Tr. at pp. 13; 84). Respondent did not recall signing an independent contractor agreement when he started working for Petitioner on July 18, 2016. (Tr. at p. 13).

On July 18, 2016, Respondent presented for work at 7:30 a.m. in Petitioner's conference room where Mr. Moulds assigned all Petitioner's employees their daily jobs. (Tr. at pp.13-14). Mr. Moulds would tell employees what needed to get done, would tell them what trucks to take, and would let them know what materials need to be loaded or picked up. (Tr. at p. 14). Respondent was not hired to do a specific job but rather a variety of jobs. (Tr. at p. 14).

Mr. Moulds told Respondent that he only need to bring a tool bag with hammers and a pair of pliers to work. (Tr. at p. 14). Petitioner provided all of the power tools, large equipment, trucks and trailers needed to perform work. (Tr. at pp. 14; 80). The work vehicles provided were marked with Petitioner's name on them. (Tr. at p. 14). Respondent testified that Mr. Moulds supervised his work. (Tr. at p. 14). He further testified that he took directions from Mr. Moulds. (Tr. at pp. 15; 88). Respondent did not personally supervise anyone. (Tr. at p. 14). Respondent did not control any of the work that was to be done. (Tr. at p. 15). Respondent's schedule was set by Mr. Moulds. (Tr. at p. 15).

Petitioner paid Respondent by check every two weeks. (Tr. at p. 16). He was

paid by the hour for work performed and not by the job. (Tr. at pp. 16; 84). He was required to fill out a time sheet provided by Mr. Moulds to get paid. (Tr. at p. 16; Ex. 3 at pp. 18-74). Claimant was also given one week of vacation. (Tr. at pp. 18-19). Mr. Moulds testified that he did not give vacation pay or at least it would not be identified as such on pay checks. (Tr. at p. 72). He would, however, give out bonuses. (Tr. at p. 72).

Respondent testified that he was provided a company credit card with his and Petitioner's name on it. (Tr. at p. 21; Ex. 4). Petitioner would pay the credit card bill. (Tr. at p. 22). Respondent would use the credit card to purchase materials needed for the jobs and Mr. Moulds would instruct Respondent about what materials to purchase. (Tr. at pp. 22; 80). In addition to the credit card, Respondent was given keys to Petitioner's business. (Tr. at pp. 22-23).

Respondent testified that he would set mobile homes and helped with demo work for Petitioner. (Tr. at p. 23). In setting up mobile homes, Respondent would haul blocks, level them, and put anchors and skirting on them. (Tr. at p. 24). With regard to demo work, he would demo mobile homes and haul materials from the demo to the landfill. (Tr. at p. 24). All of the equipment and vehicles claimant used for those jobs belonged to Petitioner. (Tr. at p. 25). Mr. Moulds described Respondent's job as a laborer, a "grunt guy," with no skills. (Tr. at p. 76). According to Mr. Moulds, that is why Respondent did a lot of running around or picked up blocks. (Tr. at p. 76).

Petitioner would take crews to do jobs for ServiceMaster. (Tr. at p. 26). Respondent was paid by Petitioner for work he did for ServiceMaster. (Tr. at p. 27).

At the hearing Petitioner presented an independent contractor agreement signed by Respondent on January 4, 2017. (Ex. A; Tr. at pp. 27-28). Mr. Moulds handed the

agreement to Respondent and told him he had to sign and return it. (Tr. at p. 28). Respondent testified that he did not read every bit of the agreement and it was not explained to him by Mr. Moulds. (Tr. at pp. 28-29).

Mr. Moulds testified that in 2013 and 2014 Petitioner had employees but there was not enough work to keep them around. (Tr. at p. 66). According to Mr. Moulds, Petitioner went to an independent contractor model and had Respondent sign an independent contractor agreement in 2016. (Tr. at p. 67). No agreement signed in 2016 was presented or introduced by Petitioner at the hearing. (Tr. at pp. 82-83).

Respondent testified that on May 31, 2017, he was working for Petitioner at a mobile home court in Cedar Rapids, Iowa. (Tr. at p. 29). He was working at the job site where mobile homes were being set into place. (Tr. at p. 29). His job was to get blocks under the homes and set them into place. (Tr. at p. 29).

On that day after setting one mobile home, Respondent sat on the front of a translift. The translift was used to move the mobile homes. (Tr. at pp. 31-32). The translift was operated by co-worker Zach Griffin. (Tr. at p. 32). Respondent said the machine got shaky and it caught his right leg underneath the track. (Tr. at pp. 32-33). Mr. Griffin stopped the machine and got it off Respondent's leg. (Tr. at p. 32). Someone called 911 and Mr. Moulds directed the ambulance to take Respondent to the hospital. Mr. Moulds testified that he was present at the scene of the accident. (Tr. at p. 85).

### **CONCLUSIONS OF LAW**

The Commissioner found Respondent proved by a preponderance of the evidence that an employer-employee relationship existed at the time of his May 31, 2017, injury.

The workers' compensation act provides coverage for "any and all personal

injuries sustained by an employee arising out of and in course of the employment.” Iowa Code § 85.3(1). Iowa Code section 85.61(11) defines who is an employee: “*Worker*” or “*employee*” means a person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship, for an employer . . .” Iowa Code § 85.61(11). The act also lists certain people who do not meet this broad definition, including independent contractors. Iowa Code § 85.61(11)(c)(2).

It is Respondent's duty to prove, by a preponderance of the evidence, that he was an employee of Petitioner within the meaning of the law. If Respondent establishes a *prima facie* case, Petitioner then has the burden of going forward with the evidence which rebuts Respondent's case. Petitioner must establish by a preponderance of the evidence any pleaded affirmative defense or bar to compensation. *Nelson v. Cities Serv. Oil Co.*, 259 Iowa 1209, 146 N.W.2d 261 (1967); *Finch v. Schneider Specialized Carriers*, 700 N.W.2d 328 (Iowa 2005).

When a party challenges the ultimate conclusions reached by the agency, the challenge is to the agency's application of the law to the facts. In that event, the question on judicial review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring relevant evidence. *Meyer v. I.B.P., Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). The court will only reverse the agency's application of the law to the facts if it is irrational, illogical, or wholly unjustifiable. *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 518 (Iowa 2012).

The agency cited the accepted factors for determining if an employment relationship existed between Petitioner and Respondent at the time of Respondent's injury. These factors are: (1) the existence of a contract for the performance by a person

of a certain piece or kind of work at a fixed price; (2) the independent nature of his business or of his distinct calling; (3) his employment of assistants, with the right to supervise their activities; (4) his obligation to furnish necessary tools, supplies, and materials; (5) his right to control the progress of the work, except as to final results; (6) the time for which the workman is employed; (7) the method of payment, whether by time or by job; and (8) whether the work is part of the regular business of the employer.

*Stark Constr. v. Lauterwasser*, 847 N.W.2d 612, (Iowa Ct. App. 2014)

In applying those factors, the Commissioner affirmed and adopted the Deputy's conclusion that Respondent was performing work as an employee for Petitioner at the time of his injury on May 31, 2017. The thorough and well-reasoned arbitration decision adopted by the Commissioner states in pertinent part:

I apply the eight *Nelson* factors as follows:

**(1) The existence of a contract for the performance by a person of a certain piece or kind of work at a fixed price.**

There was a written contract. The contract (ICA) provides {Respondent} will be paid an hourly rate. Mr. Moulds told [Respondent] it was \$12.00 an hour and paid him at that rate. [Respondent] did not have the opportunity to profit by bidding for his work and doing the work in an independent manner. He was hired as an hourly worker.

This factor leads to finding an employee/employer relationship.

**(2) Independent nature of his business or of his distinct calling.**

[Respondent] was assigned work to do. Mr. Moulds described that [Respondent] was performing "grunt" work. [Respondent] had no prior skills or training on setting up mobile homes. He was assigned specific work each day by [Petitioner].

This factor leads to finding an employee/employer relationship.

**(3) His employment of assistants, with the right to supervise their activities.**

[Respondent] did not hire assistants. The ICA did provide [Respondent] with the “right” to hire assistance (sic), but given the fact Mr. Moulds assigned all work and paid [Respondent] an hourly rate of \$12.00 per hour the right to hire was illusory.

This factor leads to finding an employee/employer relationship.

**(4) His obligation to furnish necessary tools, supplies, and materials.**

[Respondent] used some hand tools, a hammer, pliers and a tool belt. All other tools and supplies were provided by [Petitioner].

This factor leads to finding an employee/employer relationship.

**(5) His right to control the progress of the work, except as to final results.**

[Respondent] did not control the progress of the work. While [Respondent] could take some time off to coach or when he did not want to work, he had no control on scheduling the projects he was working on and when to complete any project.

[Respondent] was not hired for a particular job, but was hired to report to work and receive assigned work.

This factor leads to a finding of an independent contractor relationship.

**(6) The time for which the workman is employed.**

[Respondent] was employed from July 18, 2016 through May 31, 2017 by [Petitioner]. [Respondent] was not engaged in any substantial work for anyone else during this time.

This factor leads to finding an employee/employer relationship.

**(7) The method of payment, whether by time or by job.**

[Respondent] was paid by the hour. [Respondent] received vacation pay in December 2016.

This factor leads to finding an employee/employer relationship.

**(8) Whether the work is part of the regular business of the employer.**

[Respondent] was doing regular work for [Petitioner]. [Respondent] was



installing/leveling mobile homes, demolishing mobile homes and clean up for [Petitioner] under . . . [Petitioner's] contract with Service Master.

This factor leads to finding an employee/employer relationship.

(02/28/19 Arb. Dec. at pp. 9-11).

The Deputy further addressed the independent contractor agreement as it relates to the W-9 signed by Respondent. In finding Petitioner's argument on this point unpersuasive, the Deputy correctly cited to the following relevant law:

The *Lauterwasser* court cited 3 *Larson*, § 61.05, at 61-8 noting.

The treatise further states: "But, even without the imputation of such an evasive intent, the contractual designation of the relationship as employment or contractorship may be so plainly and completely at odds with the undisputed facts that the contractual designation must be disregarded." *Id.*

*Stark Constr. v. Lauterwasser*, 847 N.W.2d 612 (Iowa Ct. App. 2014) (Table).

(02/28/19 Arb. Dec. at pp. 9-11). The Commissioner reasonably adopted and affirmed the Deputy's finding on this point as well.

When this record is considered as a whole, the agreement signed by Respondent does not reflect the reality of the parties' employment relationship, as recognized in the Deputy's conclusion (affirmed by the Commissioner) that while "[t]here are many legitimate independent contractor relationships in the workforce, this is not one of them." (02/28/19 Arb. Dec. at p. 11, ¶ 10). The agency committed no error in reaching this conclusion.

### CONCLUSION

When all of the relevant factors stated and discussed above are considered, it is clear under this record when it is considered as a whole that Petitioner did not prove its independent contractor defense. The employment agreement between Petitioner and

Respondent was an agreement in name only. Both parties acted and performed as if an employer-employee relationship existed. Petitioner has not met its burden to establish that Respondent was an independent contractor at the time of his injury arising out of and in the course of his employment on May 31, 2017.

The final agency decision should be affirmed in its entirety, the Petition should be dismissed, and costs should be assessed to Petitioner.

**ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the Commissioner's decision is affirmed in its entirety.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Petition is dismissed.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that costs are assessed to Petitioner.



State of Iowa Courts

**Type:** ORDER ON APPEAL

<b>Case Number</b>	<b>Case Title</b>
CVCV060094	PRO PLATINUM CONSTRUCTION ET AL VS STEPHEN CORBIN

So Ordered

A handwritten signature in cursive script, reading 'Jeanie Vaudt', written in dark ink.

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Jeanie Vaudt, District Court Judge,  
Fifth Judicial District of Iowa