Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 4, 2013

CLAIM NO. 201201440

JAMES TRENT PETITIONER

VS. **APPEAL FROM HON. R. SCOTT BORDERS, ADMINISTRATIVE LAW JUDGE**

MEDALLION TRANSPORT
UNINSURED EMPLOYERS FUND
and HON. R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

ALVEY, Chairman. James Trent ("Trent") seeks review of the opinion and order rendered June 14, 2013 by Hon. R. Scott Borders, Administrative Law Judge ("ALJ") finding he was an independent contractor at the time of the November 5, 2010 accident, and dismissing his claim filed against Medallion

Transport ("Medallion"). No petition for reconsideration was filed.

On appeal, Trent essentially argues the ALJ erred in finding he was an independent contractor rather than Medallion's employee at the time of his November 5, 2010 motor vehicle accident. We disagree and affirm. The ALJ performed the appropriate analysis in applying the factors of Ratliff v. Redmon, 396 S.W.2d 320 (Ky. 1965), UEF v. Garland, 805 S.W.2d 116 (Ky. App. 1991) and UEF v. Poynter, 829 S.W.2d 430 (Ky. App. 1992). The ALJ's decision is supported by substantial evidence, and a contrary result is not compelled.

Trent submitted a Form 101 on October 22, 2012, alleging injuries to his head, neck, back, right shoulder, right arm and right leg on November 5, 2010 when the tractor trailer he was driving was struck in the rear by another truck. Trent filed medical records in support of the Form 101, and additional medical documentation was filed by both parties. Since those records are irrelevant to the issue on appeal, they will not be discussed.

Trent was a resident of Jackson, Kentucky at the time of the accident, and later moved to Jeffersonville, Kentucky. He testified by deposition on February 19, 2013 and at the hearing held April 17, 2013. Trent was born on

May 29, 1968, and completed the eleventh grade. He has no GED. He testified he attended a four to six week driver training course in Ohio. Trent has been a truck driver since 1986 or 1987, except for working two to three months as a machine operator at a factory. When he began driving trucks, Trent obtained a Chauffer's license, and later obtained a Commercial Driver's License ("CDL"). His last CDL physical examination was in 2009.

In his deposition, Trent agreed he entered into an Independent Contractor Lease Agreement with Medallion. The agreement was dated June 14, 2010, and signed by Trent. Trent acknowledged the agreement set forth his relationship with Medallion. The agreement reflects Trent operated an independent trucking company in Jackson, Kentucky. Trent admitted his intent at the time of the agreement was to work as a contractor who leased his "motor vehicle equipment to Medallion and operate the equipment under the terms of the agreement." Trent was responsible for maintaining all equipment in proper operating condition, and for all maintenance expenses. He was also responsible for all fuel, oil, tires, and other necessary repair parts. Medallion provided only some load securing equipment.

Trent directed the operation of equipment in all respects, including choice of routes, and was responsible

for payment of any helpers or co-drivers. Trent was responsible for payment of all taxes and licenses. He once hired a driver for a second truck he owned, with Medallion's approval. Trent was responsible for paying the second driver. He was responsible for all expenses of his employee. The agreement reflects, "Neither the contractor nor any personnel shall be considered to be an employee of the carrier at any time."

Trent considered himself a professional truck driver which he stated required a specific set of skills. Trent was not required to take every load offered by Medallion, but he never refused one. He admitted the contract could be terminated by either he or Medallion at any time. Trent's payment was calculated based upon a percentage of each load delivered. He had no duties for Medallion other than delivering loads he accepted. He planned his own driving schedule to account for appropriate rest periods as required by Federal regulations. He was not required to store his truck at any particular location when not in use. He received a 1099 at the end of the year instead of a W-2. No taxes were withheld from his payments. Trent's tax return for 2010 reflects he was a self-employed individual. Pursuant to the agreement, Trent was required to procure workers' compensation coverage for anyone he

hired, including the driver of his second truck. Trent received payments from Zurich Insurance pursuant to a trucker's occupational disability policy required by the contract.

Trent testified Medallion's name was on the side of his truck, and he was prevented from hauling loads for anyone else during the period of the contract. He stated he was not allowed to have anyone else in the truck with him unless approved by Medallion. Medallion advised when and where to pick up and deliver loads. Medallion owned the trailer. He testified both at his deposition and the hearing he considered himself to be Medallion's employee notwithstanding the terms of the contract.

William Winey ("Winey"), Medallion's Chief Operating Officer, testified by deposition on April 3, 2013. He testified the contract allowed Trent to accept or decline any load he desired. He explained drivers receive a percentage of loads accepted. He also explained drivers are not directed to take any certain routes, with the exception of direction from individual state authorities due to size and weight limits. Winey testified as follows regarding Trent's responsibilities:

> Mr. Trent would maintain his own insurance on that truck as far as physical damage insurance because he

> owns the truck. It's a little bit like your own personal car, you would pay for your brakes, and you pay for the vehicle itself.
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> In essence, he owns the vehicle, and he is operating it as an independent businessman, so any expense for that vehicle is his own expense.

Winey testified Medallion requires owner operators to have non-trucking liability insurance, and an occupational accident policy. He also stated the contract allowed Trent to accept individual loads from other carriers with Medallion's approval. Regarding Trent's duties when not delivering a load, Winey testified as follows:

> Q. When Mr. Trent wasn't on dispatch, did he have any regular work he was required to do for Medallion?
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> A. He didn't work for Medallion.
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> Q. So he didn't have to be at a terminal if he wasn't on an actual run?
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> A. No, sir. He can be sitting at home. He can be parked. He can be wherever he wanted[sic] to be. He can have another job.

After summarizing in detail the lay testimony, the ALJ determined Trent was an independent contractor, and dismissed the claim in the Opinion and Order rendered June 14, 2013. The ALJ specifically found as follows:

> The sole issue for determination is whether the Plaintiff was employed by Medallion Transport as an independent

contractor and therefore not covered under the Worker's Compensation Act or was he employed as an employee entitling him to the benefits of the Worker’s Compensation Act.

In the case of *Ratliff vs. Redmond*, 396 SW2d 320 (KY 1965), the Supreme Court set forth seven factors which must be considered when determining whether an individual was employed as an independent contractor or an employee. The factors are: 1) the extent of control that the alleged Employer may exercise over the details of the work; 2) whether the workers engaged in a distinct occupation or business; 3) whether the type of work is usually done in that locality under the supervision of an Employer or by a specialist, without supervision; 4) the degree of skill required by the work; 5) whether the worker or alleged Employer supplies the instrumentalities, tools, and place of work; 6) the length of the employment; 7) the method of payment, whether by the time or by the job; 8) whether the work is a part of the regular business of the Employer; and 9) the intent of the parties.

In the case of *Chambers vs. Wooten's IGA Food Liner,* 436 SW 2D. 265 KY 1969, the test was later refined to focus primarily on four factors; 1) the nature of the work as related to the business generally carried on by the alleged Employer; 2) the extent of control exercised by the alleged Employer; 3) the professional skill of the alleged employee; and 4) the true intention of the parties.

The Administrative Law Judge will now apply the facts off this claim to the aforementioned factors.

1). The extent of control exercised over details of the work. In this instance, the evidence reflects that Mr. Trent would contact "George" the dispatcher for Medallion Transport to receive his loads. The truck Mr. Trent was operating was his but was leased to Medallion. Mr. Trent had the contractual right to direct the operation of his equipment in all respects including such matters as choosing available for[sic] routes, the number of drivers and driver helpers required per unit of equipment, points for service of the equipment and rest stops. Mr. Trent was free to accept or reject any load that he wanted. Mr. Trent was responsible for all maintenance, expenses, and fees incurred as a result of operating his truck.

In addition, according to the testimony of Mr. Wiley[sic], George the dispatcher was also an independent contractor who recruited and sought out potential owner/operators such as Mr. Trent. Medallion simply qualified the owner/ operator in accordance with federal regulations. Therefore, the Administrative Law Judge finds that Medallion did not exercise control over the details of the work performed by Mr. Trent. They simply procured a load and offered it to him, to be delivered within a certain timeframe, should he wish to take it.

2). Whether the worker is engaged in a distinct occupation or business. Mr. Trent testified that he has proximately 20 years' experience as an over the road truck driver. He has obtained and completed training and classes to operate a tractor-trailer and has acquired specialized skills and licenses to do so in order to be in compliance with state and federal regulations. In addition, Mr. Trent holds himself out as

being an owner operator as evidenced by the fact that he filed tax returns indicating such, and considered himself an owner operator. Therefore, Mr. Trent was engaged in a distinct occupation or business as an over the road[sic] truck driver.

3). Whether the type of work is usually done in that locality under the supervision of an Employer or by specialists, without supervision. Mr. Trent operated his tractor-trailer throughout the United States. He received very little if any supervision from anyone. He was given a load to deliver, picked up the load, chose the best way to get to his destination, lawfully, and delivered the load to the customer. Mr. Trent then received a percentage of the load as his pay. Therefore the type of work, truck driving, Mr. Trent performed is therefore not performed in a specific locality under the supervision of an Employer but is usually performed by a specialist, a truck driver, without supervision.

4). The degree of skill required by the work. As a general rule if special skills are required to perform the job more than likely it is a job performed by an independent contractor. There is no question but that special skills are required to operate a tractor-trailer hauling freight over the highways. Truck drivers must attend specialized vocational training and possess the skills necessary to operate their vehicles. In fact they must be licensed by the government and pass a special road examination in order to do so. Therefore, the Administrative Law Judge finds that the job of a tractor-trailer driver requires specialized skills peculiar to the occupation.

5). Whether the worker supplies the instrumentalities, tools, and place of work. In this instance, the Plaintiffs[sic] supplied his own tractor, or any tools that he may need to have with him to make minor repairs to his vehicle, and chose the route he would take to deliver the goods. Therefore, the Administrative Law Judge finds that the Plaintiff supplied the instrumentalities, tools, and place of work.

6). The length of the employment. In this case the parties entered into an employment contract for a year's duration but were renewable thereafter. However, the agreement entered into between the parties itself specifies that there is no guarantee that the Plaintiff would receive a specific number of loads or pounds of freight for transportation. There is also no guarantee of how many loads that the Plaintiff would be willing to haul. Therefore, it can be determined that this contract was on a load per load basis and could be terminated by either party at any time prior to the expiration of the one-year term. Therefore, the Administrative Law Judge finds that this employment was on a load per load basis.

7). The method of payment, whether by the time or the job. It is undisputed that Mr. Trent was paid by the job. His method of payment was 75% of each load that he hauled. He was to pay all of his expenses, taxes, and fees out of this percentage and retain the rest for income. Therefore, the Administrative Law Judge finds that Plaintiff was paid by the job and not by the time spent performing the job.

8). Whether the work is a part of the regular business of the Employer. The evidence of record indicates that Medallion Transportation contracted with owners and operators and individual contractors for dispatching loads for delivery. The evidence of record indicates that Medallion Transportation did not retain salaried or employee drivers. Medallion primarily maintains a database on when and where loads are available and secures qualified owner/ operators to deliver them. Therefore Medallion is in the regular of[sic] business of securing transportation for the delivering of goods.

9). The intent of the parties. In this instance, the evidence is undisputed that the parties entered into an independent contractor agreement as evidenced by the voluntary signatures of an individual for Medallion and the Plaintiff's. Whether the Plaintiff actually read the agreement before he signed it or not is another question. However it is clear to the undersigned Administrative Law Judge that the parties intended to form an independent contractor relationship by entering into the agreement.

Therefore, in this specific instance, the Administrative Law Judge finds that Plaintiff has not met his burden of proving that he was an employee of the Defendant Employer, Medallion Transport, at the time of the November 5, 2010, motor vehicle accident. In so finding the Administrative Law Judge believes that the evidence clearly indicates that the Plaintiff was involved in a distinct occupation as a truck driver; that the Employer only secured the loads to be delivered, and exercised no control over the Plaintiff's work in making the delivery; that the Plaintiff possesses a

> professional skill as a truck driver; the work of truck driving is not usually done in a specific locality under the supervision of an Employer but is usually done by specialists without supervision; the Plaintiff supplied his truck and other instrumentalities of the trade; the length of employment was on a load per load basis; the Plaintiff was paid by the load and not the hour; and the true intent of the parties was to be entering into an independent contractor situation.
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> Therefore the Administrative Law Judge finds that Plaintiff was an independent contractor of Medallion Transportation on November 5, 2010 and therefore is not subject to coverage under the Kentucky Worker's Compensation Act. Therefore this claim shall be dismissed.

No petition for reconsideration was filed.

On appeal, Trent argues the ALJ erred in finding he was an independent contractor as established in the test set forth in Ratliff v. Redmon, supra; UEF v. Garland, supra; and UEF v. Poynter, supra, and the evidence compels a contrary result.

As the claimant in a workers' compensation proceeding, Trent had the burden of proving each of the essential elements of his cause of action, including the existence of an employee-employer relationship. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since he was unsuccessful in his burden, the question on appeal is

whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Compelling evidence is defined as evidence so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The function of the Board in reviewing the ALJ's decision is limited to determining whether the ALJ's findings are so unreasonable under the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to determine all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Although a party may note evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to reverse on appeal.

McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences which otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). So long as the ALJ's ruling is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

In Ratliff v. Redmon, 396 S.W.2d at 324-325, the Court of Appeals provided nine factors to be considered when deciding whether a worker is an employee or an independent contractor. These factors were enumerated by the ALJ in his decision. The ALJ provided an analysis of each of the nine factors in finding Trent was independent contractor.

In Chambers v. Wooten's IGA Foodliner, 436 S.W.2d 265, 266 (Ky. 1969), the Court of Appeals "refined" the nine-factor test by identifying four factors that are most "predominant" stating as follows:

> [T]he nature of the work as related to the business generally carried on by the alleged employer, the extent of control exercised by the alleged employer, the professional skill of the

> alleged employee, and the true intentions of the parties.

A proper legal analysis involves consideration of "*at least*" the four factors set forth in Chambers, and "proper legal conclusions may not be drawn from consideration of one or two of these factors." UEF v. Garland, 805 S.W.2d at 119. There, the Supreme Court stated:

> A reviewing court must give great deference to the conclusions of the fact-finder on factual questions if supported by substantial evidence and the opposite result is not compelled. When considering questions of law, or mixed questions of law and fact, the reviewing court has greater latitude to determine whether the findings below were sustained by evidence of probative value.
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> The proper legal analysis consists of several tests from Ratliff and requires consideration of at least four predominant factors: (1) the nature of the work as related to the business generally carried on by the alleged employer; (2) the extent of control exercised by the alleged employer; (3) the professional skill of the alleged employee; and (4) the true intent of the parties.
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> Id. at 117, 118-119; *See also* UEF v. Poynter, 829 S.W.2d 430 at 431.

Regarding the factors set forth above, the ALJ determined three of the four supported a finding Trent was

an independent contractor. Specifically, the ALJ determined Trent was engaged in a distinct occupation which required specialized skills with certain licensing requirements. He also determined the work accepted by Trent required no supervision. He finally determined the true intent of the parties was to create an independent contractor relationship, as evidenced by the written contract.

Trent relies heavily upon the unpublished decision of Hicks v. Eck Miller Transportation, 2004 Ky. Unpub. LEXIS 26 (Ky. 2004). It is noted in Hicks the parties produced only the testimony of the claimant, along with his tax return. In this instance, the ALJ found persuasive the fact Trent entered into a written independent contractor lease agreement, outlining his and Medallion's responsibilities. This agreement clearly outlines the true intent of the parties, and based upon a review of this agreement, along with the testimony from both Trent and Winey, it was reasonable to conclude he was an independent contractor, not an employee.

Because substantial evidence supports the ALJ's various factual findings and a contrary result is not compelled, the ALJ's decision will not be disturbed.

Accordingly, the June 14, 2013 Opinion and Order rendered by Hon. R. Scott Borders, Administrative Law Judge, is hereby **AFFIRMED.**

ALL CONCUR.

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