

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 2, 2014

CLAIM NO. 201301240

RENE GUADIANA

PETITIONER

VS.

APPEAL FROM HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE

ELIZABETH & MATTHEW JACOBSON
UNINSURED EMPLOYERS' FUND
and HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

RECHTER, Member. René Guadiana ("Guadiana") appeals from the March 18, 2014 Opinion and Order, and the May 13, 2014 Order on Reconsideration rendered by Hon. Steven G. Bolton, Administrative Law Judge ("ALJ") dismissing his claim. The ALJ determined Guadiana was acting as an independent

contractor on Matthew Jacobson's ("Jacobson") farm at the time he was injured, and dismissed the claim. Guadiana now appeals, arguing the facts compelled a finding he was Jacobson's employee. We disagree and affirm.

At the time he was injured, Guadiana was working as an exercise rider, which entailed breaking and exercising horses owned by Jacobson and boarded at Victory Haven farm. Prior to working for Jacobson, Guadiana had worked as an exercise rider for approximately eight years in Texas, Oklahoma, Florida and Kentucky. At some of these other farms, he was an employee, was paid a weekly salary, and withholdings were deducted from his check. More frequently, however, he was paid "per ride"; that is, he was paid a set sum for each horse he rode, per day.

This was the arrangement Guadiana had with Jacobson. He was paid \$12.00 per horse and typically rode about six horses per day. Jacobson paid him in cash and did not withhold any taxes from his pay. He did not receive a W-2 or a 1099 from Jacobson. He was not provided with health insurance, vacation days, or sick days.

On a typical day, Jacobson would tell Guadiana to begin riding at 7:00 am. Inside the office of the barn, Jacobson kept a large board with each horse's name. On the board, Jacobson outlined the training schedule for each

horse for the week, including which equipment to use and how to exercise the horse.

Guadiana provided testimony regarding his license to be an exercise rider, issued by the Commonwealth of Kentucky. There exists a certain level of skill and expertise to perform the duties of an exercise rider safely, for both the horse and the rider. This expertise includes knowledge of the type of equipment used to control the horse, as well what type of exercise is appropriate for the animal. While he was on the track riding a horse, Guadiana had no communication with Jacobson and used his discretion and expertise to determine how to achieve the desired workout for the horse.

The testimony of Guadiana and Jacobson was largely consistent, save for a few details. Jacobson testified Guadiana only earned about \$60 a day from him and, for that reason, worked for other trainers as well. Guadiana stated he worked only for Jacobson at the time of the injury. Jacobson also denied giving Guadiana specific hours to perform his work. Rather, he stated all exercise riders typically work early in the morning because it is "an early business."

The ALJ bifurcated the claim to first consider the issue of whether Guadiana was Jacobson's employee. Citing

Ratliff v. Redmon, 396 S.W.2d 320 (Ky. 1965), the ALJ considered each of the nine factors in determining the employment relationship. Ultimately the ALJ concluded Guadiana was an independent contractor, and dismissed the claim. Guadiana subsequent petition for reconsideration was denied, and he now appeals.

On appeal, Guadiana insists the evidence compels a finding he was Jacobson's employee. As the claimant, he bore the burden of proof of each of the essential elements of the claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Guadiana was unsuccessful in that 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 that is 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 a determination of whether the findings made by the ALJ 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).

The ALJ applied the correct law. The factors for determining whether a person is an employee or independent contractor are set forth in Ratliff, 396 S.W.2d at 324-325:

(a) the extent of control which, by the agreement, the master may exercise over the details of the work;

(b) whether or not the one employed is engaged in a distinct occupation or business;

(c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

(d) the skill required in the particular occupation;

(e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;

(f) the length of time for which the person is employed;

(g) the method of payment, whether by the time or by the job;

(h) whether or not the work is a part of the regular business of the employer; and

(i) whether or not the parties believe they are creating the relationship of master and servant.

The test was clarified in Chambers v. Wooten's IGA Foodliner, 436 S.W.2d 265 (Ky. 1969). "While many tests are appropriately considered, we think the predominant ones

encompass the 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." Id. at 266.

The record supports the ALJ's conclusion that the majority of the factors indicate Guadiana was working as an independent contractor. As a licensed exercise rider, Guadiana decided how to achieve the exercise prescribed by Jacobson while on the track. Also as an exercise rider, he performs a distinct occupation that requires special skill and, in fact, a license. Guadiana furnished his own helmet, vest and whip. Further, he had only provided his services to Jacobson for three months at the time of the accident. Guadiana's work history indicated he worked for different trainers for short periods of time, which were dictated by the racing season. Though the evidence was contradictory, the ALJ acted within his discretion in finding Guadiana worked for other trainers at the time of the accident. He was paid "per ride" and not by salary. Finally, given the nature of the pay arrangement and the itinerant nature of Guadiana's occupation and work history, the ALJ concluded the parties did not intend an employee/employer

relationship. These circumstances support the ALJ's conclusion Guadiana was an independent contractor.

Guadiana points to other circumstances tending to indicate he was Jacobson's employee. Exercising horses is a regular part of Jacobson's business as a horse trainer. Also, he provided a certain level of direction each day to Guadiana, although the ALJ did not entirely agree to the extent of this control. However, as stated above, other characteristics of the relationship supported the conclusion Guadiana was an independent contractor. We do not believe the ALJ erred in his assessment of the evidence, or in the application of the law to the facts.

For these reasons, the March 18, 2014 Opinion and Order, and the May 13, 2014 Order on Reconsideration rendered by Hon. Steven G. Bolton, Administrative Law Judge are hereby **AFFIRMED**.

ALL CONCUR.

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