

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: December 18, 2015

CLAIM NO. 201401710

STEPHENS PIPE & STEEL, LLC

PETITIONER

VS.

APPEAL FROM HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE

LANNY HUDSON
and HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
VACATING AND REMANDING

* * * * *

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

RECHTER, Member. Stephens Pipe & Steel, LLC ("Stephens") appeals from the July 24, 2015 Opinion and Order and the August 17, 2015 Opinion and Order on Reconsideration rendered by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"). The ALJ determined Lanny Hudson ("Hudson") was an employee of Stephens on March 7, 2014, when he fell 17 feet from a pole barn. Stephens argues the ALJ's

conclusion is unsupported by substantial evidence, and that a sufficient analysis was not performed.

Hudson worked in carpentry as both an employee and an independent contractor for 40 years. Around 2008, he began business dealings with Mike Adams ("Adams"), a foreman with Stephens. Hudson bid on a job to erect two barns. Pursuant to the contract, Hudson was required to furnish all labor and materials. The job was completed successfully and Hudson was paid. From his earnings, Hudson paid his workers.

Sometime around April 2010, Stephens needed some metal buildings erected. Again, Adams negotiated with Hudson for the construction of the metal buildings. During the discussions, Hudson informed Adams he did not have the necessary equipment, such as lifts, cranes and welders. Adams indicated Stephens would furnish the equipment. Further, the pieces of the metal buildings were ordered and paid for by Stephens. Hudson did not furnish the materials. Though several of Hudson's workers were hired to assist in the construction, they were paid directly by Stephens. Hudson was paid by the hour. At one point, he requested taxes to be deducted from his checks, though this request was never realized.

Hudson explained this agreement continued for two years. There were times Stephens did not have much work for him, but Hudson testified these periods were brief. Adams would direct Hudson as to where and how to erect the metal buildings and, later, pole barns. On March 7, 2014, Hudson fell from the top of a pole barn while setting trusses. He was seriously injured, and broke several vertebrae.

Adams testified by deposition. As foreman and plant manager at Stephens, he is required to oversee construction of buildings used by Stephens to erect piping and fencing. Adams agreed Hudson was initially hired to erect pole barns, and was paid by the job as an independent contractor. In April 2010, when Stephens needed some metal buildings erected, Adams again approached Hudson. Stephens would furnish all the materials for the construction of the buildings.

According to Adams, Hudson suggested being paid by the hour for the metal buildings project. Adams testified he consulted with people who worked in Stephens' accounting department about Hudson being paid by the hour. He was informed Hudson could be paid by the hour so long as he was still paid via a Form 1099. Adams exercised no control over how many workers Hudson hired to assist him,

or how many hours they worked. Neither Hudson nor his workers received health insurance, vacation time, or other benefits from Stephens. Adams also confirmed Hudson approached him about having taxes withheld from his checks. According to Adams, he informed Hudson this was not possible because he was a contractor, and not an employee.

Before the ALJ, the question of whether Hudson was an independent contractor at the time of his injury was central. In addition to the medical evidence, which is not germane to this appeal, the ALJ summarized Hudson's testimony. He noted Adams' deposition testimony had been admitted, though no summary was provided.

The ALJ ultimately determined Hudson was Stephens' employee. After citing to applicable case law concerning the analysis to be conducted in determining a claimant's status at the time of an injury, he provided the following analysis:

In addition to the testimony of the plaintiff Hudson, I carefully read the deposition testimony of Mike Adams, the defendant's employee. The defendant argues that at the time of his work injuries Mr. Hudson was an independent contractor. However, the plaintiff argues that he was an employee of the defendant at the time of his work injuries.

Based upon the law of the case, as recited hereinabove, and the sworn

testimony of both Mr. Hudson and Mr. Adams, I make the determination that when the business relationship between Mr. Hudson and Stephens Pipe & Steel began, Mr. Hudson was in fact an independent contractor. However, the relationship between the plaintiff and the defendant changed drastically when the defendant and the plaintiff began building the metal buildings. I make the determination that at that time Mr. Hudson ceased to be an independent contractor and became an employee of Stephens Pipe & Steel. In that context, Mr. Adams visited the job site every day and occasionally made modifications on the jobs for the benefit of the defendant. I make the determination that Mr. Adams served as a foreman for the project and Mr. Hudson and his work crews furnished the labor. I make the determination that Mr. Hudson was not trained to erect metal buildings and had never done so in the past, and further that he completed the projects to Mr. Adams' satisfaction. I make the determination that in that context the defendant acted through its agent, Mr. Adams, who supervised the project and furnished the materials necessary to complete the job, with Mr. Hudson and his work crew providing the necessary labor at the rate of \$22.00 per hour. I make the determination that Mr. Hudson believed that he was an employee, as shown by his specific request to Mr. Adams that taxes be withheld from his pay check and the pay checks of his work crew. I make the determination that carpenters, such as Mr. Hudson, are customarily employed by large corporations, such as Stephens Pipe & Steel. I make the determination that the buildings were erected on Stephens property and that Stephens provided the place of work for Mr. Hudson and his work crew.

In light of the above-cited evidence and both the *Ratliff* and *Garland* cases, I make the determination that at the time of Mr. Hudson's fall and injuries on March 7, 2014, he was an employee of the defendant Stephens Piper & Steel and not an independent contractor.

Stephens petitioned for reconsideration, arguing the ALJ's analysis was insufficient and requesting further fact-finding be made which included consideration of Adams' testimony. The ALJ denied the petition. The ALJ stated he had considered Adams' testimony, but did not provide a summary or specific analysis of the proof.

On appeal, Stephens again argues the ALJ's analysis is insufficient. It also asserts the ALJ's decision is against the overwhelming weight of the evidence.

In *Ratliff v. Redmon*, 396 S.W.2d 320 (Ky. 1965), the Court of Appeals provided nine factors to be considered when deciding whether a worker is an employee or an independent contractor. The nine factors are as follows:

(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.

Id. at 324-325,

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":

[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.

As held by the Supreme Court of Kentucky in UEF v. Garland, 805 S.W.2d 116, 118-119 (Ky. 1991), the "proper legal analysis consists of several tests from Ratliff and requires consideration of at least four predominant factors."

Here, the ALJ concluded Hudson began working with Stephens as an independent contractor, but the nature of the relationship changed when he was asked to build the metal buildings. To reach this conclusion, he relied on Adams' oversight of the building projects, the fact Hudson requested his taxes be withheld, Hudson's lack of expertise in building metal buildings, and the fact companies such as Stephens regularly employ carpenters. Certainly, these factors are pertinent and touch upon the four predominant factors identified in Chambers v. Wooten's IGA Foodliner, 436 S.W.2d 265 (Ky. App. 1969).

However, in the context of this case, we find the ALJ's analysis insufficient. The ALJ provided no summary or significant discussion of Adams' testimony. As to the issue of the employment relationship, the only proof submitted was the testimony of Adams and Hudson. Their testimony differed significantly, particularly as it related to the intent of the parties with respect to the business relationship between Stephens and Hudson. For

example, while the ALJ cited Hudson's request his taxes be withheld as evidence of his understanding of the relationship, the ALJ failed to note that Adams testified he was unable to fulfill this request specifically because Hudson was not an employee. Furthermore, the ALJ provided no meaningful analysis of Stephens' regular business operations or the reason it employed Hudson's services.

It was incumbent upon the ALJ to acknowledge those portions of Adams' testimony which conflicted with Hudson's, and to demonstrate he weighed these inconsistencies. While the ALJ has identified certain factors which informed his decision, we do not believe this analysis sufficiently demonstrates the totality of the evidence was considered and how. Kentucky Supreme Court in New Directions Housing Authority v. Walker, 149 S.W.3d 354, 358 (Ky. 2004). For this reason, we must vacate the ALJ's finding that Hudson was an employee of Stephens at the time of the injury, and remand this claim to the ALJ for further analysis of the issue. In doing so, we direct no particular result.

For the foregoing reasons, the July 24, 2015 Opinion and Order and the August 17, 2015 Opinion and Order on Reconsideration rendered by Hon. William J. Rudloff, are

hereby **VACATED**. This claim is **REMANDED** for further proceedings consistent with this opinion.

ALL CONCUR.

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