OPINION ENTERED: April 19, 2013

CLAIM NO. 201187511

UNINSURED EMPLOYERS' FUND PETITIONER

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

EDDIE HUDSON;
HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE;
ED HUDSON D/B/A ED HUDSON & SON PLUMBING;
and EDDIE HULKER, JR. RESPONDENTS

OPINION
AFFIRMING IN PART, VACATING IN PART,
AND REMANDING
* * * * * *

BEFORE: ALVEY, Chairman; STIVERS and SMITH, Members.

ALVEY, Chairman. The Uninsured Employers' Fund ("UEF") seeks review of the Opinion and Order rendered October 26, 2012 by Hon. William J. Rudloff, Administrative Law Judge

("ALJ"), finding Eddie Hudson[1] ("Hudson") was an employee of Ed Hudson, D/B/A Ed Hudson & Son Plumbing ("Ed Hudson & Son Plumbing") when he was injured on May 17, 2011. The ALJ also dismissed Hudson's claim against Eddie Hulker, Jr. ("Hulker") after finding he was not a contractor with up-the-ladder liability pursuant to KRS 342.610(2). Thereafter, the ALJ awarded Hudson permanent total disability ("PTD") benefits and medical benefits. The UEF also seeks review of the November 28, 2012 opinion and order on reconsideration.

On appeal, the UEF argues whether Hudson is an employee of Ed Hudson & Son Plumbing, or Hulker is an up-the-ladder employer pursuant to KRS 342.610(2) and 342.700 are questions of law since the facts are substantially undisputed. The UEF argues the ALJ failed to analyze the facts under the proper legal standard promulgated by the Board in David Rucker v. Wayne Beckley, Claim Number 1998-01188, rendered September 17, 1999, in determining whether a partnership or employment relationship existed between Hudson and Ed Hudson & Son Plumbing. The UEF also asserts the ALJ erred by misapplying the legal standard outlined in KRS 342.610 to the facts of this claim by failing to

[1] Hudson's full name is Clarence Edward Hudson, Junior. He commonly goes by the name "Eddie."

consider the legal effect of Hulker's failure to claim an exemption to the requirements outlined in KRS 342.610(5). Finally, the UEF argues the ALJ failed to address whether Hulker qualified as a "principal contractor" pursuant to KRS 342.700(2).

Hudson filed a Form 101 on April 3, 2012, alleging "bilateral legs, feet & ankles, low back, mid back" injuries occurring on May 17, 2011 when he "was climbing a ladder onto a roof when the ladder kicked back causing him to fall." He listed the UEF and Ed Hudson & Son Plumbing as party defendants. Hudson indicated he was a "plumber" at the time of the accident earning a weekly wage of $720.00. The Form 104 reflects Hudson had been a plumber for Ed Hudson & Son Plumbing from 1975 through 2011. In support of his claim, Hudson filed various medical records and reports which are not relevant to this appeal and will not be discussed further.

Pursuant to motions filed by both Hudson and the UEF, the ALJ ordered "Ed Hudson d/b/a Ed Hudson & Son Plumbing" added as a party defendant and reflected as the correct employer's business name in the Form 101 on May 4, 2012 and May 7, 2012. Subsequently, the ALJ ordered Hulker joined as a defendant by order dated July 3, 2012. The Commissioner of the Department of Workers' Claims certified

"Ed Hudson & Son Plumbing," "Ed Hudson D/B/A Ed Hudson & Son Plumbing" and Hulker did not have workers' compensation insurance in Kentucky on May 17, 2011.

Hudson testified by deposition on June 12, 2012 and at the hearing held September 27, 2012. Hudson, a resident of Harrodsburg, Kentucky, was born on June 27, 1957, and completed the twelfth grade. Hudson stated he has no vocational or specialized training, and does not hold any licenses or certifications. Specifically, he has never maintained a plumbing license. After completing high school, Hudson testified he began working full-time for Ed Hudson & Son Plumbing in 1975 and continued to do so until the May 17, 2011 accident.

Ed Hudson[2] ("Hudson Sr.") is Hudson's father. Hudson Sr. began operating Ed Hudson & Son Plumbing in 1968 from his residence when Hudson was approximately eleven years old. Ed Hudson & Son Plumbing performs primarily residential plumbing, including new construction. Hudson Sr. "basically let everybody go" when Hudson began working for him. When questioned why Hudson Sr. named the business Ed Hudson & Son Plumbing rather than "Ed Hudson Plumbing," Hudson testified "[T]hat's something [Hudson Sr.] did.

[2] Ed Hudson's full name is Clarence Edward Hudson. He commonly goes by the name "Ed."

I was in grade school." Hudson further explained his father thought he would take over the business upon retirement. At the time of the accident, Hudson Sr. was seventy three years of age.

Hudson testified he has performed "the bulk of the plumbing" since 1985, which included jobs ranging from installation in new buildings to minor plumbing repairs. His father handled the money and estimates for the business, and he also picked up supplies. His mother assisted with payroll. Cathy Baxter, unrelated to the Hudson family, was the bookkeeper who did not have any ownership interest in the business.

Hudson testified customers called his parent's house. Hudson Sr. came to Hudson's residence every morning to discuss projects. Occasionally, Hudson Sr. called Hudson while he was working on a job to direct him to another job. Hudson testified whenever he completed a job, he recorded his time and materials used, and gave it to his parents. Based upon his experience, Hudson stated "the only plumbers that own the business that actually did the work was[sic] somebody that just worked for theirself [sic], and there were no helpers. Most of them had helpers, and they actually did the work."

Hudson stated he earned $18.00 per hour in the year prior to the injury but he could not confirm how many hours he actually worked, indicating it depended on the economy and demand. However, Hudson testified the wage documentation he previously filed as evidence is accurate. Hudson attached his W-2 statements for each year from 2007 through 2011 as exhibits to his deposition testimony. The W-2s reflect federal and state taxes were withheld from his wages. The W-2s indicate the "employer" is "Clarence E. Hudson % Cathy Baxter" and the "employee" is "Eddie Hudson." Hudson testified his paychecks were signed by either his mother or father, and were written from the Ed Hudson & Son Plumbing account.

Hudson testified Ed Hudson & Son Plumbing is a sole proprietorship owned by his father, Hudson Sr. Hudson denied the existence of a partnership, as well as owning any part of the business, despite the fact the business name reflects "& Son." Hudson insisted he has been merely an hourly wage employee for over twenty years. Hudson testified he and his father did not have any discussion about a partnership, he did not share in the profits of the business, did not make any administrative decisions and was not involved in bidding. Likewise, Hudson had no involvement in the purchase of workers' compensation

insurance. He believed his father had consistently maintained workers' compensation coverage and was unaware the policy had been cancelled prior to his May 17, 2011 fall.

Hudson testified on May 17, 2011 he was completing a new construction job requiring him to cut the back vent off of a roof. He placed a ladder against the house, climbed onto the roof and immediately fell to the ground. Hudson testified his father was also at the job site inside the house, but did not witness the accident. Hudson was transported to the hospital by ambulance. As a result of the fall, he "broke the 12th vertebra in my back" and wore a back brace for five and a half months. He also testified he injured both ankles and feet as a result of the fall. Hudson testified he is physically unable to return to any type of work due to his injuries.

Concerning the specific nature of the job, Hudson testified his father dealt directly with the homeowner, rather than with a contractor or construction company. Hudson confirmed the individual was building a house and "was subbing it out hisself." [sic]. Hudson again confirmed the property owner hired them to perform plumbing work. Hudson stated he never received any instruction from the homeowner.

Hulker testified by deposition on September 17, 2012 and at the September 27, 2012 hearing. Hulker testified he has been employed as a corrections officer for the past eight years. Hulker completed the tenth grade and later earned his GED. He has no specialized or vocational training. Hulker testified he has never held himself out as a builder or contractor and likewise has no training or knowledge in that regard.

Hulker testified he lived in a mobile home on a piece of property he owned for approximately twelve or thirteen years and wanted to build a residential cabin. Hulker purchased the floor plans for his new home and hired Melvin Troyer ("Troyer") to build a cabin. Troyer did the framing, foundation and the finish carpentry. Hulker admitted the contract price negotiated with Troyer did not represent the entire construction cost of the cabin, and did not include a quote for electrical and plumbing work. At the hearing, Hulker testified as follows:

> Q: . . . So you asked [Troyer] to give you a complete price like a turnkey price where he handled all of it for you?
>
> A: No, no, it wasn't a turnkey. He did do the foundation, also.
>
> Q: Okay. Did you talk to any contractors about doing it as a turnkey?

> A: The only thing I did like I just mentioned, I just went through the yellow pages. What he didn't do - - I mean, he done most of it.
>
> Q: All right. Now, do you think you saved money by hiring those folks yourself?
>
> A: I have no idea.
>
> Q: Okay. Did you do all the scheduling for those contractors that you did hire?
>
> A: No, they worked at their own pace.
>
> Q: No, I mean, did you tell them when they needed to be on the job?
>
> A: No.
>
> Q: You know, give them a heads-up that this week you are going to need to be out here to finish this?
>
> A: No.
>
> Q: Okay. Who did that?
>
> A: I just let them work at their own pace. I had a full-time job to do.

Hulker confirmed he had received a construction loan and drew against the account to compensate various suppliers and subcontractors who performed work on the cabin. Generally, Hulker either paid the various providers directly or reimbursed Troyer after he submitted invoices. Hulker could not specify how many draws he made against the construction loan. Hulker confirmed he paid Ed Hudson & Son

Plumbing as reflected in two invoices, but could not remember from which account.

Hulker also submitted the required zoning and building permit forms. He explained Bill Durham, the building inspector "told me what all I'd have to get, and I got everything he asked me to get." When shown copies of the permit forms, Hulker stated "whatever I signed, I really didn't look at it. But whatever [Bill Durham] asked me to do, I went ahead and got the proper paperwork." Hulker denied he was the contractor despite listing himself as such on the zoning permit form. Hulker emphasized he did not build the house, had no building skills and had no previous construction experience.

Hulker testified he did not oversee or direct the plumbing work in any way because he was elsewhere working full-time as a corrections officer. He never saw Hudson or Hudson Sr. perform any work. Hulker explained he was just "in and out" during the construction of his residence, and had conversed with Hudson Sr. several times when he was passing by. On May 17, 2011, Hulker stated he was inside the house talking to Hudson Sr. and did not witness the fall.

The UEF filed copies of various statutes pertaining to the "Plumbing and Plumbers" occupation

contained in Chapter 318 of the Kentucky Revised Statutes including KRS 318.010, 020, 030, 064, 110, 120, 180, 190, and 990. It also submitted information from the Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, *2012-12 Edition*, Plumbers, Pipefitters and Steamfitters. The handbook stated the median wage for plumbers in the year 2010 was $46,660 per year or $22.43 per hour. The starting pay for apprentices is usually between 30-50% of the rate paid to fully trained plumbers. It also indicated the average salary of a journeymen plumber in Lexington, Kentucky is $30,000.

The UEF submitted the October 27, 2010 zoning permit and building permit forms from the Mercer County Joint Planning and Zoning Commission, as well as a copy of KRS 198B.060(10). The zoning permit, approved on October 27, 2010, identifies Hulker as the "property owner" and "contractor," and bears his signature. The building permit, issued on October 28, 2010, identifies Hulker as the "property owner" and "builder," and bears his signature. The building permit contains the following certification:

> " . . . . Pursuant to KRS 198B.060(10), applicant states that all contractors and subcontractors employed or that will be employed on any activity covered by any permit issued to this applicant . . . shall be in compliance with the Commonwealth of Kentucky requirements

> for Worker's Compensation insurance . . . ."

Likewise, KRS 198B.060(10)(a) states:

> No permit for building, construction . . . or for any activity related to building, construction, reconstruction . . . shall be issued . . . to any person seeking the permit unless the person shall assure, by affidavit, that all contractors and subcontractors employed, or that will be employed, on activity covered by the permit shall be in compliance with Kentucky requirements for workers' compensation insurance according to KRS Chapter 342 . . .

KRS 198B.060(10)(b) permits fines against any person who fails to comply with the assurances required under section (a).

Hulker submitted various documents including copies of his 2010 and 2011 state and federal taxes, homeowner's insurance policy, loan application and supporting documentation, appraisal report, mortgage and cashier checks, and the zoning and building permits. He also included copies of two invoices from Ed Hudson & Son Plumbing dated January 11, 2011 and April 29, 2011 indicating Hulker paid them by check on January 14, 2011 and March 1, 2011, as well as by cash, for "rough in plumbing" and "extras."

The ALJ summarized, in relevant part, the evidence in his October 26, 2012 Opinion and Order as follows:

> **SECTION IV – SUMMARY OF EVIDENCE**
>
> The plaintiff gave a deposition and testified at the hearing. The defendant Hulker also gave a deposition and testified at the hearing. The plaintiff filed the following evidence: Reports of Dr. Steven Grupke, report of Dr. Jerold Friesen, plaintiff's deposition and wage record with affidavit. The defendants filed the following evidence: Deposition of plaintiff, records of Mercer Co. Bldg. Inspector's Office, KRS 198B.060, all pleadings filed by UEF, plaintiff depo and testimony, defendant's deposition and testimony, motion for summary judgment and affidavit of defendant.
>
> The Administrative Law Judge has carefully reviewed and considered the above evidence.
>
> The plaintiff **Eddie Hudson** testified that on May 17, 2011 he fell off a roof and sustained injuries. The plaintiff testified that at the time of his work injuries he was an employee of the defendant Ed Hudson dba Ed Hudson & Son Plumbing. The plaintiff filed as exhibits to his deposition W-2 forms showing that Ed Hudson dba Ed Hudson & Son Plumbing withheld from his wages. The record shows that the defendant Ed Hudson dba Ed Hudson & Son Plumbing had workers' compensation insurance coverage before the plaintiff's accident, but cancelled that coverage before his accident. The plaintiff testified that the defendant Ed Hudson dba Ed Hudson & Son Plumbing provided materials and directions for his work

> and that he performed physical labor and received hourly wages.
>
> . . . .
>
> **Eddie Hulker, Jr.** testified that the plaintiff fell from the roof of a house on real property which he owned. He further testified that he was not in the contracting or construction business.

The ALJ made the following findings of fact and conclusions of law regarding "employment relationship" and "KRS 342.610(2) issues":

> **A. Employment relationship.**
>
> I saw and heard the plaintiff testify and found him to be a credible and convincing witness. Based on the plaintiff's testimony and the decision of the Kentucky Supreme Court in *Uninsured Employers' Fund v. Garland*, 805 S.W.2d 116 (Ky.1991), I make the factual determination that at the time and place of the plaintiff's accident on May 17, 2011 he was an employee of the defendant Ed Hudson dba Ed Hudson & Son Plumbing.
>
> **E. KRS 342.610(2) issues.**
>
> Based on the credible and convincing testimony of the defendant Eddie Hulker and the ruling case law contained in the decision of the Kentucky Supreme Court in *Daniels vs. Louisville Gas and Electric Company*, 933 S.W.2d 821 (Ky.1996), I make the factual determination that the defendant Eddie Hulker was not a "contractor" under KRS 342.610(2), since the work being performed on his house was not of a

> kind which is a regular or precurrent (sic) part of his trade, business, occupation or profession. It is uncontradicted that at the time of the plaintiff's work on Mr. Hulker's real property Mr. Hulker was employed full-time as a prison guard at Northpoint Training Center.

The ALJ found due to his May 17, 2011 injuries, Hudson sustained a whole person impairment of 26% and lacks the physical capacity to return to work. The ALJ found Hudson to be permanently and totally disabled and determined his average weekly wage to be $363.47. Under the "Order and Award" section, the ALJ awarded PTD benefits and medical benefits to be paid by the UEF, and dismissed Hulker as a party.

Both Hudson and the UEF filed petitions for reconsideration. Hudson requested the Order and Award section be amended by substituting Ed Hudson & Son Plumbing in place of the UEF as the liable party, citing to KRS 342.760 and 803 KAR 25:010(25). Hudson also requested, although he made the proper finding, the ALJ set forth the "basic facts upon which the ALJ relied in concluding that the Plaintiff was an employee of Ed Hudson dba Ed Hudson & Son Plumbing."

The UEF also filed a petition for reconsideration requesting the decision be amended to comply with KRS

342.760 and 803 KAR 25:010(25). The UEF requested the ALJ make additional findings of fact regarding the average weekly wage calculation and the determination he is permanently and totally disabled.

The UEF also made the following request:

> The UEF respectfully requests the ALJ to make additional findings of fact with regard to the employment relationship between the Plaintiff, Eddie Hudson and the Defendant, Ed Hudson, d/b/a Ed Hudson & Son Plumbing.

With regard to the employment relationship between Hudson and Ed Hudson & Son Plumbing, the UEF requested the ALJ specifically address numerous portions of testimony provided by Hudson at the deposition and hearing, as well as the evidence it submitted from the U.S. Bureau of Labor Statistics.

In addition, the UEF requested the following:

> The UEF respectfully requests the ALJ to make additional findings of fact regarding Defendant Hulkers' status under KRS 342.610, KRS 342.700 and KRS 198B.060(10)(b) and whether Defendant, Eddie Hulker, Jr.'s status under those statutes required his compliance with those obligations and/or requirements and whether he, if fact, complied with the obligations and requirements.

The UEF noted the ALJ's decision failed to address the issues raised under KRS 342.610(5), KRS 342.700 and KRS 198B.060(10)(b). With regard to up-the-ladder liability of

Hulker, the UEF specifically requested the ALJ address numerous portions of testimony provided by Hudson and Hulker, as well as the zoning and building permits.

In the November 28, 2012 Opinion and Order on Reconsideration, the ALJ stated as follows:

> 2. Plaintiff's Petition for Reconsideration is granted and sustained to the extent that the Order and Award contained in the Opinion and Order dated October 26, 2012 is amended so as to substitute Ed Hudson, dba Ed Hudson & Son Plumbing in lieu of the Uninsured Employers' Fund, with the provision that if the uninsured employer defaults on payment of the compensation benefits ordered for more than 30 days, then the plaintiff's remedy shall be against the Uninsured Employers' Fund.
>
> 3. In Ford Furniture Company v. Claywell, 473 S.W.2d 821 (Ky.1971), Kentucky's highest court held that KRS 342.281 limits the reviewing court to the correction of errors patently appearing on the face of the award, order or decision. There are no other patent errors in the Opinion and Order dated October 26, 2012 and the remainder of the two Petitions for Reconsideration are attempts to reargue the case.
>
> 4. In rendering a decision, KRS 342.285 grants the ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. AK Steel Corp. v. Adkins, 253 S.W.3d 59 (Ky.2008). An ALJ may draw reasonable inferences from the evidence, 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. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky.1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky.1977). Although a party may note evidence supporting a different outcome than reached by the ALJ, such evidence 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 weight and credibility or by noting reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky.1999). It is well established, whether on reopening or at the time of an original proceeding, an ALJ is vested with wide ranging discretion. Colwell v. Dresser Instrument Div., 217 S.W.3d 213 (Ky.2006); Seventh Street Road Tobacco Warehouse v. Stillwell, 550 S.W.2d 469 (Ky.1976).
>
> 5. The Opinion and Order dated October 26, 2012 discussed all of the issues raised by the parties and adjudicated the issues. With the exception of the amendment recited hereinabove, the Opinion and Order dated October 26, 2012 is reaffirmed.

On appeal, the UEF argues the ALJ erred by making the factual determinations Hudson was an employee of Ed Hudson & Son Plumbing and in finding Hulker was not a contractor pursuant to KRS 342.610(2). The UEF asserts the two issues are questions of law, citing to Uninsured

Employers' Fund v. Garland, 805 S.W.2d 116 (Ky. 1991), since the facts of the case are substantially undisputed.

The UEF argues the ALJ "failed to analyze the facts under the proper legal standard as promulgated by the Board" in David Rucker v. Wayne Beckley, supra, in determining whether an employment or partnership relationship existed between Hudson and Ed Hudson & Son Plumbing. The UEF notes the Board in Rucker considered the following factors from Ratliff v Redmon, 396 S.W.2d 320 (Ky. 1965), most important in distinguishing between employment and partnership: (a) the extent of control that one party exercises over the work or another; (b) the skill required in a particular work performed by the alleged employee; (c) the method of payment, that is, whether the alleged employee participates in the profits and/or losses of the enterprise; and (d) the intent of the parties in creating the relationship. The UEF argued, applying the Rucker factors to the undisputed testimony and evidence, "it is clear that the ALJ Rudloff's decision is unsupported by substantial evidence."

The UEF argues the ALJ "misapplied the legal standard outlined by KRS 342.610 to the facts of the case." It asserts the ALJ erred in finding Hulker was not a contractor pursuant to KRS 342.610(2), since the work being

performed on his house was not of a kind which is a regular or recurrent part of his trade, business, occupation or profession. The UEF asserts KRS 342.610(2)(a) and (b) do not limit the definition of a contractor to only those activities outlined in subparagraphs (a) and (b), but merely identify other people who are also deemed contractors under the statute. The UEF argues a party who identifies himself as a "contractor" and "who subcontracts all or any part of a contract" is a contractor. The UEF asserts Hulker identified himself as the contractor in the zoning and building permits, subjecting to liability as a matter of law.

The UEF argues the ALJ misapplied the proper legal standard by failing to consider the legal effect of Hulker's failure to claim an exemption pursuant to KRS 342.610(5). It states, pursuant to KRS 198B.060(10), Hulker signed the affirmation section of the building permit ensuring all contractors and subcontractors would comply with the Kentucky Workers' Compensation requirements in KRS 342. Hulker failed to assert an exemption to this requirement permitted by KRS 342.610(5). Therefore, the UEF argues "Hulker's self-identification as the project's contractor, his voluntary assurance to authorities that he would comply with the statute, and, the fact that he failed

to assert any exemption under KRS 342.610(5), renders him subject to up-the-ladder liability as a matter of law."

Finally the UEF argues the ALJ failed to apply the proper legal standard pursuant to KRS 342.700(2). The UEF asserts the above referenced statute renders Hulker liable as a matter of law since he held himself out as the "principle contractor" through his actions and admissions.

In rendering a decision, KRS 342.285 grants the ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. AK Steel Corp. v. Adkins, 253 S.W.3d 59 (Ky. 2008). An ALJ may draw reasonable inferences from the evidence, 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. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977). Although a party may note evidence supporting a different outcome than reached by the ALJ, such evidence 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 weight and credibility or by noting

reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). It is well established, an ALJ is vested with wide ranging discretion. Colwell v. Dresser Instrument Div., 217 S.W.3d 213 (Ky. 2006); Seventh Street Road Tobacco Warehouse v. Stillwell, 550 S.W.2d 469 (Ky. 1976). So long as the ALJ's rulings are reasonable under the evidence, they may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

Though the ALJ as fact-finder is vested with wide ranging discretion, he must provide a sufficient basis to support his determination. Cornett v. Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991). Parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). This ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result. However, he must adequately set forth the basic facts upon which the ultimate conclusion was drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Community Action Program v.

Chafins, 502 S.W.2d 526 (Ky. 1973). We also find instructive the holding of the Kentucky Supreme Court in New Directions Housing Authority v. Walker, 149 S.W.3d 354, 358 (Ky. 2004), where the Kentucky Supreme Court remanded the claim to the ALJ "for further consideration, for an exercise of discretion, and for an explanation that will permit a meaningful review."

This appeal centers on the relationship between Hudson and Ed Hudson & Son Plumbing. The UEF asserts a partnership existed between Hudson and his father, while Hudson insists he was merely an employee paid by the hour. A partner is not an employee of a partnership entitled to coverage under the Act, unless he elects to be covered by acquiring workers' compensation insurance. KRS 342.012(1); Wallins Creek Lumber Co. v. Blanton, 15 S.W.2d 465 (Ky. 1929). Hudson had no such coverage.

The Kentucky Courts have outlined and refined a factor balancing test in determining whether a worker is an employee or independent contractor. *See* Ratliff v Redmon, supra; Chambers v. Wooten's IGA Foodliner, 436 S.W.2d 265 (Ky. App. 1969); Uninsured Employers' Fund v. Garland, supra. However, the Courts have not outlined a similar test in determining whether a claimant is an employee or partner. Rather, KRS 362.175 defines partnership as "an

association of two (2) or more persons to carry on as co-owners a business for profit . . . ." In determining whether a partnership exists, KRS 362.180(4) states in part:

> The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:
>
> (a) As a debt by installments or otherwise,
>
> (b) As wages of an employee or rent to a landlord.

In David Rucker v. Wayne Beckley, Claim Number 1998-01188, rendered September 17, 1999, this Board addressed whether the ALJ erred in finding a partnership, rather than an employment relationship, between Rucker and Beckley. The Board first noted as follows:

> We do not believe that the ALJ has committed an error of law; however, we do feel that in this situation, Ratliff v. Redmon, Ky., 396 S.W.2d 320 (1965), and UEF v. Poyner, supra, are only of limited application. Those two cases outline the rules for distinguishing between an employment relationship and an independent contractor relationship. Here, we are concerned with distinguishing between an employment relationship and a partnership.

After citing to the above statutes pertaining to partnerships, the Board determined the following factors were most relevant in distinguishing between employment and partnership:

> We may, therefore, refer to Ratliff v. Redmon, supra, solely for the purpose of determining whether the association between Beckley and Rucker have the characteristics of an "employment" relationship.
>
> . . . .
>
> We believe some of the factors identified in Ratliff, supra, are not particularly applicable when attempting to distinguish between employment and partnership. Whether or not the one employed is engaged in a distinct occupation or business has no real weight in such a determination since partnerships are often, if not usually, composed of individuals in the same occupation or business. Likewise, whether the work is part of a regular business of an individual would seem to have no relevance with regard to partnership. A partnership ordinarily involves a community of interest in the business and an agreement to share profits and possibly losses. Hardymon v. Glenn, 56 Fed. Supp. 269 (DC Ky. 1944). Thus, for purposes of distinguishing between employment and partnership, the following factors from Ratliff, supra, would seem to be most important: (a) the extent of control that one party exercises over the work or another; (b) the skill required in a particular work performed by the alleged employee; (c) the method of payment, that is, whether the alleged employee participates in the profits and/or losses of the enterprise; and

> (d) the intent of the parties in creating the relationship.

In the case *sub judice*, both the ALJ's opinion and order, and order on reconsideration fall short of outlining the basic facts relied upon in reaching the ultimate conclusion Hudson was an employee at the time of the May 17, 2011 accident. This is especially true in light of the fact both parties specifically requested additional findings of fact supporting the ALJ's determination Hudson was an employee of Ed Hudson & Son Plumbing.

On remand, the ALJ must conduct a thorough analysis and explanation consistent with this opinion. The ALJ must identify the factors he weighed in determining Hudson was an employee, rather than a partner, at the time of the May 17, 2011 accident. Likewise, pursuant to each factor, the ALJ must identify the evidence in the record upon which he relies in support of his decision. We direct no particular result. However, the ALJ must provide the basis for his decision.

With regard to up-the-ladder liability, we find the ALJ did not err finding Hulker was not a contractor pursuant to KRS 342.610(2). KRS 342.610(2) provides in pertinent part as follows:

> (2) A contractor who subcontracts all or any part of a contract and his carrier shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured the payment of compensation as provided for in this chapter. Any contractor or his carrier who shall become liable for such compensation may recover the amount of such compensation paid and necessary expenses from the subcontractor primarily liable therefor. A person who contracts with another:
>
> > (a) To have work performed consisting of the removal, excavation, or drilling of soil, rock, or mineral, or the cutting or removal of timber from land; or
> >
> > (b) To have work performed of a kind which is a regular or recurrent part of the work of the trade, business, occupation, or profession of such person shall for the purposes of this section be deemed a contractor, and such other person a subcontractor. This subsection shall not apply to the owner or lessee of land principally used for agriculture.

The Kentucky Court of Appeals in Tom Ballard Co. v. Blevins, 614 S.W.2d 247, 249 (Ky. App. 1980) explained:

> KRS 342.610(2) was enacted to discourage owners and contractors from hiring financially irresponsible subcontractors and thus eliminate workmen's compensation liability. Elkhorn-Hazard Coal Land Corp. v. Taylor, Ky., 539 S.W.2d 101 (1976). It accomplishes this purpose by imposing

> liability upon a contractor for compensation to the employees of a subcontractor unless the subcontractor has provided for the payment. In addition the statute provides that certain persons who would not otherwise be contractors shall be “deemed” to be contractors for the purpose of the act. These “deemed” contractors include a person who contracts with another (a) to have work performed consisting of the removal of minerals and (b) to have work performed of a kind which is a regular or recurrent part of the business of such person.
>
> *See also* Fireman’s Fund Ins. v. Sherman & Fletcher, 705 S.W.2d 459 (Ky. 1986).

The question of whether a particular contractual relationship satisfies KRS 342.610 requires a case-by-case analysis. The analysis must include an examination as to the specific relationship between the alleged contractor and subcontractor and determining whether, pursuant to that statute, the alleged subcontractor has performed work "of a kind which is a regular or recurrent part of the work of the trade, business, occupation, or profession of the contractor." General Electric Co. v. Cain, 236 S.W.3d 579, 585 (Ky. 2007).

In Cain 236 S.W.3d at 588, the Kentucky Supreme Court instructed factors relevant to making the determination include the contracting business's "nature, size, and scope as well as whether it is equipped with the

skilled manpower and tools to handle the task the independent contractor is hired to perform." Even if an alleged contractor may never perform the job the subcontractor is hired to do with its own employees, it is still a contractor under KRS 342.610(2)(b) if the job is one that is usually a regular or recurrent part of its trade or occupation. *See* Fireman's Fund Ins. Co. v. Sherman & Fletcher, supra.

Although providing a *de minimis* analysis, we do not find the ALJ erred in determining Hulker was not a contractor pursuant to KRS 342.610(2). Hulker testified he has been employed by the Department of Corrections as a corrections officer for the past eight years. He further explained he has no prior experience or training in building, construction or the like. Hulker testified he wanted to build a residence on property he had owned for many years. He hired several companies or individuals to complete this task including Ed Hudson & Son Plumbing to install the plumbing. Hulker testified he did not oversee or direct the work performed by Ed Hudson & Son Plumbing since he was elsewhere working full time as a corrections officer.

Hulker’s testimony constitutes substantial evidence supporting the ALJ’s determination he was not a

contractor with up-the-ladder liability under KRS 342.610(2). His testimony establishes plumbing is not the kind of work which is a regular or recurrent part of his trade, business, occupation, or profession. Rather, his testimony establishes he was a property owner having his home built while employed full time as a corrections officer.

We acknowledge conflicting evidence exists in the record regarding whether Hulker is a contractor. As argued by the UEF, Hulker identified himself as the property owner and contractor in the October 27, 2010 zoning permit form. Likewise, he assured all contractors and subcontractors employed would be in compliance with the requirements of the Workers' Compensation Act in the October 27, 2010 building permit form. Hulker failed to assert an exemption to this requirement permitted by KRS 342.610(5). However, we believe the above-referenced evidence does not render Hulker subject to up-the-ladder liability as a matter of law. While the UEF noted evidence supporting a different outcome than reached by the ALJ, such evidence is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., supra. The ALJ properly considered and weighed all the evidence in the record and the Board may not superimpose its own. Whittaker v. Rowland, supra.

Accordingly, the Opinion and Order rendered October 26, 2012 by Hon. William J. Rudloff, Administrative Law Judge, and the November 28, 2012 Opinion and Order on Reconsideration are hereby **AFFIRMED IN PART, VACATED IN PART, AND REMANDED** to the ALJ for entry of an amended opinion, order and award in conformity with the views expressed herein.

STIVERS, MEMBER, CONCURS.

SMITH, MEMBER, NOT SITTING.

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