Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 30, 2021

CLAIM NO. 201901189

RALPH JONES PETITIONER

VS. **APPEAL FROM HON. THOMAS G. POLITES, ADMINISTRATIVE LAW JUDGE**

FRANKLIN COUNTY JAIL AND
HON. THOMAS G. POLITES,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

*** * * * * ***

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

BORDERS, Member. Ralph Jones ("Jones") appeals from the December 16, 2020 Opinion and Order and the January 21, 2021 Order rendered by Hon. Thomas G. Polites, Administrative Law Judge ("ALJ"). The ALJ dismissed his claim upon finding an employment relationship did not exist on the date of the work accident.

On appeal, Jones argues the ALJ erred in finding an employer/employee relationship between the parties did not exist. Finding no error, we affirm.

Jones filed his claim against the Franklin County Regional Jail ("Franklin County") on September 30, 2019, alleging injuries to his shoulder and low back caused by an October 5, 2017 truck accident. The claim was bifurcated on the threshold issue of whether Jones was employed by Franklin County at the time of the incident. The hearing was waived and the matter was submitted for a decision on the record.

Jones testified by deposition on December 11, 2019. Jones was initially incarcerated for a Class D felony in March of 2017. After sentencing, he was incarcerated in Lexington, Kentucky for three months, then placed in a program in Shelbyville, Kentucky. After leaving the Shelbyville program, he was transferred to Franklin County where he was incarcerated at the time of his injury. At Franklin County, he participated in a work program, receiving 63 cents per day and a one-day reduction in his sentence for each week he worked. He acknowledged his pay came from the Commonwealth and not from Franklin County. On the day of his accident he was riding on the back of a garbage truck when it scraped against a brick encased mailbox and he jumped off "after being banged up." Jones stated a supervisor or representative from the jail was with him when he worked.

Lt. Laura Smith, Director of Administration at the Franklin County Regional Jail, testified by deposition on February 10, 2020. She is responsible for human resources. She stated Jones was sentenced by the Department of Corrections ("DOC") who paid Franklin County to house him. The DOC sets the salary for

participants in the governmental services program. Jones worked on a garbage truck for the City of Frankfort through the DOC governmental services program. The DOC pays the jail for the inmate labor, and the amounts are deposited to the commissary accounts of the inmates.

The ALJ's findings relevant to this appeal are as follows:

> The initial determination to be made in this claim is whether there was an employment relationship between the Plaintiff and the Defendant on the alleged day of injury as it is not contested by the parties that Plaintiff was an inmate at the Franklin County Regional Jail at that time. Plaintiff argues that while KRS 197.047 states that prisoners that participate in governmental service programs shall not be deemed an employee for whom they perform work, this statute is in contravention to KRS 342.640 which deems Plaintiff to be an employee as he was not specifically excluded nor did he waive his rights under the Act. The Defendant argues to the contrary that KRS 197.047 precludes a finding that Plaintiff was an employee and therefore his claim should be dismissed.
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> Having reviewed and considered the testimony in regard to the contested issue herein, the ALJ finds that whether a prisoner who is performing work in a work release program for a reduction in sentence and nominal pay is an employee of the entity to whom he is working insofar as the Kentucky Worker's Compensation Act is concerned, is an issue that has been decided previously by the Kentucky Supreme Court in Commonwealth Department of Education v. Smith, 759 S.W. 3d 56 (Ky. 1988). In that case the Court held that regardless of where a prisoner performs work in such a program, he cannot contract with the Commonwealth or the entity for whom he is working for the use of his services or the terms under which he works and as such, a contract for hire cannot exist between the prisoner and said entity and therefore there can be no employer–employee relationship as same requires a contract for hire. As such, pursuant to the holding of the Supreme Court in Smith, a prisoner such as Plaintiff herein cannot be considered an employee and as such he cannot be entitled to workers compensation benefits as same are reserved for employees only. As such, Plaintiff's claim is hereby dismissed as there was no employment relationship between Plaintiff and the Defendant herein.

Jones filed a Petition for Reconsideration arguing the ALJ erred as a matter of law in finding there was no employer/employee relationship on the alleged

date of injury. Jones requested additional findings of fact, including that he sustained a work-related injury. By order dated January 21, 2021, the ALJ overruled the Petition for Reconsideration as a re-argument of the merits.

On appeal, Jones argues the ALJ erred in failing to find an employer/ employee relationship. Jones concedes KRS 197.047(4) states "participation in Governmental Services Program related projects shall not be deemed employment for any purpose, and a prisoner shall not be deemed an employee or agent of the entity for which he or she performs the community service work." Jones argues KRS 197.047(4) is in direct contravention of KRS 342.640 concerning coverage of employees. Jones argues KRS 342.640 Sections (1)(3)&(4) are applicable to his claim. He argues he is not excluded in any of the examples set out in KRS 342.650, nor is there any evidence that he signed any type of waiver of his right to be deemed an employee. For these reasons and because there is a conflict between the two statutes, Jones argues he should be deemed to be an employee. Jones attempts to distinguish Commonwealth Department of Education v. Smith, 759 S.W. 3d 56 (Ky. 1988) from this case.

In Smith, the Court stated no provision had yet been made to allow workers' compensation benefits to a prisoner for a disability incurred while working in the prisons or for an agency of the Commonwealth. Jones contends it is unclear exactly who the putative employee was working for, a public or a private entity, and whether or not it was part of the Commonwealth of Kentucky. Jones was transported to another entity and worked under another's authority. His duties were controlled by that employer rather than the Commonwealth of Kentucky. He

contends he should be compensated for occupational disability from an injury occurring during voluntary employment outside the facility of incarceration. At a minimum, Jones argues he should have been awarded benefits suspended during the period of his continued incarceration and reinstated upon release.

As the claimant in a workers' compensation proceeding, Jones had the burden of proving each of the essential elements of his cause of action, including establishing that an employer/employee relationship existed. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because he 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) *superseded by statute on other grounds as stated in* Haddock v. Hopkinsville Coating Corp., 62 S.W.3d 387 (Ky. 2001).

It is uncontroverted that, at the time of his accident, Jones was an inmate under the control of the DOC and housed at the Franklin County Regional Jail. Jones does not dispute that he was participating in the governmental services program in order to receive a reduction in his sentence. In Tackett v. La Grange Penitentiary, 524 S.W.2d 468 (Ky. 1975), the Supreme Court after reviewing the provisions of KRS 342.640(1) and (3) determined as follows:

> KRS 197.070(1) commands the Department of Corrections to provide employment for all prisoners in the penitentiaries and to exhaust every resource at its command to provide employment for all prisoners in its custody. We do not construe the use of the word 'employment' to mean that prisoners are thereby constituted 'employees' as that word is commonly understood. It is simply a

> direction that the department shall make work available to occupy the time of prisoners rather than to allow them to remain idle.
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> . . .
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> Although KRS 342.004 commands liberal construction of questions of law pertaining to Workmen's Compensation, we cannot read into our present statute any language which would transform a prisoner working inside a prison industry during the term of his confinement into an employee of the state.

Id. at 469.

In Com., Dept. of Educ., Div. of Surplus Properties v. Smith, 759 S.W.2d 56 (Ky. 1988), the Supreme Court further clarified as follows:

> It matters not that at the time of his injuries Smith was working outside the prison walls, nor that he was not guarded by prison guards. He was a prisoner of the state working for an agency of the state under the supervision and control of agencies of the state, and regardless where the work was performed, he, as a prisoner of the Commonwealth, could not contract with the Commonwealth for the use of his services or the terms under which he worked.
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> . . .
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> A prisoner of the Commonwealth, even though he performs some work for the Commonwealth, is simply not an employee of the Commonwealth under the statutes as they presently exist.

Id. at 57-58.

KRS 342.640(1) and (3) require the work be performed under a contract of hire. Thus, Jones cannot be deemed an employee under the clear language of KRS 342.640(1) and (3).

We disagree with Jones's contention that KRS 197.047(4) is inapplicable to his claim because it conflicts with KRS 342.640. KRS 197.047 indicates a "governmental services program-related project" means a project involving work for the Commonwealth or an agency of the Commonwealth; or a

county, urban-county, charter-county, city, consolidated local government, special district, or an agency of any of these entities. KRS 197.047(4) provides, "Participation in governmental services program-related projects shall not be deemed employment for any purpose, and a prisoner shall not be deemed an employee or agent of the entity for which he or she performs the community service work." An established rule of statutory construction is that where a specific statute and a general statute are potentially applicable to the same subject matter, the specific statute controls. Parts Depot, Inc. v. Beiswenger, 170 S.W.3d 354 (Ky. 2005). The Kentucky courts have held: "One of the established rules of statutory construction is that when two statutes deal with the same subject matter, one in a broad, general way and the other specifically, the specific statute prevails." Land v. Newsome, 614 S.W.2d 948 (Ky. 1981). Here, KRS 197.047, the specific statute dealing with the employer/employee relationship in the governmental services program, is controlling over KRS 342.640, the general statute.

Accordingly, the December 16, 2020 Opinion and Order and the January 21, 2021 Order rendered by Hon. Thomas G. Polites, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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