Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 30, 2021

CLAIM NO. 201901169

ROBERT MARSHALL PETITIONER

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

JAMES BECKUM
UNINSURED EMPLOYERS' FUND
and HON. THOMAS G. POLITES,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

STIVERS, Member. Robert Marshall ("Marshall") seeks review of the January 11, 2021, Opinion, Award, and Order of Hon. Thomas G. Polites, Administrative Law Judge ("ALJ") finding James Beckum ("Beckum") was employed by Marshall at the time of his February 21, 2019, work-related right hand injury. The ALJ awarded temporary total disability benefits, permanent partial disability benefits, and medical

benefits. Marshall also appeals from the March 1, 2021, Order overruling his Petition for Reconsideration.

On appeal, Marshall first asserts Beckum did not sustain an injury while working for Marshall Investors, LLP ("Marshall Investors"). Marshall also contends the work performed by Beckum falls within a well-recognized exclusion within the United States that work in the private home for the owner of Marshall Investors cannot be the subject of a workers' compensation claim. Similarly, Marshall insists KRS 342.650(2) exempts Beckum's claim from workers' compensation coverage because Marshall employed him for a period of less than twenty consecutive work days to do maintenance, repair, remodeling, or similar work in or about his private home. Marshall also argues Beckum had no prior work relationship with him individually, and the ALJ erroneously ignored the prior employment relationship between Beckum and Marshall Investors, a separate entity from Marshall. He argues the ALJ erroneously found KRS 342.650(2) inapplicable, because Marshall Investors and Marshall were essentially the same entity.

BACKGROUND

The Form 101 filed September 25, 2019, alleges Beckum was injured on February 21, 2019, while in the course of his employment with Marshall Investors. Beckum asserted as follows: "Plaintiff was working on his employer's deck cutting a board to put on the face of the steps when the table saw slipped causing lacerations to his right hand/fingers."

By Order dated September 26, 2019, Hon. Douglas W. Gott, Chief Administrative Law Judge, joined the Uninsured Employers' Fund ("UEF") as a

party after the Department of Workers' Claims certified Marshall Investors was uninsured on the date of the alleged injury.

There was no dispute Beckum sustained a serious injury to his right hand while operating a saw. As the medical evidence is not relevant to the issue before us, it will not be further discussed.

The UEF introduced Beckum's February 24, 2020, deposition. The deposition reveals Beckum was born June 29, 1982, and had previous experience as a maintenance manager for various entities owning commercial property. Beckum offered the following testimony regarding his meeting with Marshall leading to his employment and the working arrangement:

> Q: And tell me about your first meeting with Mr. Marshall?
>
> A: It was good.
>
> Q: What did you discuss?
>
> A: We discussed working on his property and doing some work with him. He was fixing a house that – or an apartment of his that, I guess, a tree had fell through. And so we was working on it, and we worked side-by-side as far as hanging doors and things like that, replaced a hot water tank in his property, everything like that.
>
> Q: What was your discussion about how much you'd be paid, how you were paid?
>
> A: He told me he would pay me 20 an hour to start out. And then if I would stick with him – we was replacing a hot water tank one night, and I stayed late to help him get it going because there was like three or four apartments. He told me if I'd stick with him and work with him, he'd give me $25 an hour. And he paid me 25 an hour after that.
>
> Q: Did he set a work schedule for you?

A: Just Monday through Friday, 8:00 to 4:30 or 9:00 to 5:00, whatever.

Q: Did you work all those hours?

A: I worked – some of them I didn't. No, I didn't really like work the whole 40 hours. Once – I did like once or twice, maybe, that was about it because I was going through some other stuff as well as the deal of the divorce and things like that so …

Q: So Mr. Marshall worked with you on your schedule and allowed you to take off when you needed?

A: Yes, sir.

Beckum began working for Marshall on January 31, 2019, and worked "maybe a month" before he was injured. He described the work he had performed:

Q: So you would show up in the morning, and he'd have a list of things for you to do, or –

A: Yes, sir. Basically, he'd tell us what we – you know, what we was going to do that day, and we would do it. He worked hands-on with us for a while. And then he would take off between 10:00 12:00, and then he'd come back between 1:00 and 2:00.

Q: You said worked with us; who's that, Charlie?

A: No, me and another guy.

Q: Who's the other guy?

A: Lonnie.

Q: And all of this was maintenance-type work?

A: Yeah, basically finishing an apartment that had been basically remodeled from a tree that fell through it.

Q: Did you feel like you could work for anybody else while you were working for him?

A: If I had to, yeah, if there wasn't any work. You know, if he'd have told me that he didn't have anymore work, then I would leave.

> Q: So there were days when he just didn't need you, Mr. Marshall –
>
> A: I mean, I worked like five days a week. Might not have been eight hours a day. Some days – there was like once or twice, maybe three or four times, I don't remember, but you know, I did mostly work.

During this time, Beckum did not work for anyone else. He detailed the event of February 21, 2019, resulting in the injury to his index, middle, and ring fingers. Surgery was performed by Dr. David Drake at the University of Kentucky Medical Center. Beckum testified he was paid $20.00 an hour and provided Marshall with the hours he worked each week. Marshall paid him by check every Friday. He did not remember the name of the payor listed on the checks he received. He did not receive a tax document such as a 1099 or a W-2 from Marshall. Beckum did not report the money to the IRS. He explained that since he did not receive a 1099 he "didn't know how to file it." Regarding the amount he earned each week, Beckum testified as follows:

> Q: Like do you know on average what you made per week?
>
> A: I know one week I made like a little – like a 1,000 or more one week. And then most of the weeks, it was maybe five to six hundred. So I think one check was like for 500 or something, and another once was for seven something. One was for 1,000. I only worked for maybe a month before the injury.

If he received pay stubs, Beckum did not retain them. He testified Marshall employed him and paid him. Beckum provided the following regarding his working relationship with Marshall:

> Q: Did he tell you what to do all the time?

A: Yes, sir. He'd make a list out for us what to do when he would take a break so …

Q: You said sometimes he'd be working with you?

A: Yeah, he worked with us every day. And then he would take off during the day to go take a nap, and then he would come back before the end of the day, and we would work with each other side by side.

Q: Did he specifically tell you how to do each maintenance job?

A: No. I mean, he'd just tell me what we needed to do, and then we did it, you know, together so …

Most of Beckum's work was performed at investment properties.

Q: When you said that you had worked for two weeks to a month for Mr. Marshall, how much of that time had you been working at some of the investment properties he had in the duplexes and things?

A: I did replace a bathtub in one of his apartments on Euclid Avenue because it was cracked and the water was going into the bottom unit, so I replaced the bathtub there. And then we worked mainly in the apartment that was being remodeled together. I worked at his house with him doing the tile. Before the injury, we laid that tile in his kitchen. And I think – and I don't remember. I know we worked together a lot. Oh, we did work in another unit of property of his over – I don't remember the name of the road, but we worked on another apartment, getting it ready.

Q: Are you talking about the apartment with the tree? Which one is that?

A: No. It was another one. It was – I don't remember the name of the road, but it was off of Euclid Avenue into a subdivision.

Beckum worked for approximately two days at Marshall's residence located at 135 Clay Avenue.

Q: And where you got – yes. How long had you been working at 135 Clay?

A: I think me and him worked there one day. I think we laid the tile one day. And then he sent me and Lonnie back another day, the next day, I believe – that's when the injury happened – to do the – finishing the tile up and stuff like that. And he told me that it needed to be done today because his wife wanted it grouted by tomorrow – or tomorrow so that they could get their kitchen put back together.

Q: And the time you spent at 135 Clay was two days?

A: Two, I think it was two days. I'm not for sure. I'm sorry.

Q: And so at the time you got injured, who all was there at –

A: His wife.

Q: Let me ask one other question before you go on to that. When you say 135 Clay, this is at what he calls the carriage house, his actual home, correct?

A: It's where he lived at the time, yes.

Q: Not the two duplexes that were in front of it? Did you know there were even two duplexes in front of the house?

A: I knew there was one in front on this side. I know his house was the cottage or the – carriage, whatever it was. That was his current home at that time.

Q: So laying the tile in the kitchen was at this carriage house?

A: Yes.

Q: And that's where the injury happened –

A: Yes.

Q: -- was at the carriage house?

A: Uh-huh (Affirmative). Yes, ma'am. I'm sorry.

On the day of the injury, Beckum and the other employee, Lonnie Hanson ("Hanson"), were at the carriage house with Marshall's wife. When the accident occurred, Hanson was downstairs mixing the mortar and Beckum was on the deck at the back of Marshall's house.

Beckum was paid for his work at the carriage house in the same manner he was paid for working on the rental properties. Regarding the days he worked each week, Beckum testified as follows:

> Q: And when you worked for the time on the other properties, was that every day or were there some days you did not work?
>
> A: I mean, we worked mainly at the one; is it Rose Street? There was one on Rose Street that I worked at; one on Euclid; his house. And then there was another one. I don't remember the name of that road. It's like a 12-apartment complex. It was an older building that we worked at as well.
>
> Q: And so were you working every day, or would it be like you'd work a day or two and then –
>
> A: Yes, ma'am.
>
> Q: -- a couple days off?
>
> A: I mean, like I said, I was going through some personal stuff too, and I would take off maybe a day or so, maybe coming in late once or twice, three or four times. I don't remember exactly. But I'd come in late here and there, and then I would work. But I was working at least four to five days a week.

Beckum's first job for Marshall took place on the Rose Street property which they referred to as the "tree house" property. Both he and Hanson along with Marshall worked at this location. Beckum was not considered a maintenance manager or maintenance supervisor for Marshall Investments.

At the November 12, 2020, hearing, Beckum reiterated much of his deposition testimony. He offered the following testimony regarding who he considered his employer:

> Q: All right. Did you ever consider yourself an employee of Marshall Investors?
>
> A: Yes, they're my – an employee of Mr. Marshall and company.
>
> Q: Did you consider that the same? As they were both one employer, is that the way you interpreted it?
>
> A: Yes, sir.
>
> Q: What did you do for Mr. Marshall at Marshall Investors?
>
> A: General work as far as – we did doors and cabinets. Basically remodel and general maintenance and repairs and things like that.
>
> …
>
> Q: Okay. What is the – what kind of business is Mr. Marshall in?
>
> A: Rental property.
>
> Q: The work you did for Mr. Marshall, was that an integral part of his business?
>
> A: I'm sorry. Could you repeat that?
>
> Q: Yes. Is the job you performed for Mr. Marshall integral to his business?
>
> A: Yes.
>
> Q: Now, how did you and Mr. Marshall agree on the $20.00 an hour initially?
>
> A: I told him what I could do and what, you know, I've done and that I've been doing maintenance and construction and stuff. He agreed to – once we talked and everything, he agreed to give me $20.00 an hour and

> then he said, you know, that he was going to see what my work was and how I work and everything like that and that, you know, he would – we would go from there.
>
> Q: Okay. Did you have a set schedule?
>
> A: Monday – yeah. I would ask him when we would come in. You know, each day, to be there by eight o'clock and I would be. We would work and we would leave like – whenever he said it was quitting time.

Beckum worked through mid-March. He was paid each Friday.

Marshall directed him to the location where he was to work and the task or tasks he was to perform. Marshall supervised and worked with him. Beckum could not come and go as he pleased. He was not paid by the job but weekly and based upon the hours worked weekly. He testified his employment was indefinite. Marshall had the authority to hire and fire. Beckum believed he was an employee and not an independent contractor. He reiterated that he did not receive a 1099 or a W-2.

Beckum estimated he worked on two or three occasions for Marshall after his injury. Marshall terminated his employment and hired someone else because Beckum was unable to perform the work using one hand. Beckum later began working of RJJC Investments as a maintenance manager earning $18.00 an hour. Marshall paid him $100.00 two or three different times after the injury. He paid $300.00 toward a debt Beckum incurred to purchase a vehicle. Beckum was always paid by check bearing the same name. He believed Marshall Investors was listed as payor on the check. On one or two occasions after the injury, he received a check drawn on Marshall's personal account.

Prior to February 20, 2019, Beckum had not worked at Marshall's residence. He believed they were to install tile in the kitchen at the carriage house and then go to the tree house on Rose Street or another location. There were approximately three or four projects ongoing at the time he was injured. He and Hanson were to finish laying the kitchen tile because Marshall had a bad knee. The carriage house where Beckum was working was not one of Marshall's rental properties. Beckum elaborated further regarding the days he worked weekly for Marshall.

> A: Five days a week. Maybe four-and-a-half days. I mean, I only worked for him for right at a month. So I know I had – there was a few days that I did work five full days and sometimes late and then there was days I wouldn't work but maybe four days, four-and-a-half.
>
> Q: Were there some days of the week that you didn't have any work to do or that he didn't have any work during that time?
>
> A: No, because he had steady – he had like three or four projects he was taking on at one time between his rental property and everything else.
>
> Q: When you worked those days, do you believe you worked eight hours or was it more like three or four?
>
> A: It depended on when he said – what time he said to come in and then what time he would decide to go home.
>
> Q: Were there days that you worked three or four hours?
>
> A: Yeah, there were some days we worked three or four hours and some days we worked eight, I mean, depending on what he said.
>
> Q: All the time that you said you worked there, you only worked two days at his personal residence?
>
> A: Yes.

Beckum believed he was paid for the flooring work he performed at the carriage house. Regarding the total amount of money he received from January 31, 2019, through the date of injury, he testified as follows:

> Q: How much money did you receive from Mr. Marshall or Marshall Investors from January 31st until the day of your injury?
>
> A: I don't remember the exact amount. But it was – from the day I started working for him until the day of the injury, correct?
>
> Q: Yes, sir.
>
> A: I think I made – I really couldn't tell you, sir, honestly. I know it was probably right at $2,000.00 or a little bit over.
>
> Q: About $2,000.00?
>
> A: Yeah, a little bit more. I don't remember. I'm sorry.
>
> Q: And you were paid how much an hour?
>
> A: $25.00 an hour.
>
> Q: Well, if you worked for $25.00 an hour – you made $25.00 an hour and you were paid $2,000.00, that would only be 80 hours of work.
>
> A: I worked for him from about – from January 31st until – basically full time until February the 21st, when the accident happened. Then I worked for him like maybe two or three times after that which wasn't but, you know, a-hit-or-a-miss day because I was injured.
>
> Q: I understand that. I'm not questioning about not getting any money after you were injured. If you were working 40 hours a week, you would be getting $1,000.00 a week. If you worked there for four weeks, as you said, you would have made $4,000.00.
>
> A: Okay. Then it was – I guess – them I wouldn't – there was some weeks that I didn't work 40 hours a week.

> Q: There are some days maybe you didn't work every day of the week?
>
> A: Yeah, because I had personal, other problems, too.
>
> Q: So there were some days that, even though Mr. Marshall had work available, you didn't work because you had things that you needed to taken [sic] care of?
>
> A: Yes, that and then there was some days that he had stuff that he had to take care of, too.
>
> Q: So you were available to work some days but, as it turns out, you didn't five days a week for each of the four weeks because of things you might have had and things he might have had as well?
>
> A: Yeah.

Beckum explained that rental units were also located on the 135 Clay Avenue property. Shortly after the accident, Marshall moved to a house on Tates Creek Road, in Lexington, which he had "reconstructed." Beckum understood Marshall was renovating the carriage house so it could be rented. He only worked on property owned by Marshall. During the entire time he worked for Marshall, including the date of the accident, Marshall resided at 135 Clay Avenue. Beckum was unsure how long the Marshalls resided at 135 Clay Avenue after the accident. However, during his employment, the Clay Avenue property was also Marshall's business address. On this, he testified as follows:

> Q: But as far as you knew on the day that you did the work in January or February of 2019, Mr. Marshall and his wife were living at that address at 135 Clay Avenue, right?
>
> A: Yes, sir. And I understand that's where they were running their business out of, too.
>
> …

> Q: You keep wanting to tell me they were running their business there because you think it's important that he was doing business; is that correct?
>
> A: I mean, I don't know. That's where – as far as I can remember that was the address that the check was coming from.
>
> Q: Except for the ones that you got on his personal account sometime after the accident?
>
> A: And I believe they had the same address.
>
> Q: Right. So he had an address for his business at the same place where he lived; is that right?
>
> A: As far as I can remember.

The UEF also introduced Marshall's February 24, 2020, deposition. He testified Marshall Investors is a "C corporation" owning approximately ten real estate rental properties. His home is located at 135 Clay Avenue. The front part of the lot has a duplex with two rental units. In 1990, he built the carriage house where he and his wife lived on the back of the property. Marshall was unsure of the location Beckum first worked after being hired. He explained:

> Q: And what was the nature of that initial contact with Jimmy?
>
> A: I have problems with my knees, and I could not get down to finish my flooring up in my house. So he came in to help me finish the floor up.
>
> Q: You say at your house, that's in the carriage house behind 135 Clay Avenue?
>
> A: That's correct.
>
> Q: And what was being done with the floors?
>
> A: It was only half finished, and he finished putting down the tile.
>
> Q: Okay, you were tiling a room in that house?

A: Yes, the kitchen.

Q: Did Charlie recommend Jimmy to you for tile work?

…

Q: So when Charlie told you Jimmy needed a job, was that a long time before you hired him to do any flooring work in your personal residence?

A: I would assume it would be within a week.

Q: So was that the first job he did for you since you met him?

A: I honestly don't remember.

Q: Had you put down the initial flooring? You said he was helping finish up.

A: Yes. I –

Q: Go ahead.

A: My knee gave out on me.

Q: How much flooring was left to do when he started?

A: 120 square feet.

Q: In your experience as you had done some flooring before, how long would that typically take to finish up 120 square feet of flooring?

A: Two to three days because you have lots of cuts around cabinets and everything.

Q: Did you pay Mr. Beckum by the job he did for you, or did you just – I mean, like say you had him replace a window or do some odd jobs, did you pay him in particular for that job when he finished that particular job, or did you have him on any sort of salary?

A: I paid him $25.00 an hour. Most things we did it's – you know, maybe it's a door lock. It's hard to give somebody a price. He just goes over there and fixes it for me and sends me a bill.

> Q: Do you remember what the bill said? Was this an invoice?
>
> A: He verbally would just tell me how much I owed him.
>
> Q: But he never sent you a written invoice?
>
> A: No.

Marshall did not provide Beckum with a 1099 or a W-2. He provided the following testimony concerning the mode of payment and the name of the payor on the checks written to Beckum:

> Q: How did you pay Jimmy: Did you give him a 1099 or a W-2 or cash or …
>
> A: No. I think it was out of the rental.
>
> Q: Do those checks have Marshall Investors LP as the payor?
>
> A: No.
>
> Q: What did they have on the checks; what do they have on the checks?
>
> A: I think B.L. Marshall Rental Account.
>
> Q: What is B.L. Marshall?
>
> A: Back when I was born, I was named after my doctor which his name was Bobby. And then I used the initials B.L. for many years. And then after my mom passed away, I changed my name to Robert.
>
> Q: So B.L. Marshall, was the account – is that a personal account?
>
> A: That's correct.
>
> …
>
> Q: Sure. Did you give him any sort of tax documents or anything like that?

A: No, I did not.

Marshall supervised the tile work performed at the house and provided all the tools and equipment. He was not present the entire time the tile was being laid. Although he told Beckum when to begin work, Beckum never showed up on time and left early due to personal problems. Beckum had not yet completed the tile work when he was injured. At the time Beckum was injured, Marshall was in the other room. He testified he took Beckum to the hospital. Marshall denied being a contractor on February 21, 2019. Beckum never returned to work after the injury. Marshall provided the following regarding the locations and times Beckum worked:

> Q: Can you estimate, and I know it's probably difficult for you to give a specific answer to this question, but how many other jobs he did for you at your rental properties?
>
> A: No, I don't.
>
> Q: How much time do you think you – I mean, over how many years, months, days did you hire him for various work?
>
> A: Let me describe it in hours because –
>
> …
>
> A: -- his day – my day is eight hours. His day would be two to four hours. So I'd say over a three-week period, he would work 30 hours.
>
> Q: That wasn't every day or it was every day?
>
> A: No, that was 10 hours per week.
>
> Q: Ten hours per week. So he would show up at your properties for two hours every day; is that correct?
>
> A: Yes. He would show up till he needed to leave.

In addition to the work he performed at the carriage house, Beckum worked at two or three other properties. Beckum was to receive $25.00 per hour for his work. Marshall was unable to recall the work Beckum performed at the other properties. Beckum did not perform carpentry, plumbing, electrical, or heating/air conditioning work. He characterized the nature of his work as follows:

> Q: So what were you actually asking him to do on your property then?
>
> A: Fix – like fixing a doorknob or a window might not open.
>
> Q: Were those things that required specific skills of an expert to do, or were those something that any laborer could do?
>
> A: Any laborer could do.
>
> Q: So he wasn't an expert in any of these areas that you hired him to perform?
>
> A: No.

Marshall testified Marshall Investors does not own the property at 135 Clay Avenue. He and his wife own the duplex in front of the carriage house. Usually Marshall performs all of the work on the carriage house. He did not have a separate maintenance person. He explained why Beckum was to finish laying the kitchen tile:

> Q: And then tell me what happened that caused you not to be able to finish that.
>
> A: My knee gave out, and I wasn't able to get on the floor, and I ended up having a knee replacement.
>
> Q: And when did you have that knee replacement?
>
> A: November, approximately.
>
> Q: Of what year?
>
> A: Of last year?

Q: So 2019?

A: Yes.

Q: And when did it happen that Mr. Beckum was injured at the carriage house? Do you know what month that was?

A: I don't have the exact date.

Q: Would that have been before or after your knee surgery?

A: Before.

Q: So you were already having trouble with the knee that you eventually had to have replaced?

A: Yes.

Q: And so who all did you hire to come in and assist with the flooring?

A: Lonnie – and I don't remember his last name – Hanson, H-A-N-S-O-N. And Jimmy.

Q: And that's Mr. Beckum?

A: Yes.

Marshall estimated Beckum and Hanson worked on the flooring the same amount of time, i.e. approximately two to three days. Beckum did not perform any other work at 135 Clay Avenue other than on those two or three days. He testified the eight to ten properties owned by Marshall Investors do not require a permanent maintenance person. During the six to eight months he experienced knee problems, Marshall performed most of the work on these properties. Beckum did not perform a long-term job which would extend over twenty days. Beckum arrived and left when he chose. The work Beckum performed for two or three days at the carriage house was sporadic, as he would either come to work late or leave early

because of "girlfriend problems." He estimated Beckum worked a total of fifteen hours during the two or three days he worked at 135 Clay Avenue. As to his business relationship with Beckum, Marshall offered the following:

> Q: And was there ever a conversation between you two of whether or not he was actually an independent contractor or whether he was working as an employee for you? Did you ever have that conversation with him?
>
> A: No.
>
> Q: So was there ever an intention on both of your parts of creating a master/servant relationship or independent contractor relationship?
>
> A: No.

Marshall did not consider Beckum his employee.

At the hearing, Marshall testified he now lives at 1208 Tates Creek Road, Lexington, where he moved in November 2019. In February 2019, his residence was 135 Clay Avenue. He moved into the carriage house twenty-two years ago. However, 135 Clay Avenue was his address for forty years. He and his wife, and children lived in what became the duplex. After the children moved out, he built the carriage house, and lived there for twenty-two years.

Marshall believed Beckum had put in a hot water heater and performed other similar jobs for him in the past. Beckum did not work five days a week prior to his injury. He estimated Beckum worked an average of three to five hours per day because of "girlfriend problems," and some days Beckum did not work. He testified Beckum worked for Marshall Investors on the rental properties approximately twenty hours a week. Marshall did not know the number of weeks Beckum had worked for him prior to the accident. Many times he advanced Beckum

$30.00 to $40.00 a day because he was short on money. This meant his pay checks on Friday were very small. When Beckum worked twenty hours a week, he worked between two to four days a week working approximately six hours daily. Marshall did not pay Beckum for the work at the carriage house from a different checking account. Marshall testified he made some of Beckum's truck payments because he did not want him to lose his truck. He believed Beckum worked a few days after the accident, but he terminated the arrangement because it did not work out.

When Marshall and his wife moved to the Tates Creek residence, he changed the business address of Marshall Investors to 1208 Tates Creek Road. His business address has always been the same as his residence. At the time of the hearing, Marshall Investors owned property located at "660 East Main, 120 Old Lafayette, and 635 Central" in Lexington. Marshall did not provide Beckum with a 1099, a W-2, or withhold taxes from his check because he paid him less than $600.00.

Marshall filed an affidavit on the same date he filed a supplemental memorandum in support of his motion for leave to file a late Form 111 and disclosure notice. In his affidavit, Marshall stated he and his wife owned the property at 135 Clay Avenue which is their personal residence. He attached his driver's license, utility bills, and other documents revealing his residence on February 21, 2019, was 135 Clay Avenue.[1] Marshall stated he performed most of the work on his

[1] One of the documents is the Property Loss Report generated as a result of Beckum's injury. Interestingly, the insured is Marshall and the address of the insured is "135 Clay Avenue OFC."

home including painting. Because of an injured knee, he needed assistance in laying the kitchen flooring. Beckum worked only four days on the kitchen flooring in his home. Hanson also worked there at the time. Marshall avowed this was not a long-term project that would not take "anywhere close to twenty days." Paragraph six of the affidavit reads as follows:

> The filing pertaining to this claim is in the name of Marshall Investors, LP, which was not the owner of the property, not the entity that may have arranged for work by Mr. Beckum and in my opinion, has no legal interest in this case and is not a proper party.

The remainder of the affidavit explains why Marshall was not able to timely file a Form 111.

Beckum introduced Marshall Investors' annual report filed online with the Secretary of State on April 25, 2019. That document reveals Marshall Investors is a Delaware corporation formed on December 15, 2015. The principal office at that time was 135 Clay Avenue, Lexington, Kentucky, and the principal agent was Robert Marshall, with the same address. The business type was finance, insurance, and real estate.

Beckum also introduced Marshall Investors' Statement of Change of Principal Office Address filed on December 20, 2019, indicating the principal office of 135 Clay Avenue changed to 1208 Tates Creek Road, Lexington, Kentucky.

The Benefit Review Conference Order & Memorandum ("BRC Order") reveals the parties stipulated Beckum sustained a February 21, 2019, work-related injury. The contested issues were listed as "employment relationship, AWW,

TTD benefits, KRS 342.730 benefits, and unpaid or contested medical expenses." Under "Other Matters" is "UEF oral motion to join Robert Marshall as named Defendant is sustained, Robert Marshall is a Defendant." Significantly, as evidenced by the BRC Order and the hearing transcript, the ALJ sustained the UEF's oral motion to join Marshall as a named defendant. Marshall was given the opportunity to file the appropriate Form 111 within the time limits set forth by the regulations. The ALJ noted the parties indicated they were ready to proceed with the final hearing. Counsel for Marshall Investors represented he was also counsel for Marshall.

In finding an employment relationship existed, the ALJ provided the following:

> The initial determination to be made in this claim is whether there was an employment relationship between Plaintiff and Defendant on the date of injury, February 21, 2019. Plaintiff argues that he was an employee of the Defendant as he had been hired to work on the Defendant's rental properties and he was not an independent contractor. The Defendant acknowledges in its brief that Plaintiff was an employee of the Defendant beginning on January 31, 2019 and that his job responsibilities included performing general maintenance and repairs on rental properties alleged to be owned by Marshall Investors. However, the Defendant asserts that at the time of his injury Plaintiff was engaged in work for two days at the Defendant's private residence and as such his injury is exempted from coverage under the Kentucky Worker's Compensation Act pursuant to KRS 342.650(2) which exempts individuals hired for less than 20 days of work performing maintenance, repair, remodeling or similar work on the private home of the employer.
>
> Having reviewed and considered the entirety of the testimony in this claim, the ALJ finds that Plaintiff was in fact an employee of the Defendant on the date of

injury based upon Marshall's testimony at the final hearing and as such there was an employment relationship between Plaintiff and the Defendant. Further, the ALJ finds that Plaintiff's injury is not exempted by application of KRS 342.650(2) as Plaintiff was not employed to do maintenance, repair, remodeling or similar work at the private home of the Defendant. As such, Plaintiff's injury is deemed to be compensable and he is entitled to benefits under the Kentucky Worker's Compensation Act.

In support of this determination, KRS 342.650(2) states as follows:

The following employees are exempt from the coverage of this chapter:

(2) any person employed, not exceeding 20 consecutive workdays, to do maintenance repair remodeling were similar work in or about the private home of the employer, or if the employer has no other employees subject to this chapter, in or about the premises where that employer carries on history his initial profession. (Emphasis not ours).

The Defendant argues that the above exemption applies in this claim as Plaintiff was injured performing work for less than 20 days at the private home of the Defendant, all of which is true. **However the ALJ concluded the exemption does not apply to the instant claim because Plaintiff was not hired to work in or about the private home of the Defendant, he was hired to perform maintenance work on the Defendant's rental properties and on the day of injury, was directed to perform work at the Defendant's private home.** The ALJ believes this distinction is important and prevents application of the exemption to apply to Plaintiff's situation. Had Plaintiff not been employed as a maintenance worker on the Defendant's rental properties and had there been no employment relationship of any nature between Plaintiff and the Defendant prior to the injury, and the Defendant then hired Plaintiff to assist him in performing work on his home laying tile, the ALJ would agree that that situation would allow Plaintiff to be exempted from coverage under the Act and the Defendant absolved from liability

for the injury. **But since there was already an employment relationship between Plaintiff and Defendant prior to the work injury, and prior to the beginning of the work on Plaintiff's home, the ALJ believes the exemption is not applicable. Coverage of an employee under the Worker's Compensation Act should not be dependent upon where an employee is told to work, that is, it would be eminently unfair for an employee to be entitled to the protection of the Kentucky Worker's Compensation Act as long as he was performing work on the Defendant's rental properties, but then somehow be removed from coverage under the Act because his employer told him to go work at a different location which happened to be his private home.** It would be manifestly unfair to a workmen to be denied coverage under the Act based upon where he was told to work by his employer.

The determination in this regard is supported by reference to the purpose for the enactment of KRS 342.650(2) which the Worker's Compensation Board discussed in Evans v. McKee, Claim No. 91 – 09156, Opinion Rendered: October 22, 1990, and stated as follows: "In Crush v. Kaelin, Ky., 419 S.W. 2d 142 (1967), an individual, building his own vacation home, enlisted the assistance of a carpenter. At the time, our Worker's Compensation Act contained no specific exclusion relative to home improvements at a private residence, but the Court declared such an exemption as a matter of public policy, noting that the homeowner was more of a "consumer" than a "producer". It is noteworthy that subsequent to the Court's decision in Crush v. Kaelin, the legislature enacted KRS 342.650 in 1972. Subsection (2) of that statute provides an exemption from workers compensation coverage for quote any person employed, not exceeding 20 consecutive workdays, to do maintenance, repair, remodeling were similar work in or about the private home of the employer".

The Court in Kaelin explained as follows: "The fact is that we do not believe the social objectives of workmen's compensation in shifting the risk of injury from the workman to the employer, and thence to the consuming public, see Ratliff v. Redmon, Ky., 396 S.W. 2d 320 (1965), were or are intended to embrace the

domain of an employer's private household affairs. In arriving at this conclusion we are by no means alone. It appears that whatever the statutory background, the courts will not ordinarily find in the compensation act coverage of work undertaken by a person as, so to speak, a consumer instead of a producer. Larson's Workmen's Compensation law Sec. 50.22 p. 740."

These cases support the concept that a homeowner is in a different position than a typical employer as he is not a position to pass on the cost of worker's compensation to the consuming public, as employers are able to do, and as such, they should not be required to be responsible for compensation coverage for minor, less than 20 days of work, home repairs. **However, the Defendant herein is in a significantly different position than a regular homeowner as he is the admitted employer of the Plaintiff who simply directed him as part of his job duties to work at his own residence for two days, doing nothing more or different than the performance of his regular job albeit at a different location. There was no separate negotiation for the work laying tile at the Defendant's home, there was no difference in pay, no bidding process, Plaintiff was simply advised where to show up for work which was typical of his job for the Defendant.** The Defendant herein, unlike a homeowner, is certainly capable of passing on the cost of worker's compensation insurance to the ultimate consumer, in this case, the renters of his rental properties. **As such, the Defendant's status herein as the admitted employer of the Plaintiff for purposes other than work about the employer's home places him in a different position than the homeowner contemplated in KRS 342.650 and not deserving of the application of the exemption.**

Given that Plaintiff was employed to work performing maintenance on the Defendant's rental properties, and not employed to work in or about the private home of the employer, which was simply ancillary to his regular employment, the ALJ concludes that KRS 342.650(2) does not apply and does not prevent the compensability of Plaintiff's injury.

(Emphasis added).

Relying upon the impairment rating of Dr. Bruce Guberman, the ALJ found Beckum's work-related injury generated an 11% impairment rating and he is entitled to permanent partial disability benefits enhanced by the three multiplier. The ALJ provided the following regarding AWW:

> The testimony in this claim regarding average weekly wage was mixed. Plaintiff testified that he earned $20 per hour at the outset and then was given a raise to $25 an hour but he acknowledged typically not working every day and typically not a full eight hour day. Plaintiff further testified that he worked 3-6 hours per day and 4-5 days per week. No wage records have been produced by either party. The Defendant testified that it was his estimation that Plaintiff earned $450 a week. Having reviewed and considered the testimony on this issue the ALJ accepts the testimony of the Defendant that Plaintiff earned $450 a week as such a wage recognizes Plaintiff's acknowledgment that he worked less than five days a week and less than eight hours per day. As such, Plaintiff's benefits shall be based upon an average weekly wage of $450 per week.

In light of the determination Beckum sustained a compensable injury, the ALJ deemed the issue of whether Marshall should be granted leave to file a late Form 111 moot.

Marshall and Marshall Investors filed a joint Petition for Reconsideration contending Beckum was exempt from receiving workers' compensation benefits. They pointed out the ALJ committed error by failing to determine which defendant was Beckum's employer prior to the accident. They observed Marshall Investors was not the owner of the property where Beckum was injured. They also observed there was no finding as to whether Marshall acted in the course and scope of his authority for Marshall Investors at the time a business

relationship was discussed with Beckum. They did not dispute Marshall's testimony that Beckum worked for Marshall Investors three to five hours per day but not every day of the week. However, they asserted at the time of the accident, Beckum was working for Marshall personally and was paid from Marshall's personal account. Since Beckum was hired by Marshall and paid separately, the prior employment relationship was between Beckum and Marshall Investors and not Marshall. Because Beckum was performing work for Marshall at his private residence, they argued KRS 342.650(2) exempts a workers' compensation claim based on the work he performed at a private residence. The ALJ clarified his decision as follows:

> …In order to clarify this matter, it is hereby determined that the liable Defendant in this claim was Robert Marshall as it was found in the Opinion that Robert Marshall hired Plaintiff to perform work activities on his rental properties. To the extent Robert Marshall may have owned the rental properties in the name of Marshall Investors, LP, this distinction does not alter the fact that Plaintiff was found to be an employee of Robert Marshall prior to the injury as well as at the time of the injury.
>
> Except as clarified above, the Petition for Reconsideration was overruled.

On appeal, Marshall asserts Beckum did not sustain an injury while working for Marshall Investors. He notes Beckum steadfastly argued he was employed by Marshall Investors and made no effort to assert a claim against another party. Marshall asserts other states recognize the exception for work performed by causal employees on the private residence of an employer. Consequently, he argues KRS 342.650(2) exempts workers' compensation coverage of Beckum's injury since he was employed for less than twenty consecutive days to do maintenance, repair,

remodeling, or similar work in or about the private home of the employer. Marshall argues Beckum did not work for either Marshall Investors or Marshall for twenty days.

According to Marshall, Beckum knew he was working for Marshall for a short period of time at his residence and was paid by personal check and not by a check drawn on Marshall Investors. Marshall emphasizes Beckum confirmed at the hearing that his first day of employment with Marshall Investors was January 31, 2019, and he worked approximately three to four partial days per week between January 31, 2019, and February 21, 2019. Thus, since he worked less than twenty days, the statute is applicable. Marshall contends the ALJ's interpretation of the statutory exemption and the facts are erroneous.

Marshall also contends the ALJ ignored the fact that Beckum's prior employment relationship was with Marshall Investors, a separate entity from Marshall. He stresses Beckum did not name or join Marshall as a party. According to Marshall, Beckum was free to accept or decline the work opportunity at Marshall's private residence as reflected by his sporadic work history. That being the case, KRS 342.650(2) prohibits Beckum from recovering benefits from Marshall.

Finally, Marshall argues Beckum was not on a regular work schedule, missed entire days of work on occasion, and was only paid for dates and times when he showed up. Therefore, Beckum was not required to work at Marshall's private residence that day. Further, the ALJ recognized Marshall paid Beckum from a private account for work performed on the home instead of being paid from an account for Marshall Investors. For that reason, Marshall insists Beckum's work

activity and injury are excluded from coverage under the Kentucky Workers' Compensation Act and his claims against Marshall, individually, and Marshall Investors, must be dismissed.

ANALYSIS

Several aspects of the claim must first be addressed. Significantly, neither Marshall nor Marshall Investors complied with 803 KAR 25:010 §7(2)(e)8 by filing an AWW-1 setting out the days and hours Beckum worked each week from January 31, 2019, through February 21, 2019, and the amount paid to him each week.

Further, there was and is no contention Beckum was an independent contractor. Beckum's Form 101 alleges a claim against Marshall Investors and at no point did he seek to join Marshall individually as a party. However, at the hearing, the UEF moved to join Marshall as a party defendant. Without objection, the ALJ sustained the motion and joined Marshall as a party. Thereafter, all parties, including Marshall, represented they were ready to proceed with the hearing. After Marshall was joined as a party, Marshall Investors' attorney represented both Marshall and Marshall Investors. Marshall did not seek a continuance. The ALJ was faced with determining Beckum's employer before the injury and at the time of the injury without any documentary evidence relating to Beckum's employment. Marshall Investors' filings with the Secretary of State introduced by Beckum and the documents attached to Marshall's affidavit represent all the documentary evidence presented to the ALJ.

Beckum, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action, including his employer. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Beckum successfully met his burden, the question on appeal is whether there was substantial evidence of record to support the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). 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 (Ky. 1977). Although a party may note evidence that would have supported a different outcome than that 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). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made are so unreasonable under the

evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). 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 other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

KRS 342.640 defines what constitute employees subject to the provisions of the Act. KRS 342.640(1) and (4) read as follows:

> (1) Every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer;
>
> …
>
> (4) Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury.

The exemptions relied upon by Marshall is contained in KRS 342.650(2) which read as follows:

> The following employees are exempt from coverage of this chapter:
>
> (2) Any person employed, for not exceeding twenty (20) consecutive work days, to do maintenance, repair, remodeling, or similar work in or about the private home of the employer, or if the employer has no other employees subject to this chapter, in or about the premises where that employer carries on his or her trade, business, or profession.

KRS 342.650(2) places the affirmative burden on the person against whom the claim is asserted to establish the individual employed is exempt from workers' compensation coverage. The first half of the section exempts from coverage maintenance, repair, remodeling, or similar work in or about the private home of the employer for less than twenty consecutive days. The second half of section (2) exempts from workers' compensation coverage an employer who has no other employees in or about the premises where the employer carries on his/her trade, business, or profession for twenty consecutive days or less. The second provision exempts a claim by a sole employee working for the employer not exceeding twenty consecutive work days on the premises where the employer carries on his trade, business, or profession. The second portion of the statute is clearly not applicable in the case *sub judice*, as the uncontradicted testimony establishes at all relevant times Beckum was working with Hanson, another employee. According to Marshall, Marshall Investors had two employees, Beckum and Hanson from January 31, 2019, through February 19, 2019, and Marshall had two employees on February 20, 2019, and February 21, 2019, performing maintenance, repair, remodeling, or similar work in or about Marshall's private home.

Beckum testified he had a conversation with Marshall on January 30, 2019, and began to work for Marshall on January 31, 2019. He could not remember the name of the payor on the checks he received each Friday. There is no dispute that Beckum performed work on various properties owned by either Marshall Investors or Marshall. At the hearing, Marshall testified the properties Marshall Investors owned were located at 660 East Main, 120 Old Lafayette, and 635 Central.

Presumably, all within Lexington, Fayette County, Kentucky. Further, Marshall testified Marshall Investors owned eight to ten rental properties. That was not borne out by his testimony at the hearing at which time he identified only three properties owned by Marshall Investors. There is no indication Marshall Investors disposed of any of the properties at which Beckum may have performed work during the pendency of the claim. We note Beckum testified he primarily worked at the "tree house" located on Rose Street and at property or properties on or near Euclid Avenue. Marshall did not identify the properties as being owned by Marshall Investors. Marshall testified Beckum was paid with funds in the B.L. Marshall Rental Account and not from a Marshall Investors' account.

The ALJ concluded based on the evidence that Marshall, individually, was Beckum's employer between January 31 and February 21, 2019. This is consistent with Beckum's testimony. He testified he was hired by Marshall, worked side by side with Marshall and Hanson, and was paid by Marshall. Beckum and Hanson took direction from Marshall as to the task to be performed at the properties. The ALJ's finding that Beckum's work at the carriage house was a continuation of his employment by Marshall is supported by substantial evidence. During his deposition, Beckum testified he worked for Marshall at his properties and identified the "tree house" property located on Rose Street as the property where he primarily worked. Beckum testified that the Rose Street property contained an apartment that had been remodeled after a tree fell through it. Presumably, this was why the property was referred to as the "tree house" property. Although Beckum could not remember the payor on the checks he received, he believed he was employed by

Marshall since Marshall was his boss. His work for Marshall also consisted of replacing a bathtub on property located at Euclid Avenue as well as working at another property located off Euclid Avenue in a subdivision. At the hearing, Beckum testified he was an employee of Marshall and the company. Beckum viewed them as one employer. It was his understanding that Marshall's business was "rental property" and that his employment was for an indefinite period.

Significantly, Marshall Investors and Marshall did not provide any documents establishing the addresses of the properties where Beckum worked, the hours he worked at each location, the hours worked each day and week, and the amount and by whom he was paid each week between January 31, 2019, and February 21, 2019. Although Beckum's testimony reveals he worked at the "tree house" on Rose Street neither Beckum nor Marshall provided the amount of time he spent working at this location. There is no documentary evidence in the form of a weekly log of time worked, the amount paid each week, cancelled checks, or check ledgers from which the ALJ could glean the location at which Beckum worked each day, the hours worked at a specific property, the entity paying Beckum, and the amount earned weekly. Similarly, the ALJ was not provided any documentation as to the owner of the property at which Beckum performed services at Marshall's direction.

Beckum's testimony regarding the number of hours worked and the amount he was paid during the period in question is inconsistent with Marshall's. Beckum testified he worked four to four and a half days a week between three and eight hours. Marshall testified Beckum worked less than twenty hours per week.

Marshall also testified he paid Beckum less than $600.00 for his work between January 31, 2019, and February 21, 2019. However, he also testified at the hearing that Beckum worked twenty hours per week for Marshall Investors. Twenty hours times $25.00 results in earnings of $500.00 a week during a period of approximately three weeks. Beckum testified he was paid $1,000.00 one week and most weeks between $500.00 and $600.00. He remembered receiving a check for over $700.00 one week.

As previously noted, neither Marshall Investors nor Marshall provided documentation buttressing Marshall's testimony and his stated position before the ALJ. In light of the above, Beckum's testimony as summarized herein and Marshall's testimony that Beckum was not paid from Marshall Investors' account constitute substantial evidence supporting the ALJ's finding Marshall was Beckum's employer between January 31, 2019, and February 21, 2019. Apparently, the ALJ found significant the failure to provide documentary evidence by Marshall Investors and Marshall establishing Beckum performed work at properties owned by Marshall Investors and was paid by Marshall Investors. Moreover, the properties Beckum listed upon which he performed work are not the properties Marshall identified at the hearing as being owned by Marshall Investors. Marshall testified the properties owned by Marshall Investors at the time of the hearing were 660 East Main, 120 Old Lafayette, and 635 Central. Marshall did not identify the properties on Rose Street and Euclid Avenue as being owned by Marshall Investors.

For these reasons, we conclude substantial evidence supports the ALJ's decision Marshall was Beckum's employer at all times from January 31, 2019,

through February 21, 2019. Although Beckum may have performed some work at properties or properties owned by Marshall Investors, there is no documentary evidence demonstrating Beckum performed work at a property owned by Marshall Investors. Further, Marshall did not identify property owned by Marshall Investors upon which Beckum performed any work. Thus, within his discretion, the ALJ could rely upon Beckum's testimony that Marshall was his employer at all relevant times. That being the case, Marshall may not avail himself of the exclusion set forth in KRS 342.650(2), which requires Beckum's employment must have been limited to maintenance, repair, remodeling, or similar work in or about the private home of the employer. Under the facts presented, Beckum's employment was not limited exclusively to performing maintenance, repair, remodeling, or similar work in or about Marshall's private home. Rather, Beckum was employed by Marshall to perform work at his rental properties and his residence. Further, the fact Marshall Investors may have owned some of the properties upon which Beckum worked did not preclude the ALJ from determining Marshall, individually, was Beckum's employer at all relevant times. Since KRS 342.650 does not apply, Beckum was not precluded from asserting a claim against Marshall.

Significantly, portions of Marshall's testimony support the ALJ's finding he was Beckum's employer at all times from January 31, 2019, through February 21, 2019. Marshall admitted he did not provide a W-2 or a 1099 from Marshall Investors. Beckum was paid by checks drawn on a rental account which did not list Marshall Investors as the payor. Marshall testified Beckum was paid by

checks drawn on the B.L. Marshall Rental account. Further, Beckum performed no work on property enumerated by Marshall as being owned by Marshall Investors.

Marshall also testified there was no discussion between he and Beckum as to whether Beckum was an employee or an independent contractor. Marshall testified Beckum was paid for the work performed at the carriage house from the same account he had paid Beckum for all work performed between January 31, 2019, and February 19, 2019. Although our holding does not hinge on this fact, we note the documents filed with the Secretary of State and Marshall's testimony reflect that the carriage house was not only Marshall's private home but was also the corporate office of Marshall Investors. This fact precluded Marshall from availing himself of the exemption contained in KRS 342.650(2) as Beckum was also performing work at Marshall Investors' corporate office.

Although Podgursky d/b/a Modern Woodworking v. Decker, 520 S.W.3d 763 (Ky. App. 2016) dealt with different facts, we believe it is insightful. Decker had been working for Podgursky/Modern Woodworking ("Modern") for approximately twenty-five years. While working for Modern, Decker fell from a ladder causing him to hit the concrete floor injuring his back, leg, and hip. The ALJ dismissed Podgursky's claim finding KRS 342.650(2) applicable. This Board reversed concluding KRS 342.650(2) did not apply and remanded for a resolution of Decker's claim on its merits. The Kentucky Court of Appeals affirmed stating that instead of focusing on the number of days Decker actually reported to the job site, the ALJ should have focused on whether Decker was "employed" to perform "work" for more than twenty consecutive days.

Here, there does not appear to be any dispute that had Beckum not been injured he would have continued to perform work for Marshall as Beckum's uncontradicted testimony was that he was employed indefinitely. Importantly, the Court of Appeals noted that the fact work was not always available for Decker to perform every day was not the determinative factor of his employment status, and even though he did not report to Modern every day, he performed work for it on a regular basis for a sustained period of time. Id. at 768. There was also no dispute Decker worked at Modern on projects pursuant to its instruction. Id. Thus, Modern was the employer and Decker was the employee. Similarly, there was no evidence to suggest Modern and Decker had negotiated a new contract for hire every time Decker reported to Modern following an off work day.

As in Decker, Beckum testified he did not work every day each week and worked between three to eight hours on the days he worked. He turned in his weekly time to Marshall and he was paid each Friday.

The Court of Appeals also held the type of work Decker performed for Modern removed him from the exclusion contained in KRS 342.650(2). Even though Decker testified he performed maintenance and repair work when there was no woodworking projects, it was readily apparent that his employment involved woodworking which is a task he was doing at the time of his injury. The Court of Appeals noted Modern's business was refurbishing furniture for its customers. Id. Thus, Decker was engaged in that type of work and was not simply performing maintenance, repair, remodeling, or similar work in or about the premises since he was performing work at his employer's business address. Id.

Here, the ALJ drew a similar conclusion that Beckum's testimony and, to a certain extent, Marshall's testimony established Beckum was not just performing maintenance, repair, remodeling, or similar work in or about Marshall's premises, but was performing work at other properties owned by Marshall and potentially Marshall Investors, an entity owned entirely by Marshall.

Although we have resolved Marshall's assertion that KRS 342.650(2) does not exempt Beckum's claim against Marshall, we agree with Marshall's first argument that Beckum did not sustain an injury while employed with Marshall Investors. We are unconvinced by Marshall's second argument that other states recognize exceptions for work performed by casual employees on the private residence of an employer as KRS 342.650(2) controls the resolution of this claim and we find no reason to address that argument. Finally, we also reject Marshall's assertion Beckum had no prior working relationship with Marshall individually as we have identified substantial evidence supporting the ALJ's determination Marshall was Beckum's employer at all times between January 31, 2019, and February 21, 2019. Similarly, we are unconvinced by the last argument.

Accordingly, the January 11, 2021, Opinion, Award, and Order and the March 1, 2021, Order overruling on the Petition for Reconsideration are **AFFIRMED**.

ALVEY, CHAIRMAN, CONCURS.

BORDERS, MEMBER, NOT SITTING.

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