

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE
CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 07-13-2010
PHILIP G. URRY, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

EZEQUIEL ROMAN RUBIO,)
)
) 1 CA-IC 09-0070
)
) Petitioner,)
)
) DEPARTMENT D
)
) v.)
)
) **MEMORANDUM DECISION**
)
) THE INDUSTRIAL COMMISSION OF ARIZONA,)
)
) (Not for Publication -
) Respondent,) Rule 28, Arizona Rules
) of Civil Appellate
)
) Procedure)
)
) SPECIAL FUND DIVISION/NO INSURANCE)
) SECTION,)
)
) Respondent Party in Interest,)
)
)
) MARIA DELACRUZ QUINTANA CAMACHO,)
)
)
) Respondent Employee.)

Special Action - Industrial Commission

ICA Claim No. 20090-330454

Carrier Claim No.: None

Administrative Law Judge Michael A. Mosesso

AWARD AFFIRMED

Ezequiel Roman Rubio
Petitioner

Glendale

Snow & Carpio, P.L.C.
By X. Alex Carpio
And Chad T. Snow
Attorneys for Respondent Employee

Phoenix

T H O M P S O N, Judge

¶1 This is a special action review of an Industrial Commission of Arizona (ICA) award and decision upon review for a compensable claim. The petitioner employer, Ezequiel Roman Rubio (Rubio), argues on appeal that he was not the employer of respondent employee Maria Delacruz Quintana Camacho (Camacho). Because we find that the accepted evidence in the record supports the ALJ's findings, we affirm the award.

¶2 This court has jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(2) (2003), 23-951(A) (1995), and Arizona Rule of Procedure for Special Actions 10. We consider the evidence in the light most favorable to upholding the award. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16, 41 P.3d 640, 643 (App. 2002). In reviewing findings and awards of the ICA, we defer to the ALJ's factual findings. *Young v. Indus. Comm'n*, 204 Ariz. 267, 270, ¶ 14, 63 P.3d 298, 301 (App. 2003). But we review the ALJ's rulings on issues of law de novo. *Vance Int'l v. Indus. Comm'n*, 191 Ariz. 98, 100, ¶ 6, 952 P.2d 336, 338 (App. 1998).

¶3 Rubio makes no legal arguments on appeal but seems to argue that the administrative law judge erred in determining that Camacho's claim was compensable because she was Rubio's employee. Camacho, a housekeeper, filed a worker's report of injury alleging that she was injured on a construction clean-up job while working

for Rubio at a private residence. Camacho testified that she and her sister were hired by Rubio and paid \$7 an hour for construction clean-up. Camacho's left wrist was injured while she was scraping granite tile with a knife in a bathroom. Camacho testified that Rubio hired her and furnished tools in the form of knives and cloths. Rubio instructed Camacho regarding what to do and when to start. Camacho never met the owner of the residence, Mr. Daugherty. Rubio testified that he furnished razor blades for the cleanup job but that Camacho brought other cleaning supplies. According to Rubio, he told Camacho what to do every day but that he did not tell her how to do her job.

¶4 In his decision upon hearing and findings and award, the administrative law judge found:

The undersigned concludes based upon A.R.S. § 23-902(A) and Stephens supra, that Richard Daugherty, the owner of the residence and his wife are not employers under the Act in this circumstance and are thus not liable for this claim. The evidence in this matter is that Ezequiel Rubio, the listed defendant employer, interviewed the Applicant and her sister and put them to work in various capacities. This included cleaning the countertops and dusting, as well as raking leaves. Mr. Rubio paid the applicant by check for her work. Mr. Rubio was responsible for finding others to do work on the job site of this residential home. Mr. Rubio provided tools for Applicant to use in performing her tasks and told Applicant what work to do and when to do it. Thus, Mr. Rubio exercised the right of control over Applicant's work activities and provided the necessary equipment and retained the right to hire and fire, which he exercised when Applicant's sister was fired. This work is in the usual and regular course of Mr. Rubio's

business in construction. Mr. Rubio also indicated that even though he had been working at this residential site for years and paid a weekly stipend, he had other clients. Thus, the undersigned concludes after a resolution of the conflicts in the evidence that Mr. Rubio is the employer of the Applicant. Applicant is not an independent contractor and not the employee of the homeowner, herein.

The administrative law judge cited the correct test for determining who was the employer under Arizona law and found the claim compensable. See *Stephens v. Industrial Commission*, 26 Ariz. App. 192, 194, 547 P.2d 44, 46 (1976) (homeowner not an employer and not required to have workers' compensation coverage under workers' compensation act where homeowner hired claimant to work as a carpenter on his private residence and claimant was injured). See also *Anton v. Industrial Commission*, 141 Ariz. 566, 569, 688 P.2d 192, 195 (App. 1984) (relevant indicia for distinguishing employee from independent contractor includes duration of employment, method of payment, who furnishes necessary equipment, the right to hire and fire, the extent to which the employer may exercise control over the details of the work, and whether the work was performed in the usual and regular course of employer's business). We find no error in the administrative law judge's finding that the claim was compensable.

¶15 Accordingly, we affirm the award.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

MICHAEL J. BROWN, Presiding Judge

/s/

SHELDON H. WEISBERG, Judge