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Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001322-WC

UNINSURED EMPLOYERS FUND — APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-08-96697

JULIAN HOSKINS;
FOUR STAR TRANSPORTATION,
INC.; BETTER INTEGRATED
SERVICES, INC.; BEACON
ENTERPRISES, INC.; KENTUCKY
EMPLOYERS' MUTUAL
INSURANCE; WORKERS'
COMPENSATION BOARD; AND
HON. R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KRAMER, STUMBO, AND TAYLOR, JUDGES.

KRAMER, JUDGE: The Uninsured Employers Fund (UEF) appeals a decision of the Workers' Compensation Board (Board) reversing an Administrative Law Judge's (ALJ) determination that Kentucky Employers' Mutual Insurance (KEMI) must provide workers' compensation coverage for work injuries sustained by Julian Hoskins. For the reasons stated below, we affirm.

FACTUAL AND PROCEDURAL HISTORY

The factual and procedural history of this case was aptly summarized by the Kentucky Supreme Court in its first review of this matter:

> Appellant, Uninsured Employers' Fund ("UEF"), appeals from a decision which held that Appellee, Kentucky Employers' Mutual Insurance ("KEMI"), was not the insurance carrier at risk for injuries sustained by Julian Hoskins in the course of his employment with Four Star Transportation, Inc. The UEF argues that the Workers' Compensation Board . . . erred by finding that Hoskins was not covered under the KEMI policy due to the fact he was unaware that Four Star was leasing him from several different entities. One of those entities was the named KEMI policy holder.
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> . . . .
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> Hoskins drove a tractor trailer truck for Four Star. Hoskins testified that he applied for his job at Four Star's office located at 2305 Ralph Avenue in Louisville, and believed that his only employer was Four Star. He also stated that he was unaware that Four Star had allegedly entered into an employee leasing scheme with two separate entities for his services.
>
> Under this employee leasing scheme Hoskins, despite applying for his job and being hired at Four Star's office, was initially considered an employee of Better Integrated Services, Inc., a Nevada corporation. Hoskins's wages were apparently paid by Better Integrated. Better

Integrated then leased Hoskins to Beacon Enterprises, Inc., also a Nevada corporation and the holder of the KEMI policy. Beacon then leased Hoskins to Four Star. Interestingly, the ownership of Better Integrated and Beacon all consist of members from one family.

Beacon's policy with KEMI was originally issued on November 1, 2005. KEMI was aware that Beacon had no physical presence in the state of Kentucky, but that Beacon leased employees to Rush Trucking, whose office is located at 3001 Chamberlain, Louisville, Kentucky. The Schedule of Named Insured and Workplaces for the policy listed Rush Trucking's office address as the worksite for the policy. On November 1, 2006, the KEMI policy was renewed for another year. This policy listed an additional location for Beacon in Kentucky, 2305 Ralph Avenue, Suite 1, Louisville, Kentucky. This second address was the location for Four Star's office, but KEMI contends that it was unaware that Beacon leased employees to that entity. KEMI did not investigate the nature of Beacon's business at the Ralph Avenue address, but did increase Beacon's premium in 2007 from $299,635.62 to $749,001.72 due to an increase in its payroll. Further, neither Better Integrated or Beacon filed the appropriate EL–1 and EL–2 forms which are required by 803 KAR[1] 25:230. These forms indicate which entities are leasing employees from an agency. The KEMI policy was in effect on the date Hoskins was injured.

All of the parties concede that Hoskins was injured in the course of his employment with Four Star on January 31, 2008. The parties also do not contest the Administrative Law Judge's ("ALJ") determination that Hoskins's injury entitled him to benefits and a permanent partial disability award of 3.25%. Instead the dispute in this matter is whether Hoskins's injury is covered by the KEMI policy.

The ALJ, in finding that KEMI's policy covered Hoskins's injury, made the following findings:

[1] Kentucky Administrative Regulations.

The Administrative Law Judge finds that KEMI was aware that Beacon Enterprises was an employee leasing company, and had two offices in Louisville, one for Rush Trucking, and one where Four Star Transportation was located. In addition, it appears that KEMI received additional premiums as a result of the adding of this additional company. This is reflected by the fact that the premiums for Beacon Enterprises increase [sic] from $299,635.62 to $749,001.72 for the policy in question. It appears to the undersigned Administrative Law Judge that KEMI did not investigate the addition of a second address in Louisville fully to determine if the appropriate documentation was submitted to the Department of Workers' Claims. However, they were willing to accept the premium and write the policy. It was not until after the January 31, 2008, work-related injury of Mr. Hoskins that KEMI corresponded to Beacon Enterprises claiming surprise that they were leasing employees to other entities than Rush Trucking. This is totally inconsistent with KEMI's own records reflecting the Defendant Employer had two locations in Louisville which was an increase from the one location they had in Louisville previously. In fact, there is correspondence from KEMI discussing how to deal with this new client as both are trucking companies and the contact was unsure how to predict the annual payroll generated from these clients. This is clearly an indication that KEMI was aware of the operation they were insuring.

Therefore, the Administrative Law Judge finds that there existed a policy of Insurance covering Beacon Enterprises. It is further found that this insurance policy covered the

> employee leased by Beacon Enterprises, an employee leasing company, to Four Star Transportation on January 31, 2008.
>
> The ALJ also found that there was an employment relationship between Hoskins and Beacon.
>
> On appeal, the Workers' Compensation Board reversed the ALJ's opinion and award. The Board based its decision on the lack of evidence in the record to show that KEMI knew Beacon was leasing Hoskins to Four Star. Key to that determination was the fact that Better Integrated and Beacon failed to comply with the reporting requirements of KRS[2] 342.615[3] and 803

[2] Kentucky Revised Statutes.

[3] In full, KRS 342.615 (entitled "Registration of employee leasing companies; coverage requirements for lessees; status of temporary help service") provides:

(1) As used in this section:

(a) "Employee leasing company" or "lessor" means an entity that grants a written lease to a lessee pursuant to an employee leasing arrangement;

(b) "Lessee" means an employer that obtains all or part of its workforce from another entity through an employee leasing arrangement;

(c) "Leased employee" means a person performing services for a lessee under an employee leasing arrangement;

(d) "Employee leasing arrangement" means an arrangement under contract or otherwise whereby the lessee leases all or some of its workers from an employee leasing company. Employee leasing arrangements include, but are not limited to, full-service employee leasing arrangements, long-term temporary arrangements, and any other arrangement which involves the allocation of employment responsibilities among two (2) or more entities. For purposes of this section, "employee leasing arrangement" does not include arrangements to provide temporary workers;

(e) "Temporary worker" means a worker who is furnished to an entity to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions for a finite period of time; and

(f) "Temporary help service" means a service whereby an organization hires its own employees and assigns those employees to clients for finite periods of time to support or supplement the client's workforce in special work situations, including employee absences, temporary skill shortages, and seasonal workloads.

(2) A corporation, partnership, sole proprietorship, or other business entity which acts as an employee leasing company shall register with the

> KAR 25:230 which would have put KEMI on notice that they were leasing employees to Four Star. The Board further believed that the arrangement between Better Integrated and Beacon was a sham, concocted after Hoskins's injury to cover up the fact they had not provided him with workers' compensation insurance. Finally, by using the loaned servant doctrine, the Board found that Hoskins could not have entered into an employment relationship with Better Integrated or Beacon because he either did not know those entities existed or how that they were involved with Four Star. KRS 342.640(1); *Rice v. Conley*, 414 S.W.2d 138, 141 (Ky.1967) ("[a]n employee, for compensation purposes, cannot have an employer thrust upon him against his will or without his knowledge.")

Kentucky Uninsured Employers' Fund v. Hoskins, 440 S.W.3d 370, 371-72 (Ky. 2013).

In our prior opinion, we agreed with the Board's conclusion that Hoskins could not have entered into an employment relationship with Better Integrated or Beacon because he either did not know those entities existed or how

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commissioner in the manner as prescribed by administrative regulations.
(3) Any lessor of employees whose workers' compensation insurance has been terminated within the past five (5) years in any jurisdiction due to a determination that an employee leasing arrangement was being utilized to avoid premiums, taxes, or assessments otherwise payable by lessees shall be ineligible to register with the commissioner or to remain registered, if previously registered.
(4) A lessee shall fulfill its statutory responsibility to secure benefits for leased employees under this chapter by purchasing and maintaining a standard workers' compensation policy approved by the commissioner of the Department of Insurance. A lessee may fulfill that responsibility by contracting with an employee leasing company to purchase and maintain the required insurance policy. In either event, it shall be the responsibility of the lessee to maintain in its files at all times the certificate of insurance, or a copy thereof, evidencing the existence of the required insurance. The exposure and experience of the lessee shall be used in determining the premium for the policy and shall include coverage for all leased employees.
(5) A temporary help service shall be deemed the employer of a temporary worker and shall be subject to the provisions of this chapter.

they were involved with Four Star. We affirmed solely on that basis. Thereafter, the Kentucky Supreme Court likewise affirmed on that basis. *See id*. But, in *Kentucky Uninsured Employers' Fund v. Hoskins*, 449 S.W.3d 753 (Ky. 2014), the Court subsequently reversed and directed this Court to address the validity of the remaining bases of the Board's decision reversing the ALJ.

STANDARD OF REVIEW

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, 309 (Ky. 1993). When reviewing the ALJ's findings of fact, an appellate tribunal is required to provide these findings considerable deference and cannot set them aside unless evidence compels a contrary finding. *Mosely v. Ford Motor Co.*, 968 S.W.2d 675, 678 (Ky. App. 1998). If an ALJ's findings of fact are supported by substantial evidence, a finding contrary to the ALJ's findings cannot be sustained. *AK Steel Corp. v. Adkins*, 253 S.W.3d 59, 64 (Ky. 2008). However, this Court reviews the ALJ's and the Board's respective applications of law *de novo*. *Newberg v. Thomas Industries*, 852 S.W.2d 339, 340 (Ky. App. 1993).

ANALYSIS

An additional basis of the Board's decision to reverse the ALJ (and an additional argument raised by KEMI in its appellee brief) was that no substantial evidence of record supports that an "employee leasing arrangement" (as defined in KRS 342.615(1)(d)) involving Beacon, or any other kind of relationship which

could have made Beacon liable for providing Hoskins with worker's compensation coverage, was ever established. In light of the additional clarity the Supreme Court has now shed upon what does and does not qualify as an "employee leasing arrangement" under Kentucky worker's compensation law, and upon further review of the record and the relationship between Better Integrated, Beacon, and Four Star, we reaffirm the Board's decision to reverse the ALJ on this alternative basis.

We begin our analysis by quoting the Supreme Court's recent explanation of what constitutes an "employee leasing company," and how an "employee leasing arrangement" differs from arrangements involving loaned servants from contract labor providers or services offered by temporary help agencies:

> [*Rice v. Conley*, 414 S.W.2d 138, 140 (Ky.1967)], a typical application of the loaned servant doctrine, involved a contract under which workers, regularly employed by a "general employer," were physically assigned on a short-term or temporary basis to perform their labors for a "special employer." In the conventional situations governed by the loaned servant doctrine, workers may perform their services in a variety of working environments for other employers. Under such arrangements, the "general employer" typically hires and trains workers, and for a fee, he "loans" those workers to "special employers" who need their services, usually on a short term or limited basis.
>
> Employee leasing companies, as contemplated in KRS 432.615 [sic], operate on a fundamentally different premise and perform a fundamentally different service. Significantly, they generally do not provide workers to employers who need workers. KRS 342.615(l)(d)

expressly provides, "For purposes of this section, 'employee leasing arrangements' do not include arrangements to provide temporary workers." Instead, employee leasing companies provide employers with a menu of administrative employee-related services, such as payroll management, employee health insurance coverage, unemployment insurance, workers' compensation coverage, savings and retirement plans, and other human resource needs. By securing the services of an employee leasing company, an employer is relieved of the burden and expense of handling those tasks with in-house administrative personnel. In effect, the employer outsources to the employee leasing company certain administrative tasks associated with the management of the client's existing workforce. For a fee paid by an employer like Four Star, the employee leasing company assumes responsibility for the agreed-upon services by becoming, for bookkeeping purposes, the "employer" of the client's workforce, which is then "leased" back to the client, Who [sic] is designated as the "lessee" in the arrangement.

The term "employee leasing company" is, perhaps, a confusing misnomer because employee leasing companies do not provide workers in the way that a car leasing company provides cars. In the typical employee leasing arrangement, the "lessee" employer, like any conventional employer, hires, trains, and oversees the performance of its existing workforce. The workers, like Hoskins, do not physically move from the workplace of the leasing company to the workplace of the lessee-employer. Instead, the worker remains as he was: a part of the lessee's existing workforce. He continues to labor for the employer who hired him, and that employer continues to oversee his day-to-day routine. Unlike contract labor providers and temporary employee services, employee leasing companies like Beacon Enterprises and Better Integrated do not send workers to employers that need workers; they provide administrative services for employers who have an existing workforce and prefer to outsource the administrative tasks associated with maintaining their workforce.

> In *Labor Ready*, a case involving a temporary labor service company rather than an employee leasing company, we touched upon this critical distinction. We said:
>
> > KRS 342.615(1) creates two classes of workers (leased employees and temporary workers) and two classes of employers (employee leasing companies and temporary help services). Employee leasing arrangements are arrangements in which two or more entities allocate employment responsibilities. KRS 342.615(4) requires the lessee to secure workers' compensation coverage for all leased employees or contract with the employee leasing company to do so, and it requires the premium to be based on the lessee's exposure and experience. A temporary help service hires its own employees and assigns them to clients for finite periods to supplement the client's workforce during special situations such as employee absences, temporary skill shortages, and seasonal workloads.
>
> 289 S.W.3d 200, 207 (Ky. 2009).

Hoskins, 449 S.W.3d at 760-61.

As an aside, the Kentucky Supreme Court's discussion of what qualifies as an "employee leasing arrangement" is helpful, but it incorporates several instances of *dicta*. That *dicta* consists of unsupported statements suggesting that Better Integrated and Beacon qualified as "employee leasing companies" and that Four Star qualified as a "lessee employer" pursuant to an "employee leasing arrangement" involving Hoskins—all within the meaning of

KRS 342.615.[4] In making these statements, the Supreme Court's opinion undertook no examination of the contracts between these individuals defining the nature of any arrangement that was or could have been established.

We agree, to an extent, with the Supreme Court's statement that there was a "dearth of documentation for the transaction involved" in this matter. *Hoskins*, 449 S.W.3d at 756, note 2. As contemplated by KRS 342.615(1)(a), where an employee leasing arrangement has occurred, every lease subsequently entered into pursuant to that arrangement must be in writing. Here, the record includes nothing approaching a written employee lease, much less one specifically involving Beacon or Hoskins. In fact, Charles Garavaglia (as the designated representative of both Beacon and Better Integrated) indicated the only documentation that *might* exist substantiating that some kind of lease involving Hoskins did take place would be the billings between Better Integrated and Beacon.

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[4] As noted in *Brown v. Diversified Decorative Plastics, LLC*, 103 S.W.3d 108, 111 (Ky. App. 2003):

> A statement in an opinion not necessary to the decision of the case is obiter dictum. It is not authoritative though it may be persuasive or entitled to respect according to the reasoning and application of whether it was intended to lay down a controlling principle." *Cawood v. Hensley*, Ky., 247 S.W.2d 27, 29 (1952). "The test is whether the statement was or was not necessary to the determination of the issues raised by the record and considered by the court." *Utterback's Adm'r v. Quick*, 230 Ky. 333, 19 S.W.2d 980, 983 (1929).

Applying these principles, it is apparent that the Supreme Court's language insinuating that Four Star qualified as Hoskins's employer, that Beacon and Better Integrated qualified as "employee leasing companies," or that an employee leasing arrangement even took place in this matter was obiter dictum. The Supreme Court's decision did not depend upon any such conclusions; rather, the Supreme Court only reversed our prior decision affirming the Board only because it was "based upon the flawed premise that Hoskins's lack of knowledge was the determinative factor" in assessing the validity of Hoskins's purported employment relationship with Beacon Enterprises. *Hoskins*, 449 S.W.3d at 762.

That is not to say, however, that nothing of record provides any insight into the nature of the transaction that took place between Better Integrated, Beacon, and Four Star. While the record contains no written *leases* pursuant to any employee leasing arrangement, the record does contain written copies of what were purported by these entities to be their *employee leasing arrangements*. Their "employee leasing arrangements," all of which were respectively memorialized on the same boilerplate document, each provided in relevant part as follows:

> CLIENT SERVICE AGREEMENT
>
> This Agreement (the "Agreement") is made this _____ day of _____ (the "Effective Date") between _____ ("GENERAL CONTRACTOR AND EMPLOYER") and _____ ("CLIENT").
>
> RECITALS
>
> 1. EMPLOYER is in the business of general contracting and providing the service of "Employee Leasing" to its clients.
>
> 2. CLIENT desires to enter into a contract with EMPLOYER, in order to fill its human resources needs and,
>
> 3. EMPLOYER desires to provide to CLIENT the human resources CLIENT needs to properly perform CLIENT's business.
>
> Therefore in consideration of the Recitals, above, and the mutual convents [sic] set forth below, the parties agree as follows:
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> I. SECTION 1 – STAFFING AND SUPERVISION OF EMPLOYER'S EMPLOYEES.

A. SUPERVISION. EMPLOYER agrees to designate supervisors to perform any and all administrative and personnel matters on CLIENT's premises during the normal business hours.
B. CONTROL OF EMPLOYER EMPLOYEES. The EMPLOYER supervisor shall determine the procedures to be followed by EMPLOYER employees regarding the performances of their duties. CLIENT agrees to permit EMPLOYER to implement EMPLOYER's policies and procedures relating to EMPLOYER employees. CLIENT shall make all non-routine directives only through the designated EMPLOYER supervisor.

II. SECTION 2 – TERM.

A. TERM. This Agreement shall commence on the Effective Date and shall continue for a period of twenty-four (24) months (the "Initial Term"). Following expiration of the Initial Term, this Agreement shall remain full [sic] force and effect until terminated by either party by giving thirty (30) days written notice to the other party.

B. MATERIAL BREACH. Notwithstanding the foregoing, EMPLOYER may, at any time, terminate this Agreement for CLIENT's material breach of this Agreement and a termination due to such material a [sic] breach shall be effective immediately upon EMPLOYER giving notice to CLIENT. The following, without limitation, shall constitute a material breach of this Agreement by CLIENT:

Failure to pay any charges or fees when due:

1. Failure to comply with any directive from EMPLOYER or any governmental authority, including but not limited to any directive regarding health, safety or personnel decisions;

2. Committing any act that usurps EMPLOYER's rights as the employer of EMPLOYER employees; . . .

. . . .

IV. SECTION 4 – STATUS OF EMPLOYER AS AN INDEPENDENT CONTRACTOR AND EMPLOYER.

A. INDEPENDENT CONTRACTOR RELATIONSHIP. The parties agree and acknowledge that EMPLOYER shall provide services to CLIENT under this Agreement as an Independent Contractor and the provisions of such service shall not be construed to create an employer-employee or agency relationship between CLIENT and EMPLOYER. Except as expressly provided in this Agreement, neither party has the right or authority to assume or create any obligation, liability or responsibility on behalf of the other party or to hold itself out as an agent or representative of the other in performance of this Agreement.

B. EMPLOYER AS THE EMPLOYER. All EMPLOYER personnel assigned to CLIENT to fulfill job function positions are and shall remain the employees of EMPLOYER. EMPLOYER is and shall remain responsible for such administrative employment matters as the payment of all federal, state and local employment taxes, providing worker's compensation coverage as well as non-obligatory fringe benefit programs for its employees. EMPLOYER agrees that CLIENT shall not be held responsible for EMPLOYER's failure to withhold those taxes or failure to conduct itself in accordance with applicable federal, state and local laws. In no event, however, shall EMPLOYER be liable for CLIENT's loss of profits, business goodwill or other consequential, special or incidental damages.

C. CONTROL OF EMPLOYEES.

1. EMPLOYER shall provide employees who are duly qualified and skilled in the area in which their services are to be utilized. EMPLOYER will consult with CLIENT in filling its Job Function Positions, but EMPLOYER shall retain the sole and exclusive right to determine which of EMPLOYER's employees shall be designated to fill CLIENT's Job Function Positions. CLIENT has no right to approve such determination, but

> nonetheless possesses the right to recommend replacement or substitution of any employee so furnished, if dissatisfied with such employee's qualifications and/or performance. If any EMPLOYER employee is recommended by client for replacement or substitution due to dissatisfaction of such employee's qualifications and/or performance, EMPLOYER agrees, if such recommendation is reasonable and practical, to furnish a suitable replacement within a reasonable time.
>
> 2. EMPLOYER shall have the sole responsibility of hiring, evaluating, supervising, disciplining and firing individuals assigned to fill CLIENT's Job Function Positions. Under no circumstances shall CLIENT have the right to terminate an EMPLOYER employee. It is understood and agreed that EMPLOYER shall retain full control over all personnel decisions.
>
> . . . .
>
> E. COMPLIANCE WITH EMPLOYMENT LAWS. To the extent possible and within CLIENT's control, CLIENT agrees to conduct itself, at its own expense, in such a manner that it complies with all current federal, state and local employment laws, including but not limited to wage and hour, overtime, discrimination law, and/or local ordinances, so as not to place EMPLOYER in violating [sic] of such federal or state employment laws or local ordinances.
>
> V. SECTION 5. – INSURANCE.
>
> A. WORKER'S COMPENSATION INSURANCE. EMPLOYER shall furnish and keep in full force and effect, at all times during the term of this Agreement, Worker's Compensation Insurance covering all EMPLOYER employees leased to CLIENT under the terms of this Agreement. . . .

We have included blank spaces in the paragraph preceding the "RECITALS" section of this agreement because this agreement was used four times to define the relationships between Better Integrated, Beacon, and Four Star.

First, on January 1, 1998, it was used to memorialize the relationship between Better Integrated as "EMPLOYER" and Four Star as "CLIENT." The second and third times it was used occurred on January 1, 2006; on that date, one copy of the above agreement listed Better Integrated as "EMPLOYER" and Beacon as "CLIENT"; another copy listed Beacon as "EMPLOYER" and Better Integrated as "CLIENT." The fourth time it was used was June 1, 2006; on that date, Beacon was listed as "EMPLOYER" and Four Star was listed as "CLIENT."

With the above in mind, a cursory reading of the agreements between these entities highlights at least two critical points.

First, despite indicating in the recitals that the "EMPLOYER" is in the business of "providing the service of 'Employee Leasing' to its clients," it is apparent that any "lease" that could have come into being pursuant to this written arrangement would have been precisely the *opposite* of what the Kentucky Supreme Court has characterized as a "lease" within the meaning of KRS 342.615. Contrary to that characterization, the unmistakable purpose of this arrangement *was* to provide workers to companies who needed workers. *See* Section 4(B) and (C). Nothing in this arrangement could be interpreted as an example of a "CLIENT" outsourcing "certain administrative tasks associated with the management of [its] existing workforce." *Hoskins*, 449 S.W.3d at 760. Rather, the plain terms of these agreements specify that the "CLIENT" is never considered *any* kind of employer of the "employees" contemplated in the agreements. *See* Section 4(B) and (C). The "CLIENT" is merely provided services from the

"EMPLOYER's employees"—individuals the "CLIENT" is expressly prohibited from hiring, training, overseeing, or otherwise considering part of its existing workforce[5]—pursuant to an arrangement that casts the "EMPLOYER" as something more akin to a temporary help service provider.[6]

Indeed, Beacon's and Better Integrated's representatives testified (and the ALJ held) consistently with the belief that the purpose of an employee leasing company *is* to provide workers in the way that a car leasing company provides

[5] *See* Sections 1(A) and (B); 2(B)(1) and (2); and 4 (B) and (C).

[6] The arrangements described in the agreements between Better Integrated, Beacon, and Four Star each involved the party designated "EMPLOYER" hiring its own employees and "furnish[ing]" them to "CLIENTS" for finite periods of time. *See* Section 4(C)(1). Comparatively, a "temporary help service," as the term is defined in KRS 342.615(f), is "a service whereby an organization hires its own employees and assigns those employees to clients for finite periods of time to support or supplement the client's workforce in special work situations, including employee absences, temporary skill shortages, and seasonal workloads." And, a "temporary worker," per KRS 342.615(1)(e) is defined as "a worker who is *furnished* to an entity to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions for a finite period of time[.]" (Emphasis added.)

cars[7]—a notion that the Kentucky Supreme Court has explicitly rejected. *Id*. at 760.

Second, and as the Board indicated in its prior review of this matter, if Better Integrated was the entity that hired Hoskins and was thus Hoskins's initial

[7] By way of illustration, the Board's opinion summarized Garavaglia's testimony regarding his understanding of the "employee leasing arrangements" at issue as follows:

> Garavaglia explained Hoskins is a contract driver from a personnel leasing company. He testified "the actual direct relationship would have been between Beacon and Four Star." Hoskins was an employee of Better Integrated leased to Beacon and in turn leased to Four Star. Garavaglia was not sure of the company name on the application or where Hoskins completed the application. He understood Hoskins obtained an application at Four Star's "drop lot" in Kentucky. Vincent [Manzo] told Garavaglia a representative of Beacon or Better Integrated provided Hoskins with an application. At the time of Hoskins's injury he believed Better Integrated had approximately four or five employees in Kentucky. Vincent could provide the information regarding the employees of Better Integrated since he ran the day to day operations, and "Sal handled Beacon."
>
> . . . .
>
> As to the arrangements between Better Integrated and Beacon regarding Hoskins, Garavaglia explained KEMI would not allow Better Integrated to be added to Beacon's policy because Better Integrated did not have a "physical operation" in Kentucky. Beacon then asked Better Integrated for employees and Better Integrated leased to Beacon somewhere between four to twelve drivers over a period of time. Beacon ultimately leased them to its customer Four Star. Better integrated initially leased Hoskin to Four Star because Hoskins "was domiciled and operating out of Chicago, Indiana." Garavaglia explained all of Hoskins's "dispatches and everything" came out of Chicago, Indiana. When Four Star decided it wanted to have a physical operation in Kentucky, Better Integrated then leased employees to Beacon since Beacon had an operation in Kentucky.

(Internal footnote omitted.)

Likewise, the ALJ's dispositive holding in his separate opinion in this matter was as follows:

> The next issue for determination is whether an Employer/Employee relationship existed. It is undisputed that [Hoskins] applied for a job with Four-Star Transportation. It is undisputed [Hoskins] was hired by Better Integrated Services, was leased to Beacon Enterprises, and then leased to

employer—as Garavaglia and Vincent and Salvatore Manzo[8] testified it was, and the ALJ specifically found—a "lease" from Better Integrated to Beacon pursuant to the above-referenced agreement (or a similar "lease" from Better Integrated to Beacon and then to Four Star) could not have altered either Better Integrated's status as Hoskins's sole employer, or Better Integrated's contractual obligation to be the sole entity responsible for "furnish[ing] and keep[ing] in full force and effect" "Worker's Compensation Insurance covering" Hoskins. *See* Sections 4(B) and 5. Incidentally, this type of arrangement is yet another hallmark of a relationship involving a temporary help service provider, as opposed to an employee leasing company. *See* KRS 342.615(5) ("A temporary help service shall be deemed the employer of a temporary worker and shall be subject to the provisions of this chapter.").

We reemphasize that this was the only written evidence Better Integrated, Beacon, and Four Star relied upon to prove that an employee leasing arrangement involving both Beacon and Hoskins existed prior to Hoskins's injury. What this writing actually demonstrates, however, is that (1) these entities did not understand what qualified as an "employee leasing arrangement" under Kentucky

> Four Star Transportation as a truck driver. Therefore, the Administrative Law Judge finds that an Employer/Employee relationship existed between Julian Hoskins, and Four Star Transportation. The Administrative Law Judge further finds that [Hoskins] was an employee of Better Integrated Services, was leased to Beacon Enterprises, and then leased to Four-Star Transportation. Therefore an Employer/Employee relationship existed at all times relevant herein.

[8] Vincent and Salvatore Manzo were respectively officers and additional representatives of Better Integrated and Beacon.

law; (2) any relationship that may have been established between these entities under the terms of these arrangements could not have permitted Hoskins's initial employer—whether that initial employer was Better Integrated or Four Star—to convert Beacon into Hoskins's employer for *any* purpose, let alone the purpose of saddling Beacon with the responsibility for providing worker's compensation coverage for Hoskins's injuries; and (3) the only arrangement utilizing the above "client service agreement" that could have permitted Hoskins to function as Better Integrated's employee while providing his services to Four Star would have been an arrangement directly and exclusively between Better Integrated (as "EMPLOYER") and Four Star (as "CLIENT").[9]

Not only was such a direct arrangement between Better Integrated and Four Star in effect at all relevant times in this matter; Better Integrated's, Beacon's, and Four Star's "fail[ure] to maintain written documents evidencing the inter-corporate transactions or . . . fail[ure] to introduce them into the record"[10] makes the proposition that Four Star acquired Hoskins directly from Beacon, as opposed

[9] The only "evidence" offered to support the existence of a leasing agreement involving both Beacon and Hoskins was oral testimony provided by the companies' owners and expert witnesses. All of this testimony, however, was consistent with the proposition that any such lease would have conformed to the provisions of the "client service agreement" appearing above. As noted, a lease from Better Integrated, to Beacon, and then to Four Star could not have conformed to the provisions of the "client service agreement." Therefore, their testimony cannot be considered substantial evidence that any kind of relationship between Beacon and Hoskins was actually established. *See, e.g., Kentucky Bd. of Nursing v. Ward*, 890 S.W.2d 641, 643 (Ky. App. 1994) ("In determining whether the evidence is substantial, the court must take into account whatever in the record fairly detracts from its weight." Internal quotation marks omitted).

[10] *Hoskins*, 449 S.W.3d at 756. Consistent with this statement, the Board also noted in its separate review that "Salvatore [Manzo] acknowledged no documents existed which would reflect an agreement between Beacon and Better Integrated after Hoskins's date of hire."

to directly from Better Integrated, pure speculation. Moreover, Better Integrated was clearly functioning as Hoskins's "EMPLOYER" under the terms of the above arrangement because, undisputedly, it (and not Beacon) was paying Hoskins's wages while Hoskins was providing services for Four Star. *See* sections 4(B) and (E).

In short, there is no substantial evidence of record supporting that Beacon and Hoskins had any relationship relevant to these proceedings. Thus, there is nothing of record disputing the following statement made by the Board in its own assessment of this matter:

> [T]he evidence, including the testimony of the Manzos and Garavaglia, compels a finding the alleged agreement involving Hoskins was nothing more than a sham concocted to obtain workers' compensation coverage for Hoskins's injury.

CONCLUSION

When reviewing worker's compensation and other employment matters, this Court disregards legal fictions espoused by the parties and views employment relationships "realistically" in light of the business being conducted and the services rendered. *See Commonwealth v. Potts*, 295 Ky. 724, 175 S.W.2d 515, 516 (1943); *see also Brewer v. Millich*, 276 S.W.2d 12, 16 (Ky. 1955) ("Courts look behind the legal terminology to discover and expose the real relationship between the parties as regards the question of the failure to obtain compensation coverage."). Having done so, it is evident the ALJ's conclusion (*i.e.*, that Beacon was associated with Hoskins in any way that implicated its policy

with KEMI) was unsupported and contrary to the record. The Board is therefore AFFIRMED.

ALL CONCUR.

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