

IN THE UTAH COURT OF APPEALS

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Richard Norris,	)	MEMORANDUM DECISION	
	)	(Not For Official Publication)	
Petitioner,	)		
	)	Case No. 20090784-CA	
v.	)		
	)		
Labor Commission, Harold Van	)	F I L E D	
Adams and/or Uninsured	)	(December 16, 2010)	
Employers Fund,	)		
	)	<table border="1"><tr><td>2010 UT App 358</td></tr></table>	2010 UT App 358
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Respondents.	)		

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Original Proceeding in this Court

Attorneys: Melvin A. Cook, Salt Lake City, for Petitioner  
Mark L. Shurtleff and Nancy L. Kemp, Salt Lake City,  
for Respondents

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Before Judges Davis, McHugh, and Christiansen.

CHRISTIANSEN, Judge:

Petitioner Richard Norris seeks our review of the Labor Commission's (the Commission) decision that he was an independent contractor, resulting in the Commission's denial of workers' compensation benefits to Norris. We affirm.

The Commission adopted the administrative law judge's findings of fact and then determined, based on those findings, that "Norris acted as an independent contractor and was not an employee." Norris does not challenge the Commission's factual findings but instead argues that the Commission could not reasonably conclude that Norris was an independent contractor based on the factual findings.

"[T]he Legislature has granted the Commission discretion to determine the facts and apply the law to the facts in all cases coming before it." AE Clevite, Inc. v. Labor Comm'n, 2000 UT App 35, ¶ 7, 996 P.2d 1072; accord Utah Code Ann. § 34A-1-301 (2005) ("The commission has the duty and the full power, jurisdiction, and authority to determine the facts and apply the law in this chapter or any other title or chapter it administers."). "As such, we must uphold the Commission's determination . . . unless the determination exceeds the bounds of reasonableness and rationality so as to constitute an abuse of discretion . . . . Moreover, we resolve any doubt respecting the right to

compensation in favor of the injured employee." AE Clevite, Inc., 2000 UT App 35, ¶ 7 (citation and internal quotation marks omitted).

The Workers' Compensation Act defines "independent contractor" as

any person engaged in the performance of any work for another who, while so engaged, is:

- (A) independent of the employer in all that pertains to the execution of the work;
- (B) not subject to the routine rule or control of the employer;
- (C) engaged only in the performance of a definite job or piece of work; and
- (D) subordinate to the employer only in effecting a result in accordance with the employer's design.

Utah Code Ann. § 34A-2-103(2)(b)(i)(A)-(D) (Supp. 2010).

"In determining whether a worker acted as an employee as opposed to an independent contractor for purposes of the Workers' Compensation Act, our inquiry has long focused on whether the employer had the right to control the worker." Utah Home Fire Ins. Co. v. Manning, 1999 UT 77, ¶ 10, 985 P.2d 243; accord Averett v. Grange, 909 P.2d 246, 249 (Utah 1995) ("[W]hether an employer-employee relationship exists depends upon the employer's right to control the employee.").

[I]n general, an employee is one who is hired and paid a salary, a wage, or at a fixed rate, to perform the employer's work as directed by the employer and who is subject to a comparatively high degree of control in performing those duties. In contrast, an independent contractor is one who is engaged to do some particular project or piece of work, usually for a set total sum, who may do the job in his [or her] own way, subject to only minimal restriction or controls and is responsible only for its satisfactory completion.

The main facts to be considered as bearing on the relationship here are: (1) whatever covenants or agreements exist concerning the right of direction and control over the employee, whether express or implied; (2) the right to hire and fire; (3) the method of payment . . . ; and (4) the furnishing of equipment.

Utah Home Fire Ins. Co., 1999 UT 77, ¶ 11 (second alteration and omission in original) (internal quotation marks omitted).

The Commission determined, based on the factual findings, that "Norris had no supervision over his work and he decided his own work schedule for completing the project"; that the manager and owner of the units had only "minimal interaction [with Norris that] did not amount to any form of supervision over . . . Norris"; that Norris agreed "he would be paid a certain amount of money to perform a job--cleaning and fixing up three vacant and vandalized units"; and that "[w]hen the supplies exceeded th[e] initial [budgeted] amount, [the owner] authorized another payment and advised [Norris] to get it done." The Commission also determined that "Norris provided his own tools for the work, used his own truck, and was responsible for purchasing most of the supplies for the work, with the exception of the cleaning supplies that he was told he could use." Based on the facts of this case, along with the law governing the determination of an independent contractor, the Commission acted reasonably and rationally in applying the facts to the law and determining that Norris was an independent contractor.<sup>1</sup>

Affirmed.

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Michele M. Christiansen, Judge

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WE CONCUR:

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James Z. Davis,  
Presiding Judge

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Carolyn B. McHugh,  
Associate Presiding Judge

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1. Because of this determination, we do not address Norris's second argument related to the Commission's alternative determination "that regardless of whether Mr. Norris had proven he was an employee . . . , the employment relationship had ended at the time of the accident." See, e.g., Ludlow v. Industrial Comm'n, 65 Utah 168, 235 P. 884, 885 (1925) (determining that once a court decides a person is an independent contractor it does not need to determine if the person acted within the course or scope of employment).