

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JUDGE DAVID M. GLOVER

DIVISION IV

CA07-827

May 7, 2008

ROGER D. JACKSON

APPELLANT

V.

BILL HARRIS, BILLY HARRIS  
CONSTRUCTION, HOT SPRINGS  
BUILDING & GRADING, LLC, and  
FIRSTCOMP INSURANCE CO.

APPELLEES

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION [F509936]

AFFIRMED

Appellant, Roger Jackson, sustained a hernia injury on September 9, 2005, while working as a framing carpenter. His claim for workers' compensation benefits went to a hearing primarily concerning whether appellant was employed by Billy Harris Construction Company or Hot Springs Building & Grading. The parties stipulated that Billy Harris Construction Company was an uninsured entity. Following the hearing, the ALJ determined that the injury was compensable and that appellant was employed by Hot Springs Building & Grading at the time of the injury.

The Commission affirmed the ALJ's finding of compensability but reversed the ALJ's finding regarding appellant's employment status, finding instead that appellant was employed by Billy Harris Construction Company at the time of his injury. As his sole

point of appeal, appellant contends that the Commission's opinion regarding his employment status is not supported by substantial evidence. We disagree and affirm.

*Standard of Review*

When a workers' compensation claim is denied, the substantial evidence standard of review requires us to affirm the Commission if its opinion displays a substantial basis for denial of the relief sought by the worker. *Whitten v. Edward Trucking/Corp. SOL*, 87 Ark. App. 112, 189 S.W.3d 82 (2004). In determining the sufficiency of the evidence to sustain the findings of the Commission, we review the evidence in the light most favorable to the Commission's findings and affirm if they are supported by substantial evidence. *Id.* Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Id.* The question is not whether the evidence would have supported findings contrary to the ones made by the Commission; there may be substantial evidence to support the Commission's decision even though we might have reached a different conclusion if we sat as the trier of fact or heard the case de novo. *Id.* In making our review, we recognize that it is the Commission's function to determine the credibility of witnesses and the weight to be given their testimony. *Id.*

Appellant began work as a framing carpenter on September 5, 2005. Four days later he suffered a hernia while lifting lumber on the job. The project on which appellant

was working was a condominium development called the Blue Heron Project. According to James Stovall, owner of Hot Springs Building & Grading, Billy Harris Construction Company had the initial framing contract for the project. Stovall did the excavation work on the project. The testimony of James Stovall and the deposition testimony of Billy Harris differed in material ways, but the Commission clearly credited Stovall's testimony.

Stovall testified that Harris came to him as a friend needing money to pay his employees until he got his first draw. As a result, Stovall said that, through his new company, Hot Springs Building and Grading, LLC, he paid several of Harris's employees by checks on Friday, September 9, 2005; that on the following Monday, September 12, he paid his workers' compensation insurance premium to appellee, First Comp Insurance Company; that the premium was based on an estimate of what he felt his payroll would be; that he wrote checks to the same Harris employees for the weeks of September 16, 23, and 30; and that he also paid his own employees through his new LLC. Stovall said that he had seen appellant on the job site; that appellant was working for Billy Harris; that Harris brought him social-security numbers or tax forms for Harris's employees so that he could prepare 1099 forms at year's end, but that he did not have a form for appellant; that Harris reported to him that Harris's employees did not want taxes held out of their checks; and that he told Harris he would help him out until he got his first draw, but after that he "would not do business that way."

Stovall explained that Billy Harris never got a draw from the job because one of the owners was not pleased with Harris's work product; that Stovall bought out Harris's

contract on approximately September 22; and that he kept Harris's employees for approximately one week after that. He stated that Billy Harris did not have workers' compensation coverage and told him that his employees had all signed waivers.

Stovall testified that he never knew about appellant's reporting of a hernia at the job site. He said that he did not know whether appellant was ever paid for his work on the project, but that he did not personally pay cash to appellant for work on the project.

On cross-examination, Stovall testified that in making Harris's payroll and expenses, he considered it a loan that Harris would repay, along with eight-percent interest, when he got his first substantial draw. He said that Harris was not his subcontractor; that Harris's statements that Stovall had torn up checks so that there would be no record of appellant working on the project were not true; that the first he knew of appellant's injury was when appellant later approached him and told him; that he then contacted Billy Harris and asked him if he knew anything about it; that Harris did not know about it at that time; that the individuals hired by Harris and for whom Stovall made payroll were not Stovall's employees; and that after Stovall took over the framing contract, those individuals except for George Burks were terminated after one more week. He said that from that point forward, he paid Burks's workers' compensation insurance and he already had coverage on all of his other employees.

Stovall explained on re-direct that he paid Harris \$4,285 to buy him out of his sub-contract and that they calculated that figure by determining what percentage of the

job Harris had completed and deducted from that amount the payroll that Stovall had made on Harris's behalf.

Appellant, Roger Jackson, testified that he started work on the project as a framing carpenter on Monday, September 5; that he found out about the job from Phillip Dixon, who was working on the project for Harris; that he met Harris and Stovall his second day on the job; that he filled out a W-2 or W-4 form at the job site; that he made an error on the first one and Harris got him a second one; that he completed it and gave it to George Burks "just like everyone else"; that Stovall was present on the job most every day; that appellant took his instruction mainly from Burks; that he saw Burks conferring with Stovall on a "couple" of occasions; that Burks basically indicated that he was the foreman of the project and that when questions arose, he would have to confer with Stovall to get the answer; that Burks never indicated that he had to report to Billy Harris; that it was appellant's understanding that Burks was the foreman for Stovall; that the way he understood it, "Billy Harris was the supervisor over the job, George Burks was the foreman under him, and then the rest of us were framers"; and that "James Stovall was the head honcho over the whole project." He said that George Burks "indicated that everyone was covered under workers' compensation insurance whether they had a waiver card or not."

Appellant explained that on the day of his injury, he felt a popping on his right side in the groin area when he picked up some lumber; that he told Burks that he had felt something pull but did not think that it would be a "big deal" if he subsequently sought

medical treatment; that he began having a hard time lifting; that he had never had a hernia before in his life; that around noon, Burks came out with the paychecks for everyone from Mr. Stovall; that appellant saw everyone else's check but Burks pulled him off to the side and said that they had forgotten to write his check so they just got cash to pay him; and that they gave him \$450 cash and then fired him. He said that he listed J.H. Stovall as his employer because that was what he thought; that he had not worked since September 9, 2005; that he had never been able to get the treatment to repair the hernia; that he started calling Stovall on Monday afternoon, September 12, and finally reached him on Wednesday September 14 on his cell phone; that Stovall told him he had no record of him ever working for him and hung up on him; that he then had to tell the doctors that he had no insurance; that the cash payment was enclosed in a white envelope; that Burks told him it came from Stovall; and that he never got a 1099 form at the end of 2005.

Briefly summarized, Billy Harris's deposition testimony was that he was not under a contract at the Blue Heron Condominium project, and that he went to work for Stovall as a superintendent.

Viewing the evidence in the light most favorable to the Commission's findings, we conclude that it is supported by substantial evidence and that the Commission's opinion displays a substantial basis for the denial of appellant's claim. The Commission clearly credited the testimony of James Stovall rather than that of Billy Harris, as is the Commission's function to do. According to Stovall, he wrote checks to several of Harris's employees as part of a loan arrangement with Harris, who was short of cash. He said that

Harris was to repay the loan, with eight-percent interest, when he got his first substantial draw. Although acknowledging that he had seen appellant on the job site, Stovall asserted that appellant worked for Harris, not him. He stated that he bought out Harris's contract around September 22 because the owners were not pleased with Harris's work product. Stovall further testified that he did not learn about appellant's injury until appellant himself later approached him; that he did not know whether appellant was ever paid for his work on the project; and that he did not personally pay cash to appellant for work on the project. Stovall further denied that Harris was his subcontractor.

In his challenge to the Commission's decision, appellant relies upon the case of *Great Central Ins. Co. v. Mel's Texaco*, 8 Ark. App. 236, 651 S.W.2d 101 (1983). However, the facts of the instant case are distinguishable. In *Mel's Texaco*, the workers' compensation insurance premiums were based upon the total payroll of several businesses owned by the same person who owned the Texaco station. Here, as found by the Commission, Stovall did not have any ownership interest in Billy Harris Construction Company, and his payment of Harris's payroll was simply a loan arrangement.

Affirmed.

BIRD and HEFFLEY, JJ., agree.