

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA08-137

GORDON HITE,

APPELLANT

V.

J & J TRUCKING,
TYSON FOODS, and
SECOND INJURY FUND,

APPELLEES

Opinion Delivered 18 JUNE 2008

AN APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F508670]

AFFIRMED

D.P. MARSHALL JR., Judge

Gordon Hite, a truck driver for J & J Trucking, slipped and fell while inspecting an empty trailer and injured his right shoulder. The ALJ found that Hite was entitled to benefits for his injury, but that his employer was not a subcontractor of Tyson Foods. The Workers' Compensation Commission adopted the ALJ's opinion. Hite appeals only the subcontractor issue. No other party has filed a brief.

J & J Trucking contracted with Tyson Foods to transport its products between Tyson facilities. Though its contract with Tyson required J & J to have workers' compensation coverage for its employees, J & J had failed to obtain coverage at the time of Hite's injury. If J & J was Tyson's subcontractor, then Tyson—as the general contractor—would be liable for all the workers' compensation benefits awarded to Hite. Ark. Code Ann. § 11-9-402(a) (Repl. 2002). The Commission determined that

no such relationship existed. Substantial evidence supports this decision. *Dairy Farmers of America, Inc. v. Coker*, 98 Ark. App. 400, 404–05, ___ S.W.3d ___, ___ (2007).

A subcontracting relationship requires a general contractor (who is contractually obligated to perform work for a third party) and a subcontractor (who contracts with the general contractor to perform part or all of its obligation to the third party). *Garcia v. A & M Roofing*, 89 Ark. App. 251, 257, 202 S.W.3d 532, 536–37 (2005). Hite contends that J & J’s relationship with Tyson satisfies both of these requirements.

He first argues that J & J’s contract with Tyson showed Tyson’s contractual obligations to its third-party customers. The contract contains a customer list and references customer deliveries. But the record does not contain Tyson’s contracts with those customers or contain other evidence explaining Tyson’s specific obligations to each customer. *Compare Dairy Farmers*, 98 Ark. App. at 408, ___ S.W.3d at ___. Hite also argues that the record shows that J & J contracted with Tyson to perform at least a portion of its obligation to its customers. We disagree. Hite testified that he drove Tyson products between different Tyson facilities in Northwest Arkansas. The record contains no evidence that Hite or any J & J driver actually delivered Tyson products to Tyson’s customers. We therefore have no idea what part, if any, of Tyson’s contracts with its customers were ever “farmed out” to J & J. *Compare Dairy Farmers*, 98 Ark. App. at 406–09, ___ S.W.3d at ___. Substantial evidence thus supports the Commission’s finding that Tyson was not J & J’s general contractor. 98 Ark. App. at 404–05, ___ S.W.3d at ___.

Finally, we agree with Hite that the Commission did not specify all the facts supporting its legal conclusion that J & J was not a subcontractor. This omission was error but not a reversible one. Our law requires findings of fact for two main reasons: to explain the decision's factual basis to the parties and to allow meaningful judicial review. *Wright v. American Transp.*, 18 Ark. App. 18, 20–22, 709 S.W.2d 107, 109–10 (1986). Neither reason was frustrated here. *Compare Lowe v. Car Care Marketing*, 53 Ark. App. 100, 102–03, 919 S.W.2d 520, 521 (1996). The ALJ, whose opinion the Commission adopted, made some findings. Hite discerned the obvious facts behind the Commission's decision and ably argued them and the applicable law in his brief. We were likewise able to review the Commission's decision as the law requires. Hite had the burden of proving all elements of his workers' compensation claim, *Aluminum Co. of America v. Rollon*, 76 Ark. App. 240, 244, 64 S.W.3d 756, 758 (2001), including his contention that Tyson Foods is the general contractor of J & J Trucking and is responsible for workers' compensation since J & J was not covered. Because Hite's proof on the general/sub issue failed as a matter of law, no good purpose would be served by remanding for the Commission to make a specific factual finding to that effect. Substantial evidence supports the Commission's conclusion that Tyson had no obligation to Hite under the statute. *Dairy Farmers*, 98 Ark. App. at 404–05, ___ S.W.3d at ___.

Affirmed.

BIRD and GLOVER, JJ., agree.