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NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2006-CA-000559-WC

LEADING EDGE INSURANCE GROUP, INC.;
AND INNOVATIVE RISK MANAGEMENT, INC.

APPELLANTS

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-04-01541

TONY HART; MAXIMUM TRANSPORTATION, INC.;
ADMINISTRATIVE EMPLOYER GROUP, INC.;
AMERICAN STAFFING, INC.; UNINSURED
EMPLOYERS' FUND; APL LOGISTICS;
HON. IRENE STEEN, ADMINISTRATIVE LAW
JUDGE; AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: TAYLOR, JUDGE; BUCKINGHAM,¹ SENIOR JUDGE; MILLER,²
SPECIAL JUDGE.

TAYLOR, JUDGE: Leading Edge Insurance Group, Inc. (Leading
Edge) and Innovative Risk Management, Inc. (IRM) petitions us to

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

² Retired Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

review an opinion of the Workers' Compensation Board entered February 17, 2006, affirming the Administrative Law Judge's (ALJ) decision that Leading Edge was the responsible insurance carrier for a work-related injury suffered by Tony Hart. We affirm.

On April 3, 2004, Hart suffered severe injuries in a propane tank explosion. At the time of the accident, Hart was working for Maximum Transportation, Inc. Since February 2003, Maximum leased its employees from Administrative Employee Group (AEG).³ AEG was ostensibly insured by Leading Edge. The record indicates that Leading Edge supplied AEG with a certificate of insurance even though Leading Edge was not licensed to write workers' compensation insurance in the Commonwealth. IRM was the third-party administrator for Leading Edge. Sometime in April 2004, AEG terminated its leasing contract with Maximum, and thereafter American Staffing Inc. (ASI) contractually undertook to lease employees to Maximum.

Hart filed a claim for workers' compensation benefits. The ALJ "bifurcated" the claim and initially rendered a decision upon the issues of employment relationship and appropriate insurance carrier. The ALJ found that AEG was the leasing company for Maximum at the time of Hart's injury on April 3rd. As such, the ALJ concluded that Leading Edge was the responsible

³ Although Administrative Employee Group was notified of Tony Hart's workers' compensation claim, it did not enter an appearance in these proceedings.

insurance carrier for Hart's injury. Being unsatisfied with the decision, Leading Edge and IRM sought review with the Workers' Compensation Board (the Board). The Board entered an opinion affirming the ALJ. Our review follows.

Leading Edge and IRM contend the Board erroneously affirmed the ALJ's decision that Leading Edge was the responsible insurance carrier at the time of Hart's accident on April 3rd. Leading Edge and IRM contend that AEG terminated its contract with Maximum on April 1, 2004; thus, Leading Edge cannot be financially responsible for Hart's work-related injury on April 3rd. Conversely, ASI contends that its contract with Maximum did not become effective until April 4, 2004; thus, it cannot be responsible for Hart's injury which occurred on April 3rd. The ALJ found that AEG was the leasing company for Maximum on April 3rd and that Leading Edge was the responsible insurance carrier for Hart's work-related injury. For the reasons hereinafter stated, we hold that substantial evidence supports the findings of fact by the ALJ.

It is well-established that the ALJ as fact-finder has the sole authority to judge the weight and credibility of evidence. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). On appeal, our function is limited to determining whether the ALJ's findings of fact were supported by substantial evidence of a probative value. The ALJ found that AEG was the

leasing company for Maximum on Hart's injury date of April 3, 2004. The record contains ample evidence to support the ALJ's finding.

ASI's president, Michael D. Ferrell, testified that ASI and Maximum entered into an employee leasing arrangement on April 7, 2004, and that a contract was executed on April 13, 2004. Ferrell specifically stated that ASI's first payroll for Maximum's employees was on April 16, 2004, and included the pay period from April 4-11. According to Ferrell, ASI did not pay wages to Hart for the work he performed on or before April 3rd. There is also evidence in the record that the ALJ heard testimony from Angela Davis, who was the safety manager for Maximum and also performed clerical and administrative duties. Davis specifically testified that the employee leasing company in place on the date of Hart's injury was AEG. Davis stated that AEG provided payroll to the employees of Maximum, including Hart, for the week ending April 4th. Accordingly, we are of the opinion that the above testimony alone constitutes substantial evidence of a probative value to support the ALJ's finding that AEG was the leasing company for Maximum on the date of Hart's work-related injury (April 3rd).

Leading Edge and IRM also argue that the evidence was incomplete and that the ALJ "rush[ed] to judgment." Specifically, Leading Edge and IRM point to a "missing contract"

between Maximum and ASI. Leading Edge and IRM also claim that the deposition of an ASI employee, Richard Tyree, was never taken. As to this argument, we are inclined to agree with and adopt the Board's reasoning:

Here, all proof taking time had expired at the time of ASI's motion to bifurcate and Leading Edge/IRM did not move to substitute counsel until after that motion. Hart's claim was filed on September 3, 2004, and Leading Edge/IRM ignored ASI's motion for production of documents until June 9, 2005. Leading Edge/IRM did not request an extension of time to introduce additional proof until May 5, 2005, almost seven months after the initial scheduling order. Given these circumstances, we discern no abuse of discretion on the part of the ALJ. Since the decision of the ALJ is supported by substantial evidence, we are bound to affirm.

Simply put, Leading Edge and IRM bear the burden to insure that the record is sufficient to support its contentions before the ALJ. Upon the whole, we are unable to conclude the Board committed error in affirming the ALJ's decision. Western Baptist Hospital v. Kelly, 827 S.W.2d 685 (Ky. 1992).

For the foregoing reasons, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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