STATE OF MICHIGAN

COURT OF APPEALS

JAMES A. LOOS, JR.,

Plaintiff-Appellee,

v

J. B. INSTALLED SALES, INC., a/k/a J. B. SUPPLY and ACCIDENT FUND INSURANCE COMPANY OF AMERICA,

Defendants-Appellants,

and

ROBINSON ROOFING,

Defendant.

UNPUBLISHED
November 20, 2008

No. 275704
WCAC
LC No. 05-000246

Before: Murphy, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Our Supreme Court has remanded this case for consideration as on leave granted.[1] Defendants J. B. Installed Sales Inc., and Accident Fund Insurance Company of America appeal an order of the Worker's Compensation Appellate Commission (the "Commission") that reversed a magistrate's order denying plaintiff's petition for benefits. Because we conclude that there were no errors warranting relief, we affirm. This appeal has been decided without oral argument under MCR 7.214(E).

Plaintiff fell from a roof and sustained injuries. Plaintiff alleged that at the time of his fall he was employed by Robinson Roofing, which had contracted with J. B. Supply Installed Sales Inc., to perform the roof work. The issue in this case is whether plaintiff was an "employee" of Robinson Roofing, within the meaning of the Worker's Disability Compensation Act, at the time of his fall. If plaintiff were an "employee" of Robinson Roofing, an uninsured subcontractor, then the principal, J. B. Supply Installed Sales Inc., would be liable for payment

[1] *Loos v J. B. Installed Sales, Inc*, 480 Mich 990; 742 NW2d 125 (2007).

of worker's compensation benefits. MCL 418.171. The magistrate determined that plaintiff was not an employee of Robinson Roofing and the Commission reversed that determination.

The proper interpretation of a statute is a question of law that we review de novo. *McCaul v Modern Tile & Carpet, Inc*, 248 Mich App 610, 615; 640 NW2d 589 (2001).

MCL 418.161(1)(n) defines "employee" in part as:

> Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury, if the person in relation to this service does not maintain a separate business, does not hold himself or herself out to and render service to the public, and is not an employer subject to this act.

These statutory factors have superceded the common law economic realities test. *Hoste v Shanty Creek Management Inc*, 459 Mich 561, 572; 592 NW2d 360 (1999). Therefore, factors of the common law test that are not incorporated into the statutory test are not to be considered. *Id.*; see also *Reed v Yackell*, 473 Mich 520, 536 n 18; 703 NW2d 1 (2005).

We agree with the Commission that the focus of the magistrate's analysis was misplaced. For example, the magistrate considered plaintiff's tax records to be "most relevant." However, factors such as whether taxes were withheld or whether plaintiff was issued a Form 1099 or a W-2 were not incorporated into MCL 418.161(1)(n), and, therefore, reliance on such factors to determine whether plaintiff was an "employee" was improper. *Hoste*, *supra*; *Reed*, *supra*. The statutory factors must be the focus of the analysis. Thus, the Commission did not err when it concluded that the magistrate's analysis was legally flawed. The Commission properly re-focused the analysis on the statutory factors, and the evidence relevant to those factors. Because the Commission did not misapprehend its administrative appellate role and gave an adequate reason grounded in the record for reversing the magistrate, and because there is evidence in the record to support the Commission's findings, we must affirm. See *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 703-704; 614 NW2d 607 (2000).

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Michael R. Smolenski