CASE NO. 5807 CRB-4-12-12 : COMPENSATION REVIEW BOARD
CLAIM NO. 400084318

JEAN M. LOUIS
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: NOVEMBER 1, 2013

REBORN AUTOBODY
EMPLOYER
NO RECORD OF INSURANCE
RESPONDENT-APPELLEE

and

SECOND INJURY FUND
RESPONDENT-APPELLEE

APPEARANCES:

The claimant was represented by Ikechukwu Umeugo, Esq., Umeugo & Associates, PC, 620 Boston Post Road, West Haven, CT 06516.

The respondent Reborn Autobody was represented by Sefton Neil Brown, Jr., Esq., Law Offices of Sefton N. Brown, Jr., 135 Elm Street, Bridgeport, CT 06604.

The respondent Second Injury Fund was represented by Michael J. Belzer, Esq., Assistant Attorney General, Office of the Attorney General, 55 Elm Street, Hartford, CT 06141-0120.

This Petition for Review from the November 15, 2012 Finding and Dismissal of the Commissioner acting for the Fourth District was heard June 28, 2013 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Charles F. Senich and Peter C. Mlynarczyk.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has appealed from a Finding and Dismissal wherein the trial commissioner concluded that due to the absence of an employee-employer relationship, the Workers' Compensation Commission lacked jurisdiction over his injury. The claimant argues that this conclusion was in error. After reviewing the record we conclude the trial commissioner could have reasonably concluded that the claimant did not establish the requisite existence of an employer-employee relationship with the respondent. We find no error and affirm the Finding and Dismissal.

The trial commissioner reached the following findings of fact at the conclusion of the formal hearing. It was stipulated that the respondent Reborn Autobody did not have workers' compensation insurance. The commissioner found on March 9, 2011 the claimant sustained injuries to the third and fourth fingers of his left hand, while working as a mechanic on a vehicle at Reborn Autobody. The claimant was immediately transported to St. Vincent's Medical Center in Bridgeport where he received emergency treatment, and was referred to Dr. Thomas Rago for follow up.

The claimant testified at the hearing that he has been doing automotive repair work since 1988 and had a degree from Porter and Chester Institute as a mechanic. He was introduced to Armand Sajous, the owner of Reborn Autobody, in January of 2011, by a friend, because Mr. Sajous was looking for a mechanic. About a week later, he started working for him repairing cars, i.e. doing brake jobs, tune-ups, transmissions, etc. He had a payment arrangement with the respondent wherein he would receive 50% of the money paid for a mechanical job after the job was completed. The claimant testified Mr.

Sajous assigned the jobs to him, told him what needed to be done and when to do it. Payment for the services he rendered was made by the customer to Mr. Sajous, who was then supposed to pay the claimant his 50% share. The claimant testified he had been hired early in February 2011 and earned a $650 a week wage, which was paid in cash. However, the commissioner found the claimant had not begun "physically working" for the respondent until February 21, 2011 and the claimant never earned $650 a week prior to his injury. After he was injured he said he was unable to work as a mechanic or do mechanic work or work on cars due to the injury until September 15, 2011, as per Dr. Rago's instruction. After he was injured he returned to Reborn Autobody and was only able to answer the telephone and do paper work. He prepared and wrote up car repair estimates during that period but he was not paid so he eventually left the job.

Armand Sajous testified to the following at the formal hearing. He said the primary service that Reborn Autobody provides is auto body work and selling used cars that he buys at auction. Mechanic work developed as an off shoot of the business, and is not consistent enough for him to employ someone full time as an auto mechanic. He would contact mechanics on as-needed basis. When he met the claimant he had not sought out a mechanic. He already had a mechanic who was doing the mechanical work when he needed him. He was asked by a close friend to help out the claimant, who was recommended to him as a mechanic. Mr. Sajous testified he did not supervise the claimant's work. After a time, he realized that he was starting to lose clients who were coming back to him to complain that the jobs had been done improperly. At the claimant's request, he always paid him in cash.

Mr. Sajous testified that after his March 9, 2011 finger injury the claimant continued to work on vehicles. The following day, the claimant showed up at the shop and fixed cars. After March 9, 2011 it was just he and the claimant at the shop. He did body work and the claimant did mechanical work. He paid the claimant 50% of the labor charge based on each job that he worked, regardless of the time spent on the repair. The claimant would not leave the premises until he was paid. If there wasn't mechanical work to do the claimant was not paid. Mr. Sajous said he would call the claimant to come into the shop when he had a job for the claimant to do. The claimant would come in and do the job free of supervision.

Based on these aforementioned subordinate facts the trial commissioner concluded that Mr. Sajous was credible and persuasive and the claimant was neither credible, nor persuasive. She found the respondent Reborn Autobody, via Mr. Sajous, had an arrangement with the claimant whereby the claimant would perform automotive mechanical work on an as-needed basis in exchange for 50% of the amount charged for his labor. There were no fringe benefits provided, nor were taxes withheld. The trial commissioner found the claimant performed mechanical work for the respondent Reborn Autobody according to his own methods and without being subject to its control except as to the result of his work. Therefore, the nature of the claimant's relationship with Reborn Autobody was that of an independent contractor. In the absence of an employer-employee relationship the Workers' Compensation Commission lacked jurisdiction over the injury. As a result of those conclusions, the claim was dismissed.

The claimant did not file a Motion to Correct from the trial commissioner's decision. He has appealed arguing that there is no dispute that he suffered a work-related

injury and that he had expected Mr. Sajous to pay these medical bills. He also argues that Mr. Sajous had full control and management of the work and therefore, an employee-employer relationship existed, making the injury compensable under Chapter 568.

We note that in the absence of a Motion to Correct, we must give the factual findings of the trial commissioner conclusive effect and that this board is limited to reviewing how the commissioner applied the law. See Admin. Reg. § 31-301-4 and Crochiere v. Board of Education, 227 Conn. 333, 347 (1993). We find the legal issues before our tribunal in this case very similar to those issues we addressed in Brockenberry v. Thomas Deegan d/b/a Tom's Scrap Metal, Inc., 5429 CRB-5-09-2 (January 22, 2010), *aff'd*, 126 Conn. App. 902 (2011)(Per Curiam). In Brockenberry, we found the case hinged on whether the claimant proved the existence of a employer-employee relationship.

> We restated the legal obligation of a claimant to prove facts supportive of jurisdiction in our decision in Reeve v. Eleven Ives Street, LLC, 5146 CRB-7-06-10 (November 5, 2007). We believe our opinion in Reeve is directly on point. Citing Castro v. Viera, 207 Conn. 420 (1988) we pointed out that the claimant has the burden of persuasion on this issue.
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> The burden in a workers' compensation claim rests upon the claimant to prove that he is an "employee" under the act and thus is entitled to invoke the act. Bourgeois v. Cacciapuoti, 138 Conn. 317, 321, 84 A.2d 122 (1951); Morganelli v. Derby, 105 Conn. 545, 551, 135 A. 911 (1927). This relationship is threshold because it is settled law that the "commissioner's jurisdiction is `confined by the Act and limited by its provisions."' Gagnon v. United Aircraft Corporation, 159 Conn. 302, 305, 268 A.2d 660 (1970). Long ago, we said that the jurisdiction of the commissioners "is confined by the Act and limited by its provisions. Unless the Act gives the Commissioner the right to take jurisdiction over a claim, it cannot be conferred upon [the commissioner] by the parties either by agreement, waiver or conduct." Castro, 426.

> In Reeve the claimant testified that he had been injured in the course of employment, and argued that since the employer had not appeared in the proceedings, he should receive benefits. We held however, that since the trial commissioner did not find the claimant credible, the claimant failed on the "threshold issue" before the tribunal.

Brockenberry, supra.

In the present case, the trial commissioner reached a similar conclusion after hearing the testimony of the witnesses that the trial commissioner reached in Brockenberry, she found that the testimony of the claimant was not credible and persuasive. We note that on appeal we may not substitute our opinion of the credibility of a witness for the opinion of credibility that the trier of fact reached after observing the witness testify.

> Credibility must be assessed . . . not by reading the cold printed record, but by observing firsthand the witness' conduct, demeanor and attitude . . . . An appellate court must defer to the trier of fact's assessment of credibility because [i]t is the [fact finder] . . . [who has] an opportunity to observe the demeanor of the witnesses and the parties; thus [the fact finder] is best able to judge the credibility of the witnesses and to draw necessary inferences therefrom . . . . As a practical matter, it is inappropriate to assess credibility without having watched a witness testify, because demeanor, conduct and other factors are not fully reflected in the cold, printed record.

Burton v. Mottolese, 267 Conn. 1, 40 (2003).

We also find our decision in Vignali v. Richard Renner, 5473 CRB-5-09-6 (June 17, 2010) relevant and instructive in addressing this matter. In Vignali, the respondent argued that the claimant failed to prove the existence of an employer-employee relationship, or in the alternative, should be deemed a casual employee. We affirmed the Finding and Award in that case as the trial commissioner credited the claimant's testimony and "employment status is patently a factual issue, and is subject to a

significant level of deference on review." Id. The trial commissioner did not credit the claimant's testimony in the present case, and consequently, a different result was reached in this matter.

The commissioner in this case also applied the "totality of factors" test promulgated in Hanson v. Transportation General, Inc., 16 Conn. Workers' Comp. Rev. Op. 57, 3001 CRB-3-95-2 (October 18, 1996), *aff'd*, 45 Conn. App. 441 (1997), *aff'd*, 245 Conn. 613, 625 (1998), and concluded that various elements of an employer-employee relationship were not present. The commissioner found that the claimant worked independently, did not have a set schedule, and was not paid by the hour. Our precedent establishes that these facts are consistent with finding a worker is acting as an independent contractor and not an employee. See for example, Bonner v. Liberty Home Care Agency, 4945 CRB-6-05-5 (May 12, 2006) and Dupree v. Masters, 13 Conn. Workers' Comp. Rev. Op. 316, 1791 CRB-7-93-7 (April 25, 1995), *aff'd*, 39 Conn. App. 929 (1995)(Per Curiam) on the issue of the form of compensation being critical in determining whether a worker is an employee. As for the ability of the claimant to work in an autonomous manner being inconsistent with employee status, we rely on the precedent in Schleidt v. Eldredge Carpentry, LLC, 5373 CRB-8-08-8 (July 14, 2009), where we held the case of Yurevich v. Dimitri Logvinski, 5013 CRB-7-05-10 (September 22, 2006) is on point herein; where the trial commissioner concluded in that case the claimant was working in a essentially autonomous manner at the time of the injury, we upheld his conclusion that the claimant was an independent contractor. Schleidt, supra.

The claimant had the burden of establishing the existence of an employer-employee relationship. The claimant failed to do so. The facts found by the trial

commissioner in this case are fully consistent with our legal precedent wherein such business relationships have been deemed to be that of acting as an independent contractor.

We find no error and affirm the Finding and Dismissal.

Commissioners Charles F. Senich and Peter C. Mlynarczyk concur in this opinion.