

**Commonwealth Of Kentucky  
Court of Appeals**

NO. 2003-CA-001597-WC

RICKY SPALDING

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-00-00641

DAN HATTON; UNINSURED EMPLOYERS'  
FUND; JOHN B. COLEMAN, ADMINISTRATIVE  
LAW JUDGE; and WORKERS' COMPENSATION  
BOARD

APPELLEES

OPINION

AFFIRMING

\*\* \*\* \* \* \* \*\*

BEFORE: EMBERTON, CHIEF JUDGE; BUCKINGHAM AND KNOPF, JUDGES.

EMBERTON, CHIEF JUDGE. The sole issue presented in this workers' compensation case is whether there is substantial evidence to support the finding of the Administrative Law Judge that, at the time of his work-related injury, Daniel Hatton was

an employee of Ricky Spalding.<sup>1</sup> The Board found the evidence sufficient to support the ALJ's finding and this appeal followed.

On July 14, 1999, Hatton was injured when he fell from a house on which he was installing a roof. Hatton testified that earlier that day he approached Spalding about working for him. Spalding informed him that he had subcontracted a one-day job to another contractor and took Hatton to the worksite. The record reveals that Spalding has been in the roofing business for approximately twenty-five years. During that time, Hatton worked for Spalding sporadically and was generally paid by the hour or by the square. He provided his own tools, but the materials to be used were either paid for by Spalding or the homeowner. No taxes were withheld from Hatton's pay and frequently he was paid in cash.

There was testimony that it was general practice in the business for roofers to be paid by the square, pay their own taxes, and provide their own insurance. Spalding argues that on the day of the accident, Hatton was not an employee but an independent contractor. Hatton argues that he was an employee. The ALJ summarized the conflicting evidence as follows:

Clearly, the plaintiff did not file his taxes as if he were self-employed and the defendant, Ricky Spalding, did not withhold

---

<sup>1</sup> Because Spalding did not have workers' compensation insurance, the Uninsured Employers' Fund was joined as a party.

social security, unemployment, or income taxes from the plaintiff's pay. However, it is also clear that the defendant, Ricky Spalding, regularly engaged in taking contracts to do roofing and then utilized the work of the plaintiff and other individuals to perform this task. These individuals, including the plaintiff, were not paid based upon the profit of the jobs done, but were instead paid either based upon the hour or by the amount of work they actually performed. It also seems clear that the plaintiff, while carrying his own nail apron, hammer, and knife did not furnish the ladder or other materials needed for the roofing jobs.

The law favors the finding of an employer/employee relationship.<sup>2</sup> The factors to be considered in determining the nature of the employment relationship are:

(1) the nature of the work as related to the business generally carried on by the alleged employer; (2) the extent of control exercised by the alleged employer; (3) the professional skill of the alleged employee; and (4) the true intent of the parties.<sup>3</sup>

As noted by the ALJ and the Board, Spalding is in the business of roofing and Hatton was performing the work normally performed in Spalding's business. Spalding took Hatton to the worksite and provided the roofing material for the work.

There is evidence in the record that could support the conclusion that Hatton was an independent contractor. However,

---

<sup>2</sup> Husman Snack Foods Co. v. Dillon, Ky. App., 591 S.W.2d 701 (1979).

<sup>3</sup> Uninsured Employers' Fund v. Garland, Ky., 805 S.W.2d 116 (1991).

that the evidence could have supported a contrary conclusion is not a basis for reversal of the ALJ's finding.<sup>4</sup>

The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

James H. Abell  
Bardstown, Kentucky

BRIEF FOR APPELLEE DANIEL  
HATTON:

Ben T. Haydon, Jr.  
HAYDON & DOCKTER  
Bardstown, Kentucky

---

<sup>4</sup> McCloud v. Beth-Elkhorn Corp., Ky., 514 S.W.2d 46 (1974).