CASE NO. 6539 CRB-1-24-4 CLAIM NO. 601096175	:	COMPENSATION REVIEW BOARD
VINCENT W. QUINN CLAIMANT-APPELLEE	:	WORKERS' COMPENSATION COMMISSION
v.	:	APRIL 25, 2025
PIERCE BUILDERS, INC. D/B/A HPJ CONSTRUCTION COMPANY EMPLOYER		
and		
SENTRY SELECT INSURANCE INSURER RESPONDENTS-APPELLANTS		

APPEARANCES:

The claimant was represented by Daniel P. Bishop, Esq., and Kenneth B. Katz, Esq., Dombrowski Law Group, L.L.C., 360 Bloomfield Avenue, Suite 200, Windsor, CT 06095.

The respondents were represented by Maribeth M. McGloin, Esq., Williams Law Firm, L.L.C., 2 Enterprise Drive, Suite 412, Shelton, CT 06484.

This Petition for Review from the April 3, 2024 Finding and Award of Pedro E. Segarra, Administrative Law Judge acting for the Sixth District, was heard September 27, 2024 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges David W. Schoolcraft and Soline M. Oslena.[1]

[1] We note that two motions for extension of time were granted during the pendency of this appeal.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The present appeal was brought by the respondents from the April 3, 2024 Finding and Award by Administrative Law Judge Pedro Segarra. In their appeal, the respondents contest the jurisdictional finding that the claimant was their employee. They argue that the weight of the evidence can only support a finding that the claimant was an independent contractor. Upon review of the record, we are not persuaded that the trier of fact applied the appropriate test to determine whether an employer-employee relationship existed between the claimant and the respondent consistent with Hanson v. Transportation General, Inc., 245 Conn. 613 (1998). As it is axiomatic that an appropriate determination of subject matter jurisdiction is a prerequisite to awarding benefits under our statutes, we remand this matter for a de novo hearing before a different administrative law judge since the trial judge is no longer with this commission.

The following facts are pertinent to our consideration of this appeal. The administrative law judge noted that the claim resulted from an injury the claimant alleged to have sustained on August 4, 2020 while in the employ of the respondent, Pierce Builders. The claimant filed his form 30C, Notice of Claim, on June 17, 2021, and the respondents filed a timely disclaimer which contested both causation of the injury and the existence of an employer-employee relationship. The claimant owned a detailing business and began to perform work for the respondents in 2009. See Findings, ¶¶ 4-5. His duties consisted of washing trucks and other vehicles, preparing winter equipment, and salting driveways. See Findings, ¶ 8. In 2011, his hours for the respondents were reduced and he took on work with other clients. See Findings, ¶ 6. Eventually, his hours

increased with the respondent and he stopped working for other customers. The claimant submitted invoices through his company for his time worked and was paid on a monthly basis. See Findings, ¶ 7. He also testified at the formal hearing that his work was directed and supervised by Hal Pierce and his brother Brian. His hours of work needed to be recorded by the respondent and vacation requests needed to be submitted to the respondents. See Findings, ¶¶ 9-10, 12. Additionally, the claimant testified he was instructed as to where to purchase materials and he was reimbursed for those costs. See Findings, ¶ 11. Hal Pierce testified at the formal hearing that the claimant was an independent contractor. See Findings, ¶ 13, *citing* November 2, 2022 Transcript, pp. 56, 66.[2]

The circumstances of the claimant's 2020 injury were also addressed at the formal hearing. Specifically, the claimant testified that on August 5, 2020, he informed Hal Pierce that he had sustained a foot injury the previous day at work and would not be in that day. See Findings, ¶ 14. He also allegedly advised Hal Pierce on August 7, 2020, that he was unable to work and would seek medical treatment. The claimant presented at PhysicianOne walk-in clinic in West Hartford on August 9, 2020. The medical report from that visit stated that the claimant suffered from "[f]oot pain, Onset: 1 week(s)" and "left foot injury x 2 days ago" when he "stepped wrong." Claimant's Exhibit B. On August 11, 2020, the claimant followed up at the UConn Health Center, at which time he

[2] The administrative law judge did not address the specifics of Hal Pierce's testimony within the Finding. Hal Pierce testified that he considered the claimant an independent contractor, see November 2, 2022 Transcript, p. 56; that the claimant was not required to wear a uniform on the job, see id., p. 59; that the claimant supplied his own tools on the job, see id., that the claimant was paid via invoices he submitted to the respondent, see id., p. 60; and he received a 1099 form for tax compliance, see id., p. 61. Hal Pierce also testified the claimant did not receive any sick time, vacation time or employee benefits, see id., p. 62, nor was the claimant restricted from seeking work from other firms. See id.

provided a history of injuring his left foot when he stepped wrong while cleaning his yard after a tropical storm. See Claimant's Exhibit A.

The claimant testified that, after he informed Hal Pierce of this diagnosis, Hal Pierce told him not to file a workers' compensation claim and that he would be reimbursed for lost time and medical expenses. He received a check for $1000 in August of 2020. See Findings, ¶ 18, *citing* November 2, 2022 Transcript, pp. 27-29. Medical treatment, including surgery, was rendered between August 2020 and March 2022. The claimant was released to light duty effective March 5, 2022. See Findings, ¶ 19. According to the claimant, he attempted to return to light duty but was informed by Hal Pierce he had to be fully recovered before he could resume his duties. See Findings, ¶ 20. He further testified that Hal Pierce was concerned about the impact of a claim on his insurance rates and suggested he return to work as an independent contractor with his own insurance. See Findings, ¶ 22.

In support of his allegations, the claimant presented a tape recording of a phone conversation he had with Hal Pierce concerning his claim. Despite this recording being made without the knowledge or consent of Hal Pierce, it was admitted as evidence over the objection of the respondents. See November 2, 2022 Transcript, pp. 69-74 and September 19, 2023 Transcript, pp. 1-7. The administrative law judge did not address whether the recording was probative or reliable. Similarly, he did not address whether or not he in fact relied upon it in rendering his decision. It is also unclear from the decision if the administrative law judge actually considered any of the evidence presented by the respondents supportive of their position that the claimant was an independent contractor, given that the findings are devoid of any reference to the respondents' evidence or legal

arguments, apart from the statement that Pierce "testified that the Claimant was an independent contractor." Findings, ¶ 13. Respondents' evidence included invoices for materials in Respondent's Exhibit 2, the 1099 forms presented to the claimant in Respondent's Exhibit 3, and the claimant's tax returns submitted in Respondent's Exhibit 4.

The administrative law judge found the claimant's testimony more persuasive and credible than that of Hal Pierce.[3] He also held that the evidence supported that the claimant was the respondents' employee. In so doing, the administrative law judge noted that the claimant reported to and received instructions from Hal Pierce and that he needed approval to take time off from work. The administrative law judge also found Hal Pierce inspected and oversaw the claimant's work. As the administrative law judge accepted the claimant's narrative that his foot injury occurred on August 4, 2020, while employed by and working for the respondents, he found the injury compensable and awarded benefits to the claimant.

The respondents filed a timely motion to correct on April 16, 2024, which sought to add some findings and revise others pertaining to the claimant's employment status. Specifically, the motion sought to add findings that the claimant was treated as an independent contractor for tax purposes by virtue of having a form 1099 issued by the respondents, not a W-2 form. The respondents also cited to other evidence presented on the record and not referenced in the decision which they contend is supportive of a determination of independent contractor status. The motion also sought to have new

[3] The administrative law judge's finding makes no findings about what the respondent testified to or his basis for arguing that the claimant was not an employee.

conclusions reached that the claimant had not sustained a compensable injury as an employee of the respondents. The administrative law judge denied the motion in its entirety without comment on April 20, 2024.

The respondents have pursued this appeal based on the issues raised in the motion, as well as on the decision to admit the audio tape obtained without the knowledge or consent of Hal Pierce. The claimant argued that this case turned on an evaluation of evidence and, therefore, the findings reached by the trier of fact should not be disturbed. Upon review, we believe that it was error to admit the audio tape. Furthermore, we are not satisfied that the administrative law judge considered the proper legal standards in reaching his decision. We, therefore, remand this matter for a de novo hearing before a new administrative law judge given that the trial judge is no longer an administrative law judge with the Workers' Compensation Commission.

The standard of deference we are obliged to apply to an administrative law judge's findings and legal conclusions is well settled. "The trial commissioner's factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences."[4] Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), *citing* Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003), *quoting* Thalheim v. Greenwich, 256 Conn. 628,

[4] Effective October 1, 2021, the Connecticut Legislature directed that the phrase "Administrative Law Judge" be substituted when referencing a workers' compensation commissioner. See Public Acts 2021, No. 18, § 1.

656 (2001). "This presumption, however, can be challenged by the argument that the trial commissioner did not properly apply the law or has reached a finding of fact inconsistent with the evidence presented at the formal hearing." Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

The respondents have argued that the claimant was not an employee on his date of injury and, therefore, this commission lacks jurisdiction to hear this matter. We must resolve that question before addressing the merits of this claim. As this tribunal has often stated, *citing* Mankus v. Mankus, 4958 CRB-1-05-6 (August 22, 2006), *aff'd*, 107 Conn. 585 (2008), *cert. denied*, 288 Conn. 904 (2008), and 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), "[o]nce a determination is reached that we lack subject matter jurisdiction no further inquiry is warranted." Mankus, supra.

Having reviewed Hanson v. Transportation General, Inc., 245 Conn. 613 (1998), we believe the administrative law judge herein needed to perform an analysis of all the evidence presented on the record to determine if the claimant met the jurisdictional threshold of being an employee of the respondent. In Hanson, our Supreme Court held that a trier of fact must consider "the totality of the evidence" id., 624 and evaluate "the totality of factors." Id., 625. Thereafter, in Maskowsky v. Fed Ex Ground, 5200 CRB-3-07-2 (July 28, 2008), this board examined the "right to control" test promulgated in Hanson and noted that a thorough weighing of all the factors was necessary to support a decision.

In Hanson, supra, the Supreme Court looked at the ability of the claimant to hire a second driver; his sole responsibility for all expenses related to the operation of the cab;

his right to regain ownership of the cab upon termination of the contract; and that the respondent did not pay any salary or fringe benefits to drivers. Furthermore, drivers could set their own hours, work anywhere in the metro area, and refuse to accept dispatch calls. See id., 624-25. Similarly, in Maskowsky, supra, this board noted that the claimant owned the vehicle used in the business, paid all expenses incurred in operating the vehicle, and had the right to hire another driver. The respondent did not pay the claimant by the hour, but rather by the package delivered. The respondent also did not withhold taxes, and the claimant filed his own taxes as a sole proprietor. We further note that in other cases involving disputes over employer/employee status, whether the claimant used their own tools and materials was the decisive factor. See Jordan v. Reindeau & Sons Logging, L.L.C., 5388 CRB-2-08-10 (December 18, 2009). Finally, as noted in Veilleux v. Dehm Drywall, L.L.C., 6057 CRB-8-15-12 (September 26, 2016),

> We note that one factor which has weighed heavily in favor of finding that a worker is an independent contractor is when he or she is being paid without tax withholding and receives a 1099 tax form from the entity that retained his or her services. See 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) and Bonner v. Liberty Home Care Agency, 4945 CRB-6-05-5 (May 12, 2006), where we pointed that "the decisive factor was the claimant's tax filings. '[T]he claimant considered himself self-employed for tax purposes, paying his own income taxes and social security taxes at self-employment rates.'" Bonner, supra.

In the present case, the evidence discussed within the four corners of the finding was overwhelmingly the evidence presented by the claimant. Evidence presented by the respondents was not included in the analysis. The respondents' evidence included that the claimant did not have taxes withheld from payments the respondent made upon receipt of his invoices from his company; he received a 1099 rather than a W-2; and he

filed his taxes as a sole proprietor. See Respondents' Motion to Correct dated April 15, 2024, paragraphs 11-12, *citing* November 2, 2022 Transcript, pp. 44-47 and Respondent's Exhibit 4. The administrative law judge did not explain why this evidence was not persuasive or even if it was considered. We believe his failure to do so was error.

Furthermore, there was a period of time while the claimant was working for the respondent that he hired an employee to assist him. The administrative law judge, however, did not explain why this factor was not considered in this case. See Respondents' Motion to Correct dated April 15, 2024, paragraph 2, *citing* November 2, 2022 Transcript, pp. 40-41. There was also evidence presented that the claimant used his own artisan soaps and waxes in performing detailing for the respondent and was reimbursed for the expense of the materials. The respondents presented evidence of this fact, but there was no comment from the administrative law judge as to whether this factor was considered in his determination that the claimant was an employee. See Respondents' Motion to Correct dated April 15, 2024, paragraphs 6 and 10, *citing* November 2, 2022 Transcript, pp. 19, 43. Given the lack of analysis of these potentially relevant factors, we cannot conclude that the standard of considering the totality of evidence enunciated in Hanson, supra, was properly applied.

In light of this lack of an analysis, we find this matter falls within the precedent we established in Badawieh v. Federal Express Corp., 5240 CRB-7-07-6 (September 4, 2008), *appeal dismissed for lack of final judgment*, A.C. 30358 (January 15, 2009). In Badawieh, the trier of fact failed to consider relevant precedent governing whether a claimant was an employee or an independent contractor and we held "[w]e are simply

unable to discern from the record herein whether the ultimate conclusion of the trial commissioner is legally sustainable." Id. Therefore, consistent with that opinion, we remand this matter for further proceedings so that a full evaluation of the Hanson test can be performed.

The second legal issue raised by the respondents was the admission of a recording of a phone call between the claimant and Hal Pierce into evidence. Connecticut General Statutes Sections 52-570d and 52-184a state that the recording of a phone conversation without both parties' consent is illegal and bars use of such evidence in court. The claimant's position is that, since the administrative law judge did not cite this evidence in the finding, that any potential error resulting from the admission of this evidence was harmless. We disagree. The statutes as to recording phone conversations without consent and the admissibility of illegally obtained evidence are not ambiguous. While we have often noted that our proceedings do not follow the strict rules of evidence as they are applied to our civil courts, consistent with General Statutes § 31-298, see Goulbourne v. State/Department of Correction, 5461 CRB-1-09-5 (May 12, 2010), *appeal withdrawn*, A.C. 32294 (June 30, 2011), we do not believe this latitude extends to acting in derogation of statutes outside chapter 568. See Cantoni v. Xerox Corp., 251 Conn. 153 (1999). "[T]he workers' compensation system in Connecticut is derived exclusively from statute. . . . A commissioner may exercise jurisdiction to hear a claim only under the precise circumstances and in the manner particularly prescribed by the enabling legislation." (Citations omitted; internal quotation marks omitted.) Id., 159-60, *quoting* Hanson v. Transportation General, Inc., 245 Conn. 613, 618 (1998). To consider evidence rendered inadmissible by statute in other forums in Connecticut in the absence

of a specific statutory exemption would be inconsistent with our limited statutory jurisdiction. We, therefore, direct that this evidence be stricken from the record.

We remand this matter for a de novo hearing consistent with this opinion.

Administrative Law Judges David W. Schoolcraft and Soline M. Oslena concur.