

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H006565**

BRANDON L. PETTY, Employee	CLAIMANT
A M C REHAB, Employer	RESPONDENT
GUARD INSURANCE COMPANIES, Carrier	RESPONDENT

OPINION FILED **AUGUST 31, 2023**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MATTHEW J. KETCHAM, Attorney, Fort Smith, Arkansas.

Respondents represented by KAREN H. MCKINNEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On August 8, 2023, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on May 18, 2023, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The respondents have controverted the claim in its entirety.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Whether the employee/employer/carrier relationship existed on May 18, 2020.
2. If relationship existed, whether claimant sustained a compensable injury on May 18, 2020.
3. Compensation rate.
4. If compensable, whether claimant is entitled to medical benefits, temporary total disability

benefits, permanent partial disability benefits, wage loss benefits, and mileage benefits.

5. Attorney's fees.

All other issues are reserved by the parties.

The claimant contends that "He was injured on May 18, 2020, when operating a table saw, without a guard on it, and amputated his second and third digits, partial amputation of thumb and laceration of fourth digit on left hand. On May 18, 2020, the claimant presented to Mercy Hospital emergency room with complaints of a hand injury with traumatic amputation to left index and middle fingers. However, due to the claimant's injuries, he was transferred to UAMS in Little Rock via Mercy Lifeline. The claimant attended UAMS in Little Rock for a traumatic amputation of multiple fingers. He received complete amputations at the left index and middle fingers as well as lacerations to his left thumb, ring, and pinky finger. The claimant was scheduled for surgery that night to replant/revascularization of hand, pinning of fractured digit and repair nerve in finger. Claimant was released on May 20, 2020, from UAMS with no follow up visits scheduled. On May 22, 2020, the claimant attended an appointment with his primary care physician, Dr. Jeffrey Medlock, for continued pain in his left hand. On June 15, 2020, the claimant was seen and treated by Dr. Eric Heim, an orthopedic surgeon, for continued left hand pain. Dr. Heim placed an order for hand therapy and scheduled a follow-up appointment for pin removal. The claimant returned to Dr. Heim's office for the pin removal as well as a follow-up where he was advised to continue the hand therapy and to return in four (4) weeks for a follow-up. The claimant reserves the right to amend and supplement his contentions after additional discovery have been completed."

The respondents contend that "There is no employment relationship between the parties.

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Respondents specifically contend that AMC Rehab¹ was not in operation until June 2020, and did not have any contracts to perform construction prior to June 2020. As such, AMC Rehab was not claimant's direct or indirect employer under A.C.A. §11-9-402.”

From a review of the entire record, including medical reports, documents, the depositions of claimant and Alex Harris, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on May 18, 2023, and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. The stipulations agreed to by the parties at the hearing of this matter are hereby accepted as fact, except I do not find who employed claimant on the day of the injury, but rather which company did not.
3. Claimant has failed to prove by a preponderance of the evidence that he was employed by AMC Rehab on the date of his injury.

FACTUAL BACKGROUND

When this matter convened for a hearing, the parties advised that they did not believe there were any factual issues to be resolved. The depositions of the claimant and Alex Harris, owner of Asset Management Construction LLC, d/b/a AMC Rehab were submitted, and will be discussed as if they had testified live at the hearing.

The stipulations were given orally by respondent's counsel, and claimant's counsel was given

¹ The parties used “AMC Rehab” to refer to respondent Asset Management Construction d/b/a AMC Rehab. Those two names refer to the same company and are used interchangeably in this opinion.

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an opportunity to object to that recitation. No refutation was given, but an additional stipulation offered by claimant was agreed upon. The stipulations were as follows:

1. In May 2020, claimant was hired to work for Bill Jones. At the time, Mr. Jones was working on a piece of property owned by a company called Arkstone that is on Chismville Road in Greenwood, Arkansas. Arkstone was in the business of buying houses and then selling them, a practice commonly called “flipping.” Arkstone is an entity owned at least in part by Alex Harris.

2. Rod Colquitt was an independent contractor for Arkstone. On May 13, 2020, Mr. Colquitt requested that claimant send him information for a W-9 tax form.

3. On May 18, 2020, while working on the property on Chismville Road in Greenwood, Arkansas, claimant sustained an injury to his left hand, severing more than half his thumb, and all his index and middle finger, as well as causing damage to his ring finger.

4. Claimant was hospitalized for his injury, and after he left the hospital, he went to Bill Jones’ home to retrieve his vehicle. During that visit, Mr. Jones gave claimant \$500.00, paying him for five days of work, although claimant had only worked four days at the time of his accident.

5. Respondent Asset Management Construction d/b/a AMC Rehab was formed to be a construction company to do rehabilitation work on properties owned by Arkstone and other entities owned by Mr. Harris. Asset Management Construction d/b/a AMC Rehab began operating on June 15, 2022

6. Bill Jones did not have the authority to hire anyone on behalf of Rod Colquitt or any of the entities owned in whole or in part by Alex Harris.

HEARING TESTIMONY

Claimant’s testimony at his deposition described his horrific injury. When asked who hired him to work, he said he understood he was working for Bill Jones, who was doing business as Total

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Home Remodeling. Claimant was friends with Bruce Jones, son of Bill Jones, which is how claimant was made aware there was a position available to work for Bill Jones. Claimant unsuccessfully attempted to negotiate a higher hourly rate with Bill Jones. He never met Rod Colquitt, but did sign a W-9 tax form for Mr. Colquitt as requested by Bill Jones. Claimant believed the money he received from Bill Jones for the work he did before he was injured came from Rod Colquitt. He was of the impression that Bill Jones was the manager, but Mr. Colquitt was “the money man.” Claimant knew nothing about Asset Management Construction at the time of his injury.

During his deposition, Alex Harris identified the companies he owned or was associated with, including Asset Management Construction d/b/a AMC Rehab. While this company was incorporated on September 9, 2019, it was stipulated that it did not begin operations until after claimant was injured on May 18, 2020. Rod Colquitt was not employed by AMC Rehab until July 3, 2020. Mr. Harris was certain that claimant was not employed by AMC Rehab at the time of his injury; he believed claimant was working for Bill Jones.

REVIEW OF THE EXHIBITS

A detailed review of the medical records is unnecessary for a determination of the issue in this matter, as it is stipulated claimant suffered a partial amputation of his thumb, complete loss of his forefinger and middle finger, and damage to his ring finger.

The non-medical exhibits include the incorporation document for Asset Management Construction d/b/a AMC Rehab, as well as financial records from Arkstone that show payments made to Bill Jones in the months prior to claimant’s accident.

ADJUDICATION

The threshold issue in this case is whether claimant was working for AMC Rehab on the day he was injured. The answer to that question, as per the stipulations announced at the hearing, is “no.”

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The parties stipulated claimant was working for Bill Jones.² While claimant believed Rod Colquitt was “the money man,” the records show that Bill Jones was being paid by Arkstone, and Rod Colquitt was not employed by Arkstone on May 18, 2020. As per the stipulations at the hearing, Bill Jones lacked the authority to hire claimant on behalf of Rod Colquitt, or any of the businesses owned in whole or in part by Alex Harris, including respondent Asset Management Construction d/b/a AMC Rehab. While it is curious why Rod Colquitt was asking for information from claimant to complete a W-9 tax form, nothing about that request makes claimant the employee of AMC Rehab, a company that existed but was not operating on May 18, 2020.

I therefore find that claimant has failed to meet his burden of proof that he was employed by respondent Asset Management Construction d/b/a/ AMC Rehab on May 18, 2020, and as such, all other issues regarding his entitlement to indemnity or medical benefits are decided in respondent’s favor as well.

ORDER

Claimant has failed to meet his burden of proving by a preponderance of the evidence that he was employed by Asset Management Construction d/b/a/ AMC Rehab on May 18, 2020. Therefore, his claim for those indemnity and medical benefits is hereby denied and dismissed.

Respondent is responsible for the court reporter charge of \$493.45.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE

² As stated above, I am not finding that claimant worked for Bill Jones, as Mr. Jones was not before me to defend such a claim. My order is limited to the question posed in the issues to be decided: Was claimant an employee of AMC Rehab at the time of his injury?