BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CHRIS B. DEGRAEVE	)	
Claimant	)	
VS.	)	
	)	Docket No. 247,187
RICHARD L. HOELTING BUILDING COMPANY	)	
RHL INVESTMENTS, LLC	)	
SCHMIDT CONSTRUCTION COMPANY	)	
Respondents	)	
AND	)	
	)	
STATE FARM INSURANCE COMPANY	)	
TRAVELERS INSURANCE COMPANY	)	
Insurance Carriers	)	

ORDER

Claimant requested Appeals Board review of Administrative Law Judge Julie A. N. Sample's October 6, 1999, preliminary hearing Order.

ISSUES

Claimant requested medical treatment and temporary total disability benefits for alleged injuries he received to his back on July 26, 1999, and August 2, 1999, while employed by the respondent, Schmidt Construction Company. The Administrative Law Judge found claimant was not an employee of Schmidt Construction Company on either of the alleged accident dates. Therefore, the Administrative Law Judge found the Workers Compensation Act did not apply, and claimant was denied the requested preliminary benefits.

On appeal, the claimant requests the Appeals Board to review the Administrative Law Judge's preliminary hearing Order and find claimant was an employee of Schmidt Construction Company. Thus, claimant argues the parties are subject to the Workers Compensation Act and the respondent should be ordered to provide claimant with medical treatment and temporary disability benefits as a result of his work-related back injuries.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record, and considering the briefs of the parties, the Appeals Board makes the following findings and conclusions:

After the Administrative Law Judge entered the October 6, 1999, preliminary hearing Order, an agreed Order of Dismissal was entered on October 11, 1999. This Order dismissed Richard L. Hoelting; Richard L. Hoelting Building Company; RHL Investments, LLC; and their insurance carrier, State Farm Insurance Company, from these proceedings. These companies and their insurance carrier were joined in these proceedings by the claimant because the companies were general contractors and the respondent, Schmidt Construction Company, was their sub-contractor. The companies and their insurance carrier were joined before claimant obtained knowledge that respondent, Schmidt Construction Company, had workers compensation insurance coverage on the dates of the alleged accidents.

The Workers Compensation Act applies to all employer and employee relationships except as specified in K.S.A. 44-506 and K.S.A. 1998 Supp. 44-505.[1]

The Act defines an employer to include, but is not limited to, any person or body of persons, corporate or incorporate, and the legal representative of a deceased employer or the receiver or trustee of a person, corporate, association, or partnership.[2] An employee is defined as any person who has entered into the employment or works under any contract of service or apprenticeship with an employer.[3]

The liability of an employer to his employee under the Workers Compensation Act is a liability rising out of contract. An accident which causes injury to the worker must arise "out of" and "in the course" of the employment relationship.[4]

Here, the threshold question is whether claimant proved he was an employee of Schmidt Construction Company on the dates of alleged accidents. The Administrative Law Judge found claimant failed to sustain his burden of proof and denied preliminary benefits. The Appeals Board agrees.

Further, the Appeals Board agrees with the Administrative Law Judge's findings and conclusions as set forth in the preliminary hearing Order. Those findings and conclusions

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[1] *See* K.S.A. 1998 Supp. 44-505(a).

[2] *See* K.S.A. 1998 Supp. 44-508(a).

[3] *See* K.S.A. 1998 Supp. 44-508(b).

[4] *See* Dorst v. City of Chanute, 185 Kan. 593, 597, 345 P.2d 698 (1959).

are accurate and supported by the preliminary hearing record. It is not necessary to repeat those in this Order. Therefore, the Appeals Board adopts the Administrative Law Judge's findings and conclusions as its own.

The claimant; Schmidt Construction Company's owner; and the claimant's friend, who was an employee of the Schmidt Construction Company, all testified before the Administrative Law Judge. There was conflicting testimony on the issue of whether claimant was employed by Schmidt Construction Company on the dates of alleged accidents. In finding that claimant was not an employee of Schmidt Construction Company, the Administrative Law Judge had to find that Schmidt Construction Company owner's testimony was more credible than that of the claimant. Therefore, some deference should be given to the Administrative Law Judge because she had the opportunity to assess the credibility of all witnesses. The Appeals Board concludes, after giving some deference to the Administrative Law Judge, that the Workers Compensation Act does not apply to claimant's injuries because, on the dates of claimant's alleged accidents, he was not an employee of Schmidt Construction Company.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Julie A. N. Sample's October 6, 1999, preliminary hearing Order should be, and it is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of December 1999.

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BOARD MEMBER

c: Mark Beam-Ward, Overland Park, KS
Rex W. Henoch, Lenexa, KS
Matthew J. Thiesing, Lenexa, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director