IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2001 MTWCC 29A

WCC No. 2000-0197

RICHARD FLIEHLER

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent

GREG CASEY/THE RESTAURANT

INSTALLATION COMPANY

Employer.

ORDER AMENDING FINDINGS OF FACT

AFFIRMED 06/11/02

¶1 Respondent, Uninsured Employers' Fund (UEF), moved to amend the finding of fact found at ¶27 and the conclusion of law found at ¶41. That motion is **denied**. However, in responding to the motion, the employer, Greg Casey (Casey), pointed out that the Court erred in stating in ¶13 that Casey had paid Montana income taxes since 1997 and also erred in stating that John Pettigrew worked for Casey (¶¶s 15, 20, 22, 23, and 24). Casey's points are well taken: The only evidence of Montana income tax payments was with respect to 2000 and the Court intended to refer to Shane Casey, not John Pettigrew. The findings will be amended accordingly.

Discussion

¶2 Paragraph 27 of the Court's findings states:

> The work claimant did was routine and repetitive. After showing claimant what to do, claimant was able to perform his work without further supervision.
>
> The UEF argues that this finding is erroneous. The Court disagrees. Claimant testified that Casey or Dave Barton "laid out" each job but that the actual work he performed was "repetitious" since all restaurants were essentially the "same." It is

no stretch to infer from his testimony that he had little supervision when performing his actual work.

¶3 UEF argues that the second sentence is inaccurate because Casey designated the days of work, starting and ending times, and breaks, and also laid out the work. Casey did designate the workday and laid out the jobs, but those facts do not undermine the finding that the actual work performed by claimant did not require further supervision.

¶4 With respect to the Court's conclusion of law, the UEF argues that the Court erred in finding Montana jurisdiction because the claimant's "principal employment duties" were carried out in other states. Section 39-71-118(10), MCA (1997), however, does not use the term "principal employment duties," nor does it impose a requirement that such duties be carried out within Montana. Rather, it requires only that the employee be a resident of Montana and that his "employment duties are primarily . . . controlled within this state." I stand by my conclusion that the facts of this case demonstrate that claimant's employment was primarily controlled from Montana.

ORDER

¶5 Paragraphs 13, 15, 20, 22, 23, and 24 of the Findings of Fact are amended to read as follows:

> ¶13 In 2000, the year claimant was injured, Greg Casey (Casey) filed Montana income taxes. The evidence provided the Court is insufficient to determine where Casey filed state income tax returns for prior years.
>
> ¶15 In 1997, claimant met Casey through a friend, John Pettigrew (Pettigrew).
>
> ¶20 From 1997 until his injury, claimant was one of four workers installing kitchens for Casey. The other workers were Casey himself, Casey's son Shane, and Dave Barton (Barton). All four lived in the Big Fork-Kalispell area of Montana.
>
> ¶22 When not working on a restaurant job, Shane, Barton, and claimant returned to Montana and awaited Casey's instructions concerning the next job. Sometimes Casey had another job lined up which began immediately upon finishing his current job. In those cases, Casey, Shane, Barton, and claimant went directly to the next job and did not return to Montana. However, after most jobs they returned to Montana.
>
> ¶23 Claimant, Shane, Casey, and Barton traveled to job sites in Casey's pickup truck. While the truck may have been registered by Casey in Washington at the time of claimant's hire, it was registered in Montana at the time of claimant's injury.
>
> ¶24 At the time most of the jobs began, Shane, Barton, and claimant were in Montana. Casey had a girlfriend in California. After completion of some of the jobs he flew to California to visit her while Shane, Barton and claimant returned to

Montana in his truck. But Casey was most often in Montana. When Casey was in Montana, all four drove to the next job site in Casey's truck. When Casey was in California, the other three drove the truck and met Casey at the job site. Whether or not Casey was along, he paid for gas for the truck.

SO ORDERED.

DATED in Helena, Montana, this 6th day of July, 2001.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Garry D. Seaman
Mr. Daniel B. McGregor
Mr. Mies Wm. Faerber
Submitted: July 2, 2001