IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2001 MTWCC 46A

WCC No. 2000-0159

JOSEPH GEIGER

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent

DAVID DECKERT d/b/a DAVID DECKERT TRUCKING

Employer.

ORDER DENYING MOTION FOR RECONSIDERATION

AFFIRMED 12/20/02

¶1 Petitioner (claimant) has requested reconsideration of the Court's Findings of Fact, Conclusions of Law and Judgment. The Motion for Reconsideration also serves as claimant's supporting brief. The arguments made by counsel for claimant are well thought out and well written, however, they are not persuasive.

Discussion

¶2 Initially, claimant argues that David Deckert (Deckert) benefitted from claimant's truck driving because he received moneys which were applied to truck payments. However, as the findings of fact show, the financial arrangement between claimant and Deckert after April 1, 1999, was strictly one of creditor and debtor. Claimant arranged for his own loads. Except for those loads he obtained by using Deckert's ICC authority, payments for loads were made directly to the claimant. While Deckert allowed claimant to use his ICC authority, he derived no financial benefit other than to enable claimant to pay his debt.

¶3 While Deckert benefitted from claimant obtaining loads and therefore income, this is not the sort of direct benefit which constitutes the "use" of a driver by a trucking firm. As set forth in my conclusions of law, the statute contemplates the use of drivers to directly benefit the trucking firm, ¶ 33, i.e., some sort of profit or remuneration from the hauling or the fulfillment of some of obligation of the trucking firm. Under the creditor-debtor

relationship, the source of claimant's loads made no difference to Deckert; the relationship simply required claimant to make the payments. In order to make payments, claimant of course had to obtain loads to haul so that he could produce income, but he determined what loads to haul, solicited his own loads, and used Deckert's ICC authority, without compensation to Deckert for such use, only when convenient to him. It made no difference to Deckert's trucking business whether claimant's earnings came from non-ICC loads or ICC loads.

¶4 Claimant argues, "There is nothing in the law that states that a party must 'profit' from an employee in order for that employee to have been 'used' by an employer." (Motion for Reconsideration at 4.) However, even though the employer cannot ascribe specific amounts of profit to an employee's efforts, or might even be losing money on his operations, there must be some benefit to the employer's business, otherwise it would be senseless to hire and pay the employee. Here, the claimant was not an employee, the question is whether he was "used" by Deckert in Deckert's trucking business. I concluded that he was not and reaffirm that holding. Claimant's debt was independent of Deckert's trucking operations. Liability for the debt did not depend on claimant's performance of any services for the trucking firm. Claimant has failed to establish that his ICC hauls benefitted Deckert's trucking operations in any way.

¶5 Claimant further argues that the Court's decision is inconsistent with *Loos v. Waldo,* 257 Mont. 266, 849 P.2d 166 (1993). The relationship between the parties, is quite different than in *Loos*. That case involved the sale of a bar. However, the sale was incomplete and the seller retained a right of control over the bar operations through ownership of the liquor license and remaining as a signatory on the business checking account. It can be argued that Deckert's ICC license is similar to the liquor license in *Loos* and gave Deckert a right of control. Indeed Deckert's permitting claimant to use his ICC license was the single most bothersome fact I considered in reaching my decision. However, the use of the ICC license in this case is different than the use of the liquor license in *Loos*. The license in *Loos* was essential to the sale of the bar; without it, the buyer could not sell alcoholic beverages. To complete the purchase of the bar, he had to obtain State approval for transfer of the license. Claimant has failed to cite authority indicating what control, if any, Deckert was required to exercise with respect to his ICC license. More importantly, claimant's purchase of the truck and operation of his own trucking business did not depend on the ICC license. He used it when convenient to him.

¶6 There is also no showing of financial control in this case which is similar to that in *Loos*. Deckert did not have any financial authority with regard to claimant's trucking operations. While he set-off payments he received on behalf of claimant against claimant's indebtedness, he was not financially involved in claimant's business and his rights were solely as a creditor.

¶7 Finally, claimant argues that Deckert should be estopped from denying liability because he dropped workers' compensation coverage without informing claimant. (Motion for Reconsideration at 4.) The argument ignores my specific finding in ¶ 17 that on April 1, 1999, Deckert "told Geiger [claimant] that the payroll withholdings had stopped and he had quit paying workers' compensation for him." There was no misrepresentation, hence no basis for estoppel.

ORDER

¶8 The Motion for Reconsideration is **denied**.

¶9 SO ORDERED

DATED in Helena, Montana, this 19TH day of November, 2001.

(SEAL)

/S/ Mike McCarter
JUDGE

c: Mr. Marvin L. Howe
Mr. Daniel B. McGregor
Mr. Richard L. Burns
Submitted: October 15, 2001