ARTURO ALCOZER, Petitioner/Appellant, v. NN CNTY. FOOD BANK and AM. STATES INS. CO., Employer/Insurer, and POLK COUNTY, SELF-INSURED, Employer, and MN DEP'T OF HUM. SERVS., Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
DECEMBER 20, 2000

No. [REDACTED SSN]

HEADNOTES

EMPLOYMENT RELATIONSHIP; STATUTES CONSTRUED - MINN. STAT. § 176.011, subd. 9. Where the only contract of any sort entered into by the petitioner was an agreement in which he agreed to participate in a welfare work program at an unspecified nonprofit agency as a prerequisite to continued payment of his AFDC benefits, which neither increased upon his commencing work nor fluctuated proportionate to his labor, it was not unreasonable for the compensation judge to conclude that the petitioner's participation in the program did not constitute employment under a contract "for hire" such as would qualify him for workers' compensation benefits under the statute.

EMPLOYMENT RELATIONSHIP - VOLUNTARY UNCOMPENSATED WORKER; STATUTES CONSTRUED - MINN. STAT. § 176.011, SUBD. 9(10). Where there was no evidence that the petitioner would have been working for the respondent nonprofit food bank except under obligation that he do so in order to continue receiving his AFDC benefits, and where the petitioner was not a signatory to the agreement between the food bank and administrators of the petitioner's AFDC benefits for respondent Polk County, the compensation judge's conclusion that the petitioner was not a "voluntary uncompensated worker" at the food bank under Minn. Stat. § 176.011, Subd. 9 (10), was not clearly erroneous and unsupported by substantial evidence.

JURISDICTION - SUBJECT MATTER. Where the compensation judge had expressly concluded that the petitioner was neither an employee nor a voluntary uncompensated worker under workers' compensation statutes, and where there was not yet any issue as to whether the petitioner's receipt of benefits under the Injury Protection Program provided for under Minn. Stat. § 256.737 was an election to the extent that the petitioner was foreclosed from pursuing any other possible remedy, the judge's suggestion in his Memorandum that the petitioner may have other remedies available to him did not constitute a finding of fact or a conclusion of law requiring review by the WCCA as a possible basis for reversing the judge's denial of employee status under the workers' compensation statute, construction of section 256.737 and review of its constitutionality being for the supreme court.

Affirmed.

Determined by Pederson, J., Rykken, J. and Wheeler. C.J.
Compensation Judge: Harold W. Schultz II

OPINION

WILLIAM R. PEDERSON, Judge

The petitioner appeals from the compensation judge's conclusion that he is not a "for hire" employee for purposes of workers' compensation benefits because he was neither a wage earner nor a "voluntary uncompensated worker" pursuant to Minn. Stat. § 176.011, subd. 9 (10), on the date of his alleged injury. We affirm.

BACKGROUND

Arturo Alcozer was born in Texas in 1955, where he completed the eighth or ninth grade in school, evidently speaking only Spanish until about the age of twenty-five, before moving to Minnesota in 1985 to work in potato and sugar beet cultivation and harvest in the Red River Valley. At some point in 1996, the petitioner, who was married at the time and had eight children, applied for and began receiving Aid to Families with Dependent Children [AFDC] subsistence benefits in the amount of about $1,000.00 a month, administered by Polk County for the State of Minnesota.

On December 9, 1996, the petitioner signed a form titled "Participant Information & Authorization to Release Medical Information," a document of the Injury Protection Program of the Minnesota Department of Human Services [the intervenor]. The form expressly granted, to medical providers, "the county human services agency," and the Minnesota Department of Human Services, permission to release to various agencies "information about my injury or condition that may have resulted from my community service work program work assignment(s)." Also on December 9, 1996, the petitioner signed a form titled "STRIDE/CWEP Participant Agreement," a document of the Minnesota Department of Economic Security, employed in that department's "STRIDE Community Work Experience Program"[1] [STRIDE/CWEP]. Under this program, which was administered by the intervenor on behalf of Polk County pursuant to Minn. Stat. § 256.737,[2] participating individuals were entitled to continue receiving full AFDC benefits beyond expiration of an unsuccessful four-week search for employment, provided they worked at least sixteen hours a week at any of certain designated participating public or nonprofit job sites.[3] The

[1] "STRIDE" is an acronym for "Success Through Reaching Individual Development and Employment."

[2] This same authority is now codified at Minn. Stat. § 256J.68, subsequent to discontinuation of the Aid to Families with Dependent Children program.

[3] The petitioner testified that he understood that his benefits would be reduced, though apparently not eliminated, if he didn't work, but he also testified that his benefits were the same before he began working as they were after he began working.

participating job sites were under contract with STRIDE/CWEP to supervise the participating individuals but were under no obligation to pay them, and the participating individuals were evidently not to be considered applicants for paid employment. In signing the STRIDE/CWEP Participant Agreement, the petitioner expressly agreed to participate in STRIDE/CWEP "as a requirement of Minnesota Statutes 256.736 subdivision 14, to work for the AFDC . . . assistance received." On December 10, 1996, the petitioner also completed an "Application for Employment CWEP Position," leaving blank the name, address, and phone number of the "organization" being applied to.

On or about December 11, 1996, the petitioner began working, without wages and under the STRIDE/CWEP program, as a warehouse worker at North Country Food Bank [North Country], a private non-profit community service organization established to supply food to needy individuals through other nonprofit organizations. The petitioner worked at North Country in this capacity through at least February 13, 1997, completing on that date sufficient hours for the week to fulfill his sixteen-hour obligation under the STRIDE/CWEP program. He evidently did not appear for work the first week in March 1997.[4] On March 9, 1997, the petitioner apparently received treatment for a left elbow and arm problem at the Riverview Health Care Associates, for which the intervenor paid $52.80.[5] The first record of any injury to the petitioner at work was evidently made in the files of the Crookston Job Services office of the Department of Economic Security on March 17, 1997. The intervenor apparently continued subsequently to pay the petitioner's AFDC benefits, and eventually, in December of 1997, he underwent submuscular nerve transposition surgery, to preserved muscle strength in the arm and to resolve numbness in the fingers. The intervenor evidently paid the petitioner's medical expenses, eventually presenting claims to subcommittees of the Minnesota legislature when expenses exceeded $1,000.00, pursuant to Minn. Stat. § 256.737, subd. 7. Payment was evidently approved by the legislature, and the petitioner's file is apparently still open.

On May 28 and June 2, 1999, the petitioner amended a claim petition originally filed March 1, 1999, alleging against North Country entitlement to temporary total disability benefits continuing from February 11, 1997, as well as certain outstanding medical and rehabilitation benefits, all consequent to a work-related injury to his elbow sustained in the course of his work for North Country on February 10, 1997. In their Answer filed June 11, 1999, North Country and its insurer denied liability, affirmatively alleging in part that, pursuant to an attached contractual agreement, STRIDE/CWEP had agreed to be the employer and to provide workers' compensation coverage for any workers placed at North Country, including the petitioner. That

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[4] No time records for the interim two weeks are in evidence.

[5] This is according to the compensation judge's Finding 14, which attributes the information to "the intervenor's material." We find no record of the treatment among materials in evidence, but the judge's finding is unappealed.

contract, between STRIDE/CWEP and North Country, provided that STRIDE/CWEP would provide North Country with "participants who[] are to perform community work," together with "Workers' Compensation -- Worksite and participant are to report any injuries to the participant with[in] 7 days of occur[re]nce by contacting the STRIDE/CWEP provider as listed above." STRIDE/CWEP providers listed at the top of the contract were the Minnesota Department of Economic Security offices in both Thief River Falls and Crookston. On August 25, 1999, the petitioner filed a Second Amended Claim Petition, realleging his entitlement to workers' compensation benefits, this time against Polk County in addition to North Country. On September 17, 1999, Polk County also denied liability and moved for dismissal, and, pursuant to a Request for Formal Hearing filed by the petitioner on October 19, 1999, North Country petitioned for and was granted joinder of the intervenor, the Department of Human Services.

The matter came on for hearing on January 26, 2000. The only issues at hearing were "[w]hether the petitioner was an employee on February 10, 1997 and, if so, who was the employer?" and "[w]hether Minn. Stat. Chapter 256 (1995) and Minn. Stat. Chapter 256 J (1998) are constitutional." All other issues relating to the petitioner's entitlement to benefits were expressly bifurcated and reserved. By Findings and Order filed April 25, 2000, the compensation judge concluded in part that "the petitioner was not an employee under the Minnesota Workers' Compensation Law at the times material herein, while he participated in the STRIDE/CWEP Program at North Country Food Bank" and that "the petitioner was not a 'voluntary uncompensated worker participating in a program established by a local social services agency' pursuant to Minn. Stat. § 176.011, Subd. 9 (10)." The petitioner appeals.

STANDARD OF REVIEW

In reviewing cases on appeal, the Workers' Compensation Court of Appeals must determine whether "the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1 (1992). Substantial evidence supports the findings if, in the context of the entire record, "they are supported by evidence that a reasonable mind might accept as adequate." Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, "[f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Findings of fact should not be disturbed, even though the reviewing court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." Id.

DECISION

Employment "for Hire"

The compensation judge concluded that the petitioner was neither "a person who performed services for another for hire," pursuant to coverage requirements established in Minn. Stat. § 176.011., subd. 9, nor "a voluntary uncompensated worker participating in a program established by a local social services agency," a category of worker expressly included as employees under paragraph (10) of that same subdivision. The petitioner argues that if, as is essentially uncontested, he was performing services at the time of his alleged injury, "[i]t seems a matter of logic that Employee must be an employee of someone," contending that "[a]lmost all of the usual factors of an employment relationship w[ere] present: control, right to discharge, etc."[6] Citing Krause v. Trustees of Hamline University, 243 Minn. 416, 68 N.W.2d 124 (1955), the petitioner emphasizes that, since 1953, direct payment of wages to a worker is no longer among essential criteria in determining an employee's employer. The petitioner also quotes Professor Larson, in part to the effect that

> a laborer whose receipt of payment is dependent on and in proportion to his or her labor should be considered an employee, regardless of evidence that the entire job on which he or she is working was set up to provide a means of relieving distress among the unemployed and destitute.

3 Larson, Workers' Compensation Law, §64.04 (1999). He cites case law from other jurisdictions to the effect that control over the work performance of and authority to fire a beneficiary of AFDC or participant in a CETA program are better identifiers of employer status than is the administration of funds.[7] We are not persuaded.

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[6] The petitioner cites generally, "Cf. Minnesota Rules 5224.0110," Subpart 3 of which lists five required criteria for distinguishing a laborer employee from a laborer independent contractor, the latter defined by eight required distinguishing criteria in Subpart 2. All of the five criteria in Subpart 3 must be "substantially met" in order for the laborer to be classified as an employee rather than as an independent contractor. The third of those five criteria, criteria C., requires that the laborer's "[p]ay is computed on a time rather than a lump-sum basis."

[7] The petitioner cites Dagen v. Village of Baldwin, 183 Mich. App. 484, 455 N.W.2d 318 (1990) (a village for which an employee was assigned to work in order to receive AFDC benefits was held to be the employer because it exercised control over the employee's daily work performance and had authority to fire him), and Wetzel v. City of Altoona, 618 A.2d. 1219 (Pa. Commw. Ct. 1992) (the decedent, who was working for the City of Altoona while participating in a CETA program administered by a school district when he died in an on-the job accident, was held to have been an employee of the City rather than of the school district, because it was the City that assigned, supervised, and controlled the decedent's work).

In Krause, as well as in the two cases cited by the petitioner from outside our jurisdiction,[8] the issue was not whether the worker was an employee under the operative statute, as is the threshold issue here, but which defending entity or entities was or were the worker's liable employer(s). Indeed, the court in Krause expressly stated that "[i]t is well settled that student nurses who perform services and are furnished board and room are employees within the meaning of the act"[9] and that "[h]ere the parties concede that the employee is entitled to compensation benefits." Krause, 243 Minn. at 419, 68 N.W.2d at 126. In his Memorandum, the judge properly explained that in the case here at issue "[t]here was no 'contract for hire,'" nor did the petitioner receive a salary from either North Country or Polk County. The only contract of any sort entered into by the petitioner was his December 9, 1996, "STRIDE/CWEP Participant Agreement," in which he agreed to participate in the STRIDE/CWEP program as a prerequisite to continued payment of his already commenced AFDC benefits. These benefits evidently neither increased upon his commencing work with North Country nor decreased upon his termination from that work. Although there is evidence that those benefits might have been decreased had the petitioner terminated or not worked the required sixteen hours each week prior to injuring himself, there is no indication that the petitioner's AFDC benefits were in any way "in proportion to his or her labor," and there is in fact testimony to the contrary. According to a description in evidence, the STRIDE program, of which CWEP is a component, is "a program to assist AFDC recipients reduce their dependency on the welfare system and to eventually achieve self-sufficiency." There was testimony that this purpose was essentially to provide participants an opportunity to experience and to practice the discipline of regular employment. Particularly given other testimony to the fact that the petitioner's AFDC benefits would not have varied had he worked many hours in addition to the sixteen required of him each week, it was not unreasonable for the compensation judge to conclude that continuation of the petitioner's full AFDC benefits in the process of his participation in the STRIDE/CWEP program did not constitute wages in these circumstances. Absent a more definitive contract for receipt of wages or other benefits more proportionate to his work, we will not reverse on grounds that the petitioner was working under any apparent contract "for hire." See Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239.

The petitioner argues also that the intervenor's assertion of the exclusive remedy provision of Minn. Stat. § 256.737, in Paragraph 14 of the intervenor's Answer, clearly implies that the petitioner is an "employee" of someone for there to be concern over an exclusive remedy. We do not see the logic in the argument, particularly in that the provision has been asserted here not by a defending potentially liable employer but by an intervenor, and even then apparently only to the end of limiting its obligation under the AFDC program to medical and permanency benefits.

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[8] We reiterate, at any rate, that case law from outside Minnesota jurisdiction is in no way binding on our determinations.

[9] We note in this context also that the decision in Krause was issued on precedents of, and prior to the 1983 statutory termination of, the common law rule of "liberal construction" favoring coverage in this state. See Minn. Stat. § 176.001 (1983).

"Voluntary Uncompensated Worker" under Minn. Stat. § 176.011, subd. 9 (10)

The petitioner contends in the alternative that, if he is found to have been not otherwise an employee "for hire," the statute specifically includes him in that category under paragraph (10) of Subdivision 9, by virtue of the fact that his is a "voluntary uncompensated worker." The compensation judge concluded that the petitioner was not such a voluntary worker. We conclude that the judge's decision is supported by the record. No evidence was offered at hearing nor any argument made on appeal that the petitioner would ever have "volunteered" to work at North Country had his ongoing receipt of full AFDC benefits not depended on his working there. Moreover, there was testimony from Mr. Ronald Graham, Executive Director of North Country, that North Country has only about four permanent employees including himself, that, in its non-profit, community-based service status, it sometimes has a few volunteers who help, that it also sometimes has some workers who are assigned to work there by the judicial system, and that there are others, like the petitioner, who work there as a condition of receiving welfare benefits. These are all apparently separate categories, with the latter two categories apparently clearly separate from the volunteer category. Mr. Graham further testified that North Country's release from liability for workers' compensation benefits, as apparently implied under its November 30, 1994, "Contractual Agreement" with STRIDE/CWEP provider Minnesota Department of Economic Security, is a material element in North Country's involvement in the STRIDE/CWEP program. That agreement provides in part as follows:

> It is of mutual consent that STRIDE/CWEP enter into an agreement with North Country Food Bank. Whereby STRIDE/CWEP will provide the above-mentioned organization with participants who[] are to perform community work. We do hereby agree to provide the following: . . . .9. Workers' Compensation -- Worksite and participant are to report any injuries to the participant with[in] 7 days of occur[re]nce by contacting the [MN Department of Economic Security].

We conclude, given especially the lack of evidence that the petitioner would have been working for North Country except under obligation that he do so in order to continue receiving his AFDC benefits, that the compensation judge's construction of that agreement in support of North Country's position was reasonable and proper. Nor, we conclude, does the language of that agreement clearly attach any definitive liability to the Department other than what it might otherwise have under applicable statutory law. The petitioner is, after all, not a signatory to the agreement. It was reasonable for the compensation judge to conclude that the petitioner was not a "voluntary uncompensated worker" at North Country, and therefore we decline to reverse on grounds of Minn. Stat. § 176.011, Subd. 9 (10).

Exclusive Remedy Provision of Minn. Stat. § 256.737, subd. 7(f)

Apparently with regard to Polk County's potential liability in this case, the compensation judge at Finding 23 referenced hearing testimony with regard to Minn. Stat. § 256.737, subd. 7. The testimony referenced was to the effect that the Injury Protection Program addressed in that statute is part of the STRIDE/CWEP program, that that program had paid the petitioner's medical bills in this instance, and that a claim for reimbursement of those bills had been presented before a subcommittee of the Minnesota Legislature, where the petitioner's file was still open. Paragraph (a) of Minn. Stat. § 256.737, subd. 7, provides in part as follows:

> Payment of any claims resulting from an alleged injury or death of a recipient participating in a community work experience program established and operated by a county or a tribal JOBs program pursuant to this section shall be determined in accordance with this section. This determination method applies to work experience programs established under aid to families with dependent children, ...

Paragraph (e) of the subdivision provides that "[c]ompensation paid under this section is limited to reimbursement for reasonable medical expenses and impairment compensation for disability in like amounts as allowed in section 176.101, subdivision 3b." Paragraph (f) of section 256.737, subd. 7, provides as follows:

> The procedure established by this section is exclusive of all other legal, equitable, and statutory remedies against the state, its political subdivisions, or employees of the state or its political subdivisions. The claimant shall not be entitled to seek damages from any state, county, tribal, or reservation insurance policy or self-insurance program.

In his Memorandum, the judge stated as follows:

> The petitioner has other remedies to pursue in respect to any injury that he sustained [at work for North Country]. The petitioner already benefit[t]ed from the payment of his medical bills pursuant to the Injury Protection Program established by the State of Minnesota as required by federal regulations. There is no issue at this point in respect to whether the petitioner's receipt of benefits under that program is an election to the extent that he is foreclosed from pursuing any other possible remedy.

The petitioner contends that Minn. Stat. § 256.737, subd. 7(f), does not prohibit the petitioner from seeking a statutory remedy against North County under Chapter 176 because North country is not a political subdivision or an employee of the state or of its political subdivisions. Even were it such an agent, the petitioner argues, the statute itself is unconstitutional because it limits access to

the courts while not providing an adequate alternative to common law remedies for injuries to employees. We conclude that the judge did not err with regard to Minn. Stat. § 256.737, subd. 7.

We note initially that this court has no jurisdiction to assess the constitutionality of a statute of the legislature. See Clabo v. Bor-Son Constr. Co., 481N.W.2d 47, 46 W.C.D. 171 (Minn. 1992). Moreover, given the compensation judge's express conclusion in Findings 25 and 26, that the petitioner was neither an employee nor a voluntary uncompensated worker under workers' compensation statutes, the judge's suggestion in his Memorandum that the petitioner may have other remedies available to him does not constitute a finding of fact or a conclusion of law requiring our review. We agree with the judge that there is no issue at this point in respect to whether the petitioner's receipt of benefits under that program is an election to the extent that he is foreclosed from pursuing any other possible remedy. Nor is it the prerogative of this court to presume construction of a statute outside chapter 176 in these circumstances. The petitioner appears to have affirmatively registered his constitutional challenge of section 256.737 in the context of this workers' compensation claim. Should he elect to appeal from our decision, and should construction of section 256.737 be deemed integral to final resolution of his appeal, that construction is for the supreme court. We will not reverse on any grounds related to Minn. Stat. § 256.737.