CHARLES ERICKSON, deceased Employee, by DONNA ERICKSON, Petitioner/Appellant, v. GOODMANSON CONSTR. CO., UNINSURED, Employer, and HUMANA, Intervenor/Cross-Appellant, and SPECIAL COMP. FUND.

WORKERS' COMPENSATION COURT OF APPEALS
JULY 24, 2000

No. [REDACTED SSN]

HEADNOTES

EMPLOYMENT RELATIONSHIP - VOLUNTEER. Substantial evidence supports the compensation judge's finding that the decedent volunteered his assistance to Merlyn Goodmanson, personally, and was not an employee of Goodmanson Construction Company at the time of his injury.

Affirmed.

Determined by: Johnson, J., Wheeler, C.J., and Rykken, J.
Compensation Judge: Danny P. Kelly

OPINION

THOMAS L. JOHNSON, Judge

The petitioner, Donna Erickson, appeals from the compensation judge's denial of her claim for workers' compensation benefits. We affirm solely on the basis that substantial evidence supports the factual finding that Charles Erickson volunteered his assistance to Merlyn Goodmanson, personally, and was not an employee of Goodmanson Construction Company at the time of his injury.

BACKGROUND

On January 25, 1999, Charles Erickson fell from the roof of a garage on property owned by Merlyn Goodmanson sustaining multiple injuries, including a closed head injury and a fractured pelvis. Erickson was taken to Hennepin County Medical Center and was hospitalized there until his death on February 10, 1999, due to complications resulting from his work injuries. Donna Erickson, Charles Erickson's widow, sought workers' compensation benefits from Goodmanson Construction Company on her own behalf and on behalf of Erickson's two dependent daughters. The petitioner claimed the garage was a project of the Goodmanson Construction Company, Inc., a Minnesota corporation, intended to be used as storage for Goodmanson's work equipment, and that Charles Erickson was engaged in roofing the garage as part of his employment with Goodmanson Construction Company at the time of his injury. Goodmanson Construction denied liability, asserting the property was residential property, personally owned by Merlyn and Cami Goodmanson, that the garage was not a Goodmanson Construction project, and that the

employee was either a volunteer or an independent contractor, and not an employee of Goodmanson Construction, at the time of his injury.

A hearing was held on November 23, 1999, before a compensation judge at the Office of Administrative Hearings. In a Findings and Order, served and filed February 17, 2000, the compensation judge found that on January 25, 1999, "Charles Erickson was acting strictly as a volunteer to do a favor for a friend, Merl Goodmanson." (Finding 7.) The judge also concluded that Erickson was a sole proprietor, self-employed in the construction industry, and that Erickson was an independent contractor, meeting all the requirements of Minn. Stat. § 176.042, and was not, therefore, an employee of Goodmanson Construction Company at the time of the injury. The compensation judge, accordingly, denied the petitioner's claim for dependency benefits, and denied the intervenor's claim for reimbursement of medical expenses. The petitioner, Donna Erickson, and the intervenor, Humana, appeal the compensation judge's decision.

STANDARD OF REVIEW

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). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings must be affirmed. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 60, 37 W.C.D. 235, 240 (Minn. 1984). Similarly, 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." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

DECISION

The appellant and cross-appellant assert that substantial evidence does not support the compensation judge's finding that Erickson was a volunteer and not an employee at the time of his injury. We are not persuaded, and affirm.

Charles Erickson and Merlyn Goodmanson had been close friends for nearly 20 years. Erickson was described as a caring and generous man, who was always willing to do favors for others. Throughout their friendship, Erickson and Goodmanson had assisted each other with personal projects at their homes and at the homes of friends and relatives. (T. 76-78, 102 158, 174-75, 181, 230-31, 236-37, 242-44.)

Merlyn Goodmanson is the sole owner of Goodmanson Construction Company, Inc., a Minnesota corporation. He resides with his wife, Cami, at 2630 Fairview Avenue in Roseville, Minnesota. This is also the business address for Goodmanson Construction. In 1998, Merl and Cami purchased the adjacent property at 2622 Fairview Avenue as an investment, anticipating eventual acquisition of the property by the city, by eminent domain, due to the rapid

retail and commercial development of the area. The property included a single family home with a detached single car garage. The Goodmanson's daughter occupied the house following the purchase of the property. (T. 131-32, 136-38.)

Sometime in 1998, Goodmanson obtained a permit to build a large attached garage at the 2622 Fairview Avenue property. Completion of the garage progressed slowly. Roofing materials were delivered by January 1999, and the garage roof had been sheeted a couple of weeks before the January 25, 1999 incident. Goodmanson testified he had made arrangements with Commercial Roofing to complete the roofing job in the spring. Goodmanson also testified he was not taking new jobs that winter and was "basically taking the winter off." (T. 139, 145-46, 151-53, 165-66, 170, 181-82, 247; Resp. Ex. 19.)

While constructing the garage, Goodmanson had several disagreements with an inspector for the City of Roseville about storing construction equipment at the site. He testified he settled the dispute with the city, successfully arguing he had an active building permit, was still in the process of constructing the garage, and was using the equipment at the site. (T. 151, 167-68.)

On the morning of January 25, 1999, Goodmanson testified he got up late. He let the dogs out the back door of his house and noticed Erickson standing on the garage roof next door, shoveling snow off the roof. He stated he was "totally shocked" and upset "because I didn't want him up there." When Goodmanson asked him what he was doing, Erickson replied he was getting the roof on for him so he could get the building inspector back out. Goodmanson stated that Erickson had been with him during an argument with the building inspector and knew the inspector had been giving him trouble. (T. 167, 169, 245.)

Goodmanson told Erickson to get off the roof. Erickson ignored him and continued to remove snow from the roof. Based on past experience, Goodmanson believed Erickson would do whatever he wanted to do and it would be pointless to try to change his mind. Again telling Erickson to get off the roof, Goodmanson went to get scaffolding to set up around the garage so that Erickson could safely work on the roof. While Goodmanson was getting the scaffolding, the employee slid off the roof, sustaining his injuries. (T. 170-71, 186, 231-34, 246.)

Payment of workers compensation benefits is premised on the existence of an employee-employer relationship. Preese v. Boy Scouts of America, 283 Minn. 284, 167 N.W.2d 737, 24 W.C.D. 863 (1969); Huebner v. Farmers Coop. Ass'n of Holland, 283 Minn. 258, l67 N.W.2d 369; 24 W.C.D. 827 (1969). Under the act, an employer is "any person who employs another to perform a service for hire," and an employee is "any person who performs services for another for hire." Minn. Stat. § 176.011, subds. 9, 10. Services offered as a volunteer, without expectation of payment, do not fall within the scope of the workers' compensation act. Id.

In determining whether an employer-employee relationship exists, the courts have considered whether there was a contract for hire, express or implied; whether the parties contemplated the payment of wages or other remuneration in compensation for the services

rendered; and whether the services were performed at the specific direction or request of the employer or an agent of the employer.[1] The issue of whether Erickson was performing a service for hire or, as the compensation judge found, as a volunteer, is a question of fact for the compensation judge. As such, our function on review is solely to determine whether the compensation judge's finding is supported by substantial evidence. Firkus at 866, 29 W.C.D. at 230; Darvell at 834, 17 W.C.D. at 281.

As noted in the employee's brief, the compensation judge's decision was based primarily on the testimony of Merlyn Goodmanson. The compensation judge specifically accepted Goodmanson's testimony "in its entirety as credible." (Mem. at 6.) The assessment of witness credibility is the unique function of the trier of fact. Even v. Kraft, Inc., 445 N.W.2d 831, 42 W.C.D. 220 (Minn. 1989). This court may not disturb a finding based on credibility unless manifestly contrary to the evidence. Tolzmann v. McCombs-Knutson Assocs., 447N.W.2d 196, 42 W.C.D. 421 (Minn. 1989). Upon careful review of the record, we cannot conclude that the compensation judge's reliance on Goodmanson's testimony was unreasonable.

Goodmanson testified he had not planned to work on the roof, that he did not know Erickson was going to show up at 2622 Fairview on the day of the accident, and that he did not ask him to come over to work on the roof on that day or at any time. "I told [Erickson] that Commercial Roof agreed to do it, that they would do it in the spring, and I thought that was the end of it." (T. 169-70, 180-82, 245.) Goodmanson further testified that he was not going to pay Erickson for working on the roof. (T. 182, 245-46.)

The fact that Goodmanson went to retrieve scaffolding and did not require Erickson to get off the roof is not determinative of an employment relationship. See, e.g., Firkus at 866, 29 W.C.D. at 231. Rather, Goodmanson testified Erickson did not like being told what to do, indicating he believed arguing with Erickson would be pointless. Goodmanson stated he went to get scaffolding to do the work, even though he did not want to do it, because he believed it was necessary "in order for the guys to be safe up there." (T. 171,180, 246.)

The compensation judge accepted Goodmanson's testimony. On this evidence the judge could reasonably conclude that the petitioner failed to establish an employee-employer relationship between Erickson and Goodmanson Construction Company on the date of injury.

---

[1] See, e.g., Firkus v. James J. Murphy, 311 Minn. 85, 246 N.W.2d 864, 29 W.C.D. 229 (1976); Huebner, l67 N.W.2d 369, 24 W.C.D. 827; Preese, 167 N.W.2d 737, 24 W.C.D. 863; Darvell v. Paul A. Laurence Co., 239 Minn. 55, 57 N.W.2d 83l, l7 W.C.D. 277 (1953); Stepan v. J.C. Campbell Co., 228 Minn. 74, 36 N.W.2d 401, 15 W.C.D. 472 (1949); Ridler v. Sears, Roebuck Co., 224 Minn. 256, 28N.W.2d 859, l4 W.C.D. 446 (1947); Thompson v. George E. Thompson Co., Inc., l98 Minn. 547, 270N.W. 594, 9 W.C.D. 320 (1936); Supornick v. Supornick, 175 Minn. 579, 222 N.W. 275, 6 W.C.D. 36 (1928); O'Rourke v, Percy Vittum Co., l66 Minn. 25l, 207 N.W. 636, 4 W.C.D. 39 (1926); State ex rel. Albert Lea Packing Co., Inc., v. Industrial Comm'n, l55 Minn. 267, l93 N.W. 450, 1 W.C.D. 279 (1923); Bank v. Mikro Kodesh Congregation, 24 W.C.D. 55 (Indus. Comm'n, 1966).

The appellant and cross-appellant argue, however, that Goodmanson intended to use the garage at 2622 Fairview to store equipment used in his business, that Erickson's activities were motivated by a desire to serve the interests of Goodmanson Construction and did, in fact, further the interests of the company, and that his death is, accordingly, compensable under the act. See Sandmeyer v. City of Bemidji, 281 Minn. 217, 161 N.W.2d 318, 24 W.C.D. 622 (1968) and Mansfield v. Gopher Aviation Co., 301 Minn. 36; 221 N.W.2d 135, 27 W.C.D. 520 (1974). Goodmanson testified the purpose of constructing the garage was to add value to the property in anticipation of condemnation by the city, and he denied he intended to use the garage for storage of his construction equipment. He stated that he was personally remodeling the house at 2622 Fairview Avenue, and asserted it was not a Goodmanson Construction project. (T. 139, 180, 247.) The compensation judge could, and did, credit Goodmanson's testimony.

Finally, the appellant, citing Debold v. H.P. Martell & Sons, 300 Minn. 296; 219 N.W.2d 623, 27 W.C.D. 482 (1974), argues there is an implied contract for hire based on Goodmanson and Erickson's long-standing history of exchanging labor on construction projects. Debold, however, involves an affirmance, on substantial evidence, of the commission's finding that Debold was the employee of Miller, another contractor, based on Debold's expectation of reciprocal services from Miller in return for services rendered. The fact that an individual providing services may have received something of value does not necessarily transform that person into an employee. There must be some evidence that the reciprocal services were intended as compensation in return for services rendered. Preese at 739, 24 W.C.D. at 865; Bank, 24 W.C.D. at 57-58. Here, Goodmanson testified that he and Erickson had done a lot of personal favors for each other, "but I never kept records or kept track of it, or felt like [Erickson] ever owed me anything for it." (T. 244-45.) The petitioner agreed that Goodmanson and Erickson had helped each other with projects for family and friends throughout their twenty-year friendship, and had never gotten paid or requested payment for it. (T. 76-78, 102.)

There is substantial evidence in the record as a whole to support the compensation judge's finding that Erickson was a volunteer helping out a friend, and not an employee of Goodmanson Construction, at the time of his injury. We acknowledge there is also evidence upon which the compensation judge could have found an employment relationship. The question, however, is not whether we might have decided the case differently. The dispositive issue is whether the evidence reasonably supports the compensation judge's factual finding that Erickson volunteered his services as a personal favor to Merl Goodmanson on the date of injury. As there is sufficient evidence to support the compensation judge's finding, we must affirm.

Other significant issues, both legal and factual, were raised by the parties in this case. While we might not necessarily agree with the compensation judge's determinations, we need not address them at this time, and affirm solely on our conclusion that substantial evidence supports the finding that Erickson was a volunteer and not an employee at the time of his injury.