DUANE A. ZUEHLKE, deceased employee, by ANN ZUEHLKE, Petitioner/Appellant, v. PENROSE OIL CO. and FARMLAND MUT. INS. CO., Employer-Insurer, PENROSE FARMS LTD., UNINSURED, Employer, and PENROSE TRANSP., LTD. and ARP/OHMS/BERKLEY ADM'RS., Employer-Insurer, and ALEXANDRIA ORTHOPEDIC CLINIC, DOUGLAS CNTY. HOSP., AND OTTERTAIL CNTY. COLLECTIONS, Intervenors, and SPECIAL COMP. FUND.

WORKERS' COMPENSATION COURT OF APPEALS
JANUARY 24, 2001

No. [REDACTED SSN]

HEADNOTES

PRACTICE & PROCEDURE - DISMISSAL. Where there was no record to establish what theories of liability were raised at hearing on the employers' motions for dismissal, where there was no way of knowing exactly what the compensation judge considered in rendering her decision, and where there was evidence in the file that tended to support the employee's position in opposition to dismissal, it was appropriate to vacate the compensation judge's dismissal order and refer the matter for hearing on the merits.

Vacated and referred to OAH.

Determined by Wilson, J., Rykken, J., and Pederson, J.
Compensation Judge: Carol A. Eckersen.

OPINION

DEBRA A. WILSON, Judge

The petitioner appeals from an order granting motions for dismissal. We vacate the order and refer the case for an evidentiary hearing on the claim petition.

BACKGROUND

Duane Zuehlke was apparently hired by David Penrose in 1994. Mr. Penrose operated three entities: Penrose Oil Company [Penrose Oil], Penrose Farms Ltd. [Penrose Farms], and Penrose Transport, Ltd.[Penrose Transport]. On December 30, 1996, Mr. Zuehlke was injured when he caught his foot in an auger at Penrose Farms. About a year later, on December 14, 1997, he committed suicide.

Mr. Zuehlke's widow [the petitioner] filed a claim petition on February 4, 1999, against Penrose Farms, Farmland Insurance,[1] and the Special Compensation Fund [SCF]. On April 26, 1999, the petitioner amended her claim petition to list Penrose Farms, Penrose Oil, and

[1] It was later established that Farmland Insurance did not provide workers' compensation coverage for Penrose Farms.

Penrose Transport as the employers. The SCF filed a motion for dismissal on March 3, 1999, contending that it had no liability for any of the claimed benefits. Penrose Transport filed a motion for dismissal from the case on June 28, 1999, on grounds that Mr. Zuehlke was not an employee of Penrose Transport. In its answer to the petitioner's amended claim petition, filed on June 24, 1999, Penrose Farms moved for dismissal. Shortly thereafter, on July 6, 1999, Penrose Oil filed a motion for dismissal, contending that Mr. Zuehlke's last date of employment with Penrose Oil was April 26, 1996, and that he was employed by Penrose Farms at the time of his injury.

A telephone settlement conference took place on November 23, 1999, after which Compensation Judge James E. O'Gorman issued an order dismissing Penrose Farms, the SCF, and Penrose Transport without prejudice. Judge O'Gorman concluded that Penrose Farms qualified as a family farm that was exempt from the workers' compensation statutes, that the SCF had no liability, and that Penrose Transport had never paid any wages to Mr. Zuehlke and therefore could not be his employer for workers' compensation purposes. In his memorandum, the judge explained that Penrose Oil had not been dismissed because there was a "colorable claim" against it under the "loaned servant" doctrine.

On April 14, 2000, the petitioner filed a motion to join Penrose Farms and Penrose Transport as named employers in the action, alleging that "all three Penrose businesses are so closely related so as to preclude exempting only certain employees from workers compensation coverage," that "Penrose Farms was not properly operating under the family farm exemption," and that "all three Penrose entities are closely related and intermingled." Penrose Farms and Penrose Transport objected to the motion, but, on May 12, 2000, Compensation Judge Bonnie A. Peterson issued an order for joinder, concluding that there were factual disputes "that must be resolved at hearing and that the parties requested to be joined by the employee are essential to this matter."

Penrose Oil filed a motion to dismiss on May 5, 2000,[2] contending in part that the petitioner was unable to make any evidentiary showing that Mr. Zuehlke was a "loaned servant" to Penrose Oil on the date of injury or that Penrose Oil was a "joint employer" at that time. The claim petition was scheduled for a telephone pre-trial on August 14, 2000, and for trial on August 31 and September 1, 2000. Compensation Judge Carol A. Eckerson presided over the telephone pre-trial and filed an order granting motions for dismissal of Penrose Oil and Penrose Transport on August 23, 2000. In that order, Judge Eckersen indicated that Penrose Transport and Penrose Farms had renewed their motions for dismissal at the time of the pre-trial, that all parties had agreed that the three motions for dismissal should be heard at the pre-trial, and that the petitioner's claim was based solely on the "loaned servant" doctrine. After making factual findings, the judge concluded that there was "no genuine issue of material fact as to whether the employee was a loaned servant by Penrose Oil or Penrose Transport" but that "[t]here is a genuine issue of material fact and questions of law as to whether Penrose Farms' payroll and insurance policy meet the requirements of Minn. Stat. § 176.011 Subd. 11a." The petitioner's attorney requested that the case be stricken from the trial calendar, which was done by order of September 12, 2000. The petitioner then appealed from the order dismissing Penrose Oil and Penrose Transport.

[2] This motion was filed prior to Judge Peterson's order but was not considered by Judge Peterson.

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.

"[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers' Compensation Court of Appeals] may consider de novo." Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

DECISION

Citing Koskela v. Quality Machine, Inc., 38 W.C.D. 310 (W.C.C.A. 1985), the petitioner contends that the compensation judge inappropriately applied a summary judgment standard to the motions for dismissal. We agree that the Minnesota Workers' Compensation Act does not provide for "summary judgment" hearings, with the exception of Minn. Stat. § 176.322, which allows a compensation judge to determine a matter without hearing "if the parties agree to a stipulated set of facts and only legal issues remain."[3] See also Minn. Stat. § 176.305, subd. 1a. However, the actual pleading before the compensation judge was not a motion for summary judgment, but a motion for dismissal, a pleading that compensation judges are authorized to deal with. Moreover, our review indicates that Judge Eckersen merely applied some basic summary judgment principles to the dismissal motion, which we do not necessarily find improper under the circumstances. Nevertheless, we conclude, for other reasons, that the judge's order should be vacated.

We note initially that the compensation judge did not delineate what evidence she considered in rendering her order for dismissal, other than additional pages from the deposition of

[3] Contrary to Penrose Oil's reference in its brief to "stipulated facts," there is no evidence of a written set of stipulated facts or of a stipulation of the facts agreed to on the record as required in Knapp v. Bud Meyer Truck Lines, No. [REDACTED SSN] (W.C.C.A. Apr. 4, 1995).

Ms. Zuehlke,[4] a statement of the employee,[5] and the first report of injury.[6] While it can be assumed that she also relied on the eighteen exhibits attached to Penrose Oil's motion for dismissal, we have no way of knowing whether she reviewed any of the other motions for dismissal, the motion for joinder, the objections to those motions, or the exhibits attached thereto. Therefore, we have inadequate basis to review the compensation judge's conclusion that "[t]he employee has not shown any evidence that the work being done was essentially that of any company other than Penrose Farms."

Further, the compensation judge dismissed Penrose Transport and Penrose Oil based solely on her analysis of the "loaned servant" doctrine, which, her order asserted, was the petitioner's only argument at the time of the pre-trial. However, in her brief on appeal, the petitioner argues not only "loaned servant" doctrine but also that she is entitled to benefits under Minn. Stat. §176.205, subd. 1, alleging a fraudulent scheme to avoid workers' compensation liability. The petitioner does not address, in her brief, whether Minn. Stat. §176.205, subd. 1, was raised as an issue at the time of the telephone pre-trial,[7] and, again, with no definite record to review, we are unable to make that determination.[8]

The judge made a legal determination that the loaned servant doctrine did not apply to the employee's claims against Penrose Oil and Penrose Transport. However, in doing so she of necessity made factual determinations. We have no record to review and no clear indication as to what documents the compensation judge considered in making her determination. In addition, without a transcript of the pre-trial, we are unable to determine whether the petitioner's claim of the applicability of Minn. Stat. §176.205, subd. 1, was raised or waived at the pre-trial. Further, we would note that the first report of injury (completed by Mr. Penrose) suggests that the employee was employed by Penrose Oil and one other Penrose entity at the time of injury, and the deposition of Ms. Zuehlke suggests that the employee had performed work for both Penrose Oil and Penrose Transport (although the timing is unclear). Therefore, this is clearly not a case in which there is

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[4] A fax to Judge Eckersen from attorney Andrew A. Willaert, dated August 17, 2000, identifies those pages as 29-45, 85-87, 89, 90, 96, 102, 103, 107 and 135. Those pages were attached to the fax.

[5] A letter to Judge Eckersen from attorney Carole Clark Isakson, dated August 15, 2000, attaches the statement of Duane Zuehlke taken on January 20, 1997.

[6] In the opening paragraphs of her decision, the compensation judge stated that the parties agreed to submit this "additional documentation" to the judge by August 17, 2000.

[7] The briefs of Penrose Transport and Penrose Oil contend that the issue of Minn. Stat. § 176.205, subd. 1, was not raised at the pre-trial and is therefore not properly before this court on appeal.

[8] If Mr. Vander Linden, attorney for the petitioner, had in fact agreed that the motions for dismissal would be heard at the pre-trial and had represented to the court that his only basis for claiming liability by Penrose Oil or Penrose Transport was the "loaned servant" doctrine, it could be argued that he waived application of other legal theories.

no evidence of a possible employment relationship with the two entities dismissed by the judge's order. Finally, we are concerned that two compensation judges from the Office of Administrative Hearings issued conflicting orders on similar motions.[9]

For all of the above reasons, we deem it appropriate to vacate the order dismissing Penrose Oil and Penrose Transport and refer this case to the Office of Administrative Hearings for an evidentiary hearing on the merits of the claim petition against all three potential employers.

[9] Judge O'Gorman's dismissal order was clearly "without prejudice" and invited the employee to move to join the dismissed parties once evidence of their necessary joinder was available. Judge Peterson's order joining Penrose Transport on May 12, 2000, was arguably based on the same evidence that Judge Eckersen relied on three months later in dismissing Penrose Transport and addressed the same issue of which parties were necessary to the action.