STATE OF VERMONT
DEPARTMENT OF LABOR

Ernest Clark

v.

Blair Farm Maple Products, Inc.

Opinion No. 09-18WC

By: Phyllis Phillips, Esq.
Stephen Brown, Esq.
Administrative Law Judges

For: Lindsay H. Kurrle
Commissioner

State File No. FF-01110

OPINION AND ORDER

Hearing held in Montpelier on March 12, 2018
Record closed on April 23, 2018

APPEARANCES:

David W. Lynch, Esq., for Claimant
Michelle B. Patton, Esq., for Defendant

ISSUES PRESENTED:[1]

1. Was Claimant an employee of Defendant under 21 V.S.A. §§ 601(3), (13), and (14)?

2. If yes, did Claimantôs April 7, 2014 injury arise out of and in the course of his employment?

EXHIBITS:

Defendantôs Exhibit A: Northwestern Medical Center record, March 16, 2014

Defendantôs Exhibit B: Northwestern Medical Center record, April 4, 2014

Defendantôs Exhibit C: Registration for trailer owned by Gregory Hall

Defendantôs Exhibit D: Three photographs of trailer owned by Gregory Hall

[1] The parties have agreed to reserve questions regarding the nature and extent of Claimantôs injury-related medical treatment and resulting disability pending the Commissionerôs determination regarding his entitlement to workersô compensation benefits generally.

CLAIM:

All workersô compensation benefits to which Claimant establishes his entitlement as causally related to his April 7, 2014 injury

Costs and attorney fees pursuant to 21 V.S.A. §678

FINDINGS OF FACT:

1. This case arises out of a compound leg fracture that Claimant suffered on April 7, 2014 while lifting a trailer on Defendantôs premises.

2. Judicial notice is taken of all forms and correspondence in the Departmentôs file relating to this claim.

Defendant's Sugaring Operation

3. Defendant is in the business of producing sugar products from maple sap, including syrup.

4. Cleland Blair is Defendantôs owner. However, Mr. Blair is not materially involved in Defendantôs day-to-day business operations. Instead, Defendant partners with Gregory Hall and Kevin Archambault to carry out its operations. After payment of expenses, Defendant pays Messrs. Hall and Archambault 25 percent of all net profits at yearôs end. Mr. Blair retains the remaining 50 percent.

5. In the past, Mr. Hall and Mr. Archambault separately hired and paid laborers to assist in Defendantôs sugaring operations. At some point prior to 2014, the partners had a disagreement about the way Mr. Hall was paying laborers. Thereafter, Mr. Blair and Mr. Archambault voted to prohibit Mr. Hall from hiring laborers. From that time forward, Mr. Archambault was solely responsible for all hiring, and Mr. Hall lacked authority to hire or pay laborers on Defendantôs behalf.

Claimant Ernest Clark

6. Claimant is a 60-year-old man who has been partially disabled since suffering a back injury in approximately 1995. Claimant also suffers from legal blindness in one eye, arthritis, and headaches related to a pituitary tumor. He receives Social Security disability benefits but can still work part time.

7. Claimant suffered a fractured left wrist in or around the summer of 2013 during a four-wheeling accident. He sustained another injury to the same wrist on or about March 14, 2014.

8. Claimant performed intermittent work for Defendant between approximately 2009 and 2012. Claimant mostly worked under Mr. Hallôs direction, though he occasionally also worked under Mr. Archambault. His job duties included washing barrels, checking vacuum lines, and tapping tree lines. He typically worked two or three days per week for three to four hours each day. He received wages of $10.00 per hour. Mr. Hall generally paid him, but occasionally Mr. Archambault had to do so because Mr. Hall was unable.

9. At some points in the past, Defendant had occasionally paid laborers, including Claimant, at least partly in syrup.

10. Claimant stopped working for Defendant in 2012, after Mr. Hall stopped paying him on time. For several months thereafter, he performed farm work for David Woods. His primary duties there included cleaning, sweeping, and feeding heifers. He stopped working for Mr. Woods after he broke his wrist in 2013.

11. Claimant did not have any employment between the time he stopped working for Mr. Woods and April 7, 2014. He credibly testified that Mr. Woods would not allow him to return to work until his doctor released him to do so.

Claimant's Alleged Hiring on April 7, 2014

12. On the morning of April 7, 2014, Claimant came into the sugar house on Defendantôs premises. Mr. Hall was present. Also present was Brian Barber, who lives next to Defendantôs premises and is related to Mr. Hall by marriage.

13. Claimant and Mr. Hall had a discussion inside the sugar house. During that conversation, Mr. Barber went outside.

14. The nature and content of Claimantôs and Mr. Hallôs conversation is disputed. According to Claimantôs version of events, after engaging in some small talk, he told Mr. Hall that he was looking for work. Mr. Hall replied that Mr. Archambault, and not Mr. Hall, was now responsible for hiring because his partners did not like the way Mr. Hall was paying people. Claimant persisted and offered to work for syrup rather than cash. Mr. Hall said that this would be possible because he had control over the syrup. The men did not specifically agree as to how many hours he would work or how much syrup he would be paid. Rather, Claimant suggested, and Mr. Hall agreed, that they would determine the appropriate amount at the end of the day. At that point, Mr. Hall told him to go outside and help Mr. Barber move two tanks, and Claimant complied.

15. Mr. Hall recalled the conversation differently. According to his testimony, Claimant came into the sugarhouse and said that he had gone to see Mr. Woods for work but Mr. Woods would not rehire him until a doctor released him. Mr. Hall testified that Claimant did not ask to be hired, and Mr. Hall did not hire him. Mr. Hall denied that there was any discussion of wages and that his right to hire ñnever came up.ò Mr. Hall also denied instructing Claimant to do anything, because he had ñno rightò to do so.

16. On cross-examination, Mr. Hall was impeached with prior deposition testimony in which he stated that Claimant ñmentionedò being hired but that Mr. Hall did not know whether Claimant specifically asked one way or the other. Mr. Hall explained that he was boiling sap during the conversation, and because the boiling equipment was not working properly, he had to physically open and close the valve, which required some level of concentration. Mr. Hall stated that he was focused on preventing his pans from burning, and therefore was less attentive to his discourse with Claimant.

17. After carefully considering the witnessesô conflicting testimony, I find that Claimant asked Mr. Hall for work on the day in question, as there is no evidence of any other purpose for his visit to Defendantôs sugar house that morning. I further find that Claimant offered to work for maple syrup instead of cash wages.

18. I also find that Mr. Hall did not accept Claimantôs offer and did not hire him to perform work for Defendant on April 7, 2014. Instead, I find that Mr. Hall informed Claimant that he had no authority to hire anyone, and that Mr. Archambault was responsible for all hiring at that time. Claimantôs explanation as to why Mr. Hall lacked hiring authority matched Mr. Hallôs testimony on this topic, and there was no evidence of any plausible way for Claimant to have known this information other than hearing it from Mr. Hall.

Claimant's April 7, 2014 Injury

19. Following his discussion with Mr. Hall, Claimant went outside to help Mr. Barber hitch a trailer to a pickup truck. The parties dispute Mr. Barberôs purpose for being present that morning, Claimantôs reasons for assisting him and the type of trailer (whether single- or double-axle) he attempted to hitch.

20. Claimantôs version of events is as follows: After he and Mr. Hall agreed that he would work for syrup that day, Mr. Hall told him to help Mr. Barber move two large empty tanks. Claimant went outside to communicate Mr. Hallôs directions to Mr. Barber. Mr. Barber objected to moving the tanks by hand, and instead insisted that they use a trailer to do so. Mr. Barber directed Claimant to help him hitch a large, double-axle trailer, of a type used to carry heavy equipment, to Mr. Hallôs pickup truck for this purpose. Claimant expressed doubt that he would be able to lift the heavy trailer hitch, but after Mr. Barber ñcussedò at him, he made the attempt. He managed to lift the hitch, but as he did so, the muddy ground gave way beneath him. The hitch fell on his leg, causing a severe compound fracture.

21. Mr. Hallôs version of events is as follows: Mr. Barber had come onto Defendantôs premises to borrow a ten-foot, single-axle landscaping trailer that belonged to Mr. Hall personally. Mr. Hall understood that Mr. Barber needed the trailer to move some brush remaining from a ñtree jobò he had undertaken downtown. Mr. Hall did not ask Mr. Barber to move any tanks; in fact, the only plastic tanks on the property were filled with ñpermeateò and connected by plastic pipes to the rear of the building.

22. Mr. Barber corroborated Mr. Hallôs version of events. He testified that he went to Defendantôs sugar house to borrow Mr. Hallôs single-axle trailer to move some firewood for his own personal use, and that he was not working for Defendant at that time. He acknowledged that had ñhelpedò Mr. Hall that morning and that he was ñalways there in case they needed something,ò but credibly denied that anyone had asked him to move any tanks. Mr. Barber recalled that Claimant followed him out of the sugar house and voluntarily offered to help him with the trailer. He asserted that nobody had asked Claimant to do so, and that his assistance ñwas a volunteer thing.ò

23. Mr. Barber credibly testified that the trailer in question was the single-axle one depicted in Defendantôs Exhibit D. Claimant denied that this was the trailer he was trying to lift on the day in question but acknowledged that a single-axle trailer would be much easier to lift, balance and hitch than a double-axle trailer would be.

24. I find from this evidence that Mr. Barber came to Defendantôs property to borrow Mr. Hallôs single-axle landscaping trailer so that he could haul firewood for his own personal purposes, unrelated to Defendantôs business. I further find that Mr. Hall did not direct Claimant to help Mr. Barber move any tanks, that Claimantôs assistance to Mr. Barber was entirely voluntary and that he was not promised any compensation for doing so.

25. Immediately after the trailer hitch fell on Claimantôs leg, Mr. Barber called for an ambulance, which arrived and transported Claimant to the hospital. Mr. Hall never came outside to see Claimant, either during or after his injury.

26. The day after Claimantôs injury, David Stanhope, whom Claimant had known for many years, came to the sugar house to pick up Claimantôs truck. Mr. Stanhope recalled that the truck was parked next to a double-axle trailer of a type used to move heavy equipment, not the single-axle trailer depicted in Defendantôs Exhibit D. Even if accurate, I find that Mr. Stanhopeôs recollection in this regard does nothing to establish that the double-axle trailer was the one Claimant was attempting to lift when he was injured.

CONCLUSIONS OF LAW:

1. In workersô compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *King v. Snide*, 144 Vt. 395, 399 (1984). He or she must establish by sufficient credible evidence the character and extent of the injury, *see, e.g., Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17, 20 (1941), as well as the causal connection between the injury and the employment. *Egbert v. The Book Press,* 144 Vt. 367, 369 (1984). There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the resulting disability, and the inference from the facts proved must be the more probable hypothesis. *Burton, supra,* 112 Vt. at 20; *Morse v. John E. Russell Corp.*, Opinion No. 40-92WC (May 7, 1993).

2. The workersô compensation statute defines ñemployeeò as ñan individual who has entered into the employment of, or works under contract of service or apprenticeship with, an employer.ò 21 V.S.A. § 601(14). Accordingly, the statute makes the existence of a contract of hire an essential element of the employment relationship. *Perrault v. Chittenden County Transportation Authority*, Opinion No. 06-17WC (March 9, 2017), *aff'd* 2018 VT 58 (May 25, 2018). A contract of hire may be written or oral, but it must include the partiesô agreement as to the payment of wages or remuneration to the employee. *Id.*, Conclusions of Law ¶ 3.

3. Claimant has not proven the existence of any contract of hire in effect on April 7, 2014. Mr. Hall did not have authority to hire Claimant. Claimant admitted that Mr. Hall told him as much and stated that he would have to talk to Mr. Archambault, who was not present, if he wanted to be hired. Mr. Hall did not accept Claimantôs offer to work for syrup. Without such acceptance, no contract exists. *See J. C. Durick Ins. v. Andrus*, 139 Vt. 150, 424 A.2d 249 (1980) (ñTo constitute a contract there must be a meeting of minds of the parties; an offer by one and an acceptance by the other.ò) (citations omitted); *Starr Farm Beach Campowners Ass'n, Inc. v. Boylan*, 174 Vt. 503 (2002) (ñWe find no offer and acceptance between plaintiff and defendants. As such, no contract exists between the two parties.ò).

4. The workersô compensation statute does not provide benefits to volunteers who work for no wages. *See Wolfe v. Yudichak*, 153 Vt. 235, 571 A.2d 592 (1989) (holding that volunteer firefighter was not an employee for purposes of workerôs compensation statute); *Lyons v. Chittenden Central Supervisory Union*, 2018 VT 26, ¶ 20 (recognizing that the ñsystem of workers' compensation provides for the partial replacement of wages as indemnity for injuries from a qualifying accident. Without receipt of wages, there can be no indemnity.ò); *Perrault v. Chittenden County Transportation Authority*, 2018 VT 58 (May 25, 2018) (holding that volunteer driver was not an employee even though she received mileage reimbursement).

5. I conclude from the credible evidence that Claimant was a volunteer who gratuitously offered his assistance to Mr. Barber in a personal matter unrelated to Defendantôs business operations. Under these circumstances, Claimantôs efforts were those of a volunteer and not an employee.

6. Because Claimant was not Defendantôs employee at the time of his injury, his injury did not result from an ñaccident arising out of and in the course of employmentò under V.S.A. § 618(a). Therefore, Claimant is not entitled to workersô compensation benefits.[2]

7. As Claimant has failed to prevail on his claim for compensation, he is not entitled to an award of attorney fees or costs under 21 V.S.A. §678.

[2] Having concluded that Defendant never accepted Claimantôs offer to work for syrup rather than cash wages, it is not necessary for me to determine what his average weekly wage for workersô compensation purposes would have been. I note only that the credible evidence established that Claimant anticipated working four or five hours on the day in question, and that the retail value of a gallon of maple syrup at the time was approximately $45.00-$50.00.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Claimantôs claim for workersô compensation benefits is **DENIED**.

DATED at Montpelier, Vermont this ____ day of June 2018.

_____
Lindsay H. Kurrle
Commissioner

Appeal:
Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§670, 672.