BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

In Re: Charles A. Ruffing, Employee.	)	
	)	**IC 2004-011019**
	)	
CITY OF BOISE,	)	
Employer/Self-Insured, Claimant,	)	**FINDINGS OF FACT, CONCLUSION OF LAW,**
v.	)	**AND RECOMMENDATION**
	)	
ADA COUNTY,	)	
Employer/Self-Insured, Defendant.	)	FILED MAR 23 2009
	)	

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Boise on December 12, 2008. Alan Gardner represented City of Boise. Dan Bowen represented Ada County. Richard S. Owen represented the injured worker Charles A. Ruffing. The parties presented oral and documentary evidence. They submitted post-hearing briefs. The case came under advisement on February 18, 2009. It is now ready for decision.

ISSUE

According to the notice of hearing, the sole issue to be resolved is:

Which entity was Mr. Ruffing's employer at the time of the accident, i.e., whether the loaned-servant doctrine applies.

CONTENTIONS OF THE PARTIES

Claimant was struck by an ambulance owned by Ada County and operated by an Ada County employee which was backing out of a congested parking lot. His knee was briefly pinned, causing some injury.

City of Boise asserts Mr. Ruffing became a loaned servant in the employ of temporary employer Ada County when he assisted ambulance driver Lindy McPherson by directing her—at her request—as she backed an Ada County ambulance out of a congested parking lot.

Ada County asserts Mr. Ruffing remained in the employ of City of Boise under the supervision of his regular supervisor, Captain Neal Forrester.

Mr. Ruffing asserts he remained under the direct control of his regular employer, City of Boise, and of his regular supervisor, Capt. Forrester.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Hearing testimony of Mr. Ruffing and his supervisor Capt. Forrester;

2. Mr. Ruffing's exhibits 1 through 4; and

3. City of Boise's exhibits 3, 4, and 8;

Except as expressly sustained at hearing, objections, particularly continuing objections, are overruled. After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Mr. Ruffing worked as a fireman employed by City of Boise when he and other firemen responded to an emergency call for medical assistance at the Chili's restaurant on Broadway Avenue in Boise. It was the day of the football game between Boise State University and Oregon State University.

2. The restaurant and surrounding area was congested and somewhat chaotic when he arrived on scene.

3. Ada County paramedics also responded to the medical emergency call. Paramedics were present when the firemen arrived.

4. The two entities, Boise City firemen and Ada County paramedics, routinely respond together in cooperation on such calls. Ada County sent two paramedics, but no supervisor, to respond to the call; City of Boise sent three firemen, including Capt. Forrester.

5. At Capt. Forrester's direction, Mr. Ruffing and another fireman retrieved a gurney from the Ada County ambulance and brought it to the patient. Employees from the two entities cooperated in transporting the patient by gurney to the waiting ambulance.

6. Once the patient was in the ambulance, Ada County paramedic Lindy McPherson asked for assistance to direct her as she backed the ambulance from the crowded parking lot. Mr. Ruffing sought and received approval from Capt. Forrester to undertake this action.

7. Mr. Ruffing has been trained by City of Boise about traffic control issues and specifically about providing hand signals to assist drivers in backing vehicles.

8. Capt. Forrester remained on scene, in his vehicle. He did not further direct Mr. Ruffing's actions as the ambulance backed up.

9. The ambulance did not stop when Mr. Ruffing signaled, "Stop", nor when he yelled for the driver to stop. Mr. Ruffing was pinned between the ambulance and a parked car.

10. Capt. Forrester left his vehicle and hurried to the ambulance. He began instructing the ambulance driver to pull forward.

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11. After the ambulance struck the parked car the second time, Ada County called a supervisor to assess the damage. The ambulance left with the patient several minutes before the Ada County supervisor arrived.

DISCUSSION AND FURTHER FINDINGS

12. When an employer (called the "general employer" or "regular employer") loans an employee to another employer (called the "special employer" or "temporary employer") under some circumstances, the "loaned-servant doctrine" applies. The loaned-servant doctrine, sometimes called the "borrowed-servant doctrine," has been addressed by the Idaho Supreme Court and by this Commission on several occasions. The test for analyzing whether a person is a loaned servant has evolved with successive cases.

13. The landmark case is *Pinson v. Minidoka Highway Dist.*, 61 Idaho 731, 106 P2d. 1020 (1940). Two employers had entered a formal, negotiated arrangement under which Mr. Pinson's services were provided. Mr. Pinson died after medical complications were induced by an accident at work. Mr. Pinson's widow and dependent mother applied for workers' compensation death benefits. The *Pinson* court looked to the temporary employer's right to control and direct the details of Mr. Pinson's work. It followed the rule announced by the United States Supreme Court in *Standard Oil Co. v. Anderson*, 212 U.S. 215 (1909):

> It sometimes happens that one wishes a certain work to be done for his benefit, and neither has persons in his employ who can do it nor is willing to take such persons into his general service. He may then enter into an agreement with another. If the other furnishes him with men to do the work, and places them under his exclusive control in the performance of it, those men become pro hac vice the servants of him to whom they are furnished. . . . To determine whether a given case falls within the one class or the other we must inquire whose is the work being performed, a question which is usually answered by ascertaining who has the power to control and direct the servants in the performance of their work.

Thus, in *Pinson*, the matter turned on the fact that the temporary employer had direct control

of Mr. Pinson when the accident occurred. It was the temporary employer's business that Mr. Pinson was furthering. The fact that Mr. Pinson continued to receive his paycheck from the regular employer was held to be "not controlling." *Id.*, at P.2d 1022. Rather, the fact that temporary employer's engineer directed, in detail, Mr. Pinson's work was. *Id.*

14. Subsequent cases have established that a formal agreement is not a requirement for finding a worker to be a loaned servant. In *Cloughley v. Orange Transportation Co.*, 80 Idaho 226, 327 P.2d 369 (1958), no formal agreement was involved. However, in *Cloughley*, because an Interstate Commerce Commission rule required an employee of a consignee to perform an act, the application of the loaned-servant doctrine allowed the *Cloughley* court to avoid finding that the consignee had violated the rule.

15. The Idaho Supreme Court has carefully limited the application of the loaned-servant doctrine. In *Gropp v. Pluid*, 91 Idaho 722, 429 P.2d 852 (1967), a "landing operator" instructed a truck driver to unload a truckload of logs. Idaho regulation required the use of certain safety equipment. The safety equipment was malfunctioning. The landing operator instructed the truck driver to proceed without the safety equipment. The truck driver did so and the landing operator was injured when the logs fell.

16. The *Gropp* court expressly refused to discuss "whether, during the ordinary unloading operations the driver of a truckload of logs would become a loaned employee" but went on to hold that the landing operator's "specific instructions" in this "unusual delegated duty" meant that the truck driver was a loaned employee and his regular employer was not liable to the landing operator for his injuries. *Id.*, at 726, P.2d at 856.

17. The standard for determining who is a loaned servant was addressed in *Paullas v. Andersen Excavating*, 113 Idaho 156, 742 P.2d 411 (1987). Under *Pinson*, it appeared that

"exclusive control" regardless of who paid the wages was the test. In *Paullas*, a theory of employee versus independent contractor was also advanced alongside the loaned-servant theory. As a result the "right-to-control test"—previously used in determining an independent contractor—became the standard for analyzing both theories. However, the *Paullas* court identified two "[a]dditional factors germane to loaned employee status" as being (1) whether there was "a contract for hire . . . with the special employer" and (2) whether "the work being done is essentially that of the special employer." The *Paullas* court appears to have minimized the impact of the *Pinson* court's determination that the method of payment was "not controlling" as a factor: "Payment for services rendered should have led the Commission toward the inescapable conclusion that there was a contract for hire." *Paullas*, at 414, P.2d at 159.

18. Use of the right-to-control test was elevated to "primary determinative" status in *Hill v. E&L Farms*, 123 Idaho 371, 373, 848 P.2d 429, 431 (1993). The Commission has followed the test espoused by the *Hill* court since. *See, e.g., Sankey v. Highway Distrib. Services*, 1996 IIC 1106; *March v. Prostaff Services*, 1995 IIC 1089; *Nelson v. Manpower, Inc.*, 1995 IIC 0346; *Kaufman v. VanHees Builders, Inc.*, 1995 IIC 0330. Thus, the traditional right-to-control test provides the basis for analysis.

19. The traditional right-to-control test for determining who is an employee in workers' compensation matters involves four factors: (1) direct evidence of the right to control, (2) the method of payment, (3) furnishing major items of equipment, and (4) the right to terminate the relationship at will and without liability. *See, e.g., Burdick v. Thornton*, 109 Idaho 869, 871, 712 P.2d 570, 572 (1985). (Other similar tests may have as few as three or as many as 15 factors, but these variants generally pertain to specific statutes, IDAPA rules, or areas of inquiry separate from the traditional right-to-control test. *See, Excell Construction,*

Inc., 145 Idaho 783, 186 P.3d 639 (2008).) The four-factor analysis follows.

20. First, Capt. Forrester testified that he retained the right to control Mr. Ruffing's actions at all times. Moreover, when the accident occurred, Capt. Forrester personally intervened to direct his personnel. Finally, no Ada County employee directed Mr. Ruffing's actions; Mr. Ruffing was asked to direct the Ada County ambulance driver's actions. This factor indicates that Mr. Ruffing was not a loaned servant. That the ambulance driver did not ultimately follow Mr. Ruffing's directions has no bearing upon whether Ada County did or did not have any right to control Mr. Ruffing's actions.

21. Second, Mr. Ruffing was at all times paid his salary by City of Boise, never by Ada County. Although the *Pinson* court's explanation that this factor is "not controlling" remains a truism, this factor indicates Mr. Ruffing was not a loaned servant.

22. Third, Mr. Ruffing required no major item of equipment to perform his job of directing the ambulance. The ambulance itself is no more relevant than a privately owned vehicle. Assisting with traffic control when responding to a call is a part of the job description of a City of Boise fireman. Applying this factor, there being no major equipment to consider, there is no basis to indicate Mr. Ruffing should be considered a loaned servant. *Arguendo*, even if the ambulance were to be considered with this factor, it remained under the control of its driver as evidenced by the fact that Mr. Ruffing did not instruct the driver to hit him or the parked car.

23. Fourth, termination and liability questions do not provide any basis for finding that Mr. Ruffing was a loaned servant. He performed his usual job of responding to a call and cooperating with other emergency personnel. This was performed without any indicia, relevant to this factor, of a temporary change of employer.

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24. To the extent the two "additional factors" identified by the *Paullas* court remain germane after *Hill*, both indicate in the direction of a finding that Mr. Ruffing was not a loaned servant: There was no contract for hire and the work being performed was a part of City of Boise firemen's duties to assist the medical personnel and to assist with traffic control.

25. One final note: This decision is intended only to decide the application of the loaned-servant doctrine to the facts found above within the framework of the Idaho Workers' Compensation Law. The facts found herein are so described only for this purpose. Nothing in this decision is intended to decide or comment on any other issue, whether within or without the Idaho Workers' Compensation Law. A brief contained some discussion about the "fellow-servant" doctrine. Whether that doctrine or any other fact or issue has any effect upon the potential liability of Ada County outside of the workers' compensation law is not considered nor addressed, explicitly or impliedly in this decision.

CONCLUSION OF LAW

At the time of the accident, Mr. Ruffing was an employee of his regular employer, City of Boise, and was not a loaned servant to Ada County.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusion of law and issue an appropriate final order.

DATED this 13th day of MARCH, 2009.

INDUSTRIAL COMMISSION

/S/_____
Douglas A. Donohue, Referee

ATTEST:

/S/_____
Assistant Commission Secretary

db

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	)	**IC 2004-011019**
CITY OF BOISE,	)	
Employer/Self-Insured,	)	
Claimant,	)	**ORDER**
v.	)	
ADA COUNTY,	)	FILED MAR 23 2009
Employer/Self-Insured,	)	
Defendant.	)	

Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. At the time of the accident, Mr. Ruffing was an employee of his regular employer, City of Boise, and was not a loaned servant to Ada County.

2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 23rd day of MARCH, 2009.

INDUSTRIAL COMMISSION

/S/_____
R. D. Maynard, Chairman

/S/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

/S/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of MARCH, 2009, a true and correct copy of the **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

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