

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

FREDERICK THORNTON,

Claimant,

v.

ENOS BORNTRERGER and RLE TRUCKING,
LLC., Employer,

and

SO-IDA COMMODITIES, Employer and
TECHNOLOGY INSURANCE COMPANY,
INC., Surety,

and

BRADEN, INC., Non-Insured Employer,

Defendants.

IC 2023-003728

**FINDINGS OF FACT,
CONCLUSION OF LAW,
AND RECOMMENDATION**

**FILED AUGUST 2, 2024
IDAHO INDUSTRIAL COMMISSION**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Sonnet Robinson. A hearing was conducted on February 27, 2024, in Twin Falls, Idaho. Claimant, Fredrick Thornton, was represented by Jonathan Harris of Blackfoot at the hearing. Theodore Larsen of Jerome represented Defendants So-Ida Commodities and Braden, Inc. An Order of Default was entered against Enos Borntrenger/RLE Trucking, LLC on April 24, 2023. Defendants Eagle View Farms/State Insurance Fund were dismissed on May 9, 2024 pursuant to a stipulation filed April 18, 2024. The parties presented oral and documentary evidence and briefs were submitted. No post-hearing depositions were taken. The matter came under advisement on May 29, 2024, and is ready for decision.

ISSUE¹

1. Whether and which of the Defendants, including So-Ida Commodities, LLC, Braden Inc, are Claimant's statutory employers.

CONTENTIONS OF THE PARTIES

Claimant contends he was injured as an employee of Borntreger and within the course and scope of this employment. Borntreger did not have workers' compensation insurance and was a subcontractor working for Braden Inc. Braden Inc. did not have workers' compensation insurance and was a contractor working for So-Ida Commodities. Therefore, per Idaho Code § 72-216(1), Braden Inc. and So-Ida Commodities are Claimant's statutory employers.

Defendants respond that per the recent Supreme Court case of *Smith v. Excel Fabrication*, 172 Idaho 725, 535 P.3d 1098 (2023) neither So-Ida Commodities nor Braden Inc. are statutory employers. *Smith* distinguished independent contractors, contractors, and subcontractors such that only Borntreger can be found liable for workers' compensation as Claimant's direct employer.

Claimant replies that *Smith* is limited to third-party cases under Idaho Code § 72-223 and does not apply here. Even if *Smith* does apply, So-Ida Commodities and Braden Inc. are liable for benefits.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Joint exhibits A-M (JE);

¹ The original notice of hearing also included: whether Claimant suffered injuries within the course and scope of his employment and whether Eagle View Farms was a statutory employer of Claimant. Defendants did not dispute that Claimant was in the course and scope of his employment and Eagle View Farms has been dismissed from this action. Therefore, both of those issues are moot.

3. The hearing testimony of Fredrick Thornton, Claimant, Michele Dudley, Claimant's girlfriend, Bradley Capps part owner of So-Ida Commodities and owner of Braden, Inc, and Bradley Visser, member of Eagle View Farms, LLC;

All outstanding objections are OVERRULED. At hearing, Mr. Harris objected to exhibits he referred to as "N" and "O" which were telephonic interviews with Dawson Coleman and Enos Borntreger. Mr. Harris' objections were SUSTAINED, and those interviews were excluded. However, the downloaded hearing exhibits contained the telephonic interview with Mr. Coleman as exhibit "K." Due to the different labeling/numbering, the citations below will follow the citations from the paper exhibits.

After having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

Claimant and Borntreger Relationship

1. Claimant met Enos Borntreger, owner of a RLE Trucking, LLC ("Borntreger/RLE Trucking"), in 2021 after responding to an ad for a truck driver. Clt. Depo. 23:8-25:1. Claimant did not begin to work for Borntreger until the fall of 2022 when Mr. Borntreger reached out to Claimant. *Id.* at 28:1-29:2. Claimant was paid 24% of the load, not hourly, and was paid every two weeks. *Id.* at 31:22-32:16; 36:11-14. Claimant wanted to be an employee and requested Mr. Borntreger withhold taxes so he "didn't have to worry about them." *Id.* at 40:16-41:4. Claimant "just took [Borntreger's] orders and I hauled the hay – I went to where he told me to be and delivered to where he told me to be." *Id.* at 45:7-11. Claimant drove Borntreger's truck and hauled with Borntreger's trailer. HT 26:12-19. Claimant testified they worked six days a week with Sunday off. *Id.*

Braden and So-Ida Relationship (Mr. and Mrs. Cupps as owner/operator of both)

2. Bradley Cupps is a partial owner of So-Ida Commodities (hereinafter “So-Ida” or “So-Ida Commodities”). HT 78:2-6. So-Ida is a brokerage company for commodities. *Id.* Amanda Cupps, Mr. Cupps’ wife, is CFO of So-Ida Commodities and responsible for purchasing workers’ compensation insurance. *Id.* at 79:10-17. Mr. Cupps is the full owner of Braden Inc. (hereinafter “Braden” or “Braden Inc.”). Braden Inc. is a trucking company. *Id.* at 82:1-2. Similar to So-Ida, Amanda Cupps is also CFO of that company and in charge of securing workers’ compensation insurance. *Id.* at 81:8-19. About 60-80% of Braden’s business is hauling commodities for So-Ida and the other 20-40% is hauling for other companies. Cupps Depo. 14:10-13; HT 84:14-22. Braden only transports commodities intra-state and is not authorized to haul outside of Idaho. HT 82:9-83:10. So-Ida and Braden have offices at Eagle View. *Id.* at 87:6-21.

Borntrager and Braden Relationship

3. Sometime in December of 2022, Mr. Borntrager, on behalf of Borntrager/RLE Trucking reached out to Mr. Cupps to see if he had any work. Cupps Depo. 42:24-46:11. Mr. Borntrager represented he had an inter-state license and was authorized to haul commodities from outside of Idaho. HT 88:4-21. Mr. Cupps and Mr. Borntrager agreed to a fee per ton and that Mr. Borntrager would provide two trucks to haul straw from a farmer named Nelson in Utah to Eagle View in Idaho. *Id.* Mr. Cupps understood there would be a second driver to run these loads but did not know how Mr. Borntrager set up his business. *Id.* at 89:12-90:1. This deal was made through Braden and paid via a check from Braden. HT 117:1-16; Cupps Depo, Ex 6. Mr. Cupps would dispatch a load to Mr. Borntrager and generally expected it would be delivered the next day, but sometimes the loads would sit; Mr. Cupps expected Mr. Borntrager’s drivers would work five days a week, Monday through Friday, because the dairy only worked five days a week. HT 94:1-95:7;

Capps Depo. 98:5-99:21. Mr. Borntreger filled out a W-9.

Circumstances Surrounding Industrial Injury

4. Claimant introduced Dawson Coleman, his friend, to Mr. Borntreger because Mr. Coleman was looking for a job. HT 31:18-25. Mr. Borntreger hired him. *Id.* at 32:1-9.

5. On January 7, 2023, a Saturday, Claimant was training Mr. Coleman per Mr. Borntreger's orders "I got told by Enos to train him how to stack hay." Clt. Depo. 57:5-8. Mr. Coleman was struggling to place a bale of hay correctly with a telehandler; Claimant instructed him to stop, and while Claimant was facing away, a bale of hay hit him in the back. *Id.* at 79:11-84:16. Claimant was knocked unconscious. *Id.* at 86:16-17.

6. Mr. Borntreger drove Claimant to the St Luke's Magic Valley Emergency Department. Clt. Depo. 89:18-25. JE J. Claimant was prescribed a cervical collar, analgesics, referred to neurosurgery, and discharged. *Id.* at 419-420.

7. When Claimant contacted Mr. Borntreger afterwards regarding the injury, Mr. Borntreger told him "to go ahead and try" and blocked his phone number. Clt. Depo. 94:4-20; 11:17-18.

8. Neither Braden nor So-Ida had workers' compensation insurance for a period of 10 days from January 1st to January 10th due to a change in insurance companies. HT 97:1-98:1.

Credibility

9. Claimant, Ms. Dudley, Mr. Capps, and Mr. Visser testified credibly.

DISCUSSION

10. Under the Worker's Compensation Act, "employee" is defined as "any person who has entered into the employment of, or who works under contract of service or apprenticeship with, an employer. ..." Idaho Code § 72-102(11). An "independent contractor" is defined as "any person

who renders service for a specified recompense for a specified result, under the right to control or actual control of his principal as to the result of his work only and not as to the means by which such result is accomplished. ..." Idaho Code § 72-102(16). When there is doubt as to whether an individual is an employee or an independent contractor under the Act, the Act "must be given a liberal construction in favor of finding the relationship of employer and employee." *Burdick v. Thornton*, 109 Idaho 869, 871, 712 P.2d 570, 572 (1985).

11. Control is the hallmark of a direct employment relationship. The test for determining whether a worker is an employee is "whether the contract gives, or the employer assumes, the right to control the time, manner and method of executing the work, as distinguished from the right merely to require certain definite results." *Livingston v. Ireland Bank*, 128 Idaho 66, 68, 910 P.2d 738, 740 (1995). The Idaho Supreme Court has articulated a four-factor balancing test to determine whether the "right to control" exists: "(1) direct evidence of the right to control the employee; (2) the method of payment, including whether the employer withholds taxes; (3) whether the employer or worker furnishes 'major items of equipment,' and (4) whether there is a right to terminate the employment at will and without liability." *State ex rel Industrial Commission v. Sky Down Skydiving, LLC*, 166 Idaho 564, 571, 462 P.3d 92, 99 (2020); see also *Livingston*, 128 Idaho at 69, 910 P.2d at 741; *Burdick*, 109 Idaho at 871, 712 P.2d at 572 (1985); *Roman v. Horsley*, 120 Idaho 136, 137, 814 P.2d 36, 37 (1991).

12. Under the Idaho worker's compensation laws, an 'employer' is more broadly defined than under the common law. As such, an employee may have more than one employer: the employer who directly hired the employee and a person or entity who, by statute, is also held to be the employer for the purposes of worker's compensation. In other words, in worker's compensation law, a party may be deemed an "employer" by statute. Statutory employers can be

held liable for worker's compensation benefits under Idaho Code § 72-216, but in exchange, they also enjoy immunity from liability for common law torts. This is known as the "exclusive remedy rule" for injured workers. *Eldridge v. Agar Livestock, LLC*, 170 Idaho 914, 918, 517 P.3d 843, 848, (2022)(internal citations omitted).

13. As an initial matter, Claimant was an employee of Enos Borntreger/RLE Trucking under the right to control test. Claimant's uncontradicted testimony was that he followed the direct instructions of Mr. Borntreger, that Mr. Borntreger withheld taxes, and that he drove Mr. Borntreger's truck and trailer. Claimant was an employee of Enos Borntreger/RLE Trucking.

14. Mr. Borntreger/RLE Trucking was contracted by Braden to haul commodities from Utah to Idaho. Under the right to control test, Borntreger/RLE Trucking is an independent contractor. It filled out a W-9, was paid a specified rate per ton delivered, provided its own equipment and employees to haul (but not to unload) commodities, and was not controlled as to the manner and time in which the commodities were delivered. Borntreger/RLE Trucking was working as an independent contractor hauling hay for Braden.

15. The next question is whether Braden Inc. or So-Ida Commodities are statutory employers. To determine if a party is a statutory employer, the starting point is the definition of "employer" under Idaho Code § 72-102(12)(a):

"Employer" means any person who has expressly or impliedly hired or contracted the services of another. It includes contractors and subcontractors. It includes the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workers there employed.

The statutory definition of "employer" is an expanded definition "designed to prevent an employer from avoiding liability under the Worker's Compensation Act by subcontracting the work to others who may be irresponsible and not insure their employees." *Harpole v. State*, 131 Idaho 437, 440,

958 P.2d 594, 597 (1998) (quoting *Runcorn v. Shearer Lumber Prod., Inc.*, 107 Idaho 389, 392-93, 690 P.2d 324, 327-28 (1984)). Idaho Code § 72-216(1) provides:

72-216. CONTRACTORS. (1) Liability of employer to employees of contractors and subcontractors. An employer subject to the provisions of this law shall be liable for compensation to an employee of a contractor or subcontractor under him who has not complied with the provisions of section 72-301[Idaho Code,] in any case where such employer would have been liable for compensation if such employee had been working directly for such employer.

16. The most recent case directly on point is *Eldridge v. Agar Livestock, LLC*, 170 Idaho 914, 517 P.3d 843 (2022). In that case, the claimant was employed by Meissen Trucking. Agar Livestock had contracted trucking services from Meissen Trucking to transport cattle. The claimant was injured when a cow charged him. Meissen, claimant's direct employer, did not have workers' compensation insurance and default was entered against Meissen. Agar Livestock was found to be claimant's statutory employer because they had "contracted for services" from Meissen per Idaho Code § 72-102(12)(a) and Idaho Code § 72-216. In *Eldridge*, the Court observed:

A category one statutory employer is "any person who has expressly or impliedly hired or contracted the services of another." As reflected by the second sentence in section 72-102(12)(a), category one statutory employers include, but are not limited to, "contractors and subcontractors." Indeed, a party may be deemed a category one statutory employer "simply because of its contractual relationship" with the employer of the injured employee.

(internal citations omitted). *Id.* at 919, 848.

17. Defendants argue that *Smith v. Excel Fabrication*, 172 Idaho 725, 535 P.3d 1098 (2023) recognized a previously ignored statutory distinction for independent contractors vs. subcontractors and contractors. Mr. Borntreger was an independent contractor, and therefore liability for workers' compensation benefits falls only on to Mr. Borntreger. This is an overreading of *Smith*.

18. In *Smith*, the claimant worked for Amalgamated Sugar and fell, injuring his

shoulder when a railing welded by Excel failed. Smith filed a workers compensation claim against Amalgamated and a third-party tort claim against Excel for negligence in construction of the railing. The lower courts dismissed Smith's tort claim, finding that Excel was a statutory co-employee of Amalgamated Sugar and therefore immune from suit. The Supreme Court reversed. The Court found that Excel was not an employee of Amalgamated and instead an independent contractor; because Smith was not an employee of Excel, Excel was not immune from third-party tort liability.

19. *Smith* is inapplicable to this factual scenario. The main holding in *Smith* was that independent contractors who cause injury to workers who are not employed by them are not immune from third-party tort liability. The Court was focused on third party liability in Idaho Code § 72-223:

1) The right to compensation under this law shall not be affected by the fact that the injury, occupational disease or death is caused under circumstances creating in some person other than the employer a legal liability to pay damages therefor, such person so liable being referred to as the third party. Such third party shall not include those employers described in section 72-216, Idaho Code, having under them contractors or subcontractors who have in fact complied with the provisions of section 72-301, Idaho Code; nor include the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workmen there employed.

(emphasis supplied). The interpretation argued by Defendants would be contrary to the express statutory language of Idaho Code § 72-102(12)(a) and Idaho Code § 72-223 which both recognize the possibility of statutory employers even when “there [is] an independent contractor” relationship in between the employee and statutory employer. Statutory employment makes an employer responsible for the worker's compensation liabilities of the uninsured subcontractor the employer has chosen, thereby preventing an employer from escaping liability by subcontracting work to others who may not be responsible and insure their workers—this exact scenario. Further,

if this were not the case, Braden and So-Ida would be liable in tort instead of workers' compensation, similar to the defendants in *Smith, supra*. Idaho Code § 72-223 protects Braden and So-Ida from third party tort liability by classifying them as employers. *Smith* was narrowly decided on third party liability and the newly recognized distinction between independent contractors versus contractors/subcontractors is not applicable to these facts.

20. In this case, Braden Inc. contracted the services of Borntreger/RLE Trucking to pick up and deliver hay to Eagle View. There is no real dispute of whether Braden Inc. contracted the services of Borntreger/RLE Trucking and the contractual relationship is enough to transform Braden into a category one statutory employer. So-Ida Commodities is similarly a statutory employer of Braden. It contracted with Braden to deliver hay in order to fulfill So-Ida's contract with Eagle View. So-Ida and Braden were owned/managed by the same people and had offices located on the same property. The Braden/So-Ida relationship and the Braden/Borntreger relationship were for the same type of hay delivery services. So-Ida provides 60-80% of Braden's business. Under these circumstances, So-Ida impliedly contracted for services from Borntreger/RLE Trucking under Idaho Code § 72-102(12)(a). Braden does not have workers' compensation insurance and the circumstances show So-Ida's contractual relationship with Braden - the statutory employer who had a contract with the direct employer of our injured Claimant.

21. Based on the contractual relationship between Braden and So-Ida, So-Ida is liable as a category one statutory employer. Unfortunately, Braden did not have workers compensation insurance on the date of injury due to a short lapse in coverage. So-Ida also becomes a statutory employer per the clear mandate of Idaho Code § 72-216. Both Braden and So-Ida are statutory employers of Claimant.

CONCLUSION OF LAW

1. Braden Inc. and So-Ida Commodities are statutory employers of Claimant.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusion of Law, the Referee recommends that the Commission adopt such findings and conclusion as its own and issue an appropriate final order.

DATED this 12th day of July, 2024.

INDUSTRIAL COMMISSION



Sonnet Robinson, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of August, 2024, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by E-mail transmission and by regular United States Mail upon each of the following:

JONATHAN W HARRIS
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g e

Gina Espinosa

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

FREDERICK THORNTON,

Claimant,

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ENOS BORNTREGER and RLE
TRUCKING, LLC., Employer,

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BRADEN, INC., Non-Insured Employer,

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Defendants.

IC 2023-003728

ORDER

**FILED AUGUST 2, 2024
IDAHO INDUSTRIAL COMMISSION**

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

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

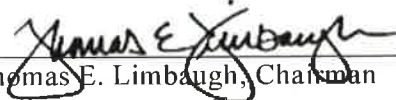
1. Braden Inc. and So-Ida Commodities are statutory employers of Claimant.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

ORDER - 1

DATED this 2nd day of August, 2024.

INDUSTRIAL COMMISSION




Thomas E. Limbaugh, Chairman


Claire Sharp, Commissioner


Aaron White, Commissioner

ATTEST:

Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of August 2024, a true and correct copy of the foregoing **ORDER** was served by *E-mail transmission* and by regular United States Mail upon each of the following:

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Gina Espinosa