

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JASON MATTE,

Claimant,

v.

DAVID R. BATES, d.b.a.
PORTABLE CEDAR CABINS.

Un-insured Employer,

Defendant.

IC 2024-022682

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

Filed
August 5, 2025
Idaho Industrial Commission

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Brian Harper, who conducted a remote video hearing via ZOOM on March 31, 2025, on a single bifurcated issue. Matthew Andrew of Melba represented Claimant. Emma Wilson of Boise represented Defendant. The parties produced oral and documentary evidence at the hearing, and submitted briefs. The matter came under advisement on June 26, 2025.

ISSUE

The parties agreed to the following issue for this adjudication:

Whether Claimant is an employee, either direct or statutory, of Defendant.

CONTENTIONS OF THE PARTIES

Claimant asserts that, under the “right to control” criteria set out in cases such as *Stoica v. Pocol*, 136 Idaho 661, 39 P.3d 601 (2001), he was an employee of Defendant at the time of his work accident and others.

Defendant asserts Claimant was an independent contractor at the time of his accident.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, Defendant, and witness Jodie Stevenson, taken at hearing; and
2. Joint exhibits (JE) A through K admitted at hearing.

FINDINGS OF FACT

Facts Related to Claimant

1. At the time of hearing Claimant was 38 years old. His educational background included a two-year diesel technology certificate and classes at Washington State University toward bachelor's degrees in English and music.

2. In the 2023-2024 timeframe, Claimant and his parents were in a protracted process of moving to Idaho from Washington. They had been in the process of selling their house, looking for real estate on which to build in the Spirit Lake area, and moving their belongings to Idaho one trip at a time.¹

3. Frequently, Claimant would pass by Defendant's place of business, and when he did he would notice a sign which said "Hiring" on it, attached to a chain link fence which surrounded Defendant's business. Claimant's mother likewise saw the sign.

4. Claimant was not actively looking for work, but his mother floated a proposition by him – she and his father would finish moving their possessions to Idaho and Claimant would apply for a job at Defendant's business, Portable Cedar Cabins. Claimant liked the idea, as it would give him a chance to make money while also gaining skills to use when working on building his and his parents' cabins.

¹ Claimant testified the plan was to find a parcel of land on which he and his parents would undertake to build two cabins, one for his parents, and one for him.

5. Claimant drove to Defendant's business late on a Friday afternoon, but the gate was locked. While looking for an entrance to the property, the on-site business supervisor or superintendent, Mark Dankovich, (hereinafter "Mark") exited a cabin located on the premises in which he was living, and approached Claimant. Claimant indicated he was looking for work, relayed that he had a background working with diesels in the timber industry, did not have professional experience in building, but knew "how to run a saw and a tape measure." HT, p. 65.

6. Claimant was told to show up the following Monday (April 29, 2024), at 7 a.m. for a team meeting and to begin working. He would be paid \$20 hour. Claimant was not told what type of work he would be doing.

7. On April 29, 2024, Claimant arrived at the Defendant's property prior to 7 a.m. and went into the office. Mark was there and gave Claimant a business card for Portable Cedar Cabins with Mark's phone number written on the back. JE G. Claimant was instructed to call Mark's number if he needed anything or was going to be late or miss work, because according to Mark "Dave (Defendant David Bates) doesn't really like to talk to the employees." HT p. 66.

8. On his first day of work, Claimant's assigned job was drilling holes in the studs through which electrical wires ran. Mark showed him the height at which to drill. The drill was furnished; Claimant had no drill. In fact, he had very few tools beyond a hammer, tape measure, speed square, a rusty socket wrench with what appears to be a single socket, a roll of duct tape, a quarter sheet of 600 grit sandpaper, a wire brush, a pair of locking pliers, and an adjustable chain style pipe wrench, which he stored in a single tool box. See photograph JE F.

9. Mark kept track of the hours Claimant worked. Claimant testified as to his belief that he and the other workers were expected to work the same hours each day. The gates to the lot were opened and closed at the same time each day. Lunch break was from noon to 12:30 p.m.

each day. Three p.m. was quitting time, and the gates were locked thereafter. Claimant could not enter the worksite at other times because the gate was locked and Claimant was not given a key.

10. Over his time working for Defendant Claimant performed various low skill jobs and often needed instructions or assistance. For example, Claimant testified he did not know which size conduit to select for a particular job assignment. Also, he hung insulation incorrectly the first time he was tasked with the project and had to redo it after being shown the proper procedure.

11. Each morning Mark would lead the team meeting at which time the workers received instructions for the day. The workers were split into teams for the assigned daily tasks. Over the course of his employment Claimant did a number of different jobs and typically required instruction for each new task as he learned new skills.

12. Materials and equipment were supplied to Claimant on site. Claimant would work with different partners from time to time, depending on what tasks he was assigned.

13. During his time with Portable Cedar Cabins Claimant was paid weekly in the sum of \$800 for 40 hours worked. No deductions were taken from his paycheck. Mark handed out the checks on Friday afternoon. The checks were from Portable Cedar Cabins and signed by Cheryl Bates, David Bates' wife. Claimant did not question the lack of deductions.

14. On one occasion Defendant approached Claimant and asked if he knew anyone else who was looking for work. Claimant suggested his brother might be looking for work when he moved to town.

15. On May 20, 2024, Claimant was ripping a board on a table saw when his hand slipped into the saw blade. A co-worker took him to the emergency room. Defendant called them in route and mentioned he did not have insurance. He told Claimant to say the accident happened

at home and Defendant would pay for the medical treatment. Claimant initially did as instructed, but later told his treaters how the accident really happened.

16. Claimant was subsequently flown to Seattle for further treatment. He lost one finger and had surgical repairs done to another.

17. When Claimant returned to Idaho, he and his brother went to Defendant's business to retrieve Claimant's truck. Defendant asked Claimant when he would be coming back to work. Claimant made no commitment.

Facts Related to Defendant

18. Portable Cedar Cabins, located in Spirit Lake, Idaho, builds custom park model cabins on wheels. The business is owned by Defendant and his wife and began operating in 2009.

19. Defendant considers himself to be what he calls a "paper contractor," which is much akin to a construction manager, lining up "subcontractors" and handling the paperwork. He meets with prospective customers to design a custom cabin on wheels and creates the blueprints for its construction.

20. In 2022, Defendant sold his business to an individual named Mike Matthews (Matthews), and Defendant and his wife retired to Arizona. Matthews defaulted on the payments and left the business with unfilled contracts. In February 2023, Defendant was forced to reassume the ownership and manufacture of the cabins.

21. Defendant discovered that Matthews had run the business using "no employees," instead he "subcontracted" all the work.

22. Prior to selling the company to Matthews, Defendant testified he had "employees," although he did not pay payroll taxes or any withholdings from their salaries. Instead, he claimed

they were “1099 employees.”² Regardless, prior to selling the business, Defendant testified he carried worker’s compensation insurance on his workers.

23. When Defendant resumed ownership of the business, he claimed most of the tools were gone and he did not replenish his inventory. (The record did not develop who supplied tools needed for construction.) Defendant continued to supply materials used in the cabin construction.

24. Defendant did not obtain worker’s compensation insurance when the business returned to his ownership. After letting his insurance agent know he no longer had “employees” Defendant claimed his insurance agent informed him he had no need to carry worker’s compensation insurance. Instead, Defendant only carried liability insurance.

25. Mark Dankovich has worked for Defendant for over a decade. He lives on-site, has keys to the locked gates, opens and closes the gates at the start and end of workdays, hires and fires workers, and keeps track of their hours so Defendant can pay them. Mark also assigns tasks to the workers. When asked in deposition if Mark was the one who does the “hiring or firing or contracting” Defendant testified that “Mark takes care of that, too” before clarifying, “We both do.” JE K, p. 8.

26. According to Defendant, Mark is free to work for others, or take on independent work, and simply works for Defendant at his own discretion.³ Mark used to be an “employee” but, like all the other workers, became an “independent contractor” when Defendant resumed control of the business. Mark does not have a separate business entity, company, or assumed name that he works under. This is likewise true for most of the other workers Defendant uses in his business

² The term “1099 employee” is an oxymoron, as by definition such workers are independent contractors, at least for tax purposes.

³ Mark Dankovich did not testify, nor do any records supplied confirm this, and most, of Defendant’s testimony. It is hard to figure how Mark could keep track of the hourly workers’ time, assign tasks, and oversee the manufacture of the cabins while simultaneously working elsewhere, or at his discretion. The concept is also inconsistent with Defendant’s labeling of Mr. Dankovich as the company “supervisor” or superintendent.” HT p. 18.

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– they do not operate under their own business names, but are, as Defendant noted, simply individuals who “come in.” JE K, p. 14.

27. Claimant did not fill out a W-4 when he came to work for Defendant, nor did he receive a W-2 statement. Neither party signed any written contract; Claimant sought work as a general laborer and was paid \$20 per hour to do general labor.

28. Defendant did not believe Claimant was an employee. He could supposedly set his own hours and could come and go as he pleased without any threat of firing or reprimand. He could work other jobs at his discretion. He received no benefits other than his hourly pay. Apparently, neither he, nor the other workers, were required to purchase worker’s compensation insurance to work there.⁴

DISCUSSION AND FURTHER FINDINGS

29. Coverage under Idaho’s worker’s compensation framework is dependent upon the existence of an employer-employee relationship. *Anderson v. Gailey*, 97 Idaho 820, 555 P. 2d 144 (1976). It is a long-established rule that Claimant bears the burden of establishing the relationship of employee and employer in order to recover benefits. *In Re Black*, 58 Idaho 803, 80 P.2d 24 (1938).

30. Idaho Code § 72-102 (11) defines an employee, in relevant part, as “any person who has entered into the employment of, or who works under contract of service or apprenticeship with, an employer.”

31. Idaho Code § 72-102 (12) defines, in relevant part, an employer as “any person who has expressly or impliedly hired or contracted the services of another. It includes

⁴ In his deposition, Defendant testified that on any occasion when individuals holding themselves out as a business worked for him, he required them to carry worker’s compensation insurance. He did not require individuals to do so. As he stated, “I told them if you’ve got employees that come onto this yard, they’ve got to have workman’s comp.” At the time of his deposition, he had no such arrangements with anyone, although he did recall a plumbing business who may have had individuals working at his business at the time Claimant was injured. JE K, p. 14.

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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....

32. Finally, 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).

33. In *Burdick v. Thornton*, 109 Idaho 869, 872, 712 P.2d 570, 572 (1985), the Idaho Supreme Court held the determination of whether the injured party is an independent contractor, or an employee, is a factual one, made after consideration of the entirety of the record. The analysis should concentrate on “whether the employer assumes the right to control the time, manner and method of executing the work of the employee, as distinguished from the right merely to require certain definite results in conforming with their agreement.”

34. The Court noted that four factors “are traditionally used in determining whether a ‘right to control’ exists, including, (1) direct evidence of the right; (2) payment and method of payment; (3) furnishing major items of equipment; and (4) the right to terminate the employment relationship at will and without liability.” In cases with conflicting evidence, “when doubt exists as to whether an individual is an employee or an independent contractor ... the Act must be given a liberal construction in favor of finding the relationship of employer and employee.” *Id.*

35. In *Stoica v. Pocol*, 136 Idaho 661, 664, 39 P.3d 601, 604, (2001), the Idaho Supreme Court declared “[t]he Commission must balance each of the elements present to determine the relative weight and importance of each, since none of the [four] elements in itself is controlling.”

Four Factor Analysis

Right to Control

36. The first of the four elements is direct evidence of the right to control the worker. Herein, Claimant admitted even before he was hired that he knew only basics of construction. He relied on instructions from Mark and co-workers on how to do various tasks, such as hanging insulation or hurricane clips. Even the simple task of gathering conduit required additional instruction, as he was unaware of which diameter tubing to use in the task of electrical wiring. He had to be shown specifics of where and at what height to drill through studs. Every morning he was assigned to a team and given tasks for the day. He learned on the job; he did not bring expertise to the jobsite.

37. The weight of the evidence supports the fact that Defendant had, and exercised, direct control over Claimant's work activities. Defendant's argument that Claimant chose when and how long to work each day and each week is not supported in the record. He was told to show up at 7 am for the team meeting, and the day ended at 3 pm, when the workers left and the gate was locked. Lunch break was thirty minutes and took place around noon. Claimant worked 40 hours per week for each of the weeks he was employed.

38. The record does not establish that Claimant was told he could just show up or not show up as he pleased. As Defendant testified, at the time Claimant was working for Defendant, "we were starting at 7 o'clock in the morning." JE K, p. 23.

39. As to the notion put forth by Defendant that Claimant could, in theory, come and go as he pleased, run "willy-nilly," and show up only when he wanted to, apparently that was true even when Defendant called his workers "employees." He testified that "employees" were a headache because they "always got to take time off here, time off there" and he "just [could not] do anything about it." His employees would "show up at noon

or no phone call.” HT pp. 38, 39. It does not appear there is a significant distinction between the right to control his “employees” and his “contractors.”

Payment and Method of Payment

40. Claimant’s payment does at least show a desire on Defendant’s part to avoid paying payroll taxes and withholding. Claimant was paid his full amount due for his hourly work. While the lack of withholding could indicate an independent contractor, the fact he was paid hourly, and not based on percentage of completion of a cabin, or finishing a specific task, would indicate an employee. Employees are often paid by the hour, and not by the result.

41. Claimant admitted at hearing he should have said something, or inquired as to why there was no withholding. The fact there was no withholding, standing alone, does not tip the scale in favor of Claimant being an independent contractor. Just because Claimant was paid as if he was an independent contractor, does not make him one, especially where there was no discussion on this topic, nor did he expressly agree to be paid as one.

42. Defendant has always refused to pay his workers as if they were employees, choosing to “1099” them for his convenience and financial gain.⁵ Even if Claimant was complicit in Defendant’s attempt to get around tax and employment laws, such an agreement is void as against public policy. As noted in *Mortimer v. Riviera Apartments*, 122 Idaho 839, 845, 840 P.2d 383, 389 (1992), Idaho Code § 72–318 provides that “[n]o agreement by an employee ... designed to relieve the employer ... from any liability created by this law, shall be valid.” The *Mortimer* Court also pointed out that “*the law in this state is ... well established* that when doubt exists as to

⁵ Defendant acknowledged in his deposition that it would cost him more if his workers were classified as employees and he would have additional costs associated with complying with federal and state employment laws. It was “easier” to call people contractors instead of employees. JE K, pp. 19, 20.

whether an individual is an employee or an independent contractor under the Worker's Compensation Act, the Act must be given a liberal construction by the Industrial Commission in its fact finding function *in favor of finding the relationship of employer and employee.*" *Id.* (Emphasis in original.)

43. The weight of the evidence supports the finding that Claimant's timing and manner of payment (weekly for hours worked instead of contracted results achieved) lends itself to the finding of an employer/employee relationship in spite of the fact no withholdings were deducted from Claimant's paychecks.

Furnishing Equipment

44. Claimant did not supply any of the major pieces of equipment he used while working for Defendant. Although Defendant claimed he did not own the equipment used on site, the record does not establish who actually did own things like compressors, nail guns, chop saws, table saws, or how they came to be on the property.

45. Defendant testified that painting was done with 4-inch paint brushes, which raises two observations. First, Claimant did not supply 4-inch paint brushes (or any paint brushes) and rhetorically it causes one to wonder who mandated 4-inch paint brushes for painting the cabins. If Defendant was only interested in the finished product (a painted cabin) it seems as if rollers, 6-inch brushes, or even paint sprayers supplied by the independent painters would suffice. And yet, Defendant testified the cabins were painted with 4-inch brushes, which were apparently supplied to Claimant when he was tasked with painting the cabins.

45. Defendant admittedly supplied all the materials used in his business. He supplied the paint, the siding, the wood for studs, the conduit, wiring, etc. Even if someone other than Defendant owned the table saw which cut Claimant's hand, it was made available for his use on

Defendant's premises. Claimant did not supply the tools and equipment used by him on a daily basis.

46. The weight of the evidence supports the fact that Claimant did not supply the major pieces of equipment he used while working on Defendant's premises. Nor did he supply any materials used by him, which lends itself to the finding of an employer/employee relationship.

Right to Terminate Employment

47. Often, when one contracts to supply a finished product, be it a roof, a painted house, etc., the individual who undertakes to provide the finished product could incur liability for failing to deliver as promised. So, if the individual walks away from the job, the potential for liability follows. On the other hand, an employee may be fired, or quit, without liability on the part of either party.

48. Claimant had every right to walk off the job at any time. He could quit without recourse. Likewise, Defendant had the right to fire Claimant. Any claims to the contrary ring hollow.

49. There was no contract for a finished product, or for an agreed-upon result. Instead, Claimant showed up on a daily basis, when the lot was unlocked, did his daily assigned tasks, left before the lot was locked up for the evening, and was paid weekly for his hours spent doing various tasks given to him. If he got tired of doing that work, he could collect the money due and owing him and walk away. Likewise, if he performed in a substandard way, or failed to live up to Defendant's expectations, Defendant could tell Claimant to not come back. In fact, after his accident, Claimant testified Defendant asked him if he would be returning to work once healed. Defendant testified that Claimant asked if he "still had a job" to which Defendant said yes. It could not be more clear that the fourth prong of the test indicates an employer/employee relationship.

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50. Claimant has proven, based upon the totality of the record, that he was a direct employee of Defendant David Bates, dba Portable Cedar Cabins.⁶

CONCLUSION OF LAW

When the totality of the record is examined, Claimant has proven by a preponderance of the evidence that he was a direct employee of Defendant, and not an independent contractor.

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 day of 17th day of July, 2025.

INDUSTRIAL COMMISSION



Brian Harper, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of August, 2025, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW AND RECOMMENDATION** was served by email transmission upon each of the following:

MATTHEW ANDREW
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EMMA WILSON
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jsk



⁶ Based on the record and findings herein, there is no need to analyze the concept of statutory employee as a ground for determining Claimant's right to worker's compensation benefits.

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JASON MATTE,

Claimant,

v.

DAVID R. BATES, d.b.a.
PORTABLE CEDAR CABINS.

Un-insured Employer,

Defendant.

IC 2024-022682

ORDER

Filed
August 5, 2025
Idaho Industrial Commission

Pursuant to Idaho Code § 72-717, Referee Brian Harper submitted the record in the above-entitled matter, together with his 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 this recommendation.

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,

IT IS HEREBY ORDERED that:

1. When the totality of the record is examined, Claimant has proven by a preponderance of the evidence that he was a direct employee of Defendant, and not an independent contractor.

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

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IT IS SO ORDERED.

DATED this the 5th day of August, 2025.



INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair

Aaron White

Aaron White, Commissioner

Thomas E. Limbaugh

Thomas E. Limbaugh, Commissioner

ATTEST:

Kameron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of August, 2025, a true and correct copy of the foregoing **ORDER** was served by email transmission upon each of the following:

MATTHEW ANDREW
mandrew@andrewinjurylaw.com

EMMA WILSON
wilson@bvwcomplaw.com

Jennifer S. Komperud

jsk