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NOTICE
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2012 IL App (1st) 113718WC-U

NO.1-11-3718WC

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

KRZYSZTOF SZCZEPANSKI) Appeal from the
Appellant,) Circuit Court of
) Cook County.
)
v.) No. 10 L 50474
)
THE ILLINOIS WORKERS' COMPENSATION)
COMMISSION, *et al.*, (Ultimate Builders, Illinois)
Injured Workers Benefit Fund, & Pancheap Jantakanont,) Honorable
Appellees).) Margaret Ann Brennan,
) Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Hudson, and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's determination that the claimant was an independent contractor was not against the manifest weight of the evidence even though the claimant's job had elements of both an independent contractor and an employee. The Commission's decision was supported by its finding that there was no credible evidence that the claimant was subject to the control and supervision of the employer, there was evidence that he was paid by the job, and there was evidence that he had the right to work for others.

¶ 2 The claimant, Krzysztof Szczepanski, filed an application for adjustment of claim against Ultimate Builders, Inc. and Pancheap Jantakanont seeking workers' compensation benefits for a tear to his Achilles tendon allegedly caused by a work related accident on May 29, 2008. The Illinois Injured Workers Benefit Fund was named as a defendant because Ultimate Builders did not carry workers' compensation insurance at the time of the accident. The claim proceeded to an arbitration hearing under Section 19(b) of the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2008)). The arbitrator found that an employee-employer relationship did not exist between the claimant and Ultimate Builders. She found that the claimant was an independent contractor and denied his claim.

¶ 3 The claimant appealed to the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's decision. The claimant filed a timely petition for review in the circuit court of Cook County. The circuit court confirmed the Commission's decision, and the claimant appealed

¶ 4 BACKGROUND

¶ 5 The claimant alleged that on May 29, 2008, he sustained an accidental injury to his Achilles tendon that arose out of and in the course of his employment with Ultimate Builders and Pancheap Jantakanont.

¶ 6 Simon Kowalski testified that he is a general contractor and the owner of Ultimate Builders. He stated that he began working with the claimant in September or October of 2007, and that their relationship lasted until the middle to end of June 2008.

¶ 7 Mr. Kowalski testified that Ultimate Builders had no employees. As a general contractor, he oversaw jobs that were performed by subcontractors. He stated that he did not have workers compensation insurance because it was his understanding that if he subcontracted the work, the subcontractors were responsible for their own insurance.

¶ 8 Mr. Kowalski testified that, in the fall of 2007, the claimant and a friend answered a newspaper advertisement that he placed looking for carpenters. Mr. Kowalski described the job, the men stated they could do it, and they agreed on a price. Mr. Kowalski testified that at the end of the project, the men asked for the payment to be split in two because they each did an equal amount of work. He inquired if they had a company he should write the checks to, and they responded negatively and requested that the checks be made out to them personally. Mr. Kowalski testified that at the time, he "did not have a problem with that, until a later time that I wanted to make things better by actually insisting on people having their companies if they're actually subcontractors."

¶ 9 The claimant testified with the assistance of a translator. He stated he first worked for Ultimate Builders on October 1, 2007. He said he answered a newspaper advertisement. He testified that he met Mr. Kowalski at the construction site and was hired at a rate of \$14 per hour. He stated he was told to work Monday through Friday from 7:00 a.m. until 5:00 p.m., with an occasional Saturday.

¶ 10 Mr. Kowalski testified that in December 2007, he held a meeting and gave the subcontractors working on projects for him the option of forming their own companies or becoming his employees. He told them if they were his employees, they would not get paid as much because there would be deductions for social security and taxes. Mr. Kowalski stated that the claimant chose not to become an employee and instead opted to form Eurocraft Construction because there was more flexibility in being a subcontractor. As a subcontractor, the claimant would not be tied just to Ultimate Builders and could take better paying jobs if they came along. Mr. Kowalski stated that none of the people performing jobs for him elected to become an employee.

¶ 11 The claimant testified that at the beginning of January 2008, Mr. Kowalski told all of his workers that they had to start their own company. The claimant asked why he could not be an employee and was told there was too much red tape involved. The claimant later testified that Mr. Kowalski required everyone to have his own company at the beginning of March.

¶ 12 Maciej Dajewski testified that he is a general contractor specializing in new construction and remodeling. He stated that he met Mr. Kowalski four years prior. He worked with him in 2007 on the same project that the claimant first worked on with Mr. Kowalski. Mr. Dajewski testified that in December 2007, Mr. Kowalski gathered together all the people performing jobs for him and informed them that starting in January he wanted them to set up their own subcontracting businesses. He stated that, to the best of his knowledge, the claimant attended the meeting. He stated that they each were given the option of becoming employees. Mr. Dajewski testified that, to the best of his knowledge, no one assembled there asked to be an employee of Ultimate Builders.

¶ 13 The claimant testified that after he completed the first project he was hired to work on, Mr. Kowalski told him what to work on next. He stated that in mid-December 2007, Mr. Kowalski made him a supervisor.

¶ 14 The claimant testified that Mr. Kowalski gave him a Home Depot credit card to purchase materials for Ultimate Builders' jobs. Mr. Kowalski testified that he gave the claimant a Home Depot commercial charge card and that, as a qualified tradesman, the claimant knew what materials needed to be purchased for a particular job. Mr. Kowalski stated that the claimant would give him the receipts for the purchases he made. Mr. Kowalski stated that he did not review the receipts as they came in. The claimant admitted that he bought items for his personal use with the card. He stated that he would tell Mr. Kowalski so that the amount of the personal purchase could be subtracted from his paycheck. The claimant testified that he would tell Mr. Kowalski the same day or the next day and that he was never told he was not allowed to make personal purchases with the card.

¶ 15 The claimant testified that he worked for Ultimate Builders continuously from October 2007 until June 2008. Mr. Kowalski testified that the claimant started performing jobs for him in October 2007, but did not work continuously from October 2007 until June 2008. He stated he had no work for the claimant between January and May 2008. Mr. Kowalski testified that it was his understanding that the claimant had other obligations. When asked why there were no checks made out to him or Eurocraft Construction in February 2008, the claimant stated that he was paid in cash in February because Mr. Kowalski "was waiting for the bank to pay him. He told us that he doesn't have the money at the moment."

¶ 16 Pancheap Jantakanont testified that he hired Ultimate Builders to remodel two bathrooms at his residence in 2008, for a contract price of \$14,900. He is a self-employed restaurant owner. He stated that he is not in the construction business, not a general contractor, and not a real estate developer.

¶ 17 Mr. Jantakanont testified that Ultimate Builders commenced the job on May 8 or 9, 2008. He stated that the claimant performed work at his house on behalf of Ultimate Builders. He stated that the claimant did not work at his house until the fourth or fifth day after the job started.

¶ 18 Mr. Kowalski testified that he was the general contractor for work done at Mr. Jantakanont's home. He stated that Eurocraft Construction and Tedi Construction were the subcontractors he used for the project. Mr. Kowalski testified that he is not a tile layer or carpenter by trade and that he hired the claimant to perform these jobs. He stated that he met the claimant at the job site and he explained the work to the claimant. They then negotiated a price for the job and entered into a verbal contract.

¶ 19 The claimant testified that on May 29, 2008, while working at Mr. Jantakanont's house, he had an accident. The claimant testified that the faucet in the lower bathroom was installed improperly. He stated he had to "remove practically the whole wall, some of the tiles, move the faucet forward and then at this point reinstall the drywall, reinstall the Durock and tiles." He stated he went to the garage to pick up the piece of drywall to take to the lower level of the house to cut. He stated that while he was carrying the drywall down the stairs, his foot slipped, and he heard a snap. His leg began hurting immediately. The claimant stated that he went to the bathroom and closed the door. He noticed his leg had

begun to swell so he went to his car for an elastic bandage which he used to bandage his leg. He then continued working.

¶ 20 The claimant stated that he hurt his leg before 9:00 a.m. He testified that while Mr. Jantakanont was probably home at the time of the accident, he did not tell Mr. Jantakanont that he hurt himself.

¶ 21 The claimant testified that at 5:00 p.m. that day, Mr. Kowalski telephoned to ask the claimant to meet him at a gas station because he could not make it to the job site. The claimant stated that when he exited his car, Mr. Kowalski noticed something was wrong and asked what happened to him. He informed Mr. Kowalski that he slipped on the stairs. He testified that Mr. Kowalski told him that it would hurt for a while, but it would pass. The claimant stated that after the accident Mr. Kowalski started to look for problems with his work.

¶ 22 The claimant testified that he did not go to the doctor on the day of the accident. When he returned home, he made a compress for his leg. By the next day the swelling had gone down some and he was able to walk so he went to work.

¶ 23 Mr. Jantakanont testified that he resided in a split level home. He stated that because of the angle of the stairway to the lower level and the ceiling height, a large piece of drywall would not fit down the stairs. He stated that the drywall would have to be cut and brought down in smaller pieces. Mr. Jantakanont testified that the drywall work was done in the first few days of the project. He stated that because May 29, 2008, was near the end of the project, no drywall work was being done, instead only small things were being done. He stated that he never saw the claimant with drywall.

¶ 24 Mr. Jantakanont testified that he usually left his house to go to his restaurant at 9:00 a.m. He came home midday almost everyday and brought the claimant

lunch from the restaurant that he owned. He returned to the restaurant and came home at 5:00 p.m. to lock the door once the workers left. He then returned to his restaurant and did not come home again until 9:30 p.m. Mr. Jantakanont stated that he was not present on May 29, 2008, when the claimant was allegedly carrying drywall down the steps to the lower level bathroom.

¶ 25 Mr. Jantakanont testified that he did not know that the claimant was allegedly injured while working at his house. He stated that the claimant continued to work until the end of the project, which finished just a few days after the claimant allegedly hurt himself.

¶ 26 Mr. Kowalski testified that the claimant never told him that he injured himself on the job at Mr. Jantakanont's house. He stated that he had receipts from Home Depot showing that the claimant went to the store to buy materials at the time he was allegedly hurt. Home Depot receipts were admitted into evidence. Three receipts showed purchases made on May 29, 2008, at 8:16 a.m., at 8:25 a.m., and at 10:20 a.m.. The claimant testified that it was a 10 minute drive to Home Depot from Mr. Jantakanont's house.

¶ 27 Mr. Kowalski stated that it was not until the arbitration hearing that he learned the faucet in the lower bathroom needed to be fixed. He testified that it takes 2 days for the first coat of drywall paste to dry and two more days for the following coat to dry. He testified that if the claimant had to remove "the drywall for where the shower valve is and then reinstall it on the day of the incident, patch the drywall, put tile on it, grout it and then install the fixtures, I highly doubt it's possible to do it between the 29th and when the job was finished." The claimant testified that the drywall work on a project is usually done near the beginning of

the project because it has to be cut, taped, and sanded. He stated that the process takes 2 days.

¶ 28 Mr. Kowalski testified that his responsibilities as a general contractor were to hold the subcontractors to the terms of their verbal or written contract. He stated that he did not supervise the subcontractors but exercised quality control to be sure that the job was performed to certain standards. Mr. Dajewski testified that, when Mr. Kowalski came to the job site, he checked on the progress of the job Mr. Dajewski was performing and the quality of the work.

¶ 29 Mr. Kowalski testified that he did not supervise the details of the claimant's work at any job site. He said that he was not present during the day when the claimant was working and did not supervise his work at Mr. Jantakanont's house. He stated that on average he showed up at the job site every other day and that he did not see the claimant much. Mr. Kowalski stated that, at times, he would speak to Mr. Jantakanont about the project and he would pass on the homeowner's concerns to the claimant. Mr. Jantakanont stated that information was relayed to the claimant in this manner because the claimant could not speak English. Mr. Kowalski testified that he did not tell the claimant how to perform the job, he only passed along instructions such as "use brown grout, not black grout or he wants 4-inch trim, not a 3-inch trim or paint that wall green, not blue, such information." Further Mr. Kowalski stated that he never set the claimant's hours and did not provide him with any tools to use on the job at Mr. Jantakanont's house.

¶ 30 The claimant testified that Mr. Kowalski supervised his work at all the job sites where he worked. The claimant stated that Mr Kowalski would usually come the evening before to tell the workers what to do the next day. At times he would tell the claimant to set the jobs for other workers. The claimant testified that Mr.

Kowalski would also call him in the middle of a project and direct him to leave to work on something else. The claimant stated that the job at Mr. Jantakanont's house was not yet complete when he was instructed to start working on a project at Mr. Kowalski's home. He further said that the project at Mr. Kowalski's residence was not complete when he was sent to work on an apartment building owned by Mr. Kowalski. He stated that he was paid \$14 per hour for all of these jobs.

¶ 31 Mr. Jantakanont testified that he communicated with Mr. Kowalski about the progress on the project. Sometimes he spoke to him by phone and other times he spoke to him in person. They met in person when Mr. Kowalski would stop by the house to check on the progress on the job. Mr. Jantakanont testified that Mr. Kowalski stopped by at the end of the day, somewhere between 5:00 and 5:30 p.m.. He stated that it was his understanding that Mr. Kowalski came by after he completed work for the day at whatever other project he was working on. Mr. Jantakanont stated that the claimant was gone at that point because he worked from 8:00 a.m. until 5:00 p.m. and left promptly at 5:00 p.m..

¶ 32 Mr. Kowalski testified that the claimant worked at his personal residence after he finished the job at Mr. Jantakanont's house. He stated that the claimant never indicated that he might not be able to do the work because of an injury or physical condition. The claimant stated that he was limping during this time. Mr. Kowalski testified that he was out of town while the work was performed. When he returned, he discovered that the claimant was charging items on the Home Depot credit card that were not related to any projects the claimant was working on for Ultimate Builders. Mr. Kowalski testified that he met with the claimant about this and showed him the receipts. The claimant told him to deduct the amount

from his check. He stated that once he made the discovery, he ended his relationship with the claimant.

¶ 33 The claimant testified that he went to the doctor on July 2, 2008. Dr. Victor Forys examined the claimant on July 2, 2008, and diagnosed him with a partial tear of the Achilles tendon. In his patient notes dated November 3, 2008, Dr. Forys wrote that the claimant needed surgical repair of the Achilles tendon.

¶ 34 The claimant testified that at his July 2, 2008, doctor's visit, he was told not to work for two weeks and was given an off-work slip. The claimant testified that when he gave the slip to Mr. Kowalski, he was told not to return to work. He was in the middle of a job at that time. Mr. Kowalski testified that the claimant never gave him an off-work slip.

¶ 35 The claimant testified that he never bid a job for Ultimate Builders. He stated that he was always paid \$14 per hour. He stated that he did not get a raise as supervisor. The claimant testified that he kept time cards to keep track of his hours. He would then present the cards to Mr. Kowalski to be paid. He presented three time cards which were admitted into evidence. He stated that his coworkers had identical time cards and that he used the cards even after he started working in his company name. The claimant testified that on the day Mr. Kowalski told him his services were no longer needed, he "managed to grab those three cards so I could have some kind of proof that I worked for him."

¶ 36 Mr. Kowalski testified that none of his workers filled out time cards or kept a log for him regarding the numbers of hours they worked. He stated that everyone who worked for him was a subcontractor who was paid by the job. He stated that if a project required extra hours, he would add \$50, \$100 or a reasonable amount to the price the parties agreed on for the project. Mr. Dajewski

testified that he thought Mr. Kowalski paid him by the hour one time, but that all other work was paid by the job. Mr. Kowalski denied ever seeing the time cards presented by the claimant.

¶ 37 The claimant testified that he has not had surgery or physical therapy for his injury. In January 2009, he returned to work because he needed money. At that point his doctor told him he could do light-duty work and to avoid climbing a ladder. He stated that he now works cleaning up after painters, and unloading and carrying their materials.

¶ 38 The arbitrator found that an employee-employer relationship did not exist between the claimant and Ultimate Builders. She found that the claimant was an independent contractor and denied his claim. The arbitrator found that Mr. Jantakanont was not in the construction business, not a general contractor, and not a real estate developer. He was a homeowner who hired Ultimate Builders to remodel his bathrooms. The arbitrator found that Mr. Jantakanont was not operating under and subject to the Act. The arbitrator further found that the provisions of the Act applied to Ultimate Builders. She also found that the Injured Workers' Benefit Fund was a proper respondent because Ultimate Builders carried no workers' compensation insurance on May 29, 2008. The arbitrator found the testimony of Mr. Kowalski that he hired the claimant for a specific job and paid him for that job credible and supported by the record. She further found that Mr. Kowalski's testimony that he was not at the job site on a daily basis more credible than the claimant's testimony that he was there directing him. The arbitrator found no credible evidence to support a finding that the claimant was at all times subject to the control and supervision of Mr. Kowalski despite the claimant's claim that he

was under the control of Mr. Kowalski and had to do what he said. The arbitrator found that the claimant was an independent contractor.

¶ 39 The Commission affirmed and adopted the arbitrator's decision. The claimant filed a petition for review in the circuit court of Cook County. The court confirmed the Commission's decision. The claimant filed a timely notice of appeal.

¶ 40

ANALYSIS

¶ 41 The claimant argues that the Commission erred in finding that he was an independent contractor and not an employee of Ultimate Builders. The Illinois Injured Workers' Benefit Fund urges us to apply the clearly erroneous standard in determining whether an employer-employee relationship existed. It acknowledges that traditionally the question has been reviewed under the manifest weight of the evidence standard, but argues that the clearly erroneous standard is the proper standard of review. Our supreme court has never applied the clearly erroneous standard to an appeal involving the Workers' Compensation Commission. *Otto Baum Co. v. Workers' Compensation Comm'n*, 2011 IL App (4th) 100959WC, ¶ 13, 960 N.E.2d 583, 586 (2011). Accordingly, we will not apply the clearly erroneous standard in our analysis.

¶ 42 In workers' compensation cases the Commission is the ultimate decisionmaker. *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 173, 866 N.E.2d 191, 199 (2007). The Commission weighs the evidence presented at the arbitration hearing and determines where the preponderance of that evidence lies. *Id.* A reviewing court will only set aside a Commission's decision if its analysis is contrary to law or its fact determinations are against the manifest weight of the evidence. *Id.* A finding of fact is contrary to the manifest weight of the evidence

only when an opposite conclusion is clearly apparent. *Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 191, 203, 904 N.E.2d 1122, 1133 (2009). "[A] reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E.2d 665, 673 (2003).

¶ 43 "An employment relationship is a prerequisite for an award of benefits under the Act." *Roberson*, 225 Ill. 2d at 174, 866 N.E.2d at 200. Whether an individual is an employee or an independent contractor is one of the most vexatious questions in the area of workers' compensation. *Id.* The difficulty arises from the fact-specific nature of the inquiry. *Id.* Determining whether an individual is an independent contractor or an employee is a vexing problem because many jobs contain elements of each, and there is no clear line of demarcation between the status of an employee and an independent contractor. *Kirkwood v. Industrial Comm'n*, 84 Ill. 2d 14, 20, 416 N.E.2d 1078, 1080 (1981). "When elements of both the relationship of employee and of independent contractor are present and the facts permit an inference either way, the Commission alone is empowered to draw the inferences, and its decision as to the weight of the evidence will not be disturbed on review." *Young America Realty v. Industrial Comm'n*, 199 Ill. App. 3d 185, 188, 556 N.E.2d 796, 798 (1990).

¶ 44 No rule has been, or could be, adopted to govern all cases where the court must determine whether an individual is an employee or an independent contractor. *Roberson*, 225 Ill. 2d at 174-5, 866 N.E.2d at 200. Instead, the court

examines "various factors that help determine when a person is an employee: whether the employer may control the manner in which the person performs the work; whether the employer dictates the person's schedule; whether the employer pays the person hourly; whether the employer withholds income and social security taxes from the person's compensation; whether the employer may discharge the person at will; and whether the employer supplies the person with materials and equipment." *Id* at 175, 866 N.E. 2d at 200. The court should also look to see whether the employer's general business encompasses the person's work. *Id*. The right to control the manner of work is often the most important consideration in determining an individual's employment status; however no single factor is determinative and the determination rests on the totality of the circumstances. *Id*.¹

¶ 45 The parties compare and contrast the facts of this case to other cases. "But the question before us is not whether the Commission's decision tracked one case when it should have tracked another. The question is whether the Commission's decision was against the manifest weight of the evidence." *Roberson*, 225 Ill. 2d at 184, 866 N.E.2d at 205.

¶ 46 We begin our analysis by addressing the right to control. In the instant case, there was conflicting testimony about whether Ultimate Builders controlled the work performed by the claimant. The claimant contends that Ultimate Builders

¹ The Employee Classification Act was enacted to address the practice of misclassifying employees performing services for contractors as independent contractors. 820 ILCS 185/3 (West 2008). The Employee Classification Act establishes a twelve-factor test to determine whether an individual is a sole proprietor or partnership rather than an employee. 820 ILCS 185/10 (West 2008). The factors are similar to those examined when determining whether an individual is an independent contractor or an employee for purposes of the Workers' Compensation Act.

controlled his work schedule. He testified that Ultimate Builders instructed him to work from 7 a.m. until 5 p.m.. Mr. Kowalski testified that the claimant determined his own work hours. Mr. Dajewski testified that when he worked on a job with the claimant for Ultimate Builders, he set his own hours. He stated that the claimant did not work from 7:00 a.m. until 5:00 p.m. and was often not present at the job site in the afternoons.

¶ 47 The claimant asserts that Ultimate Builders controlled how he performed his job. The claimant testified that Mr. Kowalski would come to the job site each day to tell him what to do the next day. The claimant stated that Mr. Kowalski would direct him from project to project, at times moving him before a project was complete. He stated that he was instructed to work on Mr. Kowalski's personal residence before the job at Mr. Jantakanont's house was complete. Mr. Kowalski stated that the claimant did not begin work on his house until after the job at Mr. Jantakanont's house was complete.

¶ 48 Mr. Kowalski testified that he did not supervise the claimant, but exercised quality control to be sure that the job was performed to certain standards. He stated that he came to the job site at Mr. Jantakanont's house, on average, every other day at the end of the day. He testified that he rarely saw the claimant. Mr. Jantakanont testified that Mr. Kowalski came to the job site at the end of the day, between 5:00 and 5:30 p.m., and that the claimant was usually gone at that time. Mr. Kowalski testified that he did not tell the claimant how to perform his job, but only passed along instructions from Mr. Jantakanont.

¶ 49 The manner in which the improperly installed faucet was fixed suggests that the claimant had substantial control over his work. The claimant testified that to fix the improperly installed faucet in the lower level bathroom, he had to remove

most of the wall, remove some tile, move the faucet, and reinstall drywall and tiles. Mr. Kowalski testified that he did not know that the claimant repaired an improperly installed faucet until the day of the arbitration hearing. The claimant did not testify that he told Mr. Kowalski about the problem with the faucet or that he sought permission to make the necessary changes.

¶ 50 Mr. Kowalski gave the claimant a corporate credit card to Home Depot. He testified that the claimant purchased the materials needed for the job, then presented him with the receipts. The claimant did not need to get preapproval from Mr. Kowalski for the purchases.

¶ 51 In resolving factual questions, it is within the Commission's province to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 482 (2009). The Commission found that Mr. Kowalski was more credible than the claimant. It found that there was no credible evidence to support a finding that the claimant was at all times subject to the control and supervision of Mr. Kowalski. There is evidence in the record to support such a determination.

¶ 52 We next examine the method in which the claimant was paid. There was conflicting evidence regarding this issue. The claimant testified that he was paid \$14 per hour for each job he performed for Ultimate Builders. He stated that he completed time cards to keep track of his hours which were then presented to Mr. Kowalski for payment. The claimant testified that his coworkers used identical time cards. Three time cards that he said he took from Mr. Kowalski were admitted into evidence. The time cards have nothing on them that distinguishes them as being from Ultimate Builders.

¶ 53 Mr. Kowalski testified that the claimant was not paid by the hour, but was paid by the job. Mr. Kowalski testified that he had never before seen the time cards presented by the claimant and that because everyone who worked for him was a subcontractor who was paid by the job, he never had them complete time cards or any type of time log.

¶ 54 Numerous checks were admitted into evidence. The Commission found that "when dividing the amounts [claimant] received per check by \$14.00 it rarely came out to an even number of hours worked." It also found that the checks appeared to represent lump sum amounts and that they only included notations about the job the claimant was working on and not the number of hours allegedly worked. The Commission found that Mr. Kowalski's testimony that he hired the claimant for a specific job and paid him for that job was more credible than the claimant's testimony that he was an hourly employee. There is evidence in the record to support the Commission's determination that the claimant was paid by the job. This factor points to an independent contractor relationship.

¶ 55 We next examine the nature of the claimant's work in relation to the general business of the employer. *Ware v. Industrial Comm'n*, 318 Ill. App. 3d 1117, 1122, 743 N.E.2d 579, 583 (2000). "[B]ecause the theory of workmen's compensation legislation is that the cost of industrial accidents should be borne by the consumer as part of the cost of the product, this court has held that a worker whose services form a regular part of the cost of the product, and whose work does not constitute a separate business which allows a distinct channel through which the cost of an accident may flow, is presumptively within the area of intended protection of the compensation act." *Ragler Motor Sales v. Industrial Comm'n*, 93 Ill. 2d 66, 71, 442 N.E.2d 903, 905 (1982). With respect to this factor, there are

aspects of both an employee-employer relationship and independent contractor status.

¶ 56 There is conflicting testimony about whether the claimant performed work for anyone other than Ultimate Builders. The claimant testified that he worked continuously for Ultimate Builders from October 2007 until June 2008. Mr. Kowalski testified that the claimant did not work for him continuously during this time and that he had no jobs for the claimant between January and May 2008. Mr. Kowalski stated that it was his understanding that the claimant performed jobs for other contractors during this time period. There were no checks made out to the claimant or Eurocraft Construction in February 2008. The claimant testified that this was because Mr. Kowalski paid him cash. He then stated that Mr. Kowalski was unable to pay him by check because he "was waiting for the bank to pay him. He told us that he doesn't have the money at the moment."

¶ 57 The claimant's work was an integral part of Ultimate Builder's business. Mr. Kowalski does not do carpentry or tile work like the claimant. On the job at Mr. Jantakanont's house, the claimant performed most of the labor. However, Ultimate Builders did not simply sell the claimant's services. Ultimate Builders is a general contractor who provided customers with a bundle of construction-related services that created an independent value beyond the value of the labor involved in the project. Different projects required subcontractors with different skill sets. It was the Commission's province to weigh the evidence and decide among the competing inferences. *Roberson*, 225 Ill. 2d at 187, 866 N.E.2d at 207. Given the evidence presented, the Commission could determine that the claimant had the right to perform work for others on whatever basis and whenever he chose to, and that his business was not subject to destruction upon the severance of his

relationship with Ultimate Builders. Thus, it was not against the manifest weight of the evidence for the Commission to decide this factor in favor of an independent contractor relationship.

¶ 58 We will now examine whether Ultimate Builders had the right to discharge the claimant at will. The claimant argues that Ultimate Builders possessed a broad right to discharge him and exercised that right. He argues that he worked at the pleasure of Ultimate Builders and could be terminated for any reason because the rights of the parties were not clearly defined in a written contract. He argues that Ultimate Builders could terminate him at any time like an at-will employee. He asserts that Ultimate Builders exercised that right when it fired him after he tendered an off-work slip to Mr. Kowalski.

¶ 59 Mr. Kowalski testified that the claimant never gave him an off-work slip. He stated that he terminated his relationship with the claimant after he discovered he was charging personal items on the Home Depot credit card. He stated he felt that the claimant was not trustworthy and was trying to "skim" from him.

¶ 60 At-will employment contracts generally permit termination for any reason. *Ware*, 318 Ill. App. 3d at 1126, 742 N.E.2d at 586. "The unqualified right to discharge an employee must be distinguished from the ability to terminate a contract for *bona fide* reasons of dissatisfaction." *Id* at 585-86, 743 N.E. 2d at 1125. In the instant case, there was no written contract. There was conflicting testimony as to whether the claimant's services were terminated for a *bona fide* reason of dissatisfaction or for no cause at all. Where the evidence is well balanced, it is the Commission's province to weigh it and decide among competing inferences. *Roberson*, 225 Ill. 2d at 187, 866 N.E.2d at 207.

¶ 61 Another factor to consider in determining whether the individual is an employee or an independent contractor is the manner in which the parties dealt with taxes. *Ware*, 318 Ill. App. 3d at 1126-27, 743 N.E.2d at 586. Ultimate Builders never withheld income or social security taxes from the claimant. The claimant admits that this is suggestive of an independent contractor relationship, but notes that courts typically give this factor little weight. See *Ware*, 318 Ill. App. 3d at 1127, 743 N.E.2d at 586 ("Whether income tax is withheld has not been found to be a significant factor"). He argues that it is much more telling that Mr. Kowalski testified that on one job he paid unemployment taxes for the subcontractors working for him. Mr. Kowalski testified that he only paid these taxes on this one job because "it was a requirement of a company that [he] wanted to do business with at that time." The claimant asserts that "if Ultimate Builders' workers were actually independent contractors, Kowalski would have been able to convince the more sophisticated general contractor that paying unemployment taxes was unnecessary." This argument is based on speculation. It cannot be assumed that the company disagreed with Mr. Kowalski's classification of his workers. It might simply have been more risk-averse. Additionally, Ultimate Builders' payment of benefits it believed were unnecessary under the law in order to obtain a job, was the equivalent of accepting a lower price on the contract. This is a weak indicator of employee status because it was done at the insistence of another company with whom Ultimate Builders wanted to do business. See *Ware*, 318 Ill. App. 3d at 1127, 743 N.E.2d at 587 (The fact that a worker purchased occupational accident insurance on his own, is at best a weak indicator of independent-contractor status, because it was done at the company's insistence).

¶ 62 The label parties apply to their relationship is a minor consideration which may swing the balance in close cases by aiding in establishing the true intent of the parties. *Ware*, 318 Ill. App. 3d at 1126, 743 N.E.2d at 586. The claimant argues that Ultimate Builders purposefully mislabeled its workers as independent contractors and coerced them into forming sham corporations. In December 2007, Mr. Kowalski held a meeting with his subcontractors. He testified that he informed them he would no longer be issuing checks to individuals. He told them that all subcontractors would need to incorporate and he would issue checks to the corporation. He stated that if a subcontractor did not want to incorporate, he could discuss becoming an employee with him. Mr. Kowalski testified that he told them that if they opted to become employees he would deduct social security and taxes from their checks. The claimant and Mr. Dajewski confirmed that this discussion took place. Mr. Kowalski testified that no one opted to become an employee. Mr. Dajewski testified that, to the best of his knowledge, no one opted to become an employee. The claimant testified that he inquired about being an employee but was told there was too much paperwork involved. He then incorporated and formed Eurocraft Construction. The parties reflected on the costs and benefits associated with both kinds of status, and chose the kind of relationship they considered more advantageous. There is evidence of intent to create an independent contractor relationship on the part of both parties, thus supporting the Commission's determination that the claimant was an independent contractor.

¶ 63 Ultimate Builders provision of the materials for the project at Mr. Jantakanont's house, including the credit card for the purchase of additional materials as needed, points to an employment relationship. While the claimant provided his own small tools, Ultimate Builders provided the materials, which

were the instrumentalities needed to complete the job. The fact that the claimant was issued a Home Depot credit card in his name suggests a continuous relationship between the parties that they anticipated would continue into the future. This factor supports a finding of an employment relationship.

¶ 64 Certain evidence suggests that the claimant was an employee, while other evidence suggests he was an independent contractor. It was the Commission's province to assess the credibility of witnesses, resolve conflicting evidence, assign weight to be given the evidence, and draw reasonable inferences from the evidence. *Hosteny*, 397 Ill. App. 3d at 674, 928 N.E.2d at 482. The Commission's finding that the claimant was an independent contractor is not against the manifest weight of the evidence.

¶ 65 CONCLUSION

¶ 66 For the foregoing reasons, the judgment of the circuit court of Cook County confirming the decision of the Commission is affirmed.

¶ 67 Affirmed.