2013 IL App (1st) 120434WC-U

Order filed: February 25, 2013

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

EDWARD DZIOBAN,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois
Appellant,	)	
	)	
v.	)	Appeal No. 1-12-0434WC
	)	Circuit No. 11-L-50109
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION *et al*. (Joint Management	)	Alexander P. White,
Company, Appellee).	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hudson and Harris concurred in the judgment.
Justice Hoffman dissented, joined by Justice Stewart.

ORDER

¶ 1 *Held*: The Commission's finding that the claimant failed to prove that an employment relationship existed between the claimant and the employer was not against the manifest weight of the evidence.

¶ 2 The claimant, Edward Dzioban, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2008)) seeking benefits for injuries which he allegedly sustained while working for the respondent, Joint Management

Company (employer). After conducting a hearing, an arbitrator found that the claimant was an independent contractor, and not an employee of the employer, at the time he was injured. Accordingly, the arbitrator denied benefits.

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). The Commission unanimously affirmed and adopted the arbitrator's decision.

¶ 4 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's decision. This appeal followed.

¶ 5 FACTS

¶ 6 The employer manages commercial and residential real estate owned by Dr. Fortunee Massuda, the employer's owner and president. The claimant is a painter and a handyman who performed maintenance on three of the properties managed by the employer, including painting, cleaning, and repairs. On October 27, 2009, the claimant was changing a lightbulb at one of the properties while standing on a ladder. He fell off of the ladder and suffered multiple injuries, including a fractured pelvis, a fractured elbow, and a strained rotator cuff. He filed a claim seeking workers' compensation benefits for these injuries.

¶ 7 Three witnesses testified during the arbitration hearing: the claimant, Massuda, and Charles W. Hannon, the employer's vice president and property manager, who is married to Massuda. Massuda's evidence deposition was also admitted.

¶ 8 Massuda testified that she sought a handyman to clean the buildings she owned and to perform basic repairs. She hired the claimant to work on the two properties that the employer managed on the south side of Chicago (including a property in Hyde Park and a small office

building in Beverly) and a third property that the employer managed in Orland Park. Hannon testified that the employer was introduced to the claimant through a woman who represents Polish workers. The claimant did not complete an employment application before being hired by the employer. He began working for the employer in January or February of 2009. He testified that he worked continuously and exclusively for the employer from the date he was hired until the date of his accident.

¶ 9 According to Massuda, as part of the employer's business, it was necessary that maintenance work be done on the properties. For example, it was necessary to paint the apartments and do minor repairs when the tenants moved out. Hannon testified that the claimant was "basically a painter," and that painting was one of his primary responsibilities. The claimant also cleaned the properties on a routine basis. The claimant testified that he also fixed things at the properties, including cracked walls and an exit sign light, and performed general maintenance, such as replacing lightbulbs and carbon monoxide detectors and replacing screens.

¶ 10 The claimant was paid on a time and materials basis, *i.e.*, he was paid for each hour that he worked, and he was reimbursed for any supplies that he purchased in order to perform his job. The claimant, Hannon, and Massuda each testified that the claimant was paid on an hourly basis. Although Hannon could not recall the claimant's hourly rate, the claimant testified that he was paid $15 per hour. That rate was reflected on some of the paychecks and pay stubs admitted into evidence. The claimant testified that he would submit his hours to the employer every two weeks on a document entitled "Joint Management Company, Inc. WEEKLY TIMESHEET." The document left blank spaces for "Pay Period" and "Employee Name." Hannon testified that this document appeared to have been created by the employer. According to Hannon, the claimant

would submit his hours, and the employer's secretary would generate an "invoice" that would be billed to the employer. The claimant stated that his paychecks were written to him personally, not to a company that he owned.[1]

¶ 11 The employer did not withhold any taxes from the checks it issued to the claimant. The claimant did not complete any employee tax forms such as a Form W-4. At the time of the arbitration hearing, the claimant had not yet received either a Form 1099 or a Form W-2. However, Massuda and Hannon each testified that a Form 1099 would be prepared, and the claimant testified that he believed he should be receiving a Form W-2 and that he expected to pay taxes once he received it. Massuda and Hannon also testified that the employer did not provide the claimant any employment benefits such as health, disability, or life insurance.

¶ 12 The claimant testified that he was hired as an employee. However, Massuda testified that she retained the claimant's services as an independent contractor, and Hannon testified that he considered the claimant an independent contractor rather than an employee. Massuda and Hannon each testified that the employer does not have any employees and that any work that needs to be done for the employer is done solely through subcontractors. According to Hannon, the employer had ongoing relationships with 15 to 20 contractors, including the claimant. Some of the employer's other contractors performed services such as HVAC, electrical work, tuckpointing, and roofing. Hannon testified that these contractors work on a job-by-job basis.

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[1] The claimant owns an apartment building that he operates as a business, and he previously owned a dump truck that he operated as a business. However, there is no evidence that any of the checks that the employer issued to the claimant were written to any business entity that he owned.

He stated that the employer would choose between contractors for each job, including maintenance, "depending on the nature of the work" and the "skill requirements they would have." Hannon testified that the claimant did not bid on the jobs that he performed for the employer.

¶ 13 Hannon testified about another person who did periodic work for the employer, a man named Janusz. Like the claimant, Janusz was paid on an hourly basis. The claimant and Janusz worked together on occasion, and the claimant considered Janusz to be his coworker, unlike the employer's contractors. One of the employer's documents showed work assignments for both the claimant and Janusz included in the same document.

¶ 14 The claimant testified that, unlike the employer's contractors who worked only when something happened at one of the properties, he worked for the employer every day. He testified that he worked Mondays through Fridays and sometimes on Saturday for 35 to 43 hours per week. Some of the claimant's paychecks and pay stubs and some of the other documents introduced by the claimant indicate that the claimant worked five days during some weeks. According to the claimant, Massuda told him when to start work for the day. He testified that he was required to stop working for the day after he had worked 8 hours.

¶ 15 However, Hannon and Massuda testified that they did not set a start time or an end time for the claimant's work schedule. Massuda testified that the claimant would generally work three days a week unless the employer had extra work for him.[2] She claimed that the claimant would go to the Hyde Park property every Monday and "do whatever need[ed] to be done," and that he

[2] Massuda testified that she could not say whether the claimant worked five days per week in the month preceding the accident.

would do the same thing at the Beverly property on Tuesday and at the Orland Park property on Wednesday. Aside from this, Massuda claimed that she did not have the claimant on a work schedule. She noted that the claimant's Monday to Wednesday schedule was flexible in that the claimant sometimes worked at different properties on different days. She also noted that most of the claimant's work was seasonal because it involved cleaning apartments vacated by tenants in March through October and getting them ready for the new tenants. Massuda testified that the claimant would not show up for work if there was nothing that needed to be done. Moreover, Hannon testified that the employer did not have a timekeeping system and that the employer did not have control over how many hours a work project should take.

¶ 16 The parties gave conflicting testimony regarding the degree to which the employer supervised or directed the claimant's work. Hannon testified that the employer would tell the claimant the results they wanted, but it was up to the claimant to determine the time, materials, and skill needed to accomplish the task. For example, although the claimant was required to paint a room with the standard color chosen by the employer, the claimant was not directed how to perform the task of painting the room. Massuda testified that she did not personally supervise the claimant's work or direct him specifically how to accomplish tasks. Rather, she would merely give him an apartment number and a location and tell him what needed to be cleaned and painted.

¶ 17 Hannon testified that the employer did not have an on-site manager to watch the claimant. Although Hannon admitted that he would make occasional visits to a work site, he claimed that he did so "just to see that [the job was] underway." He would drive around to the

various buildings to check the status of the work, but he did not direct the claimant to be at certain places at certain times on a daily basis.[3]

¶ 18 Hannon testified that Massuda had the authority to call the claimant to order him to leave one job and do another. However, Massuda denied that she had this authority, and she testified that she never called the claimant to tell him to stop painting at one location and go to a different location. The claimant introduced phone records which evidenced several calls between the claimant and Massuda's personal and office phone numbers. The claimant also introduced handwritten notes from Massuda to the claimant telling the claimant where to go and directing him to perform certain tasks. For example, Massuda's notes directed the claimant to fix a cracked wall and clean the doors and glass in an apartment,[4] fix an exit sign light, throw away items near a back door, and clean all of the vents and change all of the screens in a dental office.

¶ 19 Hannon testified that the claimant could come and go from a job site as he pleased and that he was free to pursue other jobs during the day. Hannon also stated that the claimant could hire a helper out of his own salary, provided that the helper had sufficient skills.

¶ 20 The claimant testified that Massuda give him directions every Monday, and she would call him "when something change[d]." He testified that sometimes the instructions would be on paper and sometimes he would receive instructions over the phone, which he claimed happened frequently. According to the claimant, Massuda would tell him exactly what needed to be done

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[3] Massuda testified that Hannon would check to make sure that the claimant's work was complete, but she did not know if Hannon would inspect or supervise the claimant.

[4] This note informed the claimant that he was "supposed to do the apartment before the end of the month."

at each property. He claimed that Hannon would sometimes tell him what to do when he was painting, but not as frequently as Massuda did. He testified that Massuda directed him to change the lightbulb on the occasion that led to his accident. He claimed that Massuda had the authority to take him off of one job and send him to do a different job (even if he was not finished with the first job) and that she did so at times.

¶ 21 The claimant testified that he believed he could be terminated if he failed to follow Massuda's directions. Hannon testified that, if the claimant did not follow Hannon's directions as to what to do, he would still have a job. Hannon stated that, if the claimant turned down a job, he would presume that the defendant would find another job or stay home and that the claimant "wouldn't be working for us if he stayed home." He also testified that, if the claimant did not follow Massuda's directions, Massuda would have the authority to stop using the claimant. He "presumed" that Massuda would have the authority to terminate the claimant. The claimant declined at least one job while working for the employer.

¶ 22 Hannon testified that the employer supplied the claimant with paint brushes. According to Hannon, the employer owned "a lot of supplies." In addition, the employer reimbursed the claimant for work supplies that he purchased. When the claimant ran out of necessary supplies (such as rollers, brushes, lightbulbs, etc.), he would call Massuda, who would tell him to buy more supplies. He would then buy the supplies, bring the receipt to Massuda, and the employer would reimburse him for the purchases. The employer gave Janusz, who worked the same type of job as the claimant, a Home Depot credit card to purchase supplies. Moreover, the employer owned approximately 20 to 30 ladders, including the ladder that the claimant was using when his accident occurred.

¶ 23 The claimant testified that he taught himself to paint. Harmon does not have any training or skills in building maintenance or painting. Massuda does not have any experience cleaning apartments or performing other maintenance duties.

¶ 24 The arbitrator found that the claimant was an independent contractor and not an employee of the employer, and therefore denied benefits. The arbitrator noted that, although there is no single factor that determines whether an employer/employee relationship exists and many factors are relevant, "[t]he right to control the work is often cited as the most important single factor in determining the relationship because an employee is at all times subject to the control and supervision of the employer but an independent contractor accomplishes the results required by owner and does not defer to the owner regarding the means by which it is accomplished." Regarding the "control" factor, the arbitrator concluded that:

> "Claimant was not supervised while working. He was not directed how to complete the tasks. Mr. Harmon only examined the work after it was complete for the purpose of determining if it was done. Mr. Hannon did not have any skills or training to perform the jobs Claimant was hired to complete. No hours were set. Claimant was not required to work specific hours or stay on the job for a specific length of time. He was directed as to the work to be performed and the location of the work. However, he was not directed how to accomplish the specific job. Claimant would travel to the job site on his own at the time of his own choosing."

The arbitrator also noted that the claimant was paid on a time and materials basis and that the claimant submitted "what was essentially an invoice" to the employer. The arbitrator noted that the claimant was paid for what he submitted and that no taxes were withheld.

¶ 25 The claimant appealed the arbitrator's decision to the Commission, which unanimously affirmed and adopted the arbitrator's decision.

¶ 26 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County. The circuit court issued a 38-page written opinion exhaustively summarizing the parties' arguments and affirming the Commission's decision.

¶ 27 The circuit court disagreed with aspects of the Commission's analysis of the evidence regarding the employer's right to control the claimant's work. For example, although the circuit court noted that there was conflicting evidence as to whether the employer controlled the hours per day that the claimant worked (and therefore deferred to the Commission's credibility findings on that issue), the court found that the record clearly showed that the employer controlled the claimant's work in other respects. Specifically, the circuit court found that the claimant "was directed as to what work was to be performed," that the employer's directions were sometimes given in written form, and that the claimant was told to be at certain properties at certain days of the week. The court also noted that the employer had the authority to move the claimant from a work location before the completion of his work. Thus, the court concluded that the employer "exerted a great deal of control" over the manner in which the claimant completed his painting, cleaning, and maintenance work. However, the court noted that the employer's right to control was "mitigated" due to the fact that the claimant was "not supervised" by the employer and "was not directed on how to perform the work assigned."

¶ 28 Moreover, the circuit court found that the evidence illustrated that the work performed by the claimant was "an integral part of the regular business of [the employer]" because the employer's business was to manage and maintain certain properties and the claimant performed tasks maintaining those properties, such as painting, cleaning, and other maintenance tasks.

¶ 29 On the other hand, the circuit court noted that other relevant factors counted against the finding of an employment relationship. For example, the court noted the lack of tax withholdings, and it deferred to the Commission's conclusion regarding the "method of payment" factor and the "right to discharge factor." Moreover, although the court acknowledged that the ladder and the lightbulb used during the accident were owned by the employer, it found that the record did not indicate whether the claimant "primarily used instrumentalities provided by [the employer] or whether such use was a minor occurrence."

¶ 30 Thus, although the circuit court concluded that the "right to control factor favors the existence of an employer/employee relationship," it found that the evidence was well balanced. The court therefore determined that it was the Commission's province to weigh the conflicting evidence and to decide among competing inferences, and held that the Commission's finding of no employment relationship was not against the manifest weight of the evidence. This appeal followed.

¶ 31 ANALYSIS

¶ 32 The claimant argues that the Commission's conclusion that he failed to prove an employment relationship was against the manifest weight of the evidence. We disagree.

¶ 33 An employment relationship is a prerequisite for an award of benefits under the Act. *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 174 (2007). For purposes of the Act, the term

"employee" should be broadly construed. *Ware v. Industrial Comm'n*, 318 Ill. App. 3d 1117, 1122 (2000). However, the question of whether a person is an employee remains "one of the most vexatious *** in the law of compensation." *Roberson*, 225 Ill. 2d at 174 (quoting *O'Brien v. Industrial Comm'n*, 48 Ill. 2d 304, 307 (1971)). The difficulty arises from the fact-specific nature of the inquiry. *Roberson*, 225 Ill. 2d at 174. No rule has been, or could be, adopted to govern all cases in this area. *Id.*, 225 Ill. 2d at 174-75; *Ware*, 318 Ill. App. 3d at 1122. Instead, our supreme court has identified several factors that help determine when a person is an employee, namely: (1) whether the employer may control the manner in which the person performs the work; (2) whether the employer dictates the person's schedule; (3) whether the employer pays the person hourly; (4) whether the employer withholds income and social security taxes from the person's compensation; (5) whether the employer may discharge the person at will; and (6) whether the employer supplies the person with materials and equipment. *Roberson*, 225 Ill. 2d at 175.

¶ 34 Another relevant factor is whether the employer's general business encompasses the person's work. *Roberson*, 225 Ill. 2d at 175. "[B]ecause the theory of [worker's] compensation legislation is that the cost of industrial accidents should be borne by the consumer as part of the cost of the product," our supreme 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 (1982); see also *Roberson*, 225 Ill. 2d at 175; *Peesel v. Industrial*

Comm'n, 224 Ill. App. 3d 711, 713 (1992); *Earley v. Industrial Comm'n*, 197 Ill. App. 3d 309, 315 (1990).

¶ 35 The label that the parties place on their relationship is another relevant factor, although it is a factor of "lesser weight." *Ware*, 318 Ill. App. 3d at 1122; *Earley*, 197 Ill. App. 3d at 317-18.

¶ 36 Whether an employment relationship exists rests on the totality of the circumstances, and no single factor is determinative. *Roberson*, 225 Ill. 2d at 175; see also *Earley*, 197 Ill. App. 3d at 314-15. However, the right to control the manner of the work is the most important consideration. *Roberson*, 225 Ill. 2d at 175; *Ware*, 318 Ill. App. 3d at 1122; *Peesel*, 224 Ill. App. 3d at 713.

¶ 37 The existence of an employment relationship is a question of fact for the Commission. *Roberson*, 225 Ill. 2d at 173-74, 187; *Ware*, 318 Ill. App. 3d at 1122. It is solely within the province of the Commission to draw inferences from the facts, weigh the evidence, and determine where the preponderance of the evidence lies. *Roberson*, 225 Ill. 2d at 173; *Wagner Castings Co. v. Industrial Comm'n*, 241 Ill. App. 3d 584, 594 (1993); *Earley*, 197 Ill. App. 3d at 314. A reviewing court will not set aside the Commission's factual determinations unless they are against the manifest weight of the evidence. *Roberson*, 225 Ill. 2d at 173.

¶ 38 Accordingly, where the evidence is "well balanced," it is the Commission's province to weigh the evidence and decide among competing inferences (*Roberson*, 225 Ill. 2d at 186-87; see also *Earley*, 197 Ill. App. 3d at 318), and the Commission's decision must be upheld. *Earley*, 197 Ill App. 3d at 318 (holding that "[b]ecause the facts of th[e] case were susceptible of either interpretation, it was the *** Commission's province to determine the claimant's employment status," and confirming Commission's determination where it was not against the manifest

weight of the evidence); *Area Transportation Co. v. Industrial Comm'n*, 123 Ill. App. 3d 1096, 1099 (1984) ("[W]here elements of both the relationship of employer and independent contractor are present, the *** Commission alone is empowered to draw the inferences either way and its decision as to the weight of the evidence will not be disturbed on review"); see also *Area Transportation Co.*, 123 Ill. App. 3d at 1101 ("where reasonable inferences from the facts may be drawn either in favor or against an employment relationship, the award of the Commission must be upheld"). The findings of the Commission will not be disturbed on appeal unless they are contrary to the manifest weight of the evidence. *Skzubel v. Illinois Workers' Compensation Comm'n,* 401 Ill. App. 3d 263, 267 (2010).

¶ 39 In this case, there are facts suggesting that the claimant was an employee and other facts suggesting that he was an independent contractor. This is particularly so regarding the most important factor in the analysis, *i.e.*, the employer's right to control the claimant's actions. On the one hand, the claimant testified that Massuda regularly gave him detailed instructions telling him exactly what needed to be done at each property, and he produced written notes from Massuda directing him to perform specific tasks during a particular time period. He also testified that both Massuda and Hannon would sometimes tell him what to do when he was painting, and he claimed that Massuda would occasionally take him off of one job and send him to do a different job even if he was not finished with the first job.[5]

[5] Hannon testified that Massuda had the authority to order the claimant to stop one job and start another, but Massuda denied that she had such authority. Massuda also denied that she ever gave any such order.

¶ 40 On the other hand, Hannon testified that the employer would tell the claimant the results they wanted, but it was up to the claimant to determine the time, materials, and skill needed to accomplish the task. For example, the claimant was not given instructions on how to perform the task of painting a room. Massuda testified that she did not personally supervise the claimant's work or direct him specifically how to accomplish tasks. Rather, she would merely give him an apartment number and a location and tell him what needed to be cleaned and painted. Hannon testified that the employer did not have an on-site manager to watch the claimant. Although Hannon admitted that he would make occasional visits to a work site, he claimed that he did so "just to see that [the job was] underway." He would drive around to the various buildings to check the status of the work, but he did not direct the claimant to be at certain places at certain times on a daily basis. Hannon also testified that the claimant could come and go from a job site as he pleased and that he was free to pursue other jobs during the day. Moreover, although the claimant produced phone records which evidenced several calls between the claimant and Massuda's personal and office phone numbers, some of these calls were initiated by the claimant, and what was discussed during the calls was a matter of dispute. Massuda testified that she never called the claimant to tell him to stop painting at one location and go to a different location.

¶ 41 The evidence as to the other relevant factors was also conflicting. The employer's business consisted of managing and maintaining certain properties, and the claimant performed maintenance on some of those properties. Thus, the work the claimant performed appears to have been an essential element of the employer's business, which favors a finding of an employment relationship. See, *e.g.*, *Peesel*, 224 Ill. App. 3d at 717. Moreover, the claimant worked exclusively for the employer and was paid on an hourly basis. He submitted his hours on

a "timesheet" prepared by the employer which had blank spaces for "Pay Period" and "Employee Name." Checks from the employer were paid to the claimant personally, not to a business that he owned or controlled. Although the claimant's work hours varied and his schedule appears to have been flexible, he worked for the employer regularly and continuously, and he was generally expected to work at certain properties three days per week. The claimant was reimbursed for work supplies that he purchased, and he testified that he had to ask Massuda before buying any supplies. Moreover, the employer provided at least some of the equipment and supplies that the claimant needed to perform his job, including some paint brushes and the ladder he was using when his accident occurred. All of this evidence suggests that the claimant was an employee rather than an independent contractor.

¶ 42 However, other evidence supports the opposite inference. For example, Massuda testified that the claimant's work was seasonal and that his schedule varied (both in terms of where he worked and the number of hours he worked). Massuda testified that the claimant would not show up for work if there was nothing that needed to be done. In addition, Hannon and Massuda testified that they did not tell the claimant when to start or stop working. Hannon testified that the employer did not have a timekeeping system, and it did not control the amount of time that it took the defendant to complete a project.

¶ 43 Moreover, although the claimant testified that he believed he could be terminated if he failed to follow Massuda's directions, it is not clear whether the employer had a right to "terminate" the claimant as if he were an employee at will. Hannon testified that the claimant would still have a job if he failed to follow Hannon's instructions. Hannon testified that, if the claimant turned down a particular job, Hannon would presume that the defendant would find

another job or stay home, and that the claimant "wouldn't be working for us if he stayed home." However, when read in context, Hannon's statement might simply have meant that the claimant would not be working for the employer on *that particular job*, not that the claimant would cease working for the employer in any capacity. There is support for this interpretation in the record, as the claimant admitted that he turned down at least one job and he continued to work for the claimant thereafter. Hannon testified that Massuda would have the authority to "stop using" the claimant if he failed to follow her directions. However, aside from one occasion, Hannon resisted using the term "terminate," because he considered the employer an independent contractor.

¶ 44 Finally, although this factor is of lesser significance than other factors, the employer did not withhold taxes from the claimant's paychecks. The claimant did not fill out an employment application or any tax forms before he began working for the employer, and the employer did not provide the claimant any employment benefits such as health, disability, or life insurance.

¶ 45 In sum, the evidence regarding the most important factor (the right of the employer to control the employee's work) is conflicting, and the evidence as to several of the remaining factors also cuts both ways. There is sufficient evidence to support the Commission's finding, particularly considering the evidence suggesting that the employer did not control the manner in which the claimant performed his work. Because the evidence on this critical issue was in conflict, it was the Commission's province to weigh the evidence and decide among competing inferences. *Roberson*, 225 Ill. 2d at 186-87; *Earley*, 197 Ill. App. 3d at 318. We cannot say that the Commission's decision was against the manifest weight of the evidence, *i.e.*, that the opposite conclusion was clearly apparent.

¶ 46 CONCLUSION

¶ 47 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County, which confirmed the Commission's decision.

¶ 48 Affirmed.

¶ 49 JUSTICE HOFFMAN, dissenting:

¶ 50 I have no quarrel with the law as stated by the majority, or the facts recited in its opinion. I do, however, strongly disagree with the conclusion that the majority reaches. I believe that the Commission's finding that the claimant failed to prove his status as an employee is against the manifest weight of the evidence. Consequently, I must respectfully dissent.

¶ 51 The evidence of record in this case established that: the employer had the right to control the work performed by the claimant; the cleaning, painting and general maintenance tasks performed by the claimant required minimal skill and were integral to the employer's business of managing and operating rental properties; the claimant was paid on an hourly basis; the claimant used supplies and equipment belonging to, or paid for by, the employer; the employer dictated which tasks the claimant was to perform and when; and, the claimant worked exclusively for the employer. Additionally, Hannon, the employer's vice-president and property manager, admitted that, if the claimant failed to follow the directions of Massuda, the employer's president and owner, his services could be terminated. To my mind, these facts strongly favor a finding of an employment relationship. See Roberson, 225 Ill. 2d at 175; Ware, 318 Ill. App. 3d at 1122. The fact that no taxes were taken from the claimant's earnings and the fact that the employer labeled

him as an independent contractor militate against a finding of employment. However, these lone factors carry minimal weight in resolving the issue. See Earley, 197 Ill. App. 3d at 317-318.

¶ 52 No doubt, when the evidence is "well balanced" it is the Commission's province to weigh the evidence and decide among competing inferences. Roberson, 225 Ill. 2d at 186-87. However, I do not believe that the evidence in this case is "well balanced." My understanding of the record leads me to conclude that the evidence supporting a finding that the claimant was an employee far outweighs any evidence supporting the conclusion that he was an independent contractor. I believe, therefore, that the Commission's decision is against the manifest weight of the evidence.

¶ 53 Justice Stewart joins in the dissent.