

The social security number and dates of birth
have been redacted from this opinion.

**STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
WORKERS' COMPENSATION BOARD OF MAGISTRATES**

Fariz Ishankulov,
SS# xxx xx xxxx,

Plaintiff,

-vs-

Keen Cargo Inc.,
No Record of Coverage,

Defendant.

_____ /

OPINION

APPEARANCES:

Fariz Ishankulov, In Pro Per
Henry J. Andres, Jr., (P53669)

TRIAL DATE(S):

A hearing was held on the case January 2, 2020 in Detroit, Michigan.

STATEMENT OF CLAIM:

Plaintiff filed an Application for Mediation or Hearing (Form A), received May 7, 2019, in which he alleged an injury date of October 23, 2018. It was described as follows;

I was driving and my tier's (sic) started to burn. I pulled over to see and it blew me out. Face right, neck, back, rt/knee, rt/shoulder.

He claimed multiple injuries at that time, as well as some outstanding medical bills. Plaintiff indicated he had returned to work as of November 13, 2018. Defendant through counsel filed a general denial specially alleging that plaintiff was an independent contractor.

ISSUES:

The sole issue that I was asked to address was whether the plaintiff, Mr. Ishankulov was an employee of the defendant, Keen Cargo, Inc. on the date of injury within the meaning of the Workers Disability Compensation Act.

JOINT EXHIBITS:

Four exhibits were agreed to and marked. All exhibits were accepted as a part of the record.

1. Joint Exhibit 1 – Owner/Operator Agreement dated June 20, 2018
2. Joint Exhibit 2 – Consists of three (3) separate independent contractor worksheets
3. Joint Exhibit 3 – Plaintiff's sworn statement dated December 11, 2019
4. Joint Exhibit 4 – Stipulation of Facts signed by plaintiff and defendant dated December 13, 2019

WITNESSES:

None

REVIEW OF EXHIBITS:

Joint Exhibits

Joint Exhibit 1

Exhibit 1 is an Owner/Operator Agreement dated June 20, 2018 between defendant, Keen Cargo Inc. and Sabina Paper Goods, Inc. This document is signed by the plaintiff, Mr. Ishankulov, as well as by the defendant, Keen Cargo, Inc. In this agreement, the plaintiff through his corporation Sabina Paper Goods, Inc. agrees to all terms and conditions, including the fact that he acts as an independent contractor in all respects. The agreement itemizes the rights and responsibilities of the parties. Also, a part of this exhibit is an addendum to the Owner/Operator Agreement, also dated June 20, 2018 indicating that the operator shall be fully responsible for all insurance coverage including but not limited to accidental. It specifically refuses occupational accidental insurance coverage from the defendant. This addendum is also signed by the plaintiff, Mr. Ishankulov, as well as a representative of the defendant, Keen Cargo, Inc.

Joint Exhibit 2

Exhibit 2 consists of three (3) separate independent contractor worksheets. They are all filled out and signed by plaintiff, Mr. Ishankulov and dated June 20, 2018. These worksheets were done apparently at the behest of the Michigan Workers' Compensation Placement Facility which is the heading at the top of the documents. In the documents, plaintiff indicates among other things that he is leasing his vehicle from Penske and that he carries liability, cargo and physical damage insurance. It states further that he is compensated by the load and that he can refuse to accept a given load. He further states that he purchases his own fuel. Maintenance for the vehicle was to be handled by Penske. In one of the documents he is listed as a corporation and in another he is listed as sole proprietor. The last page of this exhibit is filled out as sole proprietor/owner operator truck driver.

Joint Exhibit 3

Exhibit 3 consists of a sworn statement filled out by the plaintiff December 11, 2019, stating that he was the driver of the Keen Cargo load, and that he did get into an accident on October 23, 2018. He indicates the accident was due to a mistake by the mechanic service working on his vehicle and that he was on a job duty. He states further that as a result he sustained several injuries. Attached to that statement, which is sworn to and notarized, is a Certificate of Liability Insurance which shows that there was a Certificate of Liability Insurance produced by Peoples Insurance Agency for what appears to be the cargo and vehicle. The certificate holder of the liability insurance is listed as Penske Truck Rental.

Joint Exhibit 4

Exhibit 4 is a stipulation of facts signed by the plaintiff, Mr. Ishankulov, as well as the defendant. In this document the parties agree that Keen Cargo, Inc. is an interstate transportation company that provides ground shipping services for its clients, utilizing the services of independent contractors to transport property and goods by tractor trailer owned or leased by the contractors and that they maintain an office in Michigan. The parties further agree that Keen Cargo contracted for hire with independent trucking operator "Sabina Paper Goods, Inc. (SPGI)" or "operator", a New York corporation, with a federal tax ID number, located at 400 Ocean Parkway, Apt. 5A, Brooklyn, New York, to transport by tractor trailer property and goods owned by Keen Cargo customers.

This address is the plaintiff's address as reflected in the Bureau documents and his filing of the application.

Plaintiff agreed as well that he signed the Owner/Operator Agreement dated June 20, 2018 as the owner/operator of SPGI and that he is a resident of New York and is the sole owner and officer of SPGI. The parties further agreed that the plaintiff as owner and operator of SPGI that he would assume full and complete responsibility for his own workers compensation coverage under the agreement.

The parties further agreed that in October 2018, while SPGI was transporting by tractor trailer a Keen Cargo customer load, that claimant was driving the tractor trailer and that

an accident and injury did occur on October 23, 2018 during the transportation of the load. The parties further agree that plaintiff filed his application March 19, 2019 seeking benefits under the Michigan Workers Disability Compensation Act due to injuries arising out of the accident of October 23, 2018 while SPGI was transporting a load for the defendant.

The parties further agreed that defendant did not have a contract for hire, expressed or implied with the claimant in connection with carrying the load in question at the time of the alleged injury and that further the claimant maintained a separate business, SPGI which provided transportation services as an independent contractor. These stipulations were signed by plaintiff and a representative of the defendant.

I personally confirmed with the plaintiff, Mr. Ishankulov his agreement with the stipulations entered as Exhibit 4, as well as with entry and acceptance by this court of all the exhibits as evidence in this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The plaintiff has the burden of proof to establish a compensable workers' compensation claim by a preponderance of the evidence for each element of the claim. Aquilina v General Motors, Corp., 403 Mich 206 (1978).

Section 418.161 of the Workers Disability Compensation Act defines an employee as "a person ... under any appointment, or contract of hire, express or implied, oral or written...". Further defined in 418.161(n) as "Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury, if the person in relation to the service does maintain a separate business, does not hold himself or herself out to render service to the public, and is not an employer subject to this act...."

I find that plaintiff has not carried the burden of proving he or his company was an employee of the defendant in this case, and therefore the claim is denied.

This opinion is supported by many facts contained in the court record. Exhibit 1, the Owner/Operator Agreement signed by the plaintiff agrees that he acts as an independent contractor in all respects, including specifically refusing occupational accident insurance.

The exhibit worksheets filled out by plaintiff are all to be used by independent contractors, and they note that the vehicle used and involved in the accident is owned by a 3rd party (Penske). Additionally, plaintiff filled the document out in the capacity of sole proprietor/owner operator.

The plaintiff in his stipulations and in the documents supplied to the court holds himself out as an independent contractor and as owner/operator of "Sabina Paper Goods, Inc. This entity is the plaintiff's corporation, has a federal ID #, and is wholly owned and operated by the plaintiff.

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It is evident from the record before me that the Defendant in this case Keen Cargo Inc. had insufficient connection to the plaintiff under the above statute and based on the facts in this record to be found to be the employer of the plaintiff.

ORDER

This claim is denied and the plaintiff is found to be an independent contractor under the Act.

WORKERS COMPENSATION BOARD OF MAGISTRATES

David Grunewald, Magistrate 242G

Signed this 13th day of January 2020, at Detroit, Michigan