

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS MACHADO,  
Appellant,  
vs.  
EMPLOYERS INSURANCE COMPANY  
OF NEVADA; AND SOUTHERN  
NEVADA FRAMERS,  
Respondents.

No. 41276

FILED

NOV 09 2004

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Rubado*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a petition for judicial review in a workers' compensation case. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

On March 17, 1999, appellant, Luis Machado, suffered severe injuries when he fell while working at a construction site known as the Sterling subdivision in a residential area of Henderson, Nevada. The work was performed on the homes at the Sterling subdivision by a general contractor and by various subcontractors, one of which was Respondent Southern Nevada Framers (Nevada Framers). Nevada Framers was the subcontractor in charge of framing the home where Machado suffered his injuries.

Machado filed a claim for workers' compensation, indicating that he was a Nevada Framers employee at the time of his accident. respondent Employers Insurance Company of Nevada (EICON) denied Machado's claim because Machado could not substantiate that he was a Nevada Framers employee when he was injured.

Machado administratively appealed, and the appeals officer affirmed EICON's decision to deny coverage, concluding that the employer-employee relationship could not be substantiated. Machado

then filed a petition for judicial review in the district court, which was denied.

On appeal, Machado contends that the district court erred in denying the petition because the appeals officer's decision was not supported by substantial evidence.

The function of this court in reviewing an administrative decision is identical to that of the district court.<sup>1</sup> A reviewing court will not substitute its judgment for that of an agency with regard to a question of fact.<sup>2</sup> The decision of an agency will be affirmed if substantial evidence exists to support it.<sup>3</sup> Substantial evidence is that which "a reasonable mind might accept as adequate to support a conclusion."<sup>4</sup>

The record includes substantial evidence indicating that Machado did not qualify as a statutory employee of Nevada Framers pursuant to NRS 616A.105. According to NRS 616A.105, an employee is a "person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed." The appeals officer found the evidence presented by Nevada Framers that Machado was not an employee credible and persuasive. This evidence included the testimony of Alan Freckleton, the Safety Director for Nevada Framers, and James White, the

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<sup>1</sup>Hudson v. Horseshoe Club Operation Co., 112 Nev. 446, 452, 916 P.2d 786, 790 (1996).

<sup>2</sup>SIIS v. Engel, 114 Nev. 1372, 1374, 971 P.2d 793, 799 (1998).

<sup>3</sup>Currier v. SIIS, 114 Nev. 328, 333, 956 P.2d 810, 813 (1998).

<sup>4</sup>State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986) (internal citations omitted).

Superintendent for Nevada Framers. These men testified regarding the hiring practices of Nevada Framers. According to the record, White hired all new employees for Nevada Framers. White required that all proposed new employees meet with him, fill out the applicable paperwork, and attend an employment procedures orientation conducted by Freckleton before the new employee was allowed to work at a construction site. White and Freckleton testified that this procedure was rigidly followed. They stated that Machado could not have been a Nevada Framers' employee because they had never met him, he had not filled out any paperwork for Nevada Framers, nor did he attend the employment procedures orientation. In addition, according to Nevada Framers' employment policy, they paid all employees by check and not by cash. Machado stated that he had received payments in cash and did not expect to receive a paycheck from Nevada Framers. Therefore, because there is substantial evidence in the record to support the appeals officer's decision, and because the appeal's officer's decision was based on issues of credibility, we will not disturb it on appeal.<sup>5</sup>

Machado also argues that Nevada Framers qualifies as a principal contractor and Machado as its employee under NRS 616A.210. NRS 616A.210(1) states: "Except as otherwise provided . . . subcontractors, independent contractors and the employees of either shall be deemed to be employees of the principal contractor." Machado argues

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<sup>5</sup>Although we hold that there is substantial evidence that Nevada Framers did not employ Machado, Machado is not without a remedy. Machado was clearly hired by someone to work at the Sterling construction site. Therefore, it appears that he qualifies as an "employee" under NRS 616A.105 and might be able to proceed against the individual or individuals who employed him.

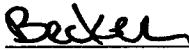
that Nevada Framers subcontracted with Teodoro Diaz, who in turn employed Machado, and therefore, Nevada Framers qualifies as a principal contractor under NRS 616A.210. However, the record indicates that Teodoro Diaz had voluntarily terminated his employment with Nevada Framers on March 12, 1999, five days before Machado's accident. Thus, on March 17, 1999, the date of Machado's injury, Diaz no longer worked for Nevada Framers. In addition, the evidence is disputed as to whether Diaz even hired Machado to work on the site. The record indicates that Machado believed that Oscar Valenzuela, his cousin, had hired him, and that Diaz had not hired him to perform any work.


Furthermore, the record includes substantial evidence that Nevada Framers was not involved in the type of construction that Machado was doing when he was injured. At the time of Machado's accident, he was carrying wood upstairs to be used for constructing safety handrails. Both White and Freckleton testified that Nevada Framers was not responsible for installing handrails at the construction site.

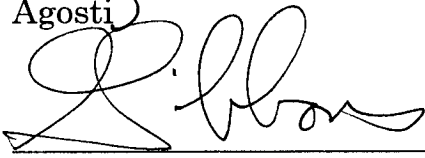
As a final matter, Machado contends that as a matter of public policy, an employer should not be permitted to circumvent Nevada's statutory scheme concerning workers' compensation by using illegal piecework crews. Machado's public policy argument fails because there is no evidence that Nevada Framers was involved in hiring illegal piecework crews at the Sterling construction site. In order for Machado's public policy argument to apply, the employer would have to be aware of the illegal piecework crews. There is no evidence that Nevada Framers knew about or hired illegal piecework crews to complete its projects.

We have considered all other issues raised on appeal and find them without merit.

Accordingly, we ORDER the judgment of the district court  
AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge  
Greenman Goldberg Raby & Martinez  
Beckett & Yott, Ltd./Las Vegas  
J. Michael McGroarty, Chtd.  
Clark County Clerk