SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3978-15T2

YURIEL MONDRAGON CALIX,

Petitioner-Respondent,

v.

A2Z UNIVERSAL LANDSCAPING and
UTICA NATIONAL INSURANCE GROUP,

Respondents-Appellants,

and

ROBERT WOOD JOHNSON UNIVERSITY
HOSPITAL,

Intervenor-Respondent.

Submitted August 30, 2017 – Decided September 7, 2017

Before Judges Rothstadt and Vernoia.

On appeal from the Department of Labor and Workforce Development, Division of Workers' Compensation, Docket No. 14-30560.

Braff, Harris & Sukoneck, attorneys for appellant A2Z Universal Landscaping (Glenn A. Savarese, of counsel; Nicholas J. Grau, on the brief).

Lois Law Firm, LLC, attorneys for appellant Utica National Insurance Group (Gregory Lois, on the brief).

Ginarte, O'Dwyer, Gonzalez, Gallardo & Winograd, LLP, attorneys for respondent Yuriel Mondragon Calix (Christopher Iavarone, on the brief).

PER CURIAM

Appellant A2Z Universal, LLC, (A2Z) appeals a Division of Workers' Compensation May 12, 2016 order awarding temporary disability benefits to petitioner Yuriel Mondragon Calix. A2Z claims the order was entered in error because there was insufficient evidence supporting the Division's determination that A2Z was Calix's employer. We agree and reverse the Division's order.

Calix was injured on June 3, 2014 in a workplace accident. He was hospitalized, spent two months in a rehabilitation center, required ongoing medical treatment, and was unable to work.

Calix filed a workers' compensation petition alleging he was employed by RNR Technologies, Inc. (RNR) at the time of the accident. RNR is not insured and did not respond to the petition. Calix filed a second petition alleging he was employed by A2Z, which was insured by Utica National Insurance Group (Utica) at the time of the accident. Utica initially paid Calex benefits, but then ceased doing so. In its answer to the petition, A2Z denied Calix was its employee.

In March 2015, Calix filed a motion against RNR for medical and temporary benefits. In support of the motion, Calix submitted a certification of counsel stating Calix commenced his employment with RNR in February 2014, he worked for RNR at 3200 Bordentown Avenue in Parlin, and he was injured at the location while working for RNR on June 3, 2014. RNR did not respond to the motion.

In April 2015, Calix filed a separate motion for medical and temporary benefits against A2Z. The motion was supported by a certification, but it did not assert any facts showing Calix was employed by A2Z. In its response to the motion, A2Z again denied Calix was its employee.

In August 2015, Utica filed a motion to dismiss the petition against its insured A2Z. Utica asserted that dismissal was warranted because Calix was not employed by A2Z and, instead, was employed by RNR.

The worker's compensation judge conducted a hearing on Calix's motion seeking medical and temporary benefits from A2Z. Calix was the only witness. He testified he began working at 3200 Bordentown Avenue in Parlin[1] a few months prior to the accident, was paid cash, and never received any documentation identifying

[1] As noted, counsel's certification in support of Calix's motion for medical and temporary benefits against RNR identified 3200 Bordentown Avenue as the location of RNR's business.

his employer. During his employment, he never worked at a different location. Calix could not identify his employer, and instead explained he was hired by Roger West and an individual named Steve and that they were his "boss[es]". Calix did not know anything about A2Z, did not recall ever hearing A2Z's name, and never saw any signs bearing A2Z's name at his work site.

After hearing Calix's testimony, the workers' compensation judge directed that A2Z pay Calix temporary benefits retroactively to the date of the accident. The court found Calix was hired by "Steve or Roger West," they paid Calix in cash, they did not comply with the legal requirements to make payroll deductions, and it was not Calix's fault his "employer" failed to comply with its responsibilities. The judge stated that Calix was "working for someone," whether it be "[t]he West's" or "somebody else behind the scenes," but that "it seems that there was some entity running the place." The judge found Calix had been without temporary benefits, did not have any money, and was entitled to benefits. The judge awarded temporary benefits and determined that "[a]t the end of the proceeding we can ascertain who's going to be responsible." The judge entered an order, and A2Z appealed.[2]

[2] An award of temporary disability benefits is a final judgment appealable as of right. Della Rosa v. Van-Rad Contracting Co., 267 N.J. Super. 290, 294 (App. Div. 1993); Hodgdon v. Project

"Appellate review of workers' compensation cases is 'limited to whether the findings made could have been reached on sufficient credible evidence present in the record . . . with due regard also to the agency's expertise.'" Hersh v. County of Morris, 217 N.J. 236, 242 (2014) (quoting Sager v. O.A. Peterson Constr., Co., 182 N.J. 156, 164 (2004)). Deference is given to the factual findings of a judge of compensation who has the opportunity to assess the witnesses' credibility from hearing and observing their testimony. Lindquist v. Jersey City Fire Dep't., 175 N.J. 244, 262 (2003). Those findings should not be reversed unless they are "manifestly unsupported by or inconsistent with competent relevant and reasonably credible evidence as to offend the interests of justice." Ibid. (quoting Perez v. Monmouth Cable Vision, 278 N.J. Super. 275, 282 (App. Div. 1994), certif. denied, 140 N.J. 277 (1995)). Yet, the judge's "interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995).

A2Z and Utica argue the obligation to pay disability benefits can only be imposed upon an employer, and the court erred by

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Packaging, Inc., 214 N.J. Super. 352, 360 (App. Div. 1986), certif. denied, 107 N.J. 109 (1987).

awarding temporary disability benefits because there was no evidence showing that A2Z was Calix's employer.[3] In pertinent part, N.J.S.A. 34:15-15 permits an award of temporary disability benefits where, as here, an employer or its insurance carrier refuses to provide such benefits. The workers' compensation judge awarded Calix benefits under N.J.A.C. 12:235-3.2(h), which provides that where it appears on a motion for temporary benefits "the only issue involved is which carrier or employer is liable to [the] petitioner for the benefits sought," the judge may order one carrier or employer to pay benefits pending the final resolution of the issue.

Under the plain language of N.J.S.A. 34:15-15, the obligation to pay temporary disability payments falls only upon the petitioner's employer. Cortes v. Interboro Mut. Indem. Ins. Co., 232 N.J. Super. 519, 521 (App. Div. 1988), aff'd, 115 N.J. 190 (1989). N.J.A.C. 12:235-3.2 is part of the regulatory framework implementing the award of benefits under N.J.S.A. 34:15-15. See N.J.A.C. 12:235-3.2. It allows temporary benefits where "the only issue involved is which carrier or employer is liable for the

[3] A2Z and Utica make an alternative argument that the judge erred by awarding the benefits without affording them the opportunity to call witnesses. It is unnecessary to address this contention because we conclude the evidence did not support the judge's determination that A2Z was Calix's employer.

benefits sought," N.J.A.C. 12:235-3.2(h), which presupposes that a respondent ordered to pay temporary benefits is the petitioner's employer in the first instance.

Here, the judge held a hearing on Calix's motion for temporary benefits under N.J.S.A. 34:15-15 and N.J.A.C. 12:235-3.2(h). The judge was therefore required to determine if A2Z was Calix's employer.[4] But the record before the judge was bereft of any evidence A2Z employed Calix. Instead, Calix testified he had no knowledge of the identity of his employer beyond having been hired by "Steve and Roger West," and he had no knowledge that A2Z was his employer. Nevertheless, and although the judge did not make an express finding Calix was employed by A2Z, he ordered A2Z to pay temporary disability benefits to Calix. There is no evidence supporting the judge's implicit finding A2Z was Calix's employer and therefore no basis upon which the judge could properly award temporary benefits under N.J.S.A. 34:15-15.

[4] N.J.A.C. 12:235-3.2(f) provides that under certain circumstances a prima facie case of entitlement to an award of temporary disability payments may be established by "[a]ffidavits, certifications and medical reports," but there were no affidavits or certifications establishing A2Z was Calix's employer. See Hogan v. Garden State Sausage Co., 223 N.J. Super. 364, 366-67 (App. Div. 1998). The only evidence presented was Calix's testimony which, for the reasons noted, did not support the judge's determination A2Z employed Calix when the accident occurred.

Because we conclude there was no evidence supporting the court's order, it is unnecessary to address A2Z's contention that it was deprived of an opportunity to present witnesses and other evidence at the hearing.

Reversed.