

DAVID CANTARA  
(Appellee)

v.

DUBE DESIGN & CONSTRUCTION, INC.  
(Appellant)

Argument held: December 9, 2015  
Decided: October 20, 2016

PANEL MEMBERS: Administrative Law Judges Jerome, Elwin, and Hirtle  
BY: Administrative Law Judge Elwin

[¶1] Dube Design & Construction, Inc., appeals from a decision of a Workers' Compensation Board administrative law judge (*Stovall, ALJ*) granting David Cantara's Petitions for Award and for Payment of Medical and Related Services. The ALJ determined that Mr. Cantara was an employee of Dube Design, and not an independent contractor, and ordered payment of incapacity benefits. Dube Design contends that the ALJ erred in finding that Mr. Cantara was an employee, and alleges that it was denied discovery crucial to the determination of independent contractor status. We disagree, and affirm the ALJ's decision.

## I. BACKGROUND

[¶2] Mr. Cantara has worked as an independent contractor since 1994. While mostly working for himself, he also has been on both sides of an arrangement whereby when one contractor becomes too busy to do all his work, he will offer work to other contractors to help him catch up. In January 2013, Scott

Dube, the owner of Dube Design, contacted Mr. Cantara to ask for help on a project. Mr. Cantara told Mr. Dube that he could only help him for two weeks, after which he would be too busy. Mr. Cantara asked for and received \$27.00 per hour. Mr. Dube had a superintendent to oversee the project, as well as other skilled craftsmen working at the job site.

[¶3] On February 13, 2013, the staging Mr. Cantara was using at the job site to install a roof gave way. He fractured his left heel and required surgery on March 4, 2013. There was no dispute about the occurrence of the injury or incapacity through April 23, 2013. The only dispute was whether Mr. Cantara was an employee of Dube Design at the time of his injury. In a decree issued on June 27, 2014, the ALJ found that he was. Both Mr. Cantara and Dube Design filed motions for findings of fact and conclusions of law, which the ALJ granted. The ALJ issued additional findings of fact and conclusions of law on April 30, 2015, establishing an average weekly wage, but otherwise leaving the decree unchanged.

## II. DISCUSSION

### A. Standard of Review

[¶4] The issue of employment status is a mixed question of law and fact. *Doughty v. Work Opportunities Unlimited/Leddy Group*, 2011 ME 126, ¶ 11, 33 A.3d 410. The Law Court’s articulated standard of review recognizes that “there exists with regard to the issue of employment status a decisional range in which

reasonable [administrative law judges], acting rationally, could disagree. Only when a decision falls outside of this range, or when a[n administrative law judge] misconceives the meaning of the applicable legal standard, are we justified in interfering with his determination.” *Timberlake v. Frigon & Frigon*, 438 A.2d 1294, 1296 (Me. 1982).

[¶5] When faced with a question of statutory interpretation, the Appellate Division first turns to the plain language of the statute and “construe[s] that language to avoid absurd, illogical or inconsistent results.” *Estate of Joyce v. Commercial Welding Co.*, 2012 ME 62, ¶ 12, 55 A.3d 411. We will look beyond a statute’s plain meaning only “if the statutory language is ambiguous;” that is “if it is reasonably susceptible to different interpretations.” *Id.*

## B. Application of Statutory Framework

[¶6] Under 39-A M.R.S.A. § 105-A(2) (Supp. 2015), Mr. Cantara is presumed to be an employee of Dube Design unless he is a “construction subcontractor,” a specific kind of independent contractor, a determination to be made in accordance with 39-A M.R.S.A. § 102(13-A).<sup>1</sup>

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<sup>1</sup> Title 39-A M.R.S.A § 102(13-A) defines independent contractor as a person who is “free from the essential direction and control of the employing unit, both under the person’s contract of service and in fact and the person meets specific criteria.” In order for a person to be an independent contractor:

### A. The following criteria must be met:

- (1) The person has the essential right to control the means and progress of the work except as to final results;

[¶7] Here, the ALJ found that while Dube Design proved the first two criteria, it failed to prove the third mandatory criterion under 39-A M.R.S.A. § 102 (13-A), that Mr. Cantara had the opportunity for profit and loss as a result of the services being performed for Dube Design. In applying this criterion, the ALJ evaluated Mr. Cantara's opportunity for profit and loss within the context of his work at Dube Design:

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- (2) The person is customarily engaged in an independently established trade, occupation, profession or business;
  - (3) The person has the opportunity for profit and loss as a result of the services being performed for the other individual or entity;
  - (4) The person hires and pays the person's assistants, if any, and, to the extent such assistants are employees, supervises the details of the assistants' work; and
  - (5) The person makes the person's services available to some client or customer community even if the person's right to do so is voluntarily not exercised or is temporarily restricted; and

B. At least 3 of the following criteria must be met:

- (1) The person has a substantive investment in the facilities, tools, instruments, materials and knowledge used by the person to complete the work;
- (2) The person is not required to work exclusively for the other individual or entity;
- (3) The person is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work;
- (4) The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work;
- (5) Payment to the person is based on factors directly related to the work performed and not solely on the amount of time expended by the person;
- (6) The work is outside the usual course of business for which the service is performed; or
- (7) The person has been determined to be an independent contractor by the federal Internal Revenue Service.

Mr. Cantara was paid \$27.00 per hour. He had no opportunity for loss in this relationship. Dube argues that the profit and loss analysis should be based on Mr. Cantara's year-end profits and losses rather than the particular arrangement he had with Dube. The problem with this approach is that it ignores the specific relationship between the parties which is what is at issue in this case. Additionally, a person can work as a carpenter for a large property management company and have a side business in which he works as an independent contractor for his own customers.

[¶8] The ALJ's interpretation is appropriate, given the plain meaning of 39-A M.R.S.A. § 102 (13-A)(3). That section focuses on profit and loss "as a result of the services being performed *for the other individual or entity*," namely Dube Design. (emphasis added). To broadly consider Mr. Cantara's opportunity for loss over the course of the entire year, including his acknowledged activities as an independent contractor, would render the quoted portion of the statute meaningless. Further, because the rights of a party under the Workers' Compensation Act are purely statutory, the board has no authority to go beyond the expressed and clear language of the statute. *Doucette v. Hallsmith/Sysco Food Srvs.*, 2010 ME 138, ¶ 5, 10 A.3d 692; *Guaranty Fund Mgmt. Srvs. v. Workers' Comp. Bd.*, 678 A.2d 578, 583 (Me. 1996); *Jordan v. Sears, Roebuck & Co.*, 651 A.2d 358, 362 (Me. 1994).

[¶9] Because one of the five mandatory criteria to overcome the employment presumption in 39-A M.R.S.A § 102(13-A) was not met, the ALJ appropriately declined to continue analyzing the remaining criteria. The ALJ

neither misconstrued nor misapplied the law when determining that Mr. Cantara did not meet the third mandatory criterion for independent contractor status under 39-A M.R.S.A. § 102 (13-A), and therefore was an employee pursuant to the Act.

C. Denial of Discovery Request

[¶10] Dube Design asserts that denial of its supplemental discovery request prevented it from establishing that Mr. Cantara had an opportunity for loss while working there. Dube Design had requested names and contact information for all individuals and entities for whom Mr. Cantara had worked in the prior ten years. Based on the ALJ's finding that the analysis of Mr. Cantara's opportunity for profit and loss was limited to his work for Dube Designs, and Mr. Cantara's admission that most of his work in the prior ten-year period was as an independent contractor, the ALJ correctly determined that the requested information was irrelevant. Denial of Dube Designs' supplemental discovery request, therefore, was within the ALJ's discretion and worked no prejudice.

### III. CONCLUSION

[¶11] The ALJ did not err in finding that Dube Design failed to establish that Mr. Cantara was an independent contractor under 39-A M.R.S.A § 102(13-A). Further, the ALJ's denial of Dube Design's supplemental discovery request was within his discretion. Moreover, the ALJ's decision is supported by competent evidence, involved no misconception of applicable law, and the application of the

law to the facts was neither arbitrary nor without rational foundation. *Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995).

The entry is:

The administrative law judge's decision is affirmed.

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Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A. § 322 (Supp. 2015).

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