WORKERS' COMPENSATION BOARD
ABUSE INVESTIGATION UNIT
(Appellee)

v.

NATASHA NEAL D/B/A BANGZ
(Appellant)

Argued: January 28, 2015
Decided: February 9, 2016

PANEL MEMBERS: Administrative Law Judges[1] Jerome, Pelletier, and Stovall
BY: Administrative Law Judge Jerome

[¶1] Natasha Neal, d/b/a Bangz, appeals from a decision of a Workers' Compensation Board hearing officer (*Dunn*, *HO*), imposing a civil penalty of $300 for failure to secure workers' compensation coverage for her employees. *See* 39-A M.R.S.A. § 324(3)(B) (Supp. 2015); 39-A M.R.S.A. § 401 (Supp. 2015). Ms. Neal operates a hair and tanning salon. She argues that the hearing officer erred by concluding that the stylists and nail technician that work in her salon are "employees" within the meaning of the Worker's Compensation Act. We conclude that the facts found by the hearing officer are insufficient to support the conclusion that an employment relationship exists as a matter of law, and for this reason we vacate the hearing officer's decision.

[1] Pursuant to P.L. 2015, ch. 297 (effective October 15, 2015) Workers' Compensation Board hearing officers licensed to practice law are now designated administrative law judges.

I. BACKGROUND

[¶2] Natasha Neal opened a hair and tanning salon in Damariscotta named "Bangz" in May of 2012. Ms. Neal leases the space where the salon is located and pays the rent, all utilities, and other associated costs. In February of 2013, Ms. Neal began sharing the space with two other stylists and a nail technician who rented booths from her. Their lease arrangement was oral for a period, but was eventually reduced to writing in January of 2014. The agreement between the parties obligates the stylists and nail technician to pay Ms. Neal $35 per day for each day that they work at the salon. Pursuant to the agreement, each stylist and nail technician works in the salon on certain identified days of the week. If they do not come in to work on those identified days, they are still obligated to pay Ms. Neal the $35 daily fee.

[¶3] Ms. Neal provides each party a space to work with a working sink, cabinets, mirror, cart, and a chair. The stylists and technician utilize this space and the salon bathroom, but provide all other tools and supplies that are necessary to their trade, including towels and sanitizing products. The stylists and technician set their own prices, collect their own fees, and generally have a specific clientele. Ms. Neal has a credit card machine, but she is the only one who uses that machine. The stylists have their own customers, but do utilize business cards with the name "Bangz" on them. Finally, Ms. Neal's salon has an "establishment license" and

each stylist and the technician have "booth licenses" identifying Bangz as the location of their booths.

[¶4] The Abuse Investigation Unit filed a complaint on March 21, 2014, alleging that Ms. Neal, d/b/a Bangz, violated the Maine Workers' Compensation Act for failing to have insurance coverage for the stylists and the technician. Subsequently, on April 24, 2014, a hearing was held. On June 10, 2014, the hearing officer reached a decision that the workers were employees, and Ms. Neal was fined $300 for failure to secure coverage for the employees. Ms. Neal filed a motion for additional findings of fact and conclusions of law, which the hearing officer denied. Ms. Neal now appeals.

II. DISCUSSION

[¶5] Ms. Neal contends that the hearing officer erred when determining that the stylists and nail technician are employees. 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 [hearing officers], acting rationally, could disagree. Only when a [hearing officer's] decision falls outside of this range, or when a [hearing officer] misconceives the meaning of the

applicable legal standard, are we justified in interfering with his determination."[2] *Timberlake v. Frigon & Frigon*, 438 A.2d 1294, 1296 (Me. 1982).

[¶6] This case presents a very similar issue to that presented in *Price v. Blind Faith Tattoos*, Me. W.C.B. No. 14-20 (App. Div. 2014).[3] In *Price*, an Appellate Division panel rejected the analysis that tattoo artists who rented space from a studio were either "employees" or "independent contractors" of the studio owner. *Id.* The Workers' Compensation Act defines employee as "every person in the service of another under any contract of hire, express or implied, oral or written." 39-A M.R.S.A. § 102 (Supp. 2015). The Act then proceeds to list exceptions to this general rule, including independent contractors. *Id*. Pursuant to this definition, before a hearing officer conducts the analysis to differentiate between employee and independent contractor, the hearing officer should address the threshold issue whether a contract of hire or a contract for services exists. *Price* at ¶ 10 (citing *Malpass v. Philip J. Gibbons*, Me. W.C.B. No. 14-19 (App. Div. 2014).

[¶7] In this case, the hearing officer concluded that Natasha Neal was an "employer" and concluded that the stylists and technician were "employees." The

[2] The Abuse Investigation Unit argues that the standard of review for mixed questions of law and fact is whether the decision of the hearing officer falls within the regular decisional range of a hearing officer acting rationally. However, this is an incomplete statement of the standard of review, leaving out the Appellate Division's obligation to review for errors of law. *Timberlake v. Frigon & Frigon*, 438 A.2d 1294, 1296 (Me. 1982).

[3] The hearing officer did not have the benefit of that decision at the time he issued his decision.

record does not establish, however, that there was a contract of hire between Ms. Neal and the stylists and technician. Like the tattoo artists in *Price*, the stylists and technician in this case leased space from Ms. Neal pursuant to a recognized licensure scheme. In exchange for the space, they paid rent to Ms. Neal for each day they had agreed to use the booth, whether they used it or not. There is no evidence that Ms. Neal had the right to control the progress of the work that the stylists or technician performed, *even as to the final result*. The stylists operated on a completely independent basis from the salon, save the use of business cards with the name Bangz.

[¶8] We conclude that the record establishes that the essential relationship between the parties in this case is a lease or rental relationship.[4] As such, there is no evidence of a contract of hire, a prerequisite to any determination of the nature of an employment relationship.[5] For this reason, the hearing officer's conclusion

[4] The Abuse Investigative Unit argues that Ms. Neal should be barred from raising the issue of whether her relationship with the stylists and technician is limited to a lease arrangement. We find, however, that Ms. Neal has consistently denied any employment relationship with the stylists and technician and explained that those individuals rent space from her salon. We find that this is more than sufficient to raise the issue of whether the relationship between the parties is one of lessee-lessor rather than employee-employer.

[5] Both parties raise additional arguments. The Abuse Investigation Unit argues: (1) that the legislature intended for booth renters at hair salons to be treated as employees under the Workers' Compensation Act, because booth renters were not included as an exception to the definition of "employee" under the Workers' Compensation Act; and (2) that because there is remuneration between Bangz and the stylists/technician, there is a presumption of an employee/employer relationship. Ms. Neal also argues that the hearing officer incorrectly assigned the burden of proof on the issue of whether the stylists and technician were employees or independent contractors. Those issues have not been addressed in this decision because there is no evidence of a contract of hire.

that Ms. Neal was an employer and that the stylists and technician were employees was erroneous.

III. CONCLUSION

The entry is:

The hearing officer's decision is vacated.

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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