LARRY HUFF
(Appellant)

v.

REGIONAL TRANSPORTATION PROGRAM
(Appellee)

and

MEMIC
(Insurer)

Conference held: February 4, 2016
Decided: November 15, 2016

PANEL MEMBERS: Administrative Law Judges Knopf, Goodnough, and Jerome
BY: Administrative Law Judge Knopf

[¶1] Larry Huff appeals from a decision of a Workers' Compensation Board administrative law judge (*Collier, ALJ*) denying his Petition for Award involving injuries from a motor vehicle accident that occurred on August 21, 2012. The ALJ determined that Mr. Huff was not an employee of the Regional Transportation Program, but rather a volunteer. Mr. Huff argues that the ALJ erred by finding that Mr. Huff was not an employee of the Regional Transportation Program. We disagree, and affirm the decision.

I. BACKGROUND

[¶2] Larry Huff began driving for the Regional Transportation Program (RTP) in November 2011 after hearing about the opportunity from a friend. RTP is

a nonprofit agency that provides transportation services to the elderly, disabled, and low-income clients of social service agencies who live throughout Cumberland County. RTP classifies its drivers into two types: employee drivers and volunteer drivers. Employee drivers drive vehicles owned and insured by the agency and belong to a union. Volunteer drivers own and insure the vehicles they drive, are not paid wages but are reimbursed for mileage driven, and do not belong to a union. Unlike employees, volunteer drivers are not guaranteed any amount of hours per week and may refuse assignments or days of work.

[¶3] Mr. Huff sold his sedan in the fall of 2011 and bought a van to have enough space to transport riders. On November 11, 2011, Mr. Huff signed a volunteer driver memorandum of understanding indicating that he would be a volunteer driver, use his own vehicle to transport riders, and receive only mileage reimbursement as compensation. The mileage reimbursement used by RTP in 2011 and 2012 was $.41 a mile. Mr. Huff's vehicle was inspected by the RTP, he was given two magnetic "RTP" signs for his van, and he began driving in November 2011. Each morning, the RTP would provide Mr. Huff with a list of his assignments for the day, although he also took emergency calls. Mr. Huff drove for the RTP on a full-time basis, Monday through Friday, and received $700 to $800 per week in mileage reimbursement. On August 21, 2012, Mr. Huff was driving for RTP when he was seriously injured in a motor vehicle accident.

[¶4] The ALJ found Mr. Huff's testimony that he retained approximately half of the reimbursement money after paying for gas and maintenance credible. Mr. Huff testified that he took the job and worked the hours he did solely to earn income. The ALJ nevertheless found the essential element of payment for services missing from Mr. Huff's relationship with RTP, and concluded that Mr. Huff was not an employee as defined by the Maine Workers' Compensation Act. The ALJ found that while Mr. Huff was reimbursed an amount to cover his expenses, he was not paid for his services. Rather, the ALJ determined that "Mr. Huff donated his time and efforts to RTP, but he did not donate the use of his vehicle and the cost of the gasoline required to operate it." Mr. Huff filed a motion for further findings of fact and conclusions of law, which the ALJ denied. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶5] 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 [the ALJ's] determination." *Timberlake v. Frigon & Frigon*, 438 A.2d 1294, 1296 (Me. 1982).

B. Remuneration in Exchange for Services

[¶6] Mr. Huff argues that the ALJ erred in determining that he was not an employee of RTP. To support this contention, Mr. Huff argues that merely labeling a relationship as volunteer does not define the relationship legally, and the $.41 per mile he received, even though it is a relatively inconsequential payment, constituted remuneration because he drove for the RTP for the sole purpose of earning money.

[¶7] Although we agree that labeling a relationship through use of a memorandum of understanding or other written instrument does not control that relationship legally, the $.41 per mile he received as reimbursement for the use of his vehicle and gasoline does not in any case constitute remuneration. The ALJ appropriately concluded that Mr. Huff was not an employee as defined by the Maine Workers' Compensation Act. Title 39-A M.R.S.A § 102(11)(A) (Supp. 2015) defines an employee as "every person in the service of another under any contract of hire, express or implied, oral or written[.]" The Law Court has held:

> An essential element in creating an employer-employee relationship, and consistent with the purposes for which the Work[ers'] Compensation Act was enacted, is payment, or expected payment, of some consideration by an employer to an employee, thus excluding

> from coverage purely gratuitous workers who neither receive, nor expect to receive, pay or other remuneration for their services.

Harlow v. Agway, 327 A.2d 856, 859 (Me. 1974) (quotation marks omitted).

[¶8] Mr. Huff argues that even relatively inconsequential payment is enough to satisfy the requirement for remuneration. In *Harriman v. EMK, Inc*., 1998 Me. Super. LEXIS 58 (Mar. 13, 1998), a volunteer, in exchange for her services, was allowed to ski at any time without charge; she received free beverages; and she was able to earn free ski passes for friends based upon the number of hours that she worked. The Law Court found that Harriman did not provide services on a purely gratuitous basis; she exchanged her services for valuable remuneration that was not fixed, and this exchange was viewed as payment for her services for purposes of establishing an employment relationship. *Id*. at *7.

[¶9] This case is distinguishable from *Harriman* because the $.41 per mile reimbursement Mr. Huff received was not in exchange for his services; rather, it was to reimburse for his motor vehicle costs. Further, while Mr. Huff testified that approximately half of what he received paid for his expenses, the record contains no information regarding the cost of the vehicle, depreciation, or other expenses. Without that information, the true cost to Mr. Huff is unknown.

C. Treatment as an Employee for IRS Purposes

[¶10] Mr. Huff argues that he should be treated as an employee for purposes of workers' compensation because of the reimbursement rate paid to him by RTP.

Rather than adopting the mileage rate the IRS has established for a volunteer rendering services to a charitable organization of $.14 per mile, RTP paid Mr. Huff $.41 per mile, the rate set by the IRS for mileage reimbursement for employees in 2011 and 2012. However, the IRS's treatment of reimbursement rates for mileage is not dispositive of the issue as to whether Mr. Huff is an employee or a volunteer. Moreover, the board is not bound by the IRS's mileage reimbursement regulations. *See Brodeur v. NMC Homecare*, 654 A.2d 443, 445 (Me. 1995) ("[P]rovisions of the tax code do not control our interpretation of [the Maine Workers' Compensation Act.]"); *Fletcher v. Hanington Brothers, Inc.*, 647 A.2d 800, 803 n.4 (Me. 1994) ("The Internal Revenue Code and the Maine Workers' Compensation Act were enacted for entirely different purposes.").

D. Independent Contractor Analysis

[¶11] Mr. Huff also argues that the ALJ should have evaluated the standards applicable to independent contractors to inform his decision regarding the employment relationship. Specifically, Mr. Huff contends the ALJ should have considered the totality of the relationship in determining whether RTP exercised essential control or superintendence of him.[1] However, this analysis was not necessary because there is no dispute about the lack of control. RTP created Mr.

[1] Because the date of injury was August 21, 2012, 39-A M.R.S.A § 102(13) (Supp. 2012) would provide the applicable standard for evaluating independent contractor status, if that analysis were necessary. Title 39-A M.R.S.A. § 102(13) was repealed and replaced by 39-A M.R.S.A. § 102(13-A) (Supp. 2015). P.L. 2011, ch. 643 (effective Dec. 31, 2012).

Huff's schedule, telling him whom to pick up, the point of origin and destination, and the time. It is not the lack of essential control that is fatal to Mr. Huff's claim; it is the lack of remuneration for services.

E. Respondeat Superior

[¶12] Finally, Mr. Huff argues that the doctrine of respondeat superior, whereby a tort committed by an employee acting within the scope of his employment renders the employer liable, requires that his claim be granted. *See Nichols v. Land Transp. Corp*., 223 F.3d 21, 22-23 (1st Cir. 2000). RTP, while it did not pay for Mr. Huff's injuries, was allegedly responsible for the passenger's injuries. Mr. Huff contends RTP should be estopped from re-litigating the issue of whether an employment relationship existed between RTP and himself (assuming there was litigation). If he were not acting within the scope of his employment, he contends that RTP and its insurer would not have been responsible for Mr. Huff's actions that caused the crash. Mr. Huff asserts this constitutes an admission of liability for his actions.

[¶13] There is no indication in the record, however, that the issue of RTP's liability to the riders of Mr. Huff's car was actually litigated. Rather, when asked whether the passenger received some kind of settlement, the Executive Director for RTP, John DeBeradinis, testified:

> I can say we have a vehicle insurance company that did make a payment, I am not sure exactly whether it was medical or otherwise

> and I believe there is a second small policy we carry for the volunteers for injury, death, dismemberment. It is a $10,000 policy. We have always carried that for the volunteer [drivers.]

This vague testimony is not sufficient to carry Mr. Huff's burden of proof on this issue.

III. CONCLUSION

[¶14] We agree with the ALJ that although Mr. Huff was able to hold his actual expenses down sufficiently to retain some portion of the reimbursement amount after covering his expenses, and that this was his motivation for entering into the arrangement with RTP, it does not transform this reimbursement scheme into payment for services. Because Mr. Huff's services were without remuneration, he was not an employee under the Act.

The entry is:

The administrative law judge's decision is affirmed.

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).

Attorney for Appellant:
James J. MacAdam, Esq.
Nathan A. Jury, Esq.
MACADAM JURY, P.A.
208 Fore Street
Portland, ME 04101

Attorney for Appellee:
Matthew W. Marett, Esq.
MEMIC
P.O. Box 3606
Portland, ME 04101