

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
September 19, 2011 Session

**MOHAMUD HIRSI MOHAMED v. TAXI USA OF TENNESSEE, LLC d/b/a  
ALLIED CAR COMPANY ET AL.**

**Appeal from the Circuit Court for Davidson County  
No. 09C-700 Joe P. Binkley, Judge**

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**No. M2010-02062-WC-R3-WC - Mailed: January 10, 2012  
Filed - February 10, 2012**

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In this case, the plaintiff, a taxi driver injured in a motor vehicle accident, sought workers' compensation benefits from the taxi company that he alleged employed him. The trial court held that he was an independent contractor and dismissed the complaint. The plaintiff appealed.<sup>1</sup> We affirm the judgment.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Circuit  
Court Affirmed**

DONALD P. HARRIS, SR. J., delivered the opinion of the Court, in which SHARON G. LEE, J., and E. RILEY ANDERSON, SP. J., joined.

Michelle B. Owens, Nashville, Tennessee, for the appellant, Mohamud Hirsi Mohamed.

Vanessa R. Comerford, Franklin, Tennessee, and Margaret R.T. Myers, Nashville, Tennessee, for the appellees, Taxi USA of Tennessee, LLC d/b/a Allied Car Company and Travelers Indemnity Company of America.

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<sup>1</sup> Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law.

## **MEMORANDUM OPINION**

### **Factual and Procedural Background**

Mohamud Hirsi Mohamed, a Nashville taxicab driver, was injured when he was involved in a motor vehicle accident while driving his taxi. At the time of the accident, Mr. Mohamed had entered into an agreement of association with Taxi USA of Tennessee, LLC (“Taxi USA”), a taxicab company certified by Metropolitan Government of Nashville and Davidson County’s Transportation Licensing Commission (“Metro”). Mr. Mohamed filed suit for workers’ compensation benefits against Taxi USA and its workers’ compensation insurer, Travelers Indemnity Company of America. Taxi USA denied that he was an employee for purposes of the workers’ compensation law, asserting that he was an independent contractor and, therefore, not entitled to benefits.

The trial court bifurcated the issues of compensability of Mr. Mohamed’s claim and his status as an employee. At the trial on the issue of his status as an employee, four witnesses testified: Brian McQuiston, the Director of Metro; Mr. Mohamed; James Church, the President of Taxi USA; and Jim Burrows, Operations Manager for Taxi USA.

Mr. McQuiston testified that in Nashville, taxicabs operate under a franchising agreement system which requires that “one must be affiliated with a company in order to drive as a cab driver.” Under this franchising system, a qualifying cab company is issued a certificate of public convenience and necessity allowing the company to operate a taxi service, and the company is also issued a certain number of individual taxi permits limiting the number of taxis in operation. Taxi USA is a certified taxi service under this system.

Mr. McQuiston stated that any individual desiring to work as a cab driver must apply to Metro for approval and, among other things, must pay a processing fee and submit to a physical examination, drug screen, and background check. If approved, the applicant could then “affiliate” with a certified taxi service company. The permit allows the driver to drive for the company with whom he is affiliated but does not allow him to drive his taxi outside of the affiliation as a freelance driver. Metro regulates the operation of taxis and has enacted various requirements for vehicles and drivers, including regulations concerning the appearance and cleanliness of vehicles and equipment, insurance, inspection of vehicles, and the driver’s attire. Complaints against drivers are investigated by Metro, and hearings are sometimes held in that regard.

Mr. McQuiston also attested that although a taxi driver is allowed to drive for only one company at a time, the driver may change companies by providing appropriate notice and

by modifying the color scheme of his vehicle to that of the new company. Most taxis in Nashville are not owned by the taxi service company and are often owned by the driver.

Mr. Mohamed testified that in 2007 he was hired by Elmy Yalaho, a cab driver affiliated with Taxi USA, to drive Mr. Yalaho's cab while he was on vacation. Mr. Mohamed subsequently purchased a vehicle of his own and executed an associate agreement with Taxi USA, which, among other things, states that Taxi USA "holds permits issued one or more regulatory authorities . . . authorizing [it] to operate a taxicab radio and dispatch service" under certain specified trade names, and identifies Mr. Mohamed as being "engaged in the taxicab business, and . . . the owner of a vehicle . . . which [he] wish[es] to operate using the facilities and services of [Taxi USA]."

After the agreement was executed, Mr. Mohamed purchased insurance for his vehicle at his own expense from one of two agencies recommended by Taxi USA. Taxi USA also directed Mr. Mohamed to a particular shop to have his vehicle painted in Taxi USA's assigned color scheme. Although Mr. Mohamed was required to pay for the painting, Taxi USA provided and installed a roof light, radio, meter, and an electronic credit card processing machine at its own expense. Taxi USA also provided Mr. Mohamed with a Blackberry communication device equipped with GPS that was used by Taxi USA for dispatching cabs. Mr. Mohamed testified that he paid a weekly fee, referred to as a "lick," to Taxi USA for the use of the equipment supplied to him.

Taxi USA did not provide health or life insurance, sick leave, vacation pay, or retirement benefits to Mr. Mohamed or its other drivers. During the course of his association with Taxi USA, Mr. Mohamed paid all expenses associated with his vehicle and set his own working hours. While Taxi USA provided Mr. Mohamed with free business cards that he could give to customers, he also had personal business cards printed at his expense. He was not required to report tips or fares he received to Taxi USA. When his customers paid using the electronic credit card processing machine in his cab, Taxi USA received the money first and then transmitted it to Mr. Mohamed.

Both Mr. Mohamed and Mr. Burrows testified that a cab driver can secure passengers through dispatches from Taxi USA, by waiting at an established taxi stand at the airport or a hotel, or through a direct call to the driver's personal cell phone. Approximately eighty percent of Mr. Mohamed's business came to him through Taxi USA's dispatch system. Under this system, when a customer seeking a cab called Taxi USA, Taxi USA's dispatch service would notify all drivers within a certain proximity of the caller and transmit an "offer" to the those drivers' company cell phones. A driver would then have a certain number of seconds to either accept or reject the offer, and the fare would be awarded to the

accepting driver closest to the pickup point. With certain exceptions,<sup>2</sup> drivers were not required to accept an offer. If a driver accepted a fare and later changed his mind and chose not to accept it, Taxi USA's computerized dispatch would suspend him for a period of twenty minutes up to three hours. During that time, the driver would not receive dispatches, and would be unable to use the electronic credit card reader. A suspended driver could, however, still pick up passengers at taxi stands or service his or her personal customers and could accept cash payments or use a mechanical credit card machine.

After hearing the evidence, the trial court concluded that Mr. Mohamed was an independent contractor, and therefore not entitled to benefits under the workers' compensation law. Mr. Mohamed has appealed.

### **Standard of Review**

We are statutorily required to review the trial court's factual findings "de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. Code Ann. § 50-6-225(e)(2). Following this standard, we are further required "'to examine, in depth, a trial court's factual findings and conclusions.'" Crew v. First Source Furniture Grp., 259 S.W.3d 656, 664 (Tenn. 2008) (quoting Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991)). We accord considerable deference to the trial court's findings of fact based upon its assessment of the testimony of witnesses it heard at trial, although not so with respect to depositions and other documentary evidence. Padilla v. Twin City Fire Ins. Co., 324 S.W.3d 507, 511 (Tenn. 2010); Glisson v. Mohon Int'l, Inc./Campbell Ray, 185 S.W.3d 348, 353 (Tenn. 2006). When the facts concerning the issue are not in dispute, whether or not a worker is an independent contractor is a question of law for the court. Stratton v. United Inter-Mountain Tel. Co., 695 S.W.2d 947, 953 (Tenn. 1985); Seals v. Zollo, 327 S.W.2d 41, 43-44 (Tenn. 1959). We review conclusions of law de novo with no presumption of correctness. Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007).

### **Analysis**

To recover workers' compensation benefits the claimant must be an employee, not an independent contractor. Bargery v. Obion Grain Co., 785 S.W.2d 118, 121 (Tenn. 1990);

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<sup>2</sup> Taxi USA had contracts to provide pre-arranged special-rate service to certain entities, including the Metropolitan Transit Authority and the Veterans' Administration. Drivers were permitted to either opt into or out of accepting fares from those entities. Drivers who opted to take part in this service were required to accept offers from these entities and then fill out forms reflecting how many customers participating in this program were picked up. The drivers would then be paid by Taxi USA.

Lindsey v. Smith and Johnson, Inc., 601 S.W.2d 923, 925 (Tenn. 1980). Determining whether an individual shall be characterized as an employee or an independent contractor calls for a particularized factual analysis. Masiers v. Arrow Transfer & Storage Co., 639 S.W.2d 654, 656-57 (Tenn. 1982) (citing Barnes v. Nat'l Mortg. Co., 581 S.W.2d 957[, 958] (Tenn. 1979)). No single aspect of a work relationship is conclusive in making this determination. In deciding whether a worker is an employee or independent contractor, “the trier of fact must examine all relevant factors and circumstances” of the relationship. Boruff v. CNA Ins. Co., 795 S.W.2d 125, 127 (Tenn. 1990). Tennessee Code Annotated section 50-6-102(10)(D) sets out the following specific factors that a court must consider in determining whether an individual is an employee or an independent contractor:

- (i) The right to control the conduct of the work;
- (ii) The right of termination;
- (iii) The method of payment;
- (iv) The freedom to select and hire helpers;
- (v) The furnishing of tools and equipment;
- (vi) Self-scheduling of working hours; and
- (vii) The freedom to offer services to other entities[.]

It appears from the record that the trial court considered each of these factors and made findings with regard to them. Upon our review, we have considered the findings and conclusions of the trial court concerning each of these factors in view of the evidence presented.

• *Right to Control*: The first factor listed in the statute, the right to control the conduct of the work, is generally viewed as “[t]he primary test for determining claimant’s status as employee or independent contractor[.]” Lindsey v. Smith & Johnson, Inc., 601 S.W.2d 923, 925 (Tenn.1980). The evidence showed that Metro, not Taxi USA, exclusively controlled the permit application process. The applicant driver, not Taxi USA, paid all fees incidental to the application process. Metro also trained drivers on how to promote their business and serve their customers with disabilities. Taxi USA exercised some element of control over its drivers through the dispatch system, for example, by “suspending” a driver if the driver initially accepted then refused a fare. A driver, however, was under no obligation to accept

any dispatch,<sup>3</sup> and there were no consequences for a driver who simply declined an offer from dispatch. While the evidence showed that there were regulations concerning driver appearance and the safety, maintenance, and cleanliness of vehicles, those regulations were promulgated by Metro. Taxi USA suggested compliance with those regulations, but it was Metro's role to enforce them.<sup>4</sup> Metro required all cabs to carry a rate card stating that any customer complaints were to be directed to Metro, not the cab company, and Metro investigated written consumer complaints concerning a driver. Due process hearings related to alleged violations of regulations and formal discipline of drivers was handled by Metro. Metro had the authority under Metropolitan Code section 6.72.180 to suspend or revoke a driver's permit for non-compliance with their rules and regulations. Taxi USA did not dictate in what particular geographic area a driver worked, and each driver was free to concentrate his efforts in a particular area or roam the entire county as he or she preferred. Taxi USA did not prevent a driver from choosing to obtain business using methods other than Taxi USA's dispatch system, by responding to a customer on the street who flagged the taxi, by waiting at an established taxi stand at the airport or a hotel, or by answering a direct call to the driver's cell phone from an established customer. The trial court made no specific conclusion as to whether consideration of the right of control factor favored a determination that Mr. Mohamed was an employee or an independent contractor. However, based upon comments made by the trial judge, we conclude that the trial court believed the facts of the case regarding this factor favored a determination that Mr. Mohamed was an independent contractor. Based upon our review of the evidence, we agree that Taxi USA did not have the right to control the driver's conduct of his work. The evidence fairly shows that Taxi USA's control of its drivers was basically limited to situations where the driver accepted and then declined a dispatch which the driver initially could have turned down without consequence. It appears that Metro had more control of the drivers than Taxi USA. In our view, consideration of this factor favors the conclusion that Mr. Mohamed was an independent contractor.

• *Right of Termination:* The Associate Agreement executed by Mr. Mohamed and Taxi USA provided for a month-to-month term that could be terminated by either party at the end of any term without cause or notice. If not terminated by one of the parties, the agreement was automatically renewed for an additional month. The agreement also permitted immediate termination by either party in the event of a default or breach. In Masiers, a tractor owner-operator under contract with a transfer business was injured when his rig overturned. The

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<sup>3</sup> Drivers who opted to service "contract" customers were required to accept dispatches from the Metropolitan Transit Authority, the Veterans' Administration and Vanderbilt University.

<sup>4</sup>As noted by the trial court, compliance with these regulations benefitted the driver more than Taxi USA because the appearance of the driver and the vehicle enhance the driver's ability to obtain fares.

Supreme Court ruled that the driver was an independent contractor based in part on the fact that the transfer company did not have the right to terminate at will its relationship with the driver. The trial court in the present matter noted the following language from Maiser: “The relationship could be terminated by either party only on thirty days notice. This method of termination is compatible with the existence of an independent contractor relationship.” 639 S.W.2d at 656. While Mr. Church testified a thirty-day notice of termination was required, the Associate Agreement provided the affiliation could be terminated by either party without notice at the end of any month. The trial court concluded this factor favored an independent contractor relationship. In Masiers, the Court noted that “[t]he power of a party to a work contract to terminate the relationship at will is contrary to the full control of work activities usually enjoyed by an independent contractor.” Id. (citing Curtis v. Hamilton Block Company, 225 Tenn. 275, 466 S.W.2d 220 (1971)). In our view, the provision in the Associate Agreement allowing either party to terminate the agreement without notice in the event of breach or default does not make Mr. Mohamed’s arrangement an employment-at-will. Thus, we agree with the trial court’s conclusion that the month-to-month term is more consistent with an independent contractor relationship than an employer-employee relationship.

• *Method of Payment*: The agreement between Mr. Mohamed and Taxi USA required him to pay a set weekly fee to Taxi USA. Charges processed through the electronic card reader were received by Taxi USA, then deposited directly to Mr. Mohamed’s account, with no deductions. Mr. Mohamed did not have to report cash receipts to Taxi USA. Taxi USA did not deduct income tax and did not provide any benefits, such as insurance or retirement. This method of payment has been considered by our courts as being consistent with an independent contractor relationship, See Galloway v. Memphis Drum Svc., 822 S.W.2d 584, 587 (Tenn. 1991), and the trial court so found. We agree with the conclusion of the trial court with regard to this factor.

*Freedom to Select and Hire Helpers*: Mr. Mohamed testified that he could hire another driver to drive his vehicle in place of or in addition to himself, contingent on the approval of Metro and Taxi USA. This arrangement may be best characterized as a limited freedom to select and hire helpers. The trial court concluded the arrangement could indicate either an independent contractor relationship or an employer-employee relationship. We agree with that conclusion.

• *Furnishing of Tools and Equipment*: Mr. Mohamed owned the taxi that he drove, was responsible for its maintenance and repairs, and was required to obtain insurance at his expense. Mr. Mohamed testified that he also paid for the painting of his vehicle to bring it into conformity with Taxi USA’s specifications. The roof light, meter, credit card machine, radio and a company cell phone, all of which enhanced the operation of Mr. Mohamed’s vehicle as a taxicab, were provided by Taxi USA. Mr. Mohamed paid a weekly fee for the

use of this equipment. The trial court found, and we agree, that these facts supported a finding that Mr. Mohamed was an independent contractor.

• *Scheduling*: The undisputed evidence was that Taxi USA’s drivers determined their own schedules. They could work as many days or hours as they wished, could take days off or breaks without seeking permission from, or even notifying, Taxi USA. The trial court found that Mr. Mohamed was in total control of when he worked, when he took time off, and was not required to notify the company when he was not working. We agree with the trial court that the evidence concerning scheduling of work is entirely consistent with the existence of an independent contractor relationship, and much less consistent with an employer-employee relationship. See Hartford Underwriters Ins. Co. v. Penney, No. E2009-01330-COA-R3-CV, 2010 WL 2432058, at \*5 (Tenn. Ct. App. June 17, 2010) (holding that the fact workers were expected to work according to normal construction hours and were required to provide a “courtesy call” if they were not at work as expected indicated a degree of control inconsistent with an independent contractor relationship.)

• *Freedom to Offer Services to Others*: The terms of Metropolitan Code section 6.72.175<sup>5</sup> imply that drivers are permitted to drive cabs for only one company at a time. According to the testimony of Mr. McQuiston, once a driver is affiliated with a specific cab company, he is not permitted to operate the cab for another company unless he changes his permit with Metro to reflect the change. In order to effect this change, however, a driver need only fill out another affiliation form with Metro and pay a ten dollar fee for a replacement permit. It is notable that this restriction is imposed by Metro for public safety reasons rather than by Taxi USA. Moreover, Mr. Mohamed was, as Taxi USA points out, free to work for other entities outside the taxi industry. While the trial court found this factor to favor the conclusion that Mr. Mohamed was an independent contractor, we find it supports neither a conclusion that he was an independent contractor nor that he was an employee. Mr. Mohamed was, in fact, restricted from working for other taxi companies, but that restriction was imposed by Metro and not by Taxi USA. We surmise that Taxi USA would not have objected to Mr. Mohamed working for another taxi company so long as it received its weekly lease payment for the equipment it supplied. Similarly, most employees can work for non-competing businesses outside the time they are working for their employer. Thus, in our view, this factor favors neither party.

In summary, the trial court found and we agree the evidence supports the conclusion that Mr. Mohamed was an independent contractor based on the statutory factors relating to the right to control the conduct of the work, the right of termination, the method of payment,

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<sup>5</sup> “Every driver granted a permit under this article shall inform the commission in writing of a change in company affiliation within one week of the change.”



the furnishing of tools and equipment, and the self-scheduling of working hours. The trial court found the factor relating to the freedom to select and hire helpers favored neither party, and we agree with that conclusion. In our view, the factor relating to the freedom to offer services to other entities favors neither party's position. Viewing the record as a whole, we are unable to conclude that the evidence preponderates against the trial court's findings with regard to these factors and, except as otherwise indicated, support its conclusion that Mr. Mohamed was an independent contractor. Neither the trial court nor this panel has found that any of the statutory factors would support the conclusion that Mr. Mohamed was an employee of Taxi USA. Accordingly, we affirm the trial court's decision that Mr. Mohamed was an independent contractor.

### **Conclusion**

Based upon the foregoing, the judgment of the trial court is affirmed. Costs are taxed to Mohamud Hirsi Mohamed and his surety, for which execution may issue if necessary.

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DONALD P. HARRIS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE  
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**JUDGMENT**

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Mohamud Hirsi Mohamed and his surety, for which execution may issue if necessary.

PER CURIAM