

SUPREME COURT OF NEW HAMPSHIRE

In re Ann Miles Builder, Inc.

150 N.H. 315 (2003) · Decided December 8, 2003

SUMMARY

The New Hampshire Supreme Court affirmed a decision of the Compensation Appeals Board holding that Michael Veltsos was an employee of Ann Miles Builder, Inc., rather than an independent contractor, for purposes of workers’ compensation. The court held that under RSA 281-A:2, VI(b)(1), the employer bears the burdens of producing evidence and persuasion on all five criteria required to rebut the presumption of employee status. Because the employer failed to prove that Veltsos controlled the means and manner of his work, the presumption remained and the board’s award of compensation was affirmed.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Duggan, J.; Brock, C.J.; Broderick, J.; Nadeau, J.; Dalianis, J.
JURISDICTION	New Hampshire
DECIDED	December 8, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ann Miles Builder, Inc. appealed the New Hampshire Compensation Appeals Board's determination that Michael Veltsos was an employee rather than an independent contractor for purposes of workers' compensation coverage.
STANDARD OF REVIEW	The court would not disturb the board's decision absent an error of law or unless, by a clear preponderance of the evidence, the decision was unjust or unreasonable.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Ann Miles Builder, Inc. v. Michael Veltsos

TOPICS

- workers compensation
- statutory interpretation
- legislative history
- construction law
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether RSA 281-A:2, VI (b)(1) places on the employer both the burden of producing evidence and the burden of persuasion to prove all five criteria necessary to rebut the statutory presumption that a person performing services for pay is an employee.
2. Whether the board's alleged misinterpretation of the burden of persuasion was harmless in light of its factual finding that AMB failed to prove that Veltsos controlled and had discretion over the means and manner of his work.

HOLDINGS

1. An employer bears both the burden of producing evidence and the burden of persuasion on all five statutory criteria required to rebut the presumption that a person who performs services for pay is an employee. The employer must prove all five criteria by a preponderance of the evidence.
2. If the employer proves all five statutory criteria by a preponderance of the evidence, the employee presumption disappears and the employee retains the ultimate burden of persuasion.
3. Any error in the board's description of the burden was harmless because the board reasonably found that AMB failed to prove all five criteria, including control and discretion over the means and manner of the work; therefore, Veltsos was an employee as a matter of law.

KEY QUOTATIONS

“Because we conclude that the legislature intended to provide increased protection to employees, we hold that the employer bears both the burden of producing evidence and the burden of persuasion on all five of the criteria set forth in the statute.” (320)

“If the employer proves all five of the criteria by a preponderance of the evidence, then the presumption disappears and the employee retains the ultimate burden of proof.” (320)

“Thus, the board correctly found that as a matter of law Veltsos was an employee of AMB.” (321)

FACTUAL BACKGROUND

Michael Veltsos provided construction services to Ann Miles Builder, Inc. on multiple occasions during 2000. He sometimes supplied his own truck, tools, and laborers, but AMB monitored the work, required timesheets, paid him by the hour, and, during his final period of work, provided substantial direction and controlled aspects of the jobsite. Veltsos was injured when he fell approximately twelve feet at the jobsite and sought workers' compensation benefits, which AMB denied on the ground that he was an independent contractor.

PROCEDURAL HISTORY

Veltsos's workers' compensation claim was initially denied by AMB. After a Department of Labor hearing officer found that Veltsos was an independent contractor, Veltsos appealed and received a de novo hearing before the

Compensation Appeals Board. The board found an employer-employee relationship, ordered AMB to compensate Veltsos, and denied AMB's motion for rehearing. The Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- Appeal of CNA Ins. Co., 148 N.H. 317, 319 (2002)
- Appeal of Routhier, 143 N.H. 404, 405-06 (1999)
- Appeal of Currin, 149 N.H. 303, 306 (2003)
- Cunningham v. City of Manchester Fire Dep't, 129 N.H. 232, 237-39 (1987)
- In re Tracy M., 137 N.H. 119, 125-26 (1993)

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