

COURT OF APPEALS OF VIRGINIA

Marshall Erdman and Associates, Inc. and Liberty Mutual Fire Insurance Company v. Edwin L. Loehr, Gregory L. Urso (Deceased) and Uninsured Employer's Fund

Marshall Erdman & Associates, Inc. v. Loehr, 24 Va. App. 670 (1997) · No. Record Nos. 2549-96-2, 2586-96-2 · Decided May 13, 1997

SUMMARY

The Court of Appeals of Virginia ruled that Marshall Erdman and Associates, Inc. was liable for the injuries of Edwin L. Loehr, who was sent to work on a construction project in Williamsburg by his supervisor, Gregory L. Urso. The court found that Loehr reasonably relied on Urso's apparent authority as a Marshall Erdman supervisor and that Urso's actions did not constitute a loaned-employee arrangement. The court also affirmed the commission's decision to suspend Loehr's temporary total disability benefits as of November 23, 1995, due to lack of evidence supporting continued disability.

CASE DETAILS

COURT	Court of Appeals of Virginia
WRITING FOR THE COURT	Moon, Chief Judge; Coleman, Judge; Cole, Senior Judge
JURISDICTION	Virginia
DECIDED	May 13, 1997
DOCKET	Record Nos. 2549-96-2, 2586-96-2
DISPOSITION	affirmed
PROCEDURAL POSTURE	Marshall Erdman and Liberty Mutual appealed the Virginia Workers' Compensation Commission's determination that Loehr's injuries arose out of and in the course of his employment with Marshall Erdman. Loehr separately appealed the suspension of his temporary total disability benefits beginning November 23, 1995.
STANDARD OF REVIEW	Findings of fact by the Workers' Compensation Commission are conclusive on appeal when supported by credible evidence, and the evidence is construed in the light most favorable to the party prevailing before the commission.
PRECEDENTIAL VALUE	published opinion

PARTIES

Marshall Erdman and Associates, Inc., Liberty Mutual Fire Insurance Company, Edwin L. Loehr v. Edwin L. Loehr, Marshall Erdman and Associates, Inc., Liberty Mutual Fire Insurance Company, Gregory L. Urso (Deceased), Uninsured Employer's Fund

TOPICS

workers compensation

employment law

appellate procedure

standard of review

PRACTICE AREAS

workers compensation

employment law

QUESTIONS PRESENTED

1. Whether Loehr remained an employee of Marshall Erdman, rather than becoming a loaned employee of Urso, when he was injured while working on Urso's private residence.
2. Whether the evidence supported the commission's suspension of temporary total disability benefits beginning November 23, 1995.

HOLDINGS

1. Loehr remained an employee of Marshall Erdman because he reasonably relied on Urso's apparent authority as a Marshall Erdman supervisor, and the evidence supported the finding that the work at the Williamsburg residence arose out of and occurred in the course of his employment with Marshall Erdman.
2. The commission properly found that Loehr was not entitled to temporary total disability benefits after November 23, 1995 because the evidence did not establish continuing disability for that period.

KEY QUOTATIONS

“An act is within the apparent scope of an agent's authority if, in view of the character of his actual and known duties, an ordinarily prudent person, having a reasonable knowledge of the usages of the business in which the agent is engaged, would be justified in believing that he is authorized to perform the act in question.” (149)

“There is no presumption in the law that once a disability has been established, a claimant will be assumed to remain disabled for an indefinite period of time.” (150)

FACTUAL BACKGROUND

Loehr was hired by Marshall Erdman supervisor Gregory Urso to work as a carpenter on a medical park project and was paid by Marshall Erdman. Urso sent Loehr to work at Urso's private residence in Williamsburg, where Marshall Erdman tools and materials were used, other Marshall Erdman employees worked, and Loehr was paid through a single Marshall Erdman check. Loehr suffered two injuries at the Williamsburg site and initially believed he was working for Marshall Erdman; Marshall Erdman later discovered that Urso had used company

employees, materials, and labor records for the unauthorized private project. Medical evidence placed Loehr on restricted duty but did not establish the duration of his continuing disability after November 23, 1995.

PROCEDURAL HISTORY

A deputy commissioner found Loehr's two injury claims compensable and held Marshall Erdman liable, awarding disability benefits including benefits beginning November 23, 1995. The full Workers' Compensation Commission affirmed liability but reversed the award of temporary total disability benefits for the period beginning November 23, 1995. The Court of Appeals of Virginia affirmed the commission on both issues.

DISPOSITION

affirmed

CASES CITED

- Ideal Steam Laundry v. Williams, 153 Va. 176, 149 S.E. 479 (1929)
- Equitable Variable Life Ins. v. Wood, 234 Va. 535, 539, 362 S.E.2d 741, 744 (1987)
- Wright v. Shortridge, 194 Va. 346, 353, 73 S.E.2d 360, 364-65 (1952)
- James v. Capitol Steel Constr. Co., 8 Va. App. 512, 515, 382 S.E.2d 487, 488 (1989)
- Crisp v. Brown's Tysons Corner Dodge, Inc., 1 Va. App. 503, 339 S.E.2d 916 (1986)
- Hercules, Inc. v. Carter, 14 Va. App. 886, 419 S.E.2d 438 (1992)

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