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May 15, 2014
JUDGE RICHARD E. HICKEY, III (RETIRED)
OF COUNSEL CAPEHART AND SCATCHARD**

Briggs v. Moye & Moye Enterprises, LLC, App. Div. (per curiam)

Petitioner Isaac Briggs appeals from two orders of the Division of Workers' Compensation, granting summary judgment in favor of respondent Neighborhood Health Services Corporation (NHSC), and denying petitioner's motion for reconsideration. NHSC is a non-profit healthcare organization that operates medical clinics for low-income clients. Since 2006, NHSC had contracted with Moye & Moye Enterprises (MME), a janitorial services company, to provide cleaning services for the NHSC facilities in Elizabeth and Plainfield. While working at a NHSC health fair, Briggs injured his hand and shoulder. At the health fair, Briggs was required to wear a T-shirt advertising the NHSC fair, but he was also required to wear a badge identifying him as an employee of MME. Briggs filed a claim petition and sought temporary medical and disability benefits from NHSC and MME. He later impleaded the Uninsured Employers Fund, when he discovered that MME did not have workers' compensation insurance at the time of the accident. The Workers' Compensation judge rejected defense claims that Briggs was a mere casual employee not entitled to compensation benefits, and found that MME was his employer. While she did not specifically address the issue, it is implicit in her decision that she did not find that NHSC was Briggs's employer. On this appeal, Briggs argues that he was an employee of both Moye and NHSC. The appellate panel disagrees, finding NHSC was not Briggs's employer, nor was NHSC a "general contractor" which was liable to provide workers' compensation coverage to the employees of its "subcontractor," MME.

Hernandez v. Port Logistics, App. Div. (per curiam)

Plaintiff suffered injury to his left eye while "engaged in the course of his work or employment" at a freight warehouse and distribution center operated by defendant Port Logistics. Plaintiff was employed by Staff Management Group and made a claim for

workers' compensation benefits against Staff. Plaintiff appeals from an order granting summary judgment to defendant and dismissing plaintiff's complaint because it was barred by the exclusivity provisions of the Workers' Compensation Act. Staff had entered into a "Service Agreement" with Distribution Solutions, Inc. Plaintiff relies upon the language of the Service Agreement that explicitly said he was an employee of Staff, however, that alone does not determine whether he was a special employee of defendant. Defendant controlled the details of plaintiff's work, including his specific assignments, lunch breaks and overall hours of work. Defendant paid plaintiff's wages through the contract it had with Staff. Lastly, defendant sent plaintiff home whenever it did not have enough work. Thus, defendant was a special employer of plaintiff, despite any contract language to the contrary. As a result, plaintiff's tort claim against defendant was barred by N.J.S.A. 34:15-8, which provides that the employer is not liable to his worker "for any act or omission" during his employment "except for intentional wrong." Defendant's alleged refusal to supply plaintiff with goggles does not constitute an intentional wrong where Defendant did not intentionally remove safety devices or deceive government inspectors about the safety of its warehouse.

***Ascione v. U.S. Airways* ,App. Div. (per curiam)**

Respondent U.S. Airways appeals from the order of the Division of Workers' Compensation in favor of petitioner Frank Ascione on the merits of his occupational exposure claim. The Division awarded petitioner seven and one-half percent permanent partial total disability for his pulmonary injury. Petitioner has worked for U.S. Airways at Newark Liberty International Airport as a fleet service agent since 198. Petitioner filed his worker's compensation claim petition in October 2009, alleging occupational injuries, described as "pulmonary lungs," from exposure to "deleterious substances" during his employment with U.S. Airways over the previous twenty-eight years. U.S. Airways argues reversal is warranted because the judge of compensation, in her decision, failed to make critical findings concerning the conflicting testimony of the medical experts in the case. The appellate panel agrees and reverses and remands. Although the judge discussed both experts' testimony and conclusions, which are diametrically opposed, she failed to make credibility findings and failed to fully explain why she rejected the findings and conclusions of one expert, and credited those of another.