

Alaska Workers' Compensation Appeals Commission

Samuel Amos,
Appellant,

vs.

David E. Tidwell, Travis Plambeck, Plambeck
Floor Customs, Inc., Umialik Insurance
Company, and State of Alaska, Workers'
Compensation Benefits Guaranty Fund,
Appellees.

Final Decision

Decision No. 299 January 9, 2023

AWCAC Appeal No. 21-014
AWCB Decision No. 21-0102
AWCB Case No. 201916954

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 21-0102, issued at Fairbanks, Alaska, on November 4, 2021, by northern panel members Robert Vollmer, Chair, and Sarah Lefebvre, Member for Industry.

Appearances: Keenan Powell, Attorney at Law, for appellant, Samuel Amos; David E. Tidwell, self-represented appellee; Treg R. Taylor, Attorney General, and Noah I. Star, Assistant Attorney General, for appellee, State of Alaska, Workers' Compensation Benefits Guaranty Fund. Travis Plambeck, Plambeck Floor Customs, Inc., and Umialik Insurance Company, appellees, were dismissed as parties to this appeal.

Commission proceedings: Appeal filed November 19, 2021; briefing completed June 23, 2022; oral argument held September 29, 2022.

Commissioners: Michael J. Notar, Amy M. Steele, Deirdre D. Ford, Chair.

By: Deirdre D. Ford, Chair.

1. Introduction.

Samuel Amos was injured while helping David E. Tidwell build a shed at the home of Travis Plambeck, owner of Plambeck Floor Customs, Inc. (PFCI). The Alaska Workers' Compensation Board (Board) found that neither PFCI, Mr. Plambeck, nor Mr. Tidwell were

his employer for the work on the shed.¹ Mr. Amos appeals only from the finding that Mr. Tidwell was not his employer for the work on the shed. The Workers' Compensation Benefits Guaranty Fund (Fund) is part of the appeal because if Mr. Tidwell were found to be the employer of Mr. Amos, the Fund would pay any benefits owed because Mr. Tidwell did not carry workers' compensation insurance. The Fund did not file a brief and did not make any argument at oral argument on September 29, 2022. The Commission affirms the decision of the Board.

*2. Factual background and proceedings.*²

On October 21, 2019, Mr. Amos was injured when he fell from the roof of a structure being constructed at Mr. Plambeck's personal residence in North Pole, Alaska. He sustained injuries to his bilateral wrists and one elbow.³ The structure that was being constructed was a 30' x 36' and 16' tall shop that has two garage doors and two lean-to car ports.⁴

On November 25, 2019, Mr. Amos claimed workers' compensation benefits arising from his October 21, 2019, injuries. He named Mr. Tidwell and Mr. Plambeck as his "Employer at the Time of Injury," and stated:

Samuel Amos was hired by Travis Plambeck and David Tidwell as part of a crew to construct a shop on Mr. Tidwell's premises. On the third or fourth day of work, Samuel Amos fell through the roof while working, fractured both wrists and one elbow and may have sustained a TBI.

His reason for filing a claim was "Employer claims he is uninsured," and he included the Fund as a defendant.⁵

¹ There have been two Board decisions issued in this matter. *Amos v. Tidwell, et al.*, Alaska Workers' Comp. Bd. Dec. No. 21-0041 (May 10, 2021) (*Amos I*), and *Amos v. Tidwell, et al.*, Alaska Workers' Comp. Bd. Dec. No. 21-0102 (Nov. 4, 2021) (*Amos II*). *Amos II* is the decision being appealed.

² We make no factual findings. We state the facts as found by the Board, adding context by citation to the record with respect to matters that do not appear to be in dispute.

³ R. 1.

⁴ Hr'g Tr. at 63:6-17, Sept. 2, 2021.

⁵ R. 21.

Mr. Plambeck is an owner of PFCI and a part-owner of the personal property on which Mr. Amos was injured. Mr. Tidwell was employed by PFCI on a project-by-project basis. Mr. Plambeck said Mr. Tidwell was a flooring installer for PFCI and had no duties outside the installation of flooring for PFCI. Mr. Plambeck and his wife hired Mr. Tidwell to construct the outbuilding on their Peede Road property in North Pole. Mr. Tidwell was paid \$3,000.00 for his work on Mr. Plambeck's property, which was paid from Mr. Plambeck's personal bank account.⁶ The interior of the structure was intended for wood working, metal working, automotive restoration and maintenance, and storage of personal outdoor power equipment. The building has two carports attached to accommodate a motorhome and a boat during the winter months. None of the equipment intended to be stored there had ever been used in PFCI's business.⁷ Mr. Plambeck did not personally know Mr. Amos and did not hire him. He was unaware of Mr. Amos until he was notified there had been an incident while building the structure on his property.⁸

Mr. Tidwell testified his current occupation is carpenter.⁹ He and his wife formerly operated a remodeling business for four years,¹⁰ which closed around 2016.¹¹ Mr. Tidwell started working for PFCI in late 2018 or 2019 and continued to work for it for another "couple of jobs" after Mr. Amos was injured.¹² He installed flooring for PFCI and was paid "piecemeal."¹³ Mr. Tidwell was familiar with Mr. Plambeck's property at 2150 Peede Road and he became involved with working on the shop project because Mr. Plambeck's contractor "fell through" so Mr. Plambeck asked him to help with it.¹⁴ Mr. Tidwell told

⁶ R. 171-173, 298-316.

⁷ R. 171-173.

⁸ R. 298-302.

⁹ David E. Tidwell Dep., July 12, 2021, at 6:11-12.

¹⁰ *Id.* at 6:17-23.

¹¹ *Id.* at 6:20-21.

¹² *Id.* at 7:10 – 8:2.

¹³ *Id.* at 8:7 – 9:15.

¹⁴ *Id.* at 13:20-24, 15:2-8.

Mr. Plambeck, "Sure, I'll come help you." Mr. Plambeck offered him \$6,000.00 cash for his help in return.¹⁵ He and Mr. Plambeck went to the same high school and he had known Mr. Plambeck a long time, so he told Mr. Plambeck he would help him. Mr. Tidwell had previously helped Mr. Plambeck with his house, the trim in his bathroom, and a problem with the taillights on his van,¹⁶ but was never paid for that work.¹⁷ "Anything I could do to help him," he stated. He asked, "If a friend asked you for help, what would you do?"¹⁸

Mr. Tidwell described his relationship with Mr. Amos:

Met him through a friend. He could never keep a job, always getting fired, never on time, always needed help. Numerous times, I've helped him out with side work because he had no money. I know his wife, I gave him my dog, come over to the house all the time. We have several mutual friends. Once again, small town.¹⁹

He had known Mr. Amos for about seven years. Mr. Tidwell would help Mr. Amos by having him sweep and clean floors and stack boxes. He paid Mr. Amos out of pocket including money for gas and food.²⁰

Mr. Tidwell explained Mr. Amos had shown up unannounced at his house and "vaguely explained that he had been dealing with some hardships . . . and was completely desperate for work." Mr. Amos "begged" Mrs. Tidwell to let Mr. Tidwell know he "was at rock bottom and in need of companionship, food, and money to pay piling up bills." Before he left, Mr. Amos "reiterated that if there was 'ANYTHING' he could possibly do for 'ANY TYPE' of compensation that it would be 'a life saver.'"²¹

15 Tidwell Dep. at 15:2-5, 20-24.

16 *Id.* at 15:25 – 17:3.

17 *Id.*

18 *Id.* at 17:3-5.

19 *Id.* at 20:2-8.

20 *Id.* at 20:9 – 21:14.

21 R. 176-177.

About two weeks after working on the shop project, Mr. Tidwell returned to his “more customary duties” at PFCI.²² He never finished working on the shop project and Mr. Plambeck paid him \$3,000.00.²³ Mr. Tidwell asked Mr. Amos to help with the shop project: “I said, hey, my buddy Travis needs help, are you still broke, do you still want to make some side money? He said yes.”²⁴ Mr. Tidwell stated he told Mr. Amos he would give him a portion of what he received.²⁵ He said to Mr. Amos, “. . . hey, we’re going to frame a garage, if you want money, you can come help.”²⁶ Mr. Tidwell also said he only did work like this for friends.²⁷

Mr. Tidwell met Glenn Bressette through a friend of his who worked with Mr. Bressette at Eielson Air Force Base.²⁸ Mr. Bressette came to help him on the shop project because Mr. Bressette “was my friend.”²⁹ Regarding the text message describing the project as a “buddy deal,” he explained he was friends with both Mr. Amos and Mr. Plambeck, so Mr. Amos came to help him help Mr. Plambeck.³⁰ Mr. Tidwell’s work has also included doing side-jobs for people who called him, like Mr. Plambeck called him.³¹ A couple of the projects were done as favors for homeowners after they asked.³² He would be paid in cash for these side-jobs.³³ Mr. Tidwell stopped working for PFCI a

²² Tidwell Dep. at 56:18-24.

²³ *Id.* at 56:25 – 58:20.

²⁴ *Id.* at 62:5-12.

²⁵ *Id.* at 62:13 – 63:6.

²⁶ *Id.* at 63:20-22.

²⁷ *Id.* at 81:15-25.

²⁸ *Id.* at 29:2-6.

²⁹ *Id.* at 29:16-19.

³⁰ *Id.* at 31:2-19.

³¹ *Id.* at 38:22 – 39:9.

³² *Id.* at 39:10-21.

³³ *Id.* at 39:22-24.

short time before beginning work for Merriman Construction on March 31, 2020.³⁴ He described in detail the \$6,000.00 cash payment Mr. Plambeck offered him which was to cover his time and anyone else he had to help him. The money discussed was because they were friends.³⁵ Mr. Tidwell also described getting help from Mr. Amos because he knew he would need help.³⁶

Glenn Bressette stated he was acquainted with Mr. Tidwell and was present at the Peede Road property on the date of Mr. Amos's injury. He was there to assist Mr. Tidwell as a volunteer in constructing a personal storage building for Mr. Plambeck. He continued:

It was my understanding that while Mr. Plambeck owned a flooring company, the job for which he hired Mr. Tidwell was completely personal in nature and in no way related to his business, Plambeck Floor Customs. It was further my understanding that an acquaintance of Mr. Tidwell, Sam Amos, had fallen on hard times and that Mr. Tidwell took the project on in part to provide some help to Mr. Amos as he was having financial issues.³⁷

After Mr. Amos fell, Mr. Bressette helped Mr. Tidwell on the shop build along with another guy called "Slim."³⁸ Mr. Plambeck did not expect Mr. Tidwell to work on the shop alone. He thought Mr. Tidwell would have help. Mr. Plambeck left the help up to Mr. Tidwell. He was aware Mr. Tidwell did more than flooring and had other side-jobs.³⁹ Mr. Tidwell never completed construction on the shop, so Mr. Plambeck hired someone else to finish it.⁴⁰

At hearing, Mr. Bressette testified his occupation is an Alternate Station Manager at Eielson Air Force Base, which involves supervising people loading and unloading

³⁴ Tidwell Dep. at 42:4-15.

³⁵ *Id.* at 51:8 – 54:10.

³⁶ *Id.* at 54:11 – 55:22.

³⁷ R. 190-192.

³⁸ Hr'g Tr. at 88:23 – 89:7.

³⁹ *Id.* at 92:16 – 93:4.

⁴⁰ *Id.* at 107:12-15.

military aircraft.⁴¹ His nickname is "Biscuit."⁴² He has been to the Plambecks' residence on Peede Road "a handful" of times while he was helping Mr. Tidwell construct the shop.⁴³ Mr. Bressette saw no flooring materials at the house or in the storage shed.⁴⁴ He has been in Alaska two years and met Mr. Tidwell, who has been like a brother to him, through a mutual friend. Mr. Bressette has a lot of "downtime" from his regular job and wanted to learn a trade.⁴⁵ He did not get paid for helping Mr. Tidwell on the shop, but rather was just learning from Mr. Tidwell.⁴⁶ He saw no commercial purpose for the shop and never discussed the purpose of the shop with Mr. Plambeck.⁴⁷

Mr. Amos filed copies of text messages sent between him and Mr. Tidwell on October 16, 2019, October 18, 2019, October 19, 2019, and October 21, 2019. In those messages, Mr. Tidwell asked Mr. Amos, "When do you wanna [sic] start framing this shop[?]" The messages also contain references to Mr. Tidwell dropping off a tool bag, Mr. Tidwell asking Mr. Amos "Are you coming to north pole[?]," Mr. Tidwell instructing Mr. Amos, "Do not set or move anything besides getting the truck set up and ready," Mr. Tidwell admonishing Mr. Amos, "Don't be late," Mr. Amos replying, "Going to be a little," Mr. Tidwell asking Mr. Amos, "Where's my . . . air compressor[?]," Mr. Tidwell telling Mr. Amos he was going to run home and get his air compressor because he needed to get work done, and a discussion of starting "a little earlier tomorrow."⁴⁸

Regarding the construction project on which Mr. Amos was injured, Mr. Tidwell wrote that Mr. Plambeck asked for his help in erecting a shed at Mr. Plambeck's home because he had some experience in construction. Since Mr. Tidwell did not have any

⁴¹ Hr'g Tr. at 144:22 – 145:4.

⁴² *Id.* at 144:17.

⁴³ *Id.* at 145:5-18.

⁴⁴ *Id.* at 146:9-13.

⁴⁵ *Id.* at 146:14-24.

⁴⁶ *Id.* at 147:14-18.

⁴⁷ *Id.* at 153:16-19, 155:1-6.

⁴⁸ R. 57-67.

scheduled work for PFCI, he agreed to do it and eventually was paid \$3,000.00. Mr. Tidwell saw the project as a friend helping a friend. He stated Mr. Bressette and Mrs. Tidwell were willing to testify to his generous nature and his previous help to Mr. Amos, including food, cash, and marijuana.⁴⁹

Mr. Tidwell explained he paid Mr. Amos, "But that it was all I could do at that particular time to help him."⁵⁰ Mr. Amos had also worked at Mr. Tidwell's house, in his yard and went to work "underneath" him at Wilson & Wilson Construction.⁵¹ When Mr. Plambeck told him he was going to need more help on the shop project, he brought Mr. Amos over.⁵²

On July 27, 2021, Mr. Amos testified about his background and work history. His work history included cooking and cleaning in restaurants,⁵³ performing maintenance on fleet vehicles,⁵⁴ changing tires,⁵⁵ doing basic oil changes,⁵⁶ performing structural and big tank welding,⁵⁷ working as a welder's helper,⁵⁸ welding plastic tanks,⁵⁹ building log cabins,⁶⁰ welding at a mine,⁶¹ and performing residential construction.⁶² In 2019, he worked for Wilson & Wilson Construction and Greer Tank and Welding.⁶³ Mr. Tidwell

⁴⁹ R. 176-189.

⁵⁰ Tidwell Dep. at 21:15 – 22:1.

⁵¹ *Id.* at 22:2-8.

⁵² *Id.* at 22:17-20.

⁵³ Samuel Amos Dep., July 27, 2021, at 31:1-13.

⁵⁴ *Id.* at 43:12-24.

⁵⁵ *Id.* at 53:15-25.

⁵⁶ *Id.* at 54:20-24.

⁵⁷ *Id.* at 44:17-23.

⁵⁸ *Id.* at 50:1-3.

⁵⁹ *Id.* at 61:20 – 64:8.

⁶⁰ *Id.* at 64:9 – 67:19.

⁶¹ *Id.* at 68:8 – 69:15.

⁶² *Id.* at 73:17-23.

⁶³ *Id.* at 20:10-19.

getting him hired at jobs was a “[p]retty normal thing.”⁶⁴ Mr. Amos’s and Mr. Tidwell’s relationship was “built off of work” and Mr. Tidwell getting him jobs. Mr. Tidwell got him hired at Wilson & Wilson.⁶⁵ He first met Mr. Tidwell two or three weeks before beginning work at Wilson & Wilson.⁶⁶ Mr. Tidwell did not pay Mr. Amos directly for his work at Wilson & Wilson.⁶⁷ Mr. Tidwell did pay him directly for a flooring job he and Mr. Tidwell did at Darryl Bourne’s mother-in-law’s house.⁶⁸ He assumed Mr. Tidwell was authorized to hire him for that job and they completed that job. Mr. Tidwell gave Mr. Amos some cash a week later.⁶⁹ He currently works at an auto parts store.⁷⁰

Regarding the shed project, Mr. Amos said Mr. Tidwell “came over to my house. He said, ‘Hey. My boss needs to get this shop built. Do you want to help me build it?’ And I said, ‘Okay.’”⁷¹ Mr. Tidwell said he would pay Mr. Amos “like 2,500 bucks at the end of the job.”⁷² He has never met Travis or Tabitha Plambeck.⁷³ He was never paid for helping at Mr. Plambeck’s shop job.⁷⁴ He also described his fall from the roof while unhooking a load of trusses.⁷⁵ Prior to the injury, he had worked under the table on and off.⁷⁶ “Under the table” means a job where he is paid in cash, not with a check.⁷⁷

⁶⁴ Amos Dep. at 25:7 – 26:2.

⁶⁵ *Id.*

⁶⁶ *Id.* at 57:11-21.

⁶⁷ *Id.* at 58:6-25.

⁶⁸ *Id.*

⁶⁹ *Id.* at 58:6-25, 169:18 – 170:14.

⁷⁰ *Id.* at 77:15-25.

⁷¹ *Id.* at 92:5-12.

⁷² *Id.* at 93:24 – 94:2.

⁷³ *Id.* at 96:5-10.

⁷⁴ *Id.* at 98:16-18, 153:15-24.

⁷⁵ *Id.* at 101:7-23.

⁷⁶ *Id.* at 121:8-24

⁷⁷ *Id.*

Mr. Tidwell was an in-house installer for PFCI. Mr. Tidwell was on the company payroll and was not a licensed subcontractor. Mr. Tidwell was paid "piecework." Piecework involves being paid by the square foot and the amount of pay depends on the type of material being installed.⁷⁸ The three pieceworkers with the company have been there for different amounts of time and there is a "pecking order." Job assignments depend on seniority, the skill set of the pieceworker, and the type of material being laid.⁷⁹ Mr. and Mrs. Plambeck are the only people who hire employees for PFCI. There is no foreman position. Pieceworkers cannot hire anyone to help them. The issue of helpers has come up in the past and this has always been PFCI's policy.⁸⁰ Mr. Tidwell was never authorized to hire employees for PFCI.⁸¹

Mr. Plambeck described his personal residence, which is a three-to-four-bedroom house on five acres, or about 3,000 square feet. His residential property also includes a shed, a Conex, and now a shop. Mr. Plambeck uses the shop to pursue hobbies, which include working on an old Chevy pickup truck, a river boat, and welding and woodworking in the winter. They also have some chickens, a greenhouse, and garden in the summer. No PFCI business is conducted at his home. No equipment or flooring material is kept there.⁸²

Mr. Plambeck also described the shop project on which Mr. Amos was injured. The shop is 30' x 36' and 16' tall. It has two garage doors, one 10' x 14' and the other 8' x 8'. There are two lean-tos on the shop for his boat and recreational vehicle. The intended purpose of the shop was to provide Mr. Plambeck with heated space where he could pursue his hobbies. The shop was never intended to be used for the flooring business.⁸³

⁷⁸ Hr'g Tr. at 43:19 – 44:13.

⁷⁹ *Id.* at 46:15 – 47:23.

⁸⁰ *Id.* at 47:24 – 49:1.

⁸¹ *Id.* at 62:10-12.

⁸² *Id.* at 51:1 – 52:17.

⁸³ *Id.* at 63:6 – 64:4.

He designed the shop and made a sketch of it.⁸⁴ Mr. Tidwell used the sketch to make a “takeoff” list of materials needed to build the shop.⁸⁵ The original plan was to have a framer, named Andrew, build the shop, but Andrew got a big job in Southeast Alaska so he could not build it. Mr. Tidwell became involved with the project through “shop talk” at work. Mr. Plambeck asked Mr. Tidwell to build the shop and Mr. Tidwell said yes.⁸⁶ Andrew was going to charge \$6,000.00 to build the shop. Mr. Plambeck did not pay Mr. Tidwell \$6,000.00 for his work on the shop because they “got busy.” He instead paid Mr. Tidwell \$3,000.00.⁸⁷ Mr. Plambeck did not remove Mr. Tidwell from the PFCI work schedule to build the shop. Rather, Mr. Tidwell was not on the PFCI work schedule because there was no work. Mr. Tidwell had only been with PFCI for six months, while the other pieceworker had been with PFCI for two to three years, so the other pieceworker had seniority.⁸⁸ Mr. Plambeck estimated it cost him \$60,000.00 to \$70,000.00 to build the shop and he took out a home equity loan to build it.⁸⁹ Mr. Plambeck did not make any openings in Mr. Tidwell’s work schedule at PFCI. Mr. Tidwell’s availability was the result of a wintertime slowdown in work. Mr. Tidwell could have made more money installing flooring than helping him build the shop. Mr. Tidwell was just there to help him out as a “buddy deal.”⁹⁰

Mr. Plambeck did not know who Mr. Amos was until he fell off his roof. Mr. Amos never worked for PFCI, but he later learned Mr. Amos had been on a PFCI jobsite. PFCI

⁸⁴ Hr’g Tr. at 64:5-10.

⁸⁵ *Id.* at 64:25 – 65:11.

⁸⁶ *Id.* at 65:17 – 66:24.

⁸⁷ *Id.* at 67:12 – 68:6, 112:13 – 113:10.

⁸⁸ *Id.* at 68:13 – 69:3.

⁸⁹ *Id.* at 69:25 – 70:9.

⁹⁰ *Id.* at 83:5 – 84:2.

never hired Mr. Amos. Mr. Amos never applied for a job at PFCI.⁹¹ Mr. Amos called him about one month after his fall and wanted compensation.⁹²

The Board found that based on Mr. Plambeck's affect while testifying, and because his testimony was consistent with independently established facts and other witnesses' testimony, he was credible. AS 23.30.122.⁹³

Mrs. Plambeck stated she did not know Mr. Amos and he never worked for PFCI. She would have known if he had worked for PFCI, and she went back and checked old records.⁹⁴ She spoke to Mr. Amos one time on the telephone.⁹⁵ PFCI had installed flooring at their personal residence and she paid the company as a customer.⁹⁶ The \$3,000.00 payment to Mr. Tidwell came from her personal bank account.⁹⁷

The Board found that based on Mrs. Plambeck's affect while testifying, and because her testimony was consistent with independently established facts and other witnesses' testimony, she was credible. AS 23.30.122.⁹⁸

At hearing, Mr. Tidwell testified he never thought he had authority to hire employees for PFCI and he never told Mr. Amos he had authority to hire employees for PFCI. He never told Mr. Amos he was a foreman with PFCI.⁹⁹ Mr. Plambeck did not ask him, as his boss at PFCI, to build the shop. Mr. Tidwell did not think he would be fired from PFCI had he refused to help build the shop. He did not expect to be covered by workers' compensation insurance while building the shop.¹⁰⁰ He and Mr. Amos did not

⁹¹ Hr'g Tr. at 72:11 – 73:10.

⁹² *Id.* at 73:21 – 74:5.

⁹³ *Amos II* at 25, No. 49.

⁹⁴ Hr'g Tr. at 126:15 – 127:1.

⁹⁵ *Id.* at 127:6-20.

⁹⁶ *Id.* at 127:21 – 128:3.

⁹⁷ *Id.* at 128:8-11.

⁹⁸ *Amos II* at 25, No. 51.

⁹⁹ Hr'g Tr. at 162:19 – 163:2.

¹⁰⁰ *Id.* at 163:18 – 164:10.

have a contract. Mr. Amos was “nothing but help” on the shop construction. Mr. Tidwell described the shop construction project as “a friend helping a friend,” and “a buddy deal.”¹⁰¹

At hearing, Mr. Amos testified he has lived in the Fairbanks – North Pole area for thirty years.¹⁰² Mr. Tidwell hired him to work on the shop’s construction. He believed he was working for either Mr. Plambeck or PFCI. Mr. Amos thought he was working for Mr. Plambeck because Mr. Tidwell asked him if he wanted to work for his boss.¹⁰³ In October 2019, he was in between jobs and looking for part-time work. Mr. Tidwell said he would pay him a lump sum for helping construct the shop after the job was done; then, Mr. Tidwell said he would pay him hourly. Mr. Amos has never been paid for his work on the shop by anyone.¹⁰⁴ He assumed Mr. Tidwell was a foreman while constructing the shop. Mr. Tidwell primarily supervised him while building the shop. Mr. Tidwell instructed Mr. Amos on when he should show up to work. He saw Mr. Plambeck one time when there was a discrepancy concerning the size of a door.¹⁰⁵ Mr. Amos refused to answer if he has worked many jobs for short time periods where he was paid “under the table.” He stated he has worked under the table in the past. Mr. Amos never had any conversations with PFCI about working for them. He never applied for a job at PFCI. Mr. Tidwell was his only contact at PFCI.¹⁰⁶

The Board dismissed Mr. Amos’s claims against PFCI and Mr. Plambeck finding that neither was his employer on the personal job at the Plambeck residence. Mr. Amos did not appeal those findings. The Board also found that Mr. Tidwell was not the employer of Mr. Amos, because the construction of the structure/shed was a buddy deal between Mr. Plambeck and Mr. Tidwell. “A preponderance of the evidence shows Tidwell helped

¹⁰¹ Hr’g Tr. at 189:5 – 190:18.

¹⁰² *Id.* at 166:23 – 167:3.

¹⁰³ *Id.* at 167:7 – 168:13.

¹⁰⁴ *Id.* at 170:24 – 172:2.

¹⁰⁵ *Id.* at 174:16 – 175:12.

¹⁰⁶ *Id.* at 183:7 – 185:3.

Plambeck out of friendship rather than 'in connection with a business or industry.'"¹⁰⁷ The Board further noted that friendship is not "a route through which the costs of industrial accidents should be channeled."¹⁰⁸ Mr. Amos appealed only the issue of the denial of his claim against Mr. Tidwell.

3. Standard of review.

The Board's findings of fact shall be upheld by the Commission on review if the Board's findings are supported by substantial evidence in light of the record as a whole.¹⁰⁹ Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.¹¹⁰ "The question of whether the quantum of evidence is substantial enough to support a conclusion in the contemplation of a reasonable mind is a question of law."¹¹¹ The weight given to witnesses' testimony, including medical testimony and reports, is the Board's decision to make and is, thus, conclusive. This is true even if the evidence is conflicting or susceptible to contrary conclusions.¹¹² The Board's conclusions regarding credibility are binding on the Commission since the Board has the sole power to determine credibility of witnesses.¹¹³

On questions of law and procedure, the Commission does not defer to the Board's conclusions, but exercises its independent judgment.¹¹⁴ Abuse of discretion occurs when

¹⁰⁷ *Amos II* at 45 (citation omitted).

¹⁰⁸ *Id.*

¹⁰⁹ AS 23.30.128(b).

¹¹⁰ *See, e.g., Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

¹¹¹ *McGahuey v. Whitestone Logging, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 054 at 6 (Aug. 28, 2007) (citing *Land & Marine Rental Co. v. Rawls*, 686 P.2d 1187, 1188-1189 (Alaska 1984)).

¹¹² AS 23.30.122.

¹¹³ AS 23.30.122; AS 23.30.128(b); *Sosa de Rosario v. Chenega Lodging*, 297 P.3d 139 (Alaska 2013); *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009).

¹¹⁴ AS 23.30.128(b).

a decision is arbitrary, capricious, manifestly unreasonable, or stems from an improper motive.¹¹⁵

4. Discussion.

This appeal arises out of a claim by Mr. Amos for injuries sustained while helping with work on the building of a structure/shed at the home of Mr. Plambeck. Mr. Amos claims that he was an employee of Mr. Tidwell for the work on the structure. The Board, in *Amos II*, found that Mr. Plambeck was not the employer of Mr. Amos. The Board also dismissed PFCI as a party to the claim. The Board then found that Mr. Tidwell was not the employer of Mr. Amos and dismissed his claim. Since the Board found that neither Mr. Plambeck nor Mr. Tidwell were the employer of Mr. Amos, the claim against the Fund was also dismissed.

Mr. Amos timely appealed *Amos II* to the Commission. Mr. Amos did not appeal the Board's finding that Mr. Plambeck was not his employer, nor did he appeal the dismissal of PFCI from the claim. Mr. Amos asserted in his points on appeal that the Board erred in its finding that Mr. Tidwell was not the employer of Mr. Amos, that Mr. Tidwell rebutted the presumption of compensability, that Mr. Tidwell did not hire Mr. Amos in connection with a business or industry, that there is a "buddy deal" exemption to the Act, and that the findings were not supported by substantial evidence in the record. Mr. Amos asserted that Mr. Tidwell was an unlicensed contractor when he agreed to help Mr. Plambeck with the erection of the shed. Mr. Amos appealed the Board's findings only as to Mr. Tidwell.

Mr. Tidwell contended the Board properly found that he was not the employer of Mr. Amos, and that he was operating solely out of friendship in his attempts to help Mr. Amos out of financial and personal difficulties. He further asserted that he was not operating a side business of contractor or handyman when he agreed to help Mr. Plambeck with the construction of the shed. Mr. Tidwell further contended that Mr. Amos had a sufficient remedy for his injury through the personal injury insurance

¹¹⁵ *Sheehan v. Univ. of Alaska*, 700 P.2d 1295 (Alaska 1985) (*Sheehan*).

policy Mr. Plambeck had on his house which would have covered the injuries Mr. Amos sustained in the fall from the roof.

a. Credibility findings are binding.

The weight given to witnesses' testimony, including medical testimony and reports, is the Board's decision to make and is, thus, conclusive. This is true even if the evidence is conflicting or susceptible to contrary conclusions.¹¹⁶ The Board's conclusions regarding credibility are binding on the Commission since the Board has the sole power to determine credibility of witnesses.¹¹⁷ The Board found Mr. Plambeck was credible, and Mr. Plambeck testified Mr. Tidwell was helping him as a friend and that Mr. Amos was working with Mr. Tidwell as a friend.

Mr. Amos asserted the Board erred in finding that Mr. Tidwell helped Mr. Amos because Mr. Amos was a friend. The Board found that both Mr. Amos and Mr. Tidwell supported each other's testimony as to how Mr. Amos came to be present and helped build the Plambeck shed. Mr. Amos discounted the testimony that at various times Mr. Tidwell had helped him, either by finding him work, or by buying him food, paying for gas, and giving him the family dog. The Board found the evidence showed that the portrayals of the friendship between the two were accurate. Moreover, the Board found that Mr. Tidwell's testimony of his relationship with Mr. Amos was also supported by the testimony of PFCI (through Mr. Plambeck) that the relationship between Mr. Tidwell and Mr. Amos was "one based on Mr. Amos consistently asking for help in the form of work, money, food, and drugs."¹¹⁸

Mr. Amos also asserted that the Board erred in finding that Mr. Tidwell would have made more money installing floors than in helping Mr. Plambeck by working on the structure/shop. Mr. Plambeck testified that Mr. Tidwell was available due to a lull in work at PFCI. Mr. Plambeck testified that "Tidwell could have made more money installing

¹¹⁶ AS 23.30.122.

¹¹⁷ AS 23.30.122; AS 23.30.128(b); *Sosa de Rosario v. Chenega Lodging*, 297 P.3d 139 (Alaska 2013); *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009).

¹¹⁸ *Amos II* at 20, No.41.

flooring than helping him build the shop. Tidwell was just there to help him out as a 'buddy deal.'"¹¹⁹ The Board specifically found Mr. Plambeck to be credible in his testimony.¹²⁰ The Board chose to believe Mr. Plambeck over Mr. Amos.

These credibility findings by the Board are binding on the Commission.

b. Was Mr. Tidwell an employer?

The Alaska Workers' Compensation Act (Act) describes an employee as "a person who is not an independent contractor . . . and who, under a contract of hire, express or implied, is employed by an employer."¹²¹ An employer is defined as "a person employing one or more persons in connection with a business or industry. . . ."¹²²

In *Kroll v. Reeser*, the Alaska Supreme Court (Court) stated that in determining employee status, there must first be a determination of whether there is an employer who comes within the "ambit of the Workers' Compensation Act."¹²³ Only if Mr. Tidwell is determined to be an employer, is it possible to determine that Mr. Amos was an employee "engaged in work which was 'a regular part of the employer's regular work.'"¹²⁴

In *Nickels v. Napolilli*, Ms. Nickels rented a cabin on the Napolillis' farm and paid for the rent through work on the farm.¹²⁵ The parties had entered into an express agreement by which Ms. Nickels worked at least eighty hours per month in exchange for use of the cabin as her home.¹²⁶ In finding that Ms. Nickels was an employee, the Court looked to the fact that a business "can pass the cost of workers' compensation insurance on to the consumers of the business's service or product."¹²⁷ The farm was not the

¹¹⁹ *Amos II* at 22-25, No. 48.

¹²⁰ *Id.* at 25, No.49.

¹²¹ AS 23.30.395(19) (Emphasis added).

¹²² AS 23.30.395(20) (Emphasis added).

¹²³ *Kroll v. Reeser*, 655 P.2d 753, 756 (Alaska 1982).

¹²⁴ *Id.* at 757.

¹²⁵ *Nickels v. Napolilli*, 29 P.3d 242 (Alaska 2001)(*Nickels*).

¹²⁶ *Id.* at 252.

¹²⁷ *Id.* at 253.

primary source of income for the Napolillis, but Ms. Nickels' work was a regular part of the regular work on the farm.¹²⁸ The evidence of Ms. Nickels' "regular and continuous work for the Napolillis indicates that she was not part-time help exempt from the workers' compensation laws."¹²⁹

The Court, in *Gaede v. Saunders*, held that homeowners were not employers under the Act.¹³⁰ In so doing, the Court again looked at the difference between consumptive activities and productive activities. Consumptive activities should not bear the cost of workers' compensation insurance, because there is no consumer to whom one could pass the cost.¹³¹

In *Kang v. Mullins*, the Court held that a tenant's business would not have been furthered by the roof repair being undertaken at the time of the injury.¹³² The Court found that Lee's Massage was not "engaged in the construction or real estate business or . . . any other 'profit-making enterprise which ought to bear the costs of injuries' related to the major building repairs to her son's building."¹³³

Mr. Amos contends that the nature of the work or business is no longer to be considered in determining if someone is an employee. He then proceeded to analyze his work on the shed utilizing the criteria for an independent contractor. Since he did not fit the criteria for independent contractor, he must, therefore, be an employee of Mr. Tidwell.

Nonetheless, there still must be some evidence of a business which would benefit from the claimant's labor. In *Adams v. Workers' Compensation Benefits Guaranty Fund*, the Court expressly looked at the nature of Mr. Heath's businesses.¹³⁴ The Court found

¹²⁸ *Nickels*, 29 P.3d 242, 253.

¹²⁹ *Id.*

¹³⁰ *Gaede v. Saunders*, 53 P.3d 1126 (Alaska 2002).

¹³¹ *Id.*

¹³² *Kang v. Mullins*, 420 P.3d 1210, 1217 (Alaska 2018).

¹³³ *Id.* at 1217-1218.

¹³⁴ *Adams v. Workers' Comp. Benefits Guar. Fund*, 467 P.3d 1053 (Alaska 2020)(*Adams*).

Mr. Heath was more than a mere homeowner having consumptive work performed on his house. Rather, Mr. Heath was in the real estate business because he garnered income from renting part of his residence along with income from three other rentals. Moreover, Mr. Heath also had his recording business as demonstrated by the recording studio in his residence. Both businesses provided the basis for finding Mr. Heath conducted business on his property and hired Mr. Adams as an employee at the time of his injury because the work Mr. Adams was doing for him was productive and not consumptive.

The Court, in *Adams*, referred to its language in *Kroll v. Reeser*:

[T]he policy question is whether Kroll's construction activity, either by itself or as an element of his rental activities, was a profit-making enterprise which ought to bear the costs of injuries incurred in the business, or was the construction activity simply a cost-cutting shortcut in what was basically a *consumptive* and not a *productive* rol[e] played by Kroll.¹³⁵

The Board found that Mr. Amos attached the presumption of compensability that Mr. Tidwell was his employer by his own statements that Mr. Tidwell invited him to help build the Plambeck structure and offered to share a portion at the end of the project of what Mr. Plambeck was going to pay him. The Board then held that Mr. Tidwell overcame the presumption with substantial evidence through his own testimony that he did not hire Mr. Amos, but rather offered to help him through sharing any funds he got for work on the structure. He asserted Mr. Amos helped "on his own recognizance."¹³⁶ Mr. Tidwell further contended he did not operate any kind of a side business as a handyman or contractor. The Board's finding is also supported by testimony from PFCI that Mr. Amos was helping Mr. Tidwell based on their friendship.¹³⁷ Having found that Mr. Tidwell rebutted the presumption of compensability, the Board required Mr. Amos to prove his claim by a preponderance of the evidence.

The Board held that the evidence presented was that Mr. Tidwell was not an employer, but rather a friend helping a friend. Mr. Tidwell worked full-time for PFCI

¹³⁵ *Adams*, 467 P.3d 1053, 1061.

¹³⁶ *Amos II* at 42.

¹³⁷ *Id.* at 20, No. 41.

installing floors.¹³⁸ There was a history of Mr. Tidwell providing assistance to Mr. Amos by finding him jobs, paying him out of pocket for help on some jobs, and providing him with food, gas, and other things.

Further, the Board found no contract of employment existed whether implied or express. Mr. Tidwell offered to work on the structure because he considered Mr. Plambeck a friend. When Mr. Amos indicated he was again down on his luck, Mr. Tidwell suggested he help him with the Plambeck shed, and he would give Mr. Amos some portion of the monies Mr. Plambeck said he would pay him. In point of fact, Mr. Plambeck paid Mr. Tidwell only half of what he said he would pay, and Mr. Tidwell did not share any with Mr. Amos. Mr. Amos was working on the shed out of friendship with Mr. Tidwell as did Mr. Bressette. The Board found that both Mr. Amos and Mr. Tidwell portrayed their relationship as one of friendship and the Board agreed that the portrayals were accurate.¹³⁹

The Board relied on the evidence that while Mr. Tidwell found Mr. Amos a job at Wilson & Wilson Construction, this was not in connection with any business Mr. Tidwell might have had. Mr. Amos helped Mr. Tidwell on the "Bourne" job, but Mr. Tidwell paid him out of his pocket. Again, this was not associated with any business Mr. Tidwell might have owned. Finding Mr. Amos these jobs was not connected to any potential business of Mr. Tidwell. Mr. Tidwell also bought Mr. Amos food and marijuana and gave him gas money and the family dog. All these were done through friendship. Offering Mr. Amos the chance to work on the Plambeck structure was in the same nature. Mr. Amos was in need of money and helping Mr. Tidwell might garner him some portion of any money Mr. Plambeck paid Mr. Tidwell.

Mr. Amos contended Mr. Tidwell operated a handyman business. Mr. Tidwell testified that he had not had such a business since 2016, and he worked full-time for PFCI. Any construction activities he did were for friends and not as a business. The Board found Mr. Tidwell's activities were not connected to a business and were

¹³⁸ *Amos II* at 10, No. 29.

¹³⁹ *Id.* at 43.

consumptive in nature. The Board held there was no business operated by Mr. Tidwell, and he was employed full-time by PFCI. He worked prior to PFCI for another flooring company and subsequently for another flooring company. Any activities he did was for friends, and not connected to any business. He was sometimes paid for his activities, but just as frequently these activities were for free.

The Board found no evidence of any regular business as a handyman or construction contractor by Mr. Tidwell. To be an employee entitled to workers' compensation benefits there must be an employer who is in business "coming within the scope of this chapter," i.e., obligated to have workers' compensation insurance. The indicia that Mr. Tidwell owned a business of a productive nature are not present here. There is no indication Mr. Tidwell owned a business which necessitated his purchase of workers' compensation insurance, the cost of which he could pass on to his customers. There were no customers for any of the activities he provided to Mr. Amos. His activities vis a vis Mr. Amos were consumptive rather than productive. The Board's finding is supported by substantial evidence in the record as outlined above.

c. Was Mr. Amos an employee?

The Act defines "employee" to mean "a person who is not an independent contractor as described in AS 23.30.230 and who, under a contract of hire, express or implied, is employed by an employer. . . ."140 An employer is "a person employing one or more persons in connection with a business . . . coming within the scope of this chapter and carried on in this state. . . ."141

Mr. Amos contends that when the Legislature repealed the statutory definition "[a]n 'employee' means an employee employed by an employer as defined in (20) of this section" and the Board repealed its regulation at 8 AAC 45.890, the balancing test previously used to determine employee status was extinguished. Mr. Amos contends that since "regular part of the employer's business" is no longer a valid criterion for determining employee status, this leaves only the criteria for determining "independent

140 AS 23.30.395(19).

141 AS 23.30.395(20).

contractor” status. Mr. Amos further asserts the Board erred in finding a “buddy” exemption to an employer/employee relationship. According to Larson’s, an employee is a “person in the service of another under any contract of hire, express or implied. . . .”¹⁴²

Mr. Amos argues that he was either an independent contractor or an employee of Mr. Tidwell. He then contends he was clearly not an independent contractor, enumerating the criteria in AS 23.30.230(a)(12). Specifically, he had no express contract, could not hire or fire, was not free from the direction of Mr. Tidwell, and did not provide the significant tools for the job. Mr. Amos was not an independent contractor.

However, an employee is not always employed by an employer. Larson’s discusses the kinds of employees who are not employed by an employer at the time of injury. For example, Larson’s would exempt most “casual” employees from coverage under workers’ compensation acts. “Employment is ‘casual’ when it is irregular, unpredictable, sporadic, and brief in nature. Under most statutes, even if casual, it is not exempt unless it is also outside the usual business of the employer.”¹⁴³

This express language is not part of the Act, but it is helpful in looking at the kind of work Mr. Amos did. A reading of his deposition shows a variety of jobs held for varying lengths of time followed by varying lengths of time unemployed. He testified he was waiting for a federal job and so turned down a regular employment offer when Mr. Tidwell suggested he help on the Plambeck shed.¹⁴⁴

The Act, at AS 23.30.230, specifically exempts “harvest help and similar part-time or transient help.”¹⁴⁵ The Board’s regulation defines part-time help as “a person who on an intermittent, irregular, noncontinuous basis performs work which is either not an integral part of the regular business of the beneficiary of the work or which is not the

¹⁴² 6 *Larson’s Workers’ Compensation Law*, § 60-1 (2018).

¹⁴³ *Larson’s*, ch. 73 at 3-1.

¹⁴⁴ Amos Dep. at various pages. The Federal job was another part-time job, that of helping on the census.

¹⁴⁵ AS 23.30.230(a)(3).

regular business, profession, or occupation of the worker. . . ."¹⁴⁶ This definition seems to apply to the work on the shed.

Moreover, the United States has a long history of friends and neighbors helping others from barn-raising to deck construction. This history or custom further supports an implicit exemption in the Act for "buddies." This kind of work falls squarely within the "consumptive activities" the Court has already declared not covered by the Act.

The evidence upon which the Board relied showed that Mr. Amos knew he was helping a friend even if he expected some reimbursement for helping. He had a history with Mr. Tidwell providing him with monies either for work on various projects or just because he needed money. The work he was performing was both transient and part-time. The Board found that Mr. Tidwell did not have a usual business for which Mr. Amos's labor would have been an ordinary part. This finding is supported by substantial evidence in the record.

5. Conclusion.

The Board's decision is AFFIRMED.

Date: 9 January 2023 Alaska Workers' Compensation Appeals Commission



Signed

Michael J. Notar, Appeals Commissioner

Signed

Amy M. Steele, Appeals Commissioner

Signed

Deirdre D. Ford, Chair

APPEAL PROCEDURES

This is a final decision. AS 23.30.128(e). It may be appealed to the Alaska Supreme Court. AS 23.30.129(a). If a party seeks review of this decision by the Alaska Supreme Court, a notice of appeal to the Alaska Supreme Court must be filed no later than 30 days after the date shown in the Commission's notice of distribution (the box below).

¹⁴⁶ 8 AAC 45.900(c)(1).

If you wish to appeal to the Alaska Supreme Court, you should contact the Alaska Appellate Courts *immediately*.

Clerk of the Appellate Courts
303 K Street
Anchorage, AK 99501-2084
Telephone: 907-264-0612

RECONSIDERATION

A party may ask the Commission to reconsider this decision by filing a motion for reconsideration in accordance with AS 23.30.128(f) and 8 AAC 57.230. The motion for reconsideration must be filed with the Commission no later than 30 days after the date shown in the Commission's notice of distribution (the box below). If a request for reconsideration of this final decision is filed on time with the Commission, any proceedings to appeal must be instituted no later than 30 days after the reconsideration decision is distributed to the parties, or no later than 60 days after the date this final decision was distributed in the absence of any action on the reconsideration request, whichever date is earlier. AS 23.30.128(f).

I certify that, with the exception of changes made in formatting for publication, this is a full and correct copy of Final Decision No. 299 issued in the matter of *Samuel Amos v. David E. Tidwell, Travis Plambeck, Plambeck Floor Customs, Inc., Umialik Insurance Company, and State of Alaska, Workers' Compensation Benefits Guaranty Fund*, AWCAC Appeal No. 21-014, and distributed by the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on January 9, 2023.

Date: January 11, 2023



Signed

K. Morrison, Appeals Commission Clerk