

2003

# W. Scott McLaws and Utah Labor Commission v. Hedayat Kazamini, Kazz's Kars, Uninsured Empoyers Fund : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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W. SCOTT MCLAWS,	)	
	)	
Plaintiff/Appellee,	)	
	)	
and	)	Court of Appeals
	)	Case No. 20030607CA
UTAH LABOR COMMISSION;	)	
	)	
Joined Appellee,	)	Labor Commission Case Nos.
vs.	)	01-0340 & 10141646779
	)	
HEDAYAT KAZAMINI dba KAZZ'S	)	
KARS (Uninsured) and/or	)	
UNINSURED EMPLOYERS FUND,	)	Priority No. 14
	)	
Defendants/Appellant/Appellee,	)	

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BRIEF OF APPELLEE  
UTAH LABOR COMMISSION

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## TABLE OF CONTENTS

JURISDICTION .....	1
ISSUES AND STANDARDS FOR REVIEW .....	1
1. Whether Mr. McLaws was at any time an employee of Kazz's Kars	
Preservation of issue for review.....	1
Standard of review .....	1
2. Whether Mr. McLaws was an employee of Kazz's Kars at the time of the accident on January 30, 2001.	
Preservation of issue for review.....	3
Standard of review .....	3
3. Whether Mr. Kazamini was required to obtain workers' compensation insurance	
Preservation of issue for review.....	3
Standard of review .....	3
4. Mr. McLaws was not paid an average of \$752.25 per week for the services provided to Kazz's Kars	
Preservation of issue for review.....	4
Standard of review .....	4
DETERMINATIVE PROVISIONS .....	4
STATEMENT OF THE CASE.....	8
Nature of the Case.....	8
Course of Proceedings .....	8
Statement of Facts.....	10
SUMMARY OF ARGUMENT .....	12
ARGUMENT .....	13
Point One .....	13
Point Two.....	14
Point Three.....	16
Point Four.....	19
Point Five.....	21
CONCLUSION.....	22

## TABLE OF AUTHORITIES

### CASES

<u>AE Clevite, Inc. v. Labor Commission</u> , 996 P.2d 1072 .....	2,15
<u>Anabasis, Inc. v. Labor Commission</u> , 30 P.3d 1236, Utah App. 2001).....	21
<u>Averett v. Grange</u> , 909 P.2d 246 (Utah 1995) .....	17
<u>Bennett v. Industrial Commission</u> , 726 P.2d 427 (Utah 1986).....	16
<u>Burgess v. Siaperas Sand &amp; Gravel</u> , 965 P.2d 583 (Utah 1998) .....	15, 16
<u>Chandler v. Industrial Commission</u> , 184 p. 1020 (Utah 1919).....	14
<u>Grace Drilling Co. v. Board of Review</u> , 776 P.2d 63 (Utah App. 1998).....	13
<u>Hales Sand &amp; Gravel v. Audit Div.</u> , 842 P.2d 877 (Utah 1992).....	2, 4
<u>Heaton v. Second Injury Fund</u> , 796 P.2d 676 (Utah 1990).....	15
<u>Intermountain Health Care v. Industrial Commission</u> , 839 P.2d 841 (Utah App. 1992) .....	13
<u>Maryland Cas. Co. v. Industrial Comm.</u> , 12 Utah 2d 223, 364 P.2d 1020 (Utah 1961) .....	15
<u>McKesson Corp. v. Labor Commission</u> , 41 P.3d 468 (Utah App. 2002) .....	2
<u>Olsen v. Samuel McIntyre Inv. Co.</u> , 956 P.2d 260 (Utah 1998).....	15
<u>Osman Home Improvement v. Industrial Commission</u> , 958 P.2d 240 (Utah 1998).....	2
<u>Park Utah Consol. Mines v. Industrial Commission</u> , 84 Utah 841, 36 P.2d 979 (Utah 1934) .....	15
<u>Walls v. Industrial Commission</u> , 857 P.2d 964 (Utah App. 1993) .....	16
<u>Young v. Industrial Commission</u> , 538 P.2d 318 (Utah 1975) .....	16

## STATUTES

Utah Code Ann. §34-2 .....	1
Utah Code Ann. §34A-2-103 .....	4, 16
Utah Code Ann. §34A-2-104 .....	6
Utah Code Ann. §34A-2-104(1)(b) .....	16
Utah Code Ann. §34A-2-201 .....	6, 21, 22
Utah Code Ann. §34A-2-211 .....	7
Utah Code Ann. §34A-2-211(2) .....	13, 21, 22
Utah Code Ann. §34A-1-301 .....	2, 4
Utah Code Ann. §34A-2-401 .....	7
Utah Code Ann. §34A-2-801(8) .....	1
Utah Code Ann. §63-46b-16(4)(g) .....	2, 4, 13
Utah Code Ann. §63-46b-16(4)(h)(i) .....	2
Utah Code Ann. §78-2a-3(2)(a) .....	1

## **JURISDICTION**

Hedayat Kazamini seeks judicial review of the final order of the Utah Labor Commission Appeals Board awarding workers' compensation benefits to Scott McLaws and holding Mr. Kazamini liable for those benefits. Kazamini also seeks review of the Appeals Board's imposition of a penalty for Kazamini's failure to maintain workers' compensation coverage.

The Utah Court of Appeals has jurisdiction over Kazamini's petition for review pursuant to Section 78-2a-3(2)(a) and Section 34A-2-801(8), Utah Code Annotated.

## **ISSUES AND STANDARDS OF REVIEW**

Kazamini has identified four issues for review by this Court, but misstates the standards of review applicable to those issues. He also fails to verify that each issue was preserved for judicial review. The Commission addresses these points below.

### **ISSUE ONE: "WHETHER MR. MCLAWS WAS AT ANY TIME AN EMPLOYEE OF KAZZ'S KARS."**

**Preservation of issue for review:** Kazamini raised this issue in his initial answer to McLaws' application for hearing (Record at page 59) and in his motion for review of Administrative Law Judge La Jeunesse's decision (R. at 206), thereby preserving the issue for judicial review by this Court.

**Standard of review.** Whether an employment relationship existed between Kazamini and McLaws for purposes of the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated) depends on both the underlying facts of the Kazamini/McLaws relationship and the legal standards defining "employment."

Review of findings of fact: The authority of the Labor Commission's Appeals Board to determine the underlying facts of the Kazamini/McLaws relationship is established by Section 34A-1-301 of the Utah Labor Commission Act, which grants the Commission "full power, jurisdiction, and authority to determine the facts" in any case coming before it.

Section 63-46b-16(4)(g) of the Utah Administrative Procedures Act ("UAPA") requires this Court to uphold the Appeals Board's findings of fact so long as the findings are supported by substantial evidence when viewed in light of the whole record. In judging whether the Appeals Board's findings are supported by substantial evidence, this Court will examine the facts, and all legitimate inferences drawn from those facts, in the light most favorable to the Appeals Board's findings. Hales Sand & Gravel v. Audit Div., 842 P.2d 877, 888 (Utah 1992).

Review of application of law: The authority of the Labor Commission's Appeals Board to apply legal standards defining "employment" to the facts of this case is established by Section 34A-1-301, which grants the Commission "the duty and the full power, jurisdiction, and authority to . . . apply the law" in cases coming before it. In light of this explicit grant of discretion, this court will, pursuant to Section 63-46b-16(4)(h)(i) of UAPA, uphold the Appeals Board's application of the law unless it "exceeds the bounds of reasonableness and rationality." Osman Home Imprvement v. Industrial Commission, 958 P.2d 240, 243 (Utah 1998); McKesson Corp. v. Labor Commission, 41 P.3<sup>rd</sup> 468, 471 (Utah App. 2002), citing AE Clevite, Inc. v. Labor Commission, 996 P.2d 1072.



**ISSUE TWO: “WHETHER MR. MCLAWS WAS AN EMPLOYEE OF KAZZ’S KARS AT THE TIME OF THE ACCIDENT ON JANUARY 30, 2001.”**

**Preservation of issue for review:** Kazamini raised this issue in his initial answer to McLaws’ application for hearing (Record at page 59) and again in his motion for review of Judge La Jeunesse’s decision (R. at 206), thereby preserving the issue for judicial review by this Court.

**Standard of review.** The same standards of review set forth above apply here. In summary, the Appeals Board’s findings of fact will be upheld if they are supported by substantial evidence. The Appeals Board’s application of law will be upheld unless the application is unreasonable and irrational.

**ISSUE THREE: “WHETHER MR. KAZAMINI WAS REQUIRED TO OBTAIN WORKERS’ COMPENSATION INSURANCE.”**

**Preservation of issue for review:** Kazamini argues he was not required to obtain workers’ compensation insurance because he had no employees. Kazamini raised this in proceedings before the Appeals Board (R. at 209), thereby preserving the issue for judicial review by this Court.

**Standard of review.** Kazamini’s only defense to the Appeals Board’s determination that he was required to obtain workers’ compensation coverage for McLaws, his employee, is that McLaws was not his employee. This is the same question addressed as Issue One, above, and the same standards of review apply. Again in summary, the Appeals Board’s findings of fact will be upheld if they are supported by substantial evidence. The Appeals Board’s application of law will be upheld unless the application is unreasonable and irrational.

**ISSUE FOUR: “MR. MCLAWS WAS NOT PAID AN AVERAGE OF \$752.25 PER WEEK FOR THE SERVICES PROVIDED TO KAZZ’S KARS.”**

**Preservation of issue for review:** McLaws sought Appeals Board review of Judge La Jeunesse’s determination that McLaws earned only minimum wage while employed by Kazamini. The Appeals Board set aside Judge La Jeunesse’s determination on this point and concluded instead that that McLaws had earned \$752.25 per week. The Appeals Board then used this higher wage amount to compute McLaws’ disability compensation. (R. at 237; Appendix A, attached) Under these circumstances, the amount of McLaws’ earnings has been preserved for judicial review by this Court.

**Standard of review.** The amount of McLaws’ earnings is a question of fact. As such, Section 34A-1-301 of the Utah Labor Commission Act and Section 63-46b-16(4)(g) of UAPA requires this Court to uphold the Appeals Board’s determination of McLaws’ wages if the determination is supported by substantial evidence in the record. In judging whether the Appeals Board’s findings are supported by substantial evidence, this Court will examine the facts, and all legitimate inferences drawn from those facts, in the light most favorable to the Appeals Board’s findings. Hales Sand & Gravel at 888.

**DETERMINATIVE STATUTES**

**34A-2-103. Employers enumerated and defined - Regularly employed - Statutory employers.**

....

(2) Except as provided in Subsection (4), each person, including each public utility and each independent contractor, who regularly employs one or more workers or operatives in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act. As used in this Subsection (2):

(a) "Independent contractor" means any person engaged in the performance of any work for another who, while so engaged, is:

(i) independent of the employer in all that pertains to the execution of the work;

(ii) not subject to the routine rule or control of the employer;

(iii) engaged only in the performance of a definite job or piece of work; and

(iv) subordinate to the employer only in effecting a result in accordance with the employer's design.

(b) "Regularly" includes all employments in the usual course of the trade, business, profession, or occupation of the employer, whether continuous throughout the year or for only a portion of the year.

....

(7) (a) If any person who is an employer procures any work to be done wholly or in part for the employer by a contractor over whose work the employer retains supervision or control, and this work is a part or process in the trade or business of the employer, the contractor, all persons employed by the contractor, all subcontractors under the contractor, and all persons employed by any of these subcontractors, are considered employees of the original employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.

....

(e) A contractor or subcontractor is not an employee of the employer under Subsection (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains and relies on either:

(i) a valid certification of the contractor's or subcontractor's compliance with Section 34A-2-201; or

(ii) if a partnership, corporation, or sole proprietorship with no employees other than a partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a workers' compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8) stating that:

(A) the partnership, corporation, or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner, corporate officer, or owner personally waives the partner's, corporate officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership's, corporation's, or sole proprietorship's enterprise under a contract of hire for services.

**34A-2-104. "Employee," "worker," and "operative" defined - Mining lessees and sublessees - Corporate officers and directors - Real estate agents and brokers - Prison inmates - Insurance producers - Certain domestic workers.**

(1) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" mean:

....

(b) each person in the service of any employer, as defined in Section 34A-2-103, who employs one or more workers or operatives regularly in the same business, or in or about the same establishment:

(i) under any contract of hire:

(A) express or implied; and

(B) oral or written;

(ii) including aliens and minors, whether legally or illegally working for hire; and

(iii) not including any person whose employment:

(A) is casual; and

(B) not in the usual course of the trade, business, or occupation of the employee's employer.

**34A-2-201. Employers to secure workers' compensation benefits for employees - Methods.**

An employer shall secure the payment of workers' compensation benefits for its employees by:

(1) insuring, and keeping insured, the payment of this compensation with the Workers' Compensation Fund;

(2) insuring, and keeping insured, the payment of this compensation with any stock corporation or mutual association authorized to transact the business of workers' compensation insurance in this state; or

(3) obtaining approval from the division in accordance with Section 34A-2-201.5 to pay direct compensation as a self-insured employer in the amount, in the manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act.

**34A-2-211. Notice of noncompliance to employer - Enforcement power of division - Penalty.**

....

(2) (a) Notwithstanding Subsection (1), the division may impose a penalty against the employer under this Subsection (2):

(i) subject to the notice and other requirements of Title 63, Chapter 46b, Administrative Procedures Act; and

(ii) if the division believes that an employer of one or more employees is conducting business without securing the payment of benefits in one of the three ways provided in Section 34A-2-201.

(b) The penalty imposed under Subsection (2)(a) shall be the greater of:

(i) \$1,000; or

(ii) three times the amount of the premium the employer would have paid for workers' compensation insurance based on the rate filing of the Workers' Compensation Fund, during the period of noncompliance.

(c) For purposes of Subsection (2)(b)(ii), the premium is calculated by applying rates and rate multipliers to the payroll basis under Subsection (2)(d), using the highest rated employee class code applicable to the employer's operations.

(d) The payroll basis for the purpose of calculating the premium penalty shall be 150% of the state's average weekly wage multiplied by the highest number of workers employed by the employer during the period of the employer's noncompliance multiplied by the number of weeks of the employer's noncompliance up to a maximum of 156 weeks.

**34A-2-401. Compensation for industrial accidents to be paid.**

(1) An employee described in Section 34A-2-104 who is injured and the dependents of each such employee who is killed, by accident arising out of and in the course of the

employee's employment, wherever such injury occurred, if the accident was not purposely self-inflicted, shall be paid:

(a) compensation for loss sustained on account of the injury or death;

(b) the amount provided in this chapter for:

(i) medical, nurse, and hospital services;

(ii) medicines; and

(iii) in case of death, the amount of funeral expenses.

(2) The responsibility for compensation and payment of medical, nursing, and hospital services and medicines, and funeral expenses provided under this chapter shall be:

(a) on the employer and the employer's insurance carrier; and

(b) not on the employee.

#### **STATEMENT OF THE CASE**

Nature of the Case: Kazamini seeks review of the Appeals Board's award of workers' compensation benefits to McLaws. Kazamini also seeks review of the Appeals Board assessment of penalty against him for failure to maintain workers' compensation coverage.

Course of Proceedings: On April 2, 2001, McLaws filed an application for hearing with the Commission, seeking workers' compensation benefits for an accidental injury to his left hand. McLaws alleged that he was employed by Kazamini at the time of his accident and that his injury arose out of and in the course of his employment. (R. at 1)

On April 23, 2001, in a separate proceeding, the Commission's Industrial Accidents Division assessed a \$1,000 penalty against Kazamini for failure to maintain workers'

compensation coverage for his employees. (R. at 214) Kazamini appealed the penalty. (R.at 216)

Judge La Jeunesse conducted a single evidentiary hearing on both 1) McLaws' claim for benefits and 2) Kazamini's appeal of the noncompliance penalty. Judge La Jeunesse then issued two separate decisions, addressing each issue respectively. The first decision awarded workers' compensation benefits to McLaws and held Kazamini liable for those benefits. (R. at 84; Appendix B) The second decision affirmed the Industrial Accidents Division's penalty against Kazamini for failure to maintain workers' compensation insurance coverage. (R. at 139; Appendix C)

McLaws sought Commission review of Judge La Jeunesse's decision, on the sole issue of the amount of disability benefits he was entitled to. (R. at 112) Kazamini sought review of both Judge La Jeunesse's decisions. (R. at 129) At Kazamini's requests, these motions for review were referred to the Appeals Board for resolution. (R. at 161)

On June 30, 2003, the Appeals Board issued a single decision that addressed all issues presented by the motions for review. In summary, the Appeals Board agreed with McLaws' contention that he was entitled to additional disability compensation. The Appeals Board rejected Kazamini's argument that he was not an employer and, therefore, not required to maintain workers' compensation coverage. The Appeals Board also rejected Kazamini's argument that McLaws' injury occurred while McLaws was working on a personal project. The Appeals Board therefore held Kazamini liable for McLaws' benefits and affirmed the \$1,000 noncompliance penalty. (R. at 234; Appendix A)

Kazamini then filed a timely petition for appellate judicial review of the Appeals Board's decision. (R. at 243)

Statement of Facts. For 20 years, Kazamini has worked as a shop instructor at Davis Applied Technology College. (Hearing transcript at 120) He also owns "Kazz's Kars," where he purchases wrecked automobiles at auction, arranges for their repair, then resells them. (Transcript at 220)

During July 2000, Kazamini placed the following "help wanted" advertisement in the Salt Lake Tribune: "AUTO/PAINTER FRAME TECH top wages. Full or part time. 916-1621" (R. at 63) McLaws responded to the ad, met with Kazamini and on about August 1, 2000, began repairing cars for Kazamini. (Transcript at page 11) At first, McLaws worked on a part-time basis, but by the end of September, 2000, the work became full-time. (Transcript at 12) As is the common practice in the auto body repair industry, Kazamini paid McLaws on a "piece rate," rather than an hourly wage. (Transcript at 23, 81)

Kazamini maintained all the business licenses and satisfied all other requirements necessary to conduct business as a used car dealer. (Transcript at 113) He paid the rent and the utility bills. (Transcript at 141, 166) He purchased all supplies, parts and materials necessary for McLaws' repair work. (Transcript at 31, 81, 126) In turn, he collected payment, in the name of Kazz's Kars, for McLaws' work. (Transcript at 69, 86)

Because Kazamini had another full-time job during the day, he was not present at Kazz's Kars during normal work hours. (Transcript at 28, 85, 119) He did not require McLaws to conform to any particular work schedule, but did direct the order of McLaws' work. (Transcript at 84) At least on one occasion, involving repair of a Mercedes



automobile, Kazamini exercised authority to increase the amount of a repair bid McLaws had given the car owner. (Transcript at 68, 192) In some instances, customers were dissatisfied with repair work McLaws had done on vehicles purchased from Kazz's Kars. In such cases, Kazamini accepted responsibility for correcting the deficiencies, without in turn seeking recourse to McLaws. (Transcript at 148, 150-152)

Kazamini paid McLaws by check or cash (Transcript at 199), with no taxes withheld. At the end of the 2000 tax year, Kazamini provided neither a W-2 nor a 1099 tax form to McLaws. (Transcript at 209) However, McLaws maintained a record of his earnings from Kazamini which establishes that McLaws earned \$16,549.41 during the 22-week period from August through December, 2000, or \$752.25 per week. (Transcript at 12, 102-106; also R. at 66-69)

During the period of time material to this proceeding, Kazamini did not maintain workers' compensation coverage. (Transcript at 222) Kazamini never inquired whether McLaws carried his own workers' compensation coverage. (Transcript at 88) In fact, McLaws carried no business or workers' compensation insurance. He maintained no business or professional license. He had no place of business of his own, nor did he advertise or otherwise hold himself out as available to do freelance auto body repairs. With the exception of repair work performed on a neighbor's pickup truck, all McLaws' work was performed on vehicles owned by Kazamini or his customers. Although McLaws owned some auto/body tools, he used tools provided by Kazamini. (Transcript at 28, 86, 191)

During most of January, 2001, McLaws worked on his personal project of restoring a neighbor's pickup. (Transcript at 49) This project was outside his work duties for Kazamini, but was performed at the Kazz's Kars premises with Kazamini's consent. (Transcript at 53) By the end of January 2001, McLaws finished his repair of the pickup and returned to his work for Kazamini. Specifically, McLaws began repair of an Isuzu Trooper. (Transcript at 20).

Kazamini purchased the Trooper in question with the intention of selling it to one of his established customers. (Transcript at 174-176) As with most of Mr. Kazamini's stock in trade, the Trooper had been in a wreck and required substantial repair. (Transcript at 178) On January 30, 2001, while McLaws was in the process of repairing the Trooper, he severely cut his left hand on a sharp piece of metal. (Transcript at 12, 72, 73) Some time after the accident, Kazamini sold the Trooper to McLaws. (Transcript at 22, 23, 58; also R. at 83)

### **SUMMARY OF ARGUMENT**

Although Kazamini challenges the Appeals Board's findings of fact, he has failed to marshal the evidence to show that those findings are unsupported by substantial evidence. To the contrary, the evidence presented in this matter, as identified by the Commission in this brief, fully supports the Appeals Board's findings.

In light of the Appeals Board's findings of fact and the long-established principle that the Utah Workers' Compensation Act must be liberally construed in favor of coverage and compensation for injured workers, the Appeals Board reasonably concluded that McLaws was Kazamini's employee at the time of McLaws' workplace injury and that

Kazamini is liable for McLaws' workers' compensation benefits. Likewise, the Appeals Board reasonably concluded that Kazamini is liable for the noncompliance penalty established by Section 34A-2-211(2) of the Act. The Commission therefore respectfully urges this Court to affirm the Appeals Board's decision.

### **ARGUMENT**

#### **POINT ONE: KAZAMINI HAS FAILED TO MARSHAL THE EVIDENCE TO DEMONSTRATE THAT THE APPEALS BOARD'S FINDINGS OF FACT ARE UNSUPPORTED BY THE RECORD.**

Kazamini's failure to marshal the evidence. Because Kazamini challenges the Appeals Board's findings of fact regarding the nature of the relationship between Kazamini and McLaws, the burden falls to Kazamini to show that the Appeals Board's findings of fact are "not supported by substantial evidence when viewed in light of the whole record before the court." Section 63-46b-16(4)(g), Utah Administrative Procedures Act; Grace Drilling Co. v. Board of Review; 776 P. 2d 63, 67-68 (Utah App. 1998). To meet this burden, Kazamini must "marshal all of the evidence supporting the findings and show that despite the supporting facts, and in light of the conflicting or contradictory evidence, the findings are not supported by substantial evidence. Grace Drilling at 68.

Kazamini's brief selectively presents only that evidence which supports his view of the facts. He ignores all contrary evidence. In particular, he ignores McLaws' testimony and the documentary evidence that the Appeals Board found persuasive. Because Kazamini has failed to meet his burden of marshalling the evidence, this Court should reject his challenge to the Appeals Board's findings of fact. Intermountain Health Care v. Industrial Commission, 839 P. 2d 841, 844 (Utah App. 1992).

Substantial evidence supports the Appeals Board's findings. Even though it is not the Commission's burden to marshal the evidence in support of the Appeals Board's findings, the Commission nevertheless submits that each of the Appeals Board's material findings is supported by substantial evidence.

The Commission directs this Court's attention to the "statement of facts" which begins at page 10 of this brief. There, the Commission has identified the evidentiary basis for each material fact on which the Appeals Board based its decision. The Commission will not repeat that evidence here.

While the testimony of Kazamini and McLaws was substantially different in some regards, it was the duty of the Appeals Board to determine which version was correct. The Appeals Board accepted McLaws' evidence. Because Kazamini failed to demonstrate that the Appeals Board's decision is unsupported by substantial evidence, this Court should affirm the Board's findings.

**POINT TWO: THE WORKERS' COMPENSATION ACT IS  
LIBERALLY CONSTRUED IN FAVOR OF COMPENSATION**

The Utah Workers' Compensation Act must be liberally construed in favor of coverage and compensation. In Chandler v. Industrial Commission, 184 P. 1020, 1021 (Utah 1919), decided only a few years after enactment of the Utah Employers' Liability Act (predecessor to the Utah Workers' Compensation Act), the Utah Supreme Court applied this principle of liberal construction, stating: "Upon the question that the Employers' Liability Act should be liberally construed and so as to effectuate its purposes, all courts agree."

Since then, Utah courts have continued to apply this principle of liberal construction. In Park Utah Consol. Mines v. Industrial Commission, 84 Utah 841, 36 P.2d 979, 981 (Utah 1934), the Utah Supreme Court stated:

If there is any doubt “respecting the right to compensation, such doubt should be resolved in favor of the employee or of his dependents as the case may be.” (Citing Chandler v. Industrial Commission, supra.)

Likewise, in Maryland Cas. Co. v. Industrial Comm., 12 Utah 2d 223, 364 P.2d 1020, 1022 (Utah 1961), the Utah Supreme Court explained the policy reasons behind the principle of liberal construction:

These purposes inhere in (the Act): that injuries suffered in employment should be spread throughout and be borne by industry; and that compensation should be provided to alleviate economic hardship falling on injured workers and their dependents, which in turn has a beneficial effect in stabilizing the economy. . .

To accomplish its salutary purposes, the Act should be liberally construed in favor of coverage of the claimant.

More recently, in Heaton v. Second Injury Fund, 796 P.2d 676, 679 (Utah 1990), the Court stated:

It is the duty of the courts and the commission to construe the Workers’ Compensation Act liberally and in favor of employee coverage when statutory terms reasonably admit of such a construction.

During the last several years, both the Utah Supreme Court and this Court have reaffirmed the continued vitality of the principle of liberal construction: See Olsen v. Samuel McIntyre Inv. Co, 956 P.2d at 260 (Utah 1998); Burgess v. Siaperas Sand & Gravel, 965 P.2d 583, 588 (Utah App. 1998); AE Clevite v. Labor Commission, 996 P.2d 1072, 1074 (Utah 2000).

So, for the last 80 years, Utah's appellate courts have enforced "the common law principle of liberal construction in favor of injured employees that is at the heart of the Act." Burgess, 965 P.2d at 588. The Commission recognizes that this principle of liberal construction does not mean that compensation should be allowed in every claim. Walls v. Industrial Commission, 857 P.2d 964, (Utah App. 1993). However, in a case such as this, where substantial evidence establishes the existence of an employer/employee relationship and also establishes that the employee's injuries were work-related, the principle of liberal construction supports the Appeals Board's decision awarding benefits to McLaws and holding Kazamini liable for those benefits.

**POINT THREE: THROUGHOUT THE DURATION OF THE KAZEMINI/MCLAWS RELATIONSHIP, AND SPECIFICALLY AT THE TIME OF MCLAWS' WORKPLACE INJURY, KAZEMINI WAS MCLAWS' EMPLOYER.**

Kazamini's status as an employer. The central issue in this case is whether Kazamini was McLaws' employer. Section §34A-2-104(1)(b) of the Act defines an "employee" as "each person in the service of any employer, as defined in Section 34A-2-103, . . . under any contract of hire, express or implied, oral or written, . . . ." (Emphasis added.) An individual is "in the service" of an alleged employer when the individual is subject to the employer's control. Bennett v. Industrial Commission, 726 P.2d 427 (Utah 1986).

In Bennett and also in Young v. Industrial Commission, 538 P.2d 318 (Utah 1975), the Court identified some of the factors which indicate the existence of an employment relationship, such as 1) extent and right of supervision; 2) method of payment; 3) provision

of equipment; 4) right to terminate; and 5) whether the individual has other clients. More recently, in Averett v. Grange, 909 P.2d 246, 249 (Utah 1995), the Utah Supreme Court emphasized the importance of the “control” test in determining whether an individual is an employee for purposes of the Workers’ Compensation Act:

In workers’ compensation cases, this court has consistently held that whether an employer-employee relationship exists depends upon the employer’s right to control the employee. . . . “It is not the actual exercise of control that determines whether an employer-employee relationship exists; it is the right to control that is determinative.” (citations omitted; emphasis added.)

The underlying facts of this case establish that Kazamini is the sole owner/operator of “Kazz’s Kars.” (Transcript at 220) It was he who possessed the business license and the business premises. (Transcript at 113, 141, 166) In contrast, there is no evidence that McLaws had a business license, insurance or business premise of his own. McLaws did not advertise or otherwise hold himself out as available to do freelance auto body repairs. With the exception of repairs to a neighbor’s truck, McLaws’ work came entirely from Kazamini. McLaws had no clientele of his own.

Kazamini’s business plan for “Kazz’s Kars” was to buy wrecked vehicles at auction, make necessary repairs, then sell the vehicles to the public at a profit. Under this business plan, the function of repairing collision damage was integral to Kazamini’s operation. It was for that reason that Kazamini advertised to hire an “auto/painter frame tech” at “top wages” for either “full or part time” work. (R. at 63) After going to work for Kazamini, McLaws was not required to provide any supplies, parts or other materials. To the contrary,

Kazamini provided all such items. (Transcript at 31, 81, 126) Clearly, McLaws was not established in his own business, but was entirely dependent upon Kazamini.

Another indication that Kazamini was McLaws' employer is the fact that Kazamini carried all risk of business losses, but likewise had a right to all profits. For example, when customers were dissatisfied with repairs McLaws had performed to vehicles purchased from Kazz's Kars, Kazamini accepted responsibility for correcting the deficiencies, without in turn seeking recourse to McLaws. (Transcript at 148, 150-152) Additionally, Kazamini had the power to direct the order of McLaws' work (Transcript at 84) and to change McLaws' repair bids. (Transcript at 68, 192)

The Appeals Board noted that McLaws was paid a piece rate, rather than an hourly wage, but observed that this compensation method was common throughout the auto body repair industry and did not indicate that McLaws was self-employed. Likewise, the Appeals Board recognized that Kazamini's daytime employment prevented him from directly supervising McLaws' moment-to-moment activities, but did not diminish Kazamini's authority over McLaws.

On balance, the Appeals Board concluded that the evidence established Kazamini had the right to control McLaws in all significant aspects of his work. Because of this right of control, an employer-employee relationship existed between Kazamini and McLaws. The Appeals Board's conclusion is supported by substantial evidence and should be upheld by this Court.

McLaws' status as an employee at the time of his accident. Kazamini contends that, even if McLaws was his employee for some period of time, McLaws was not his employee



at the time of the accident that gives rise to McLaws' workers' compensation claim. According to Kazamini, McLaws was working on his own vehicle when the accident occurred and was not performing any service for Kazamini.

The Appeals Board considered this specific issue, but did not accept Kazamini's version of fact. Instead, the Appeals Board found that McLaws had worked on a personal project (restoring a neighbor's truck) during most of January, 2001. (Transcript at 49) However, that personal project was completed by the end of January 2001, and McLaws then resumed his work for Kazamini. Specifically, McLaws began repair of an Isuzu Trooper. (Transcript at 20). It was in the course of repairing this vehicle for Kazamini that McLaws severely cut his left hand on a sharp piece of metal. (Transcript at 12, 72, 73)

Once again, Kazamini has failed to marshal the evidence so as to demonstrate that the Appeals Board's findings are in error. The Appeals Board's finding that McLaws was Kazamini's employee at the time of McLaws' accident is supported by substantial evidence and should be affirmed.

**POINT FOUR: THE APPEALS BOARD'S FINDINGS REGARDING MCLAWS' WAGES AND HIS DISABILITY COMPENSATION ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.**

Kazamini challenges the Appeals Board's award of disability compensation to McLaws, but only on the grounds that McLaws' actual wages were less than the amount found by the Appeals Board.

The Appeals Board carefully considered the evidence regarding the amount of McLaws' wages. (R. 237; Appendix A), then made the following specific findings:

For the most part, Kazamini paid McLaws in cash, with no taxes of any sort withheld. At the end of the 2000 tax year, Kazamini provided neither a W-2 nor a 1099 tax form to McLaws. In addition to cash payments from Kazamini, McLaws allowed Kazamini to hold approximately \$3,500 to be applied as a credit against the purchase price of a van McLaws hoped to purchase from Kazamini.

Due to Kazamini's lax business practices and failure to maintain any credible information regarding McLaws' earnings, it is necessary to turn to other evidence to establish McLaws' average weekly wage. The Appeals Board concludes that McLaws' record of earnings, set forth in exhibits 3 and 4 of the record, are the most accurate and persuasive representation of McLaws' earnings. From this evidence, it appears that McLaws earned \$16,549.41 during the 22-week period from August through December, 2000, or \$752.25 per week. The Appeals Board finds that the foregoing wage information is fairly representative of McLaws' average weekly wage. Consequently, with credit for a spouse and three dependent children, McLaws' weekly compensation rate for temporary total disability is \$522 per week.

Although Kazamini argues that the Appeals Board has misstated McLaws' earnings, Kazamini makes no effort to marshal the evidence on these factual questions. In fact, Kazamini makes no reference whatsoever to the evidentiary basis for the Appeals Board's findings. (See McLaws' testimony set forth in the hearing transcript at pages 12 and 102-106; also Exhibits 3 and 4 at R. 66 and R. 68). Instead, Kazamini relies entirely on his own ambiguous testimony and inadequate records.

Because Kazamini has failed to discharge his duty to marshal the evidence regarding McLaws' earnings so as to discredit the Appeals Board's findings, the Court should reject Kazamini's argument. But even if the Court overlooks Kazamini's failure to marshal the evidence, the Court should nevertheless affirm the Appeals Board's findings because they are supported by substantial evidence in the record.

**POINT FIVE: THE APPEALS BOARD PROPERLY ASSESSED NONCOMPLIANCE PENALTY AGAINST KAZAMINI FOR HIS FAILURE TO MAINTAIN WORKERS' COMPENSATION COVERAGE.**

The Commission's Industrial Accidents Division assessed a penalty of \$1,000 against Kazamini pursuant to Section 34A-2-211(2) of the Act because Kazamini had failed to obtain workers' compensation coverage as required by Section 34A-2-201 of the Act. Judge La Jeunesse and the Appeals Board both upheld the penalty assessment. Kazamini now contends he was not required to obtain workers' compensation coverage because he did not have any employees.

Section 34A-2-201 of the Act requires every employer to "secure the payment of workers' compensation benefits for its employees" either by purchasing commercial workers' compensation insurance or by obtaining permission from the Commission to self-insure. As this Court recently observed in Anabasis, Inc. v. Labor Commission, 30 P.3<sup>rd</sup> 1236, 1240 (Utah App. 2001):

The requirement to insure and keep insured is mandatory for all employers in Utah. See Industrial Commission v. Daly Mining Co., 51 Utah 602, 172 P. 301, 303-06 (1918). Further, the Insurance Statute "imposes an unconditional obligation on employers to be properly insured." Thomas A. Paulsen Co. v. Industrial Commission, 770 P.2d 125, 128 n. 4 (Utah 1989).

Employers who fail to obtain workers' compensation coverage as required by Section 34A-2-201 are subject to penalty pursuant to Section 34A-2-211(2) of the Act:

(a) . . . the division may impose a penalty against the employer under this Subsection (2):

....

(ii) if the division believes that an employer of one or more employees is conducting business without securing the payment of benefits in one of the three ways provided in Section 34A-2-201.

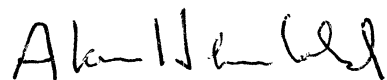
- (b) The penalty imposed under Subsection (2)(a) shall be the greater of:
- (i) \$1,000; or
  - (ii) three times the amount of the premium the employer would have paid for workers' compensation insurance based on the rate filing of the Workers' Compensation Fund, during the period of noncompliance.

Point Three of this brief has already addressed the basis for the Appeals Board's determination that McLaws was employed by Kazamini, thereby triggering Section 34A-2-201's mandatory requirement that Kazamini obtain workers' compensation coverage. It is undisputed that Kazamini did not obtain the required workers' compensation coverage. Consequently, the Appeals Board properly concluded that Kazamini was subject to the noncompliance penalty established by Section 34A-2-211(2).

### CONCLUSION

The Commission respectfully requests this Court to affirm the Appeals Board's determination that Kazamini is liable for McLaws' workers' compensation benefits, in the amount awarded by the Appeals Board, arising out of McLaws' work-related hand injury of January 30, 2001. The Commission also requests this Court to affirm the Appeals Board's assessment of a \$1,000 penalty against Kazamini for his noncompliance with the coverage requirements of the Act.

Dated this \_\_\_\_ day of February, 2004.

  
\_\_\_\_\_  
Alan Hennebold  
Utah Labor Commission

## CERTIFICATE OF MAILING

I hereby certify that on the 10<sup>th</sup> day of February 2004, two true and correct copies of the foregoing Brief of Respondent, Utah Labor Commission, were mailed postage prepaid by US Mail to:

W SCOTT MCLAWS  
5795 SOUTHSIDE DRIVE  
RAPID CITY SD 57703

DAVID J HODGSON  
4516 SOUTH 700 EAST  
SALT LAKE CITY UT 84107

And hand-delivered to:

UNINSURED EMPLOYERS FUND  
160 EAST 300 SOUTH, 3<sup>RD</sup> FLR  
SALT LAKE CITY UT 84111

Allell

# Appendix A

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**APPEALS BOARD  
UTAH LABOR COMMISSION**

**In the matter of:**

**HEDAYAT KAZEMINI dba  
KAZZ'S KARS**

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**ORDER DENYING  
MOTION FOR REVIEW**

**Case No. 10141646779**

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**WALLACE SCOTT MCLAWS,**

**Applicant,**

**v.**

**HEDAYAT KAZEMINI dba KAZZ'S  
KARS (uninsured) and UNINSURED  
EMPLOYERS' FUND,**

**Defendants.**

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**ORDER DENYING KAZEMINI'S  
MOTION FOR REVIEW**

-----  
**ORDER GRANTING MCLAWS'  
MOTION FOR REVIEW**

**Case No. 01-0340**

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The two above-titled proceedings arise from the same facts and present common issues of law. The Appeals Board of the Utah Labor Commission therefore consolidates the two matters for the purpose of addressing the parties' motions for review.

In Case No. 01-0340, Hedayat Kazemini asks the Appeals Board to review the Administrative Law Judge's determination that Wallace Scott McLaws was Mr. Kazemini's employee and, as such, is entitled to benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.). For his part, Mr. McLaws asks the Appeals Board to review his disability compensation amount.

In Case No. 10141646779, Mr. Kazemini asks the Appeals Board to review the ALJ's assessment of penalty against Mr. Kazemini pursuant to §34A-2-211(2) of the Utah Workers' Compensation Act.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §§63-46b-12, 34A-2-211(4)(c) and 34A-2-801(3), and Utah Admin. Code R602-2-1.M.

**ORDER ON MOTIONS FOR REVIEW**  
**In Re KAZEMINI (Case No. 10141646779)**  
**MCLAWS v. KAZEMINI/UEF (Case No. 01-340)**  
**PAGE 2**

**BACKGROUND AND ISSUES PRESENTED**

On January 30, 2001, McLaws accidentally injured his left hand while doing auto body repair work on an Isuzu Trooper at Kazemini's business premises. McLaws claimed workers' compensation benefits from Kazemini, who denied liability on the grounds McLaws was not his employee. McLaws then requested a hearing before the Labor Commission's Adjudication Division.

In the meantime, the Commission's Industrial Accidents Division investigated Kazemini's business and concluded he was an employer subject to the insurance requirements of the Act. Because Kazemini had failed to obtain such insurance, the Division assessed a \$1,000 penalty against him. He challenged the penalty assessment by requesting a hearing before the Adjudication Division.

The two foregoing matters were consolidated for evidentiary hearing before Judge La Jeunesse. Judge La Jeunesse concluded that Kazemini was McLaws' employer and was, therefore, liable under the Workers' Compensation Act to pay McLaws' medical expenses and disability compensation. Furthermore, because Kazemini had failed to procure workers' compensation insurance, Judge La Jeunesse also upheld the penalty assessed against Kazemini.

Kazemini now asks the Appeals Board to review Judge LaJeunesse's determination that he was McLaws' employer. McLaws asks the Appeals Board to review Judge La Jeunesse's determination of the amount of disability compensation to be paid to McLaws.

**FINDINGS OF FACT**

As a preliminary note, the Appeals Board recognizes that McLaws and Kazemini have substantially different versions of the conditions of McLaws' work for Kazemini. Based on the record, including the transcript of the evidentiary hearing, the Appeals Board generally agrees with Judge La Jeunesse's appraisal of the evidence, except on the issue of McLaws' earnings while employed by Kazemini. The Commission therefore affirms Judge La Jeunesse's findings of fact as restated and amended below.

For 20 years, Kazemini has worked as a shop instructor at Davis Applied Technology College. He also owns "Kazz's Kars," which he operates on evenings and weekends. Kazemini's usual practice is to purchase wrecked automobiles at auction, repair them at his used car lot, then resell them.

During July 2000, Kazemini placed a "help wanted" advertisement in the Salt Lake Tribune, as follows: "AUTO/PAINTER FRAME TECH top wages. Full or part time. 916-1621" McLaws responded to the ad, met with Kazemini and, on about August 1, 2000, began repairing cars for Kazemini. At first, McLaws worked on a part-time basis for Kazemini. Later, the work became full-time.



**ORDER ON MOTIONS FOR REVIEW**  
**In Re KAZEMINI (Case No. 10141646779)**  
**MCLAWS v. KAZEMINI/UEF (Case No. 01-340)**  
**PAGE 3**

The testimony establishes that, at least during the period relevant to these proceedings, Kazemini operated Kazz's Kars without any hard and fast rules or procedures. In general, Kazemini acquired wrecked cars from a local automobile auction. These vehicles would be brought to Kazz's Kars, where Kazemini maintained a repair shop. He would consult with McLaws regarding the amount of time it would take McLaws to repair the vehicle. After McLaws and Kazemini reached an agreement, Kazemini would obtain parts, materials and supplies. McLaws would then begin the necessary work.

McLaws had no business or professional license. He had no place of business of his own, nor did he advertise or otherwise hold himself out as available to do freelance auto body repairs. With the exception of work performed on a neighbor's pickup truck, which was done with Kazemini's consent, all McLaws' work was performed on vehicles owned by Kazemini or his customers.

Kazemini maintained the licenses and satisfied the other requirements necessary to conduct business as a used car dealer. He provided the business location for Kazz's Kars and paid the utility bills. He was not personally skilled in auto body repair techniques and relied on McLaws' judgment in that area. However, he purchased all supplies, parts and materials necessary for McLaws' work. Because of his full-time job as a teacher, Kazemini was not present at Kazz's Kars during week days. He did not require McLaws to conform to any particular work schedule, but did direct the order of McLaws' work. At least in one occasion, involving repair of a Mercedes automobile, Kazemini exercised authority to increase the amount of a repaid bid McLaws had given the car owner.

In some instances, customers were dissatisfied with the auto body repair work that had been done on vehicles purchased from Kazz's Kars. In such cases, the cars would be returned for further repair. Kazemini accepted responsibility for these repairs, but did not in turn hold McLaws responsible.

As already noted, McLaws allowed Kazemini to withhold some payments otherwise due so that McLaws would have a credit that could be used to purchase a vehicle from Kazemini. Ultimately, this credit grew to \$3,500. McLaws wanted to purchase a van, but could not afford the purchase price, even with the \$3,500 credit. During most of January, 2001, McLaws worked on a personal project of restoring a neighbor's pickup. This project was outside his work duties for Kazemini, but nevertheless was performed at Kazz's Kars with Kazemini's consent. By the end of January 2001, McLaws had completed this personal job and returned to his work for Kazemini. It was at this time that McLaws began work on the Isuzu Trooper and suffered the injury giving rise to this claim.

Kazemini purchased the Trooper in question with the intention of selling it to one of his established customers. As with most of Mr. Kazemini's stock in trade, the Trooper had been in a

**ORDER ON MOTIONS FOR REVIEW**  
**In Re KAZEMINI (Case No. 10141646779)**  
**MCLAWS v. KAZEMINI/UEF (Case No. 01-340)**  
**PAGE 4**

wreck and required substantial repair. In the process of repair, McLaws severely cut his left hand on a sharp piece of metal. After the accident, Kazemini sold the Trooper to McLaws.

For the most part, Kazemini paid McLaws in cash, with no taxes of any sort withheld. At the end of the 2000 tax year, Kazemini provided neither a W-2 nor a 1099 tax form to McLaws. In addition to cash payments from Kazemini, McLaws allowed Kazemini to hold approximately \$3,500 to be applied as a credit against the purchase price of a van McLaws hoped to purchase from Kazemini.

Due to Kazemini's lax business practices and failure to maintain any credible information regarding McLaws' earnings, it is necessary to turn to other evidence to establish McLaws' average weekly wage. The Appeals Board concludes that McLaws' record of earnings, set forth in exhibits 3 and 4 of the record, are the most accurate and persuasive representation of McLaws' earnings. From this evidence, it appears that McLaws earned \$16,549.41 during the 22-week period from August through December, 2000, or \$752.25 per week. The Appeals Board finds that the foregoing wage information is fairly representative of McLaws' average weekly wage. Consequently, with credit for a spouse and three dependent children, McLaws' weekly compensation rate for temporary total disability is \$522 per week.

**DISCUSSION AND CONCLUSION OF LAW**

The fundamental issue before the Appeals Board is whether McLaws was Kazemini's employee. As relevant to that issue, §34A-2-104(1)(b) of the Utah Workers' Compensation Act defines an employee as:

each person in the service of any employer . . . who employs one or more workers or operatives regularly in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, ... but not including any person whose employment is casual and not in the usual course of trade, business, or occupation of the employee's employer.

It is well established that when an employer has retained the right to control the work of a workers' compensation claimant, the claimant is the employer's employee for workers' compensation purposes. Bennett v. Industrial Commission, 726 P.2d 427, 429-30 (Utah 1986). Among the factors commonly used to determine whether an employer has retained the right of control are: 1) the right to direct the performance of the work; 2) the right to hire and fire; 3) responsibility for payment of wages; and 4) providing necessary equipment. But these factors are not inclusive and no one factor is completely controlling. Johnson Brothers Construction v. Labor Commission, 967 P.2d 1258, 1260 (Utah App. 1998). Ultimately, it is the **right** to control that is determinative. In Averett v. Grange, 909 P.2d 246, 249 (Utah 1995), the Utah Supreme Court stated:

**ORDER ON MOTIONS FOR REVIEW**  
**In Re KAZEMINI (Case No. 10141646779)**  
**MCLAWS v. KAZEMINI/UEF (Case No. 01-340)**  
**PAGE 5**

In workers' compensation cases, this court has consistently held that whether an employer-employee relationship exists depends upon the employer's right to control the employee. . . . "It is not the *actual* exercise of control that determines whether an employer-employee relationship exists; it is the right to control that is determinative." (citations omitted.)

It is difficult to apply the foregoing standards to the facts of this case because of the widely divergent versions of fact presented by the parties, and Kazemini's ad hoc approach to running his business. With regard to the ultimate question of Kazemini's right to control McLaws, the Appeals Board notes that McLaws was an experienced auto body repairman who required little actual direction in the details of his work. However, Kazemini did exercise control by directing the order of McLaws' work, as well as overriding McLaws' repair bids as he saw fit. On balance, the record indicates that Kazemini had the right to control McLaws' work, even though that right was seldom exercised.

Other factors also convince the Appeals Board that McLaws was Kazemini's employee. McLaws was not established in business in his own right. He did not hold himself out as available for work, except through Kazz's Kars. McLaws had no risk of loss and was not required to make good at his own time and expense any defects in his work. Thus, the economic reality of their relationship indicates that McLaws was Kazemini's employee.

As to the events surrounding the accident of January 30, 2001, the Appeals Board agrees with Judge La Jeunesse that the preponderance of evidence establishes that McLaws was working for Kazemini on the Trooper while it was still owned by Kazemini, prior to any agreement to transfer it to McLaws. Only after the accident did the parties agree to exchange the Trooper in settlement of Kazemini's debt to McLaws.

In summary, the Appeals Board concludes that McLaws was Kazemini's employee during the period in question. The Appeals Board further concludes that McLaws injured his hand in a work-related accident at Kazz's Kars on January 30, 2001. Kazemini is therefore liable for benefits due McLaws under the Workers' Compensation Act.

With respect to the penalty imposed against Kazemini pursuant to §34A-2-211(2) of the Act, the Appeals Board has already determined that Kazemini had at least one employee, McLaws, during the period in question. Kazemini has admitted that he did not have workers' compensation insurance during that period. Consequently, the Appeals Board affirms the \$1,000 penalty imposed Kazemini, which is the minimum penalty provided by Act.

Finally, the Appeals Board turns to McLaws' argument that he is entitled to a larger weekly compensation amount than was allowed in Judge La Jeunesse's order. In most cases, where employers have properly recorded employee wages, it is a simple task to determine the amount of

**ORDER ON MOTIONS FOR REVIEW**  
**In Re KAZEMINI (Case No. 10141646779)**  
**MCLAWS v. KAZEMINI/UEF (Case No. 01-340)**  
**PAGE 6**

compensation due an injured worker. However, §34A-2-409 recognizes that such wage information is not always available and, for that reason, authorizes use of other methods to determine an injured worker's disability compensation rate. In this case, the Appeals Board has concluded that McLaws' total earnings, averaged over the period of his active employment by Kazemini, is the best and fairest indicator of McLaws' average weekly wage. On that basis, McLaws is entitled to temporary total disability compensation of \$522 per week.

**ORDER**


The Appeals Board affirms Judge La Jeunesse's decision in Case No. 10141646779.


The Appeals Board also affirms Judge La Jeunesse's decision in Case No. 01-0340, but hereby modifies paragraph one of Judge La Jeunesse's Order, at page 10 of his decision, as follows:

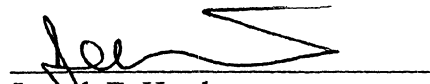
It is ordered that Hedayat Kazemini shall pay Wallace Scott McLaws temporary total disability compensation at the rate of \$522 per week, plus interest at 8% per annum on any installment not paid when due, such payments to commence January 31, 2001, and to continue thereafter until Mr. McLaws reaches medical stability.

All other parts of Judge La Jeunesse's Order remain in effect. It is so ordered.

Dated this 30<sup>th</sup> day of June, 2003.

  
Colleen S. Colton, Chair

  
Patricia S. Drawe

  
Joseph E. Hatch

**NOTICE OF APPEAL RIGHTS**

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals

**ORDER ON MOTIONS FOR REVIEW**  
**In Re KAZEMINI (Case No. 10141646779)**  
**MCLAWS v. KAZEMINI/UEF (Case No. 01-340)**  
**PAGE 7**

by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

**CERTIFICATE OF MAILING**

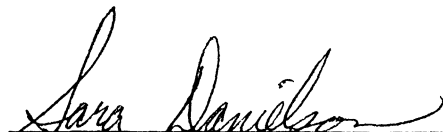
I certify that a copy of the foregoing Order Denying Motion For Review in the matter of Hadayat Kazemini dba Kazz's Kars, Case No. 10141646779, and Denying/Granting Motions For Review in the matter of W. Scott McLaws v. Kazemini, Case No. 01-0340, was mailed first class postage prepaid this 30<sup>th</sup> day of June, 2003, to the following:

HEDAYAT KAZEMINI  
DBA KAZZ'S KARS  
3994 S 300 W #39  
SALT LAKE CITY UT 84107

DAVID HODGSON  
ATTORNEY AT LAW  
954 E 7145 S #B205  
MIDVALE UT 84047

W SCOTT MCLAWS  
5795 SOUTHSIDE DR  
RAPID CITY SD 57703

SHERRIE HAYASHI  
UNINSURED EMPLOYERS FUND  
P O BOX 146600  
SALT LAKE CITY UT 84114-6600



Sara Danielson  
Support Specialist  
Utah Labor Commission

## Appendix B

**UTAH LABOR COMMISSION  
P.O. BOX 146615  
Salt Lake City, Utah 84114-6615**

**Case No. 2001340**

<b>WALLACE SCOTT MCLAWS,</b>	*	<b>FINDINGS OF FACT,</b>
	*	
	*	
<b>Petitioner,</b>	*	<b>CONCLUSIONS OF LAW,</b>
	*	
<b>vs.</b>	*	<b>AND ORDER</b>
	*	
<b>HEDAYAT KAZEMINI dba KAZZ'S</b>	*	
<b>KARS (uninsured) and/or</b>	*	
<b>UNINSURED EMPLOYERS FUND,</b>	*	
	*	<b>Judge: Richard M. La Jeunesse</b>
<b>Respondents,</b>	*	
	*	

\*\*\*\*\*

**HEARING:** Room 334, Labor Commission, 160 East 300 South, Salt Lake City, Utah, on November 5, 2002, at 8:30 a.m. Said Hearing was pursuant to Order and Notice of the Commission.

**BEFORE:** Richard M. La Jeunesse, Administrative Law Judge.

**APPEARANCES:** The petitioner, Wallace Scott McLaws, was present and represented himself pro se.

The respondent Hedayat Kazemini dba Kazz's Kars was represented by his attorney David J. Hodgson.

The respondent Uninsured Employers Fund was represented by attorney Sherrie Hayashi.

**I. STATEMENT OF THE CASE**

The petitioner, Wallace Scott McLaws, filed an "Application For Hearing" with the Utah Labor Commission on April 2, 2001, and claimed entitlement to the following workers' compensation benefits: (1) medical expenses; (2) recommended medical care; (3) temporary total disability compensation, and; (4) permanent partial disability compensation. Mr. McLaws claim for workers' compensation benefits arose out of an alleged industrial accident that occurred on January 30, 2001.

---

The respondents denied that Mr. McLaws' injury on January 30, 2001 arose out of and in the course of employment with Mr. Kazemini.

## **II. ISSUES.**

1. Did Wallace Scott McLaws' injury on January 30, 2001 arise out of and in the course of his employment with Hedayat Kazemini dba Kazz's Kars?
2. What workers compensation benefits, if any, do either respondent owe Wallace Scott McLaws?

## **III. PROCEEDINGS.**

After the hearing on November 5, 2001 I left the evidentiary record open for the receipt of additional pertinent medical records from UEF. On November 26, 2001 UEF filed a "Supplemental Medical Exhibit" at which time I considered the record closed and ready for order.

## **IV. FINDINGS OF FACT**

### **A. Existence of an Employment Relationship in General.**

The main dispute between the parties involved the issue of whether an employment relationship ever existed between Mr. McLaws and Mr. Kazamani. More particularly the parties disagreed over whether Mr. Kazemini employed Mr. McLaws on the date of his accident and injury on January 30, 2001.

Mr. Kazemini operated a business wherein he purchased damaged automobiles at auction, repaired the vehicles, and then sold them at a profit. Mr. Kazemini ran his business out of a shop located at 3994 South 300 West in Salt Lake City, Utah. Mr. Kazemini did business under the assumed name Kazz's Kars.

In July of 2000 Mr. Kazemini placed an advertisement in the Salt Lake Tribune's "Help Wanted" section that stated: "AUTO/PAINTER FRAME TECH top wages. Full or part time." [Exhibit "1"]. Mr. McLaws responded to Mr. Kazemini's advertisement and met Mr. Kazemini at his shop. Mr. McLaws claimed that Mr. Kazemini offered him a job as an auto body repair man.

The parties essentially agreed that Mr. Kazemini paid Mr. McLaws piece rate which the parties negotiated separately for each vehicle. Mr. Kazemini paid Mr. McLaws with both cash and an occasional check [Exhibit "16"]. Mr. Kazemini never withheld taxes from the amounts he paid to Mr. McLaws. Further, Mr. Kazemini issued no W-2s or 1099s to Mr. McLaws.



Mr. McLaws stated that he commenced employment for Mr. Kazemini part time in August 2000. Mr. McLaws testified that up to the end of September 2000 he worked part time for Mr. Kazemini and part time for Rocky Mountain Collision across the road. At the end of September 2000 Mr. McLaws claimed he began to work for Mr. Kazemini full time.

Mr. McLaws said the he usually worked from 9:00 a.m. to around 6:00 p.m. Because he worked full time as a shop teacher at Layton High School, Mr. Kazemini only came to the shop from 5:00 p.m. to 6:00 p.m. Mr. Kazemini denied that he actually employed Mr. McLaws. Rather, Mr. Kazamin claimed that Mr. McLaws worked when he pleased as a sort of independent contractor. Mr. Kazemini admitted that Mr. McLaws began to work full time for him because Mr. McLaws' wife wanted him to purchase a 1999 Dodge Caravan from Mr. Kazemini in trade for work. Mr. Kazemini valued the Dodge Van at \$4,500.00.

Mr. McLaws repaired all the vehicles in Mr. Kazemini's shop. Mr. McLaws testified that all of the tools he used to repair vehicles for Mr. Kazemini in fact belonged to Mr. Kazemini. Mr. Kazemini acknowledged that he kept tools in his shop including: (1) socket wrenches; (2) screw drivers; (3) a grinder, and; (4) a cutting torch. However, Mr. Kazemini maintained that Mr. McLaws used his own tools for the repair work.

Mr. Kazemini conceded that he supplied all parts, materials, and paint needed for each repair job performed by Mr. McLaws. The parties concurred that when a repair job came in, Mr. Kazemini consulted Mr. McLaws on the needed repairs then Mr. Kazemini negotiated the bid with the customer. Mr. Kazemini retained control over the bid process with prospective customers.

Mr. Kazemini confirmed that he monitored Mr. McLaws' progress on specific jobs. Mr. Kazemini also acknowledged that he became upset when dissatisfied with Mr. McLaws' progress or quality on a job.

The preponderance of the more credible evidence in this case verified that an employment relationship existed between Mr. Kazemini and Mr. McLaws. Mr. Kazemini advertised for what all intents and purposes purported to be a full or part-time position of employment as an automotive painter and frame technician. Mr. Kazemini also advertised that he would pay wages for the services of the automotive painter and frame technician.<sup>1</sup> Mr. Kazemini engaged the services of Mr. McLaws based on his response to the advertisement of employment.

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<sup>1</sup> Although Mr. Kazemini actually paid Mr. McLaws a negotiated piece rate for each job, Mr. Kazemini still characterized the pay as wages in his advertisement.

As of September 2000 Mr. McLaws began to work full time 9:00 a.m. to 6:00 p.m. for Mr. Kazemini. Mr. Kazemini challenged Mr. McLaws' statement concerning the hours he worked. However, Mr. Kazemini admitted that Mr. McLaws began to work full time for Mr. Kazemini so that Mr. McLaws could afford to purchase a 1999 Dodge Caravan for his wife.

Mr. McLaws repaired all of the vehicles at Mr. Kazemini's shop. The preponderance of the evidence demonstrated that Mr. Kazemini supplied the tools, parts, and supplies used by Mr. McLaws to repair vehicles for Mr. Kazemini.

The preponderance of the evidence in this case disclosed that Mr. Kazemini retained control over the manner and method of the work performed by Mr. McLaws. Mr. Kazemini monitored the quality and progress of the jobs performed by Mr. McLaws. In sum, the preponderance of the evidence in this case established an employer/employee relationship between Mr. McLaws and Mr. Kazemini.

**B. Accident Arising Out of and in the Course of Employment.**

On January 30, 2001 Mr. McLaws testified that he worked on a 1992 Isuzu Trooper for Mr. Kazemini in his shop. Mr. McLaws stated that as he yanked on the Isuzu's rear fender it cut through the palm and little finger on his left hand.

Mr. Kazemini maintained that Mr. McLaws completed his last jobs for Mr. Kazemini in Mid-December 2000. Mr. Kazemini recalled that in January 2001 he became dissatisfied with Mr. McLaws' work and terminated the relationship. Mr. Kazemini alleged that he told Mr. McLaws to finish work on his neighbor's 1972 Chevrolet pickup truck and clear out. Mr. Kazemini claimed that after December 2000 Mr. McLaws did his own jobs exclusively including his neighbor's 1972 Chevrolet pickup truck and the 1992 Isuzu Trooper.

Mr. Kazemini alleged that he sold the 1992 Isuzu Trooper to Mr. McLaws in January 2001. Therefore, according to Mr. Kazemini, any work performed by Mr. McLaws on the 1992 Isuzu Trooper constituted work on Mr. McLaws' own vehicle for his own benefit.

The purchase, ownership, and resale of the 1992 Isuzu Trooper had a convoluted history. The parties agreed that when Mr. McLaws first began work for Mr. Kazemini he negotiated for the purchase of a 1999 Dodge Caravan from Mr. Kazemini in the amount of \$4,500.00. The parties concurred that as Mr. McLaws lacked the finances to purchase the 1999 Caravan, Mr. McLaws would exchange labor for the vehicle.

The parties further agreed that in December 2000 Mr. McLaws performed \$3,500.00<sup>2</sup> in work for Mr. Kazemini to be applied against the purchase of the 1999 Caravan. Mr. McLaws never received the 1999 Caravan from Mr. Kazemini. Rather, Mr. Kazemini confirmed that after January 2001 he took the 1999 Caravan back to auction and traded it for another vehicle.

On December 21, 2000 Mr. Kazemini purchased the 1992 Isuzu Trooper for his customer Jeremy Kingston. [see: Exhibit "14"]. Mr. Kazemini took delivery of the 1992 Trooper on December 29, 2000. [id.]. Mr. Kazemini offered the 1992 Trooper to Mr. Kingston for \$2,750.00. Mr. McLaws stated that agreed to fix the 1992 Trooper for Mr. Kazemini for \$1,000.00.

Mr. McLaws testified that he also offered to purchase the 1992 Trooper himself from Mr. Kazemini for \$2,500.00 plus \$1,000.00 in parts as an offset against the \$3,500.00 owed Mr. McLaws by Mr. Kazemini. However, Mr. McLaws claimed his wife still wanted the 1999 Caravan. Ultimately, Mr. Kazemini sold Mr. Kingston a door off the 1992 Trooper, but not the vehicle itself.

On January 30, 2001 Mr. McLaws testified that he commenced work on the 1992 Trooper and injured his left hand. Mr. McLaws stated that he eventually purchased the 1992 Trooper on February 28, 2001 in exchange for the \$3,500.00 owed him by Mr. Kazemini. When confronted with the bill of sale, Mr. Kazemini conceded that the actual sale of the 1992 Trooper to Mr. McLaws occurred on February 28, 2001. [Exhibit "17"]. Prior to February 28, 2001 Mr. Kazemini remained the owner of the 1992 Trooper. [see: Exhibits "14" and "17"]. Mr. Kazemini acknowledged that he applied the \$3,500.00 he owed Mr. McLaws to the purchase of the 1992 Trooper.

The undisputed evidence in this case verified that on January 30, 2001 Mr. McLaws commenced work on the 1992 Trooper owned by Mr. Kazemini. The preponderance of the more credible evidence in this case established that Mr. McLaws agreed to fix the 1992 Trooper for Mr. Kazemini for \$1,000.00. Although Mr. McLaws eventually purchased the 1992 Trooper, the purchase occurred on February 28, 2001 almost one month after the industrial accident. In the end Mr. Kazemini received \$3,500.00 in value for the 1992 Trooper, which he sold to Mr. McLaws for the work Mr. McLaws performed as an employee. Accordingly, the preponderance of the evidence in this case revealed that Mr. McLaws injured his left hand on January 30, 2001, which injury arose out of an in the course of his continued employment with Mr. Kazemini.

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<sup>2</sup> Mr. McLaws repaired a 1997 red Honda Civic and 1999 black Honda Civic for Mr. Kazemini. [Exhibit "4"].

**C. Nature of the Industrial Injury.**

The medical evidence in this case stood undisputed as to the injuries suffered by Mr. McLaws on January 30, 2001. On February 1, 2001 Dr. Mark Greene M.D. diagnosed Mr. McLaws with a:

Laceration of left small finger with laceration of the flexor profundis superficialis and ulnar digital nerve. [Exhibit "J-1" at 37].

Dr. Greene operated on Mr. McLaws and performed a: "Repair of flexor profundis superficialis and ulnar digital nerve." [id.]. On May 7, 2001, after a lengthy course of treatment, Dr. Greene provided a further diagnosis of Mr. McLaws' left hand:

Extension contracture of the left small finger...with rupture of flexor profundis tendon. [id. at 1].

Dr. Greene performed a second operation on Mr. McLaws which involved a: "Tenolysis and pulley reconstruction." [id.]. Mr. McLaws continued to have problems with his left hand, and on May 17, 2001 Dr. Greene opined that Mr. McLaws still had a: "Tendon rupture of the left small finger." [id. at 3]. Mr. McLaws underwent a third operation that involved a: "Tenotomy and first-stage tendon graft." [id.]. On July 25, 2001 Mr. McLaws endured yet a fourth and final operation that consisted of: "Removal of tendon spacer and second stage tendon grafting." [id. at 95].

**D. Compensation Rate.**

At the time of the industrial accident in issue, Mr. McLaws was married with three dependent children. As noted in Section IV. A. Mr. Kazemini paid Mr. McLaws a piece rate which the parties negotiated separately for each vehicle repaired by Mr. McLaws. Mr. Kazemini paid Mr. McLaws as he finished each job. The 1992 Trooper constituted only vehicle Mr. McLaws worked on for negotiated compensation in the month of January 2001. [see: Section IV. B.]. Mr. Kazemini agreed to pay Mr. McLaws \$1,000.00 for repair of the 1992 Trooper. [id.]. However, the industrial accident prevented Mr. McLaws from completing work on the 1992 Trooper.

Because Mr. McLaws never completed work on, nor received pay for, the 1992 Trooper, the only useful method for calculating a wage rate in the week of Mr. McLaws' industrial injury consisted of the applicable minimum wage. Consequently, Mr. McLaws' temporary total disability benefit rate equaled \$157.00 per week. [  $\$5.15/\text{hour (minimum wage)} \times 40 \text{ hours per week} = \$206.00 \text{ per week} \times 2/3 = \$137.33/\text{week} + \$20.00/\text{week dependants' allowance} = \$157.00/\text{week (TTD rate rounded to nearest whole dollar)}$  ].

**E. Temporary Total Disability Compensation.**

No dispute existed that Mr. McLaws remained unemployed from January 31, 2001, through the date of hearing on November 5, 2001. The medical evidence also stood unchallenged concerning the period of time Mr. McLaws remained medically unstable and unable to work. On July 25, 2001 Mr. McLaws underwent the last surgery for his left hand injury sustained in the industrial accident. On November 11, 2001 Dr. Greene declared that Mr. McLaws remained medically unstable. Accordingly, Mr. Kazemini owed Mr. McLaws temporary total disability compensation from January 31, 2001, through the date of hearing on November 5, 2001, and ongoing at the rate of \$157.00 per week until he reaches medical stability. From January 1, 2001, through November 5, 2001 Mr. Kazemini owed Mr. McLaws **\$6,258.02 in temporary total disability compensation**. [39.86 weeks (from January 31, 2001, through November 5, 2001) x \$157.00/week (TTD rate) = \$6,258.02].

**F. Permanent Partial Disability Compensation.**

The last medical evidence in this case stated that as of the date of hearing Mr. McLaws had not reached medical stability. Therefore, the issue of an impairment rating, and an award of permanent partial disability benefits, remained unripe at the time of hearing.

**G. Liability of the Uninsured Employers Fund.**

Mr. Kazemini admittedly had no workers' compensation insurance on January 30, 2001. However, no evidence existed that Mr. Kazemini lacked the funds to pay the workers' compensation benefits owed to Mr. McLaws. Consequently, no evidence existed that UEF should be liable for the workers' compensation benefits owed to Mr. McLaws by Mr. Kazemini.

**V. CONCLUSIONS OF LAW**

**A. Existence of an Employment Relationship in General.**

Utah Code § 34A-2-401(1) provides in relevant part that:

Each employee described in Section 34A-2-104 who is injured...by accident arising out of and in the course of the employee's employment...shall be paid compensation for loss sustained on account of the injury....

The Utah Supreme Court held that:

[i]t will almost always follow that if the evidence shows that an "employer" retains the right to control the work of the claimant, the claimant is the employer's employee for workmen's compensation purposes. (citations omitted). Certainly, the concept of right to control is not to be rigidly and narrowly defined. Rather it should be defined to give full effect to the remedial purposes of the Workmen's Compensation Act. (citations omitted).

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Many factors have been applied in determining the right to control. Among those factors are actual supervision of the worker, the extent of the supervision, the method of payment, the furnishing of equipment for the worker, and the right to terminate the worker. (citations omitted). Although these factors are not inclusive, they are relevant in many cases.... Bennett v. Industrial Commission of Utah, 726 P. 2d 427, 429-430 (Utah 1986).

Mr. Kazemini retained control over the manner and method of the work performed by Mr. McLaws. Mr. Kazemini monitored the quality and progress of the jobs performed by Mr. McLaws.

Other indicia of an employment relationship between Mr. McLaws and Mr. Kazemini included the manner in which Mr. Kazemini retained the services of Mr. McLaws. Mr. Kazemini advertised for what purported to be a full or part-time position of employment as an automotive painter and frame technician. Mr. Kazemini also advertised that he would pay wages for the services of the automotive painter and frame technician. Mr. Kazemini engaged the services of Mr. McLaws based on his response to the advertisement of employment.

As of September 2000 Mr. McLaws began to work full time 9:00 a.m. to 6:00 p.m. for Mr. Kazemini. Mr. McLaws repaired all of the vehicles at Mr. Kazemini's shop. Additionally, Mr. Kazemini supplied the tools, parts, and supplies used by Mr. McLaws to repair vehicles for Mr. Kazemini. In sum, the facts of this case demonstrated that an employer/employee relationship existed between Mr. McLaws and Mr. Kazemini.

**B. Accident Arising Out of and in the Course of Employment.**

On January 30, 2001 Mr. McLaws worked on a 1992 Isuzu Trooper owned by Mr. Kazemini in his shop. As Mr. McLaws yanked on the Isuzu's rear fender it cut through the palm and little finger on his left hand.

Mr. McLaws agreed to fix the 1992 Trooper owned by Mr. Kazemini for \$1,000.00. Mr. McLaws injured his left hand on January 30, 2001, which injury arose out of an in the course of his employment with Mr. Kazemini.

**C. Nature of the Industrial Injury.**

The injuries suffered by Mr. McLaws on January 30, 2001 consisted of a lacerated and ruptured tendon in the little finger of his left hand. Mr. McLaws injuries from the January 30, 2001 industrial accident resulted in four surgeries to repair the damage.

**D. Compensation Rate.**

At the time of the industrial accident in issue, Mr. McLaws was married with three dependent children. Mr. Kazemini paid Mr. McLaws a piece rate which the parties negotiated separately for each vehicle repaired by Mr. McLaws. Mr. Kazemini paid Mr. McLaws as he finished each job. The 1992 Trooper constituted only vehicle Mr. McLaws worked on for negotiated compensation in the month of January 2001. Mr. Kazemini agreed to pay Mr. McLaws \$1,000.00 for repair of the 1992 Trooper. However, the industrial accident prevented Mr. McLaws from completing work on the 1992 Trooper.

Because Mr. McLaws never completed work on, nor received pay for, the 1992 Trooper, the only useful method for calculating a wage rate in the week of Mr. McLaws' industrial injury consisted of the applicable minimum wage.<sup>3</sup> Consequently, Mr. McLaws' temporary total disability benefit rate equaled \$157.00 per week. [ \$5.15/hour (minimum wage) x 40 hours per week = \$206.00 per week x 2/3 = \$137.33/week + \$20.00/week dependants' allowance) = \$157.00/week (TTD rate rounded to nearest whole dollar)].

**E. Temporary Total Disability Compensation.**

Mr. McLaws remained unemployed from January 31, 2001, through the date of hearing on November 5, 2001. As of November 11, 2001 Mr. McLaws remained medically unstable. Accordingly, Mr. Kazemini owed Mr. McLaws temporary total disability compensation from January 31, 2001, through the date of hearing on November 5, 2001, and ongoing at the rate of \$157.00 per week until he reaches medical stability. From January 1, 2001, through November 5, 2001 Mr. Kazemini owed Mr. McLaws **\$6,258.02 in temporary total disability compensation.** [39.86 weeks (from January 31, 2001, through November 5, 2001) x \$157.00/week (TTD rate) = \$6,258.02].

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<sup>3</sup> Utah Code § 34-40-103 requires that employers pay employees the established minimum wage.

**F. Permanent Partial Disability Compensation.**

As of the date of hearing Mr. McLaws had not reached medical stability. Therefore, the issue of an impairment rating and an award of permanent partial disability benefits remained unripe at the time of hearing.

**G. Liability of the Uninsured Employers Fund.**

Utah Code §34A-2-704 (1)(a) states in relevant part that:

There is created an Uninsured Employers' Fund. The Uninsured Employers' Fund has the purpose of assisting in the payment of workers' compensation benefits to any person entitled to the benefits, if:

- (i) That person's employer:
  - (A) is individually, jointly, or severally liable to pay the benefits;  
and
  - (B) (I) becomes or is insolvent;  
(II) Appoints or has appointed a receiver; or  
(III) otherwise does not have sufficient funds, insurance,  
sureties, or other security to cover workers' compensation  
liabilities;

Mr. Kazemini admittedly had no workers' compensation insurance on January 30, 2001. However, no evidence existed that Mr. Kazemini lacked the funds to pay the workers' compensation benefits owed to Mr. McLaws. Consequently, no evidence existed that UEF should be liable for the workers' compensation benefits owed to Mr. McLaws by Mr. Kazemini.

**VI. ORDER**

IT IS THEREFORE ORDERED that Hedayat Kazemini dba Kazz's Kars shall pay Wallace Scott McLaws temporary total disability compensation from January 31, 2001, until November 5, 2001, at the rate of \$157.00 per week for 39.86 weeks, for a total of \$6,258.02, under Utah Code §34A-2-410. That amount is accrued, due and payable in a lump sum, plus interest at eight percent (8%) per annum, under Utah Code §34A-2-420 (3) and Utah Administrative Code, Rule 612-1-5. Thereafter, Hedayat Kazemini dba Kazz's Kars shall pay Wallace Scott McLaws temporary total disability compensation at the rate of \$157.00 per week until he reaches medical stability.

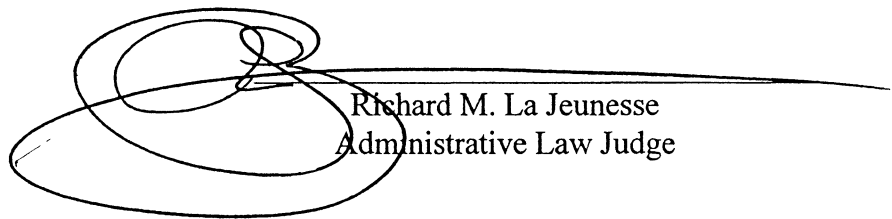


IT IS FURTHER ORDERED that Wallace Scott McLaws claim for permanent partial disability compensation remained unripe at the time of hearing. Therefore, an order with respect to permanent partial disability compensation shall be deferred.

IT IS FURTHER ORDERED that Hedayat Kazemini dba Kazz's Kars shall pay all medical expenses reasonably related to Wallace Scott McLaws industrial accident of January 30, 2001, according to Utah Code § 34A-2-418, and the medical and surgical fee schedule of the Utah Labor Commission, and any travel allowances under Utah Administrative Code, Rule 612-2-20, plus interest at eight percent (8%) per annum, under Utah Code § 34A-2-420 (3) and Utah Administrative Code, Rule 612-2-13.

IT IS FURTHER ORDERED that Wallace Scott McLaws claim against the Uninsured Employers Fund is dismissed.

Dated this 30<sup>th</sup> day of July 2002,



Richard M. La Jeunesse  
Administrative Law Judge

#### **NOTICE OF APPEAL RIGHTS**

A party aggrieved by the decision may file a Motion For Review with the Adjudication Division of the Utah Labor Commission. The Motion for Review must set forth the specific basis for review and must be received by the Commission within 30 days from the date this decision is signed. Other parties may then submit their Responses to the Motion for Review within 20 days of the Motion for Review.

Any party may request that the Appeals Board of the Utah Labor Commission conduct the foregoing review. Such request must be included in the party's Motion for Review or its Response. If none of the parties specifically requests review by the Appeals Board, the review will be conducted by the Utah Labor Commissioner.

CERTIFICATE OF MAILING


I, Alicia Zavala-Lopez, certify that I did mail by prepaid first class postage, except as noted below, a copy of the Findings of Fact, Conclusions of Law, And Order in the case of McLaws v. Hedayat Kazemini dba Kazz's Kars et al, Case No. 2001340 on the 30 day of July 2002, to the following:

WALLACE SCOTT MCLAWS  
5795 SOUTHSIDE DRIVE  
RAPID CITY, SD 57703

HEDAYAT KAZEMINI  
DBA KAZZ'S KARS  
3994 S 300 W NO 39  
SALT LAKE CITY UT 84107

DAVID HODGSON ESQ  
954 E 7145 S STE B205  
MIDVALE UT 84047

SHERRIE HAYASHI ESQ  
PO BOX 146600  
SALT LAKE CITY UT 84114-6600

  
Alicia Zavala-Lopez

## Appendix C

10141646779

UTAH LABOR COMMISSION

P.O. BOX 146615  
Salt Lake City, Utah 84114-6615

10141646779

Case No. 10141646779

In the Matter of the Noncompliance of:

HEDAYAT KAZEMINI dba KAZZ'S  
KARS,

FINDINGS OF FACT,

CONCLUSIONS OF LAW,

AND ORDER

Judge: Richard M. La Jeunesse

\*\*\*\*\*

**HEARING:** Room 334, Labor Commission, 160 East 300 South, Salt Lake City, Utah,  
on November 5, 2002, at 8:30 a.m. Said Hearing was pursuant to Order  
and Notice of the Commission.

**BEFORE:** Richard M. La Jeunesse, Administrative Law Judge.

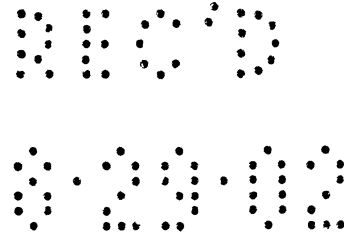
**APPEARANCES:** The respondent Hedayat Kazemini dba Kazz's Kars was represented by his  
attorney David J. Hodgson.

The Industrial Accidents Division was represented by attorney Sherrie  
Hayashi.

**I. STATEMENT OF THE CASE**

On April 23, 2001 the Industrial Accidents Division issued against Hedayat Kazemini dba  
Kazz's Kars a "Determination and Order Declaring Noncompliance and Assessing Penalty." The  
Industrial Accidents Division assessed Mr. Kazemini a \$1,000.00 penalty for failure to carry  
workers' compensation insurance on his employees for the period of time January 1, 2001, to  
April 02, 2001.

On May 22, 2001 Mr. Kazemini filed a "Notice of Appeal and Request for Hearing" from a  
"Determination and Order Declaring Noncompliance and Assessing Penalty." Mr. Kazemini  
claimed that he employed no employees in his business.



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## II. ISSUES.

1. Did Hedayat Kazemini dba Kazz's Kars employ any employees from January 1, 2001 to April 2, 2001 without carrying workers' compensation insurance?

## III. PROCEEDINGS.

I consolidated the evidentiary hearing on this matter with Case No. 2001340, Wallace Scott McLaws v. Hedayat Kazemini dba Kazz's Kars.

## IV. FINDINGS OF FACT

### A. Existence of an Employment Relationship with Wallace Scott McLaws.

Mr. Kazemini operated a business wherein he purchased damaged automobiles at auction, repaired the vehicles, and then sold them at a profit. Mr. Kazemini ran his business out of a shop located at 3994 South 300 West in Salt Lake City, Utah. Mr. Kazemini did business under the assumed name Kazz's Kars.

In July of 2000 Mr. Kazemini placed an advertisement in the Salt Lake Tribune's "Help Wanted" section that stated: "AUTO/PAINTER FRAME TECH top wages. Full or part time." [Exhibit "1"]. Mr. McLaws responded to Mr. Kazemini's advertisement and met Mr. Kazemini at his shop. Mr. McLaws claimed that Mr. Kazemini offered him a job as an auto body repair man.

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Mr. McLaws said the he usually worked from 9:00 a.m. to around 6:00 p.m. Because he worked full time as a shop teacher at Layton High School, Mr. Kazemini only came to the shop from 5:00 p.m. to 6:00 p.m. Mr. Kazemini denied that he actually employed Mr. McLaws. Rather, Mr. Kazamin claimed that Mr. McLaws worked when he pleased as a sort of independent contractor. Mr. Kazemini admitted that Mr. McLaws began to work full time for him because Mr. McLaws' wife wanted him to purchase a 1999 Dodge Caravan from Mr. Kazemini in trade for work. Mr. Kazemini valued the Dodge Van at \$4,500.00.

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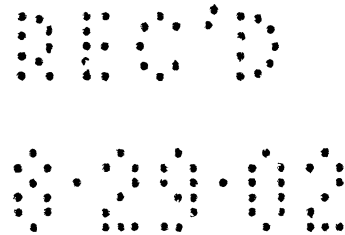
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Mr. Kazemini alleged that he sold the 1992 Isuzu Trooper to Mr. McLaws in January 2001. Therefore, according to Mr. Kazemini, any work performed by Mr. McLaws on the 1992 Isuzu Trooper constituted work on Mr. McLaws' own vehicle for his own benefit.

The purchase, ownership, and resale of the 1992 Isuzu Trooper had a convoluted history. The parties agreed that when Mr. McLaws first began work for Mr. Kazemini he negotiated for the purchase of a 1999 Dodge Caravan from Mr. Kazemini in the amount of \$4,500.00. The parties concurred that as Mr. McLaws lacked the finances to purchase the 1999 Caravan, Mr. McLaws would exchange labor for the vehicle.

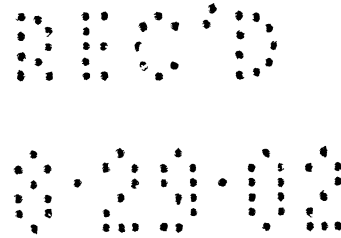
The parties further agreed that in December 2000 Mr. McLaws performed \$3,500.00<sup>2</sup> in work for Mr. Kazemini to be applied against the purchase of the 1999 Caravan. Mr. McLaws never received the 1999 Caravan from Mr. Kazemini. Rather, Mr. Kazemini confirmed that after January 2001 he took the 1999 Caravan back to auction and traded it for another vehicle.

On December 21, 2000 Mr. Kazemini purchased the 1992 Isuzu Trooper for his customer Jeremy Kingston. [see: Exhibit "14"]. Mr. Kazemini took delivery of the 1992 Trooper on December 29, 2000. [id.]. Mr. Kazemini offered the 1992 Trooper to Mr. Kingston for \$2,750.00. Mr. McLaws stated that agreed to fix the 1992 Trooper for Mr. Kazemini for \$1,000.00.

Mr. McLaws testified that he also offered to purchase the 1992 Trooper himself from Mr. Kazemini for \$2,500.00 plus \$1,000.00 in parts as an offset against the \$3,500.00 owed Mr. McLaws by Mr. Kazemini. However, Mr. McLaws claimed his wife still wanted the 1999 Caravan. Ultimately, Mr. Kazemini sold Mr. Kingston a door off the 1992 Trooper, but not the vehicle itself.

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<sup>2</sup> Mr. McLaws repaired a 1997 red Honda Civic and 1999 black Honda Civic for Mr. Kazemini. [Exhibit "4"].



On January 30, 2001 Mr. McLaws testified that he commenced work on the 1992 Trooper and injured his left hand. Mr. McLaws stated that he eventually purchased the 1992 Trooper on February 28, 2001 in exchange for the \$3,500.00 owed him by Mr. Kazemini. When confronted with the bill of sale, Mr. Kazemini conceded that the actual sale of the 1992 Trooper to Mr. McLaws occurred on February 28, 2001. [Exhibit "17"]. Prior to February 28, 2001 Mr. Kazemini remained the owner of the 1992 Trooper. [see: Exhibits "14" and "17"]. Mr. Kazemini acknowledged that he applied the \$3,500.00 he owed Mr. McLaws to the purchase of the 1992 Trooper.

The undisputed evidence in this case verified that on January 30, 2001 Mr. McLaws commenced work on the 1992 Trooper owned by Mr. Kazemini. The preponderance of the more credible evidence in this case established that Mr. McLaws agreed to fix the 1992 Trooper for Mr. Kazemini for \$1,000.00. Although Mr. McLaws eventually purchased the 1992 Trooper, the purchase occurred on February 28, 2001 almost one month after the industrial accident. In the end Mr. Kazemini received \$3,500.00 in value for the 1992 Trooper, which he sold to Mr. McLaws for the work Mr. McLaws performed as an employee. Accordingly, the preponderance of the evidence in this case revealed that Mr. McLaws injured his left hand on January 30, 2001, which injury arose out of an in the course of his continued employment with Mr. Kazemini.

**B. Existence of an Employment Relationship with Jose.**

Mr. Kazemini acknowledged that a person named Jose worked for Mr. Kazemini a few hours per week. Mr. Kazemini said that Jose cleaned the shop. Mr. Kazemini stated that Jose also changed the oil, changed the spark plugs, and did suspension work on Mr. Kazemini's sale vehicles. Mr. Kazemini admitted that Jose worked for him from November 2000, through January 2001. Mr. Kazemini claimed that Jose lived in the shop in exchange for the work he performed for Mr. Kazemini.

The preponderance of the evidence in this case disclosed that Mr. Kazemini employed Jose from at least November 2000, through January 2001.

**C. Penalty.**

Mr. Kazemini admitted that he carried no workers' compensation insurance. The Industrial Accidents Division assessed a \$1,000.00 minimum penalty against Mr. Kazemini for failure to carry workers' compensation insurance on his employees from January 1, 2001, to April 2, 2001 in violation of Utah Code § 34A-2-201. The preponderance of the evidence in this case disclosed that Mr. Kazemini employed at least two employees during the relevant time period January 1, 2001, through January 30, 2001. Consequently, the preponderance of the evidence in this matter confirmed the appropriateness of the \$1,000.00 minimum penalty.



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**V. CONCLUSIONS OF LAW**

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Utah Code Ann. §34A-2-201(1) requires that: "Employers ... shall secure the payment of workers' compensation benefits for their employees." Utah Code Ann. §34A-2-211(2) provides in pertinent part that:

(a) [t]he division may impose a penalty against the employer under this Subsection (2):

(b) The penalty imposed under subsection (2)(a) shall be the greater of:

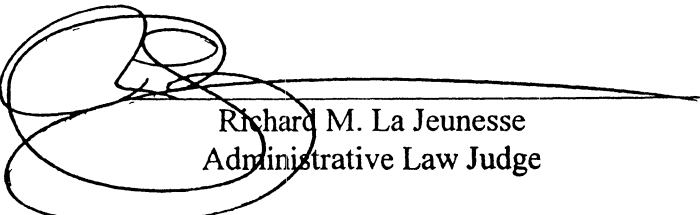
- (i) \$1,000; or
- (ii) Three times the amount of the premium the employer would have paid for workers' compensation insurance based on the rate filing of the Workers' Compensation Fund of Utah during the period of noncompliance.

Mr. Kazemini carried no workers' compensation insurance. The Industrial Accidents Division assessed a \$1,000.00 minimum penalty against Mr. Kazemini for failure to carry workers' compensation insurance on his employees from January 1, 2001, to April 2, 2001 in violation of Utah Code § 34A-2-201. Mr. Kazemini employed at least two employees during the relevant time period January 1, 2001, through January 30, 2001. Consequently, the \$1,000.00 minimum penalty under Utah Code Ann. §34A-2-211(2) was appropriate.

**VI. ORDER**

IT IS THEREFORE ORDERED that Hedayat Kazemini dba Kazz's Kars shall pay the Uninsured Employers Fund \$1,000.00 as a penalty pursuant to Utah Code Ann. §34A-2-211(2).

Dated this 30<sup>th</sup> day of July 2002,

  
Richard M. La Jeunesse  
Administrative Law Judge

RE: Hedayat Kazemini dba Kazz's Kars et al  
Findings of Fact, Conclusions of Law, and Order  
page 7

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**NOTICE OF APPEAL RIGHTS**

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A party aggrieved by the decision may file a Motion For Review with the Adjudication Division of the Utah Labor Commission. The Motion for Review must set forth the specific basis for review and must be received by the Commission within 30 days from the date this decision is signed. Other parties may then submit their Responses to the Motion for Review within 20 days of the Motion for Review.

Any party may request that the Appeals Board of the Utah Labor Commission conduct the foregoing review. Such request must be included in the party's Motion for Review or its Response. If none of the parties specifically requests review by the Appeals Board, the review will be conducted by the Utah Labor Commissioner.

REC'D

CERTIFICATE OF MAILING

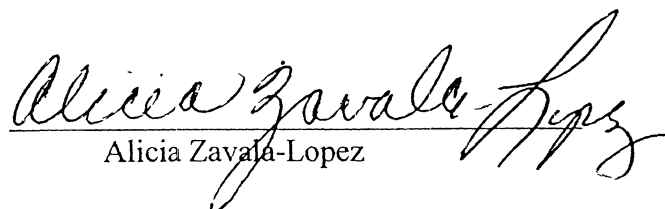
8-29-02

I, Alicia Zavala-Lopez, certify that I did mail by prepaid first class postage, except as noted below, a copy of the Findings of Fact, Conclusions of Law, And Order in the case of The Noncompliance of: Hedayat Kazemini dba Kazz's Kars et al, Case No. 10141646779 on the 30 day of July 2002, to the following:

HEDAYAT KAZEMINI  
DBA KAZZ'S KARS  
3994 S 300 W NO 39  
SALT LAKE CITY UT 84107

DAVID HODGSON ESQ  
954 E 7145 S STE B205  
MIDVALE UT 84047

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Alicia Zavala-Lopez