

In the Matter of the Compensation of
JOHN J. MULROONEY, Claimant

WCB Case No. 01-09466, 01-08222

ORDER ON REVIEW

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Reviewing Panel: Members Langer, Phillips Polich, and Bock.

The SAIF Corporation requests review of Administrative Law Judge (ALJ) Hazelett's order that: (1) set aside its coverage and responsibility denial issued on behalf of Bula Arveson; and (2) upheld the denial of responsibility issued by Constitution State Service Company on behalf of US Bancorp. On review, the issues are coverage and responsibility. We reverse.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact," with the exception of the finding that Bula Arveson employed US Bancorp as trustee of the Bula Buck Arveson Trust on October 15, 1995. Instead, we find that US Bancorp became trustee in June 1998 when Bula Arveson resigned as trustee.

CONCLUSIONS OF LAW AND OPINION

We begin by setting forth the background of this claim. Claimant was employed as a health care coordinator and caregiver for Arveson, an elderly blind woman. Claimant supervised a staff of caregivers and certified nursing assistants who provided 24-hour care for Arveson, who had previously created a trust (the Bula Buck Arveson Trust) to handle her financial affairs and to settle and administer her estate after her death. Arveson was the initial trustee.

Arveson contracted with SAIF in August 1997 to provide workers' compensation coverage for her caregivers. US Bancorp became trustee of the trust in June 1998 after Arveson resigned. It paid caregivers and other expenses from the trust fund.

Arveson passed away on July 1, 2001, after which a US Bancorp employee and administrator of the trust, Mallett, requested that claimant remain an employee even though other caregivers were laid off. Claimant assisted family members by

taking care of and distributing Arveson's possessions and worked on Arveson's apartment to restore it to its previous condition. It was during the latter activity that claimant sustained a right knee injury on July 16, 2001, when he fell from a stepladder.

Claimant filed claims with both SAIF, the insurer for Bula Arveson, and US Bancorp. Both carriers denied the claim, but consented to an order pursuant to ORS 656.307, which referred the case to the Hearing Division for a determination of the responsible employer/insurer.

The ALJ determined that SAIF was responsible for claimant's injury claim. In making that determination, the ALJ found that claimant was an employee of the Bula Buck Arveson Trust at the time of injury and that SAIF insured the trust when claimant was injured. The ALJ rejected SAIF's argument that it was not responsible because it insured only Bula Arveson and not the Bula Buck Arveson Trust and that, therefore, when Arveson died, it no longer had an employer to insure and could not be responsible for claimant's injury occurring after Arveson passed away. As support for his conclusion that SAIF insured the trust, the ALJ cited SAIF's dealings with the trust and the trustee for many years, as well as the fact that it had been taking premiums from and providing insurance for the trust.

On review, SAIF renews its contention that it only insured Arveson individually and not her trust and that, while its policy was in effect until September 6, 2001 (after Arveson's death), it did not cover claimant's employment on the date of injury because the employment contract between claimant and Arveson ended on her death. In other words, SAIF argues that claimant was not an employee of Arveson on the date of injury and, therefore, it was not responsible for claimant's injury. It argues, instead, that the trustee at the time of injury, US Bancorp, was the responsible employer.

Having reviewed this record, we first conclude that SAIF is not responsible for claimant's claim because we agree that it insured Arveson individually and not the Bula Buck Arveson trust. In support of this conclusion, we observe that Arveson's application for workers' compensation coverage listed the applicant as "Bula Arveson," not the "Bula Buck Arveson trust." (Ex. 2-1). The employer on that form is listed as an "individual," with the boxes for partnership, corporation and "other" left unchecked. *Id.* There is no mention of a "trust" on the form, which was signed by Bula Buck Arveson. The Department issued the guaranty contract for "Bula Arveson," not the "Bula Buck Arveson Trust." (Ex. 4).

As SAIF notes, a trust is a legal entity that is separate from the creator of the trust and its beneficiaries. *Jones and Jones*, 158 Or App 41, 50 (1999). Accordingly, we do not view Arveson and the Bula Buck Arveson Trust interchangeably. Given that SAIF's guaranty contract and the Department's acknowledgment show that SAIF insured Arveson individually, we find that SAIF did not insure the trust.¹

Because we have concluded that SAIF insured Arveson individually, it would be responsible for claimant's injury only if claimant was an employee of Arveson on the date of injury. SAIF cites *Jimmy L. Grazier*, 53 Van Natta 639, 641 (2001), in support of its contention that the contract of employment between Arveson and claimant terminated on her death and that, therefore, claimant was not an employee of Arveson on the date of injury.

In *Grazier*, we held that, when a corporation was no longer doing business at the time of the injury, there could not be a contract of hire between the corporation and the claimant at that time. 53 Van Natta at 641. Thus, we held that the claimant failed to prove that he was working for the corporation on the date of his injury. *Id.* We find the facts in *Grazier* analogous to this case.

Here, claimant entered into a contract to provide caregiver services to Arveson. However, when Arveson died, claimant could no longer provide those services. Accordingly, we conclude, in accordance with our reasoning in *Grazier* that, when Arveson passed away, the employment contract with claimant ceased. Therefore, when claimant was injured, he was not an employee of Arveson. We, thus, reinstate SAIF's denial of claimant's claim. We now proceed to determine the question of who was claimant's employer on the date of injury.

ORS 656.005(13)(a) provides:

“‘Employer’ means any person, including receiver, administrator, executor or *trustee*, and the state, state agencies, counties, municipal corporations, school

¹ The method of payment to Arveson's caregivers also establishes that SAIF insured Arveson individually. Payroll checks were signed by Bula Arveson, not the Bula Buck Arveson Trust. (Ex. 7A-1). Ms. Pope, the assistant to the trust administrator, Mallett, testified that she transferred money from the trust to Arveson's general checking account to cover the payroll. (Tr. II-109, 166). Mallett testified that he did not make any arrangements to have the trust placed on the policy name after US Bancorp became the trustee. (Tr. II-83).

districts and other public corporations or political subdivisions, who contracts to pay a remuneration for and secures the right to direct and control the services of any person.” (emphasis added).

Here, after Arveson’s death, Mallett, the administrator of the trust, requested claimant “to stay on” to restore the rental property in which Arveson was residing before her death. (Tr. II-21, Ex. 40-1). Claimant stayed on to distribute Arveson’s possessions and “close-down” Arveson’s apartment. (Ex. 27-2). Under the terms of the trust, the trustee, US Bancorp, had the duty to close out Arveson’s affairs by paying taxes, debts and expenses and by distributing assets. (Ex. 1-3, 4).

We find that, at the time of his injury, the trustee had engaged claimant to carry out its legal obligations under terms of the trust. Moreover, the trust, through its representatives, orally contracted with claimant to pay a remuneration and secured the right to direct and control claimant’s services. We, thus, find that claimant was an employee of the trustee, US Bancorp, at the time of injury. Because an employer under ORS 656.005(13)(a) includes a “trustee,” we further conclude that US Bancorp, as claimant’s employer at the time of injury, was, therefore, responsible for claimant’s injury.²

ORDER

The ALJ’s order dated January 31, 2003 is reversed. US Bancorp’s denial is set aside and the claim is remanded to it for processing in accordance with law. SAIF’s denial is reinstated and upheld.

Entered at Salem, Oregon on September 4, 2003

² In support of its argument that SAIF is responsible for claimant’s injuries, US Bancorp cites SAIF’s receipt of premiums and other actions arguably indicating that it insured the trust. To the extent that US Bancorp is arguing that SAIF is estopped to deny coverage, we reject that argument. Estoppel cannot be invoked to expand coverage. *ABCD . . . Vision v. Fireman’s Fund Ins. Companies*, 304 Or 301, 307 (1987); *see also* ORS 656.419 (contract must identify the insured). Moreover, there was no material misrepresentation by SAIF that resulted in reliance by US Bancorp. Thus there was no “equitable estoppel.” *Johnson v. Kentner*, 71 Or App 61, 72 (1984), *rev den* 299 Or 31 (1985). Finally, SAIF did not promise coverage, so there was no promissory estoppel. *Derryberry v. Dokey*, 91 Or App 533, 536, *rev den* 306 Or 661 (1988).