In the Matter of the Compensation of
LEE SCHNEIDERMAN, Claimant
WCB Case No. 03-01352
ORDER ON REVIEW
Hooton Wold & Okrent LLP, Claimant Attorneys
Alice M Bartelt, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

Claimant requests review of Administrative Law Judge (ALJ) Sencer's order that: (1) found that claimant was not a subject worker; and (2) upheld the SAIF Corporation's denial of claimant's injury claim. On review, the issue is subjectivity.

We adopt and affirm the ALJ's order with the following supplementation.

In *James E. Baucum*, 55 Van Natta 3251 (2003), the claimant was a corporate officer and there was no evidence that the employer's insurer was provided with notice that the employer's corporate officers elected workers' compensation coverage. Relying on ORS 656.039(1), we found, in *Baucum*, that because there was no written election of coverage pertaining to the claimant, he was not a subject worker.

Here, on September 9, 1997, claimant, as president of the employer, signed a designation of corporate officer exemption that confirmed that claimant was not a subject worker. The exemption provides that the employer agreed to notify the insurer in writing of any changes to the exemptions and that any change would be effective upon receipt. (Ex. 2). There is no evidence any written change was ever made to the corporate officer exemption. Accordingly, we decide this case consistent with our holding in *Baucum*. Because there was no written election of coverage pertaining to claimant, we agree with the ALJ that claimant was not a subject worker when he sustained his January 28, 2003 injury.

Claimant asserts, however, that the employer's insurance contract with SAIF contains an endorsement for corporate officers and that premiums were established based on a payroll including the wages of the corporate officer. On this basis, claimant argues that SAIF should be estopped from contending that claimant was not covered under the policy. SAIF contends that several elements of estoppel are missing from this case. We agree.

In *Day v. Advanced M&D Sales, Inc.*, 184 Or App 260, 264-65 (2002), the court explained that for equitable estoppel to apply, there must be (1) a false representation, (2) made with knowledge of the facts, (3) with the intent that the other party rely, (4) when the other party was ignorant of the truth, and (5) the other party must have been induced to rely upon the representation to his or her detriment. *See also James E. Baucum*, 55 Van Natta at 3255.

Here, SAIF argues that the endorsement referenced by claimant does not indicate that officers are covered by the policy. We agree that the document does not expressly state whether officers are covered by the policy. (Ex. 13). SAIF further argues that claimant acknowledged that he was exempt (Tr. 34), and that there is no proof of a false representation because claimant was aware that he was not covered. SAIF further argues that the second element has not been established because it was unaware that claimant was going to begin working on January 16, 2003 as an employee of the employer.

Based on this record, we are not persuaded that all of the elements of estoppel have been established. In this regard, claimant was aware that he was not a covered employee at least until January 16, 2003. We are not persuaded that a false representation was made by SAIF that claimant would be covered. In addition, there is no evidence that SAIF knew that claimant was going to begin working as an employee on January 16, 2003. Thus, based on this record, it cannot be said that SAIF had knowledge of the facts or intended to induce claimant to rely on a false representation that he was covered.

Finally, claimant argues that SAIF's inclusion of his wages in the premium assessment amounted to a false representation to claimant that he was covered. We disagree, however, because claimant testified that the policy based on his wages did not go into effect until after his January 28, 2003 injury. (Tr. 24).

In summary, we are not persuaded that the elements of estoppel have been established.

ORDER

The ALJ's order dated June 12, 2003 is affirmed.

Entered at Salem, Oregon on February 6, 2004