In the Matter of the Compensation of
MARTIN L. MADSEN, Claimant
WCB Case Nos. 01-09496, 01-09230, 01-01622
ORDER ON REMAND
Black Chapman et al, Claimant Attorneys
Dept Of Justice – GCD - BAS, Defense Attorneys
Hornecker Cowling et al, Defense Attorneys
Michael G Bostwick LLC, Defense Attorneys
Brophy Mills et al, Defense Attorneys

Reviewing Panel: Members Lowell and Biehl.

This matter is before the Board on remand from the Court of Appeals. *Sorenson v. LaTour*, 217 Or App 373 (2007). The court has reversed that portion of our prior order, *Martin L. Madsen*, 57 Van Natta 3151 (2005), that found Sorenson responsible for claimant's injury claim under ORS 656.029(1) because, at the time of his injury, claimant was working for a noncomplying employer (LaTour) on the construction of Sorenson's house. In reaching our conclusion, we reasoned that, because the home building project enhanced the value of Sorenson's farm and horse training business and because Sorenson had not hired a general contractor, the project was included within Sorenson's "trade or business" for purposes of determining that Sorenson was a subject employer under ORS 656.029(1) and OAR 436-050-0040(4)(c). Consequently, our prior order reversed those portions of an Administrative Law Judge's (ALJ's) order that: (1) had dismissed LaTour's request for hearing from JCI's acceptance of claimant's injury claim as the statutory claim agent under ORS 656.054(1); and (2) affirmed the Workers' Compensation Division's (WCD's) determination that claimant was not a subject worker for Sorenson. Instead, we reinstated LaTour's hearing request and, in light of our determination that claimant was a subject worker for Sorenson, set aside JCI's acceptance of the claim on behalf of LaTour.

Reasoning that Sorenson's mere improvement of real property for his personal use neither enrolled him in the trade or business of commercial home construction for purposes of ORS 656.029(1) and determining that Sorenson's house construction lacked the necessary nexus to his farming and horse training business that is required under ORS 656.029(1), the court has reversed our decision that claimant was a subject worker for Sorenson. Consequently, the court has remanded.

In accordance with the court's holding, Sorenson is not a subject employer regarding claimant's injury claim. Therefore, consistent with the court's decision, we affirm that portion of the ALJ's order that affirmed WCD's determination that claimant was not a subject worker for Sorenson. Furthermore, we continue to hold that LaTour's hearing request was timely filed under ORS 656.054(1) and ORS 656.262(6)(a) (2001). Nevertheless, in light of the court's conclusion that Sorenson was not responsible for claimant's injury claim under ORS 656.029(1), we affirm JCI's acceptance of claimant's injury claim as the statutory claim agent for LaTour, the noncomplying employer.

Accordingly, on remand and in lieu of our December 16, 2005 order, the ALJ's order dated December 21, 2004 is reversed in part and affirmed in part. LaTour's hearing request contesting JCI's claim acceptance is reinstated. JCI's acceptance is affirmed. The remainder of the ALJ's order is affirmed.

IT IS SO ORDERED.

Entered at Salem, Oregon on April 18, 2008