

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 20, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

No. 99-2515

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

MIKE MAES CONSTRUCTION, INC.,

PLAINTIFF-APPELLANT,

v.

**FRANCIS GRADY, UNINSURED EMPLOYERS FUND AND
LABOR AND INDUSTRY REVIEW COMMISSION,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Outagamie County: HAROLD V. FROEHLICH, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Mike Maes Construction, Inc., appeals a judgment affirming a decision of the Labor and Industry Review Commission awarding Francis Grady compensation for injuries he suffered while working for Maes. The

commission determined that Maes was “an employer” under WIS. STAT. § 102.04(1)(b)2 (1997-98)¹ and that Grady was not an independent contractor because he did not meet all of the criteria under WIS. STAT. § 102.07(8)(b). Maes argues that Grady’s testimony was not credible and that his social security number is the equivalent of an employer tax identification number for purposes of determining whether he was an independent contractor.² We reject these arguments and affirm the judgment.

¶2 Sufficient evidence supports the commission’s finding that Maes was an employer as defined in WIS. STAT. § 102.04(1)(b)2 because it paid more than \$500 in wages the calendar quarter that included July 1996. The parties agree that Maes paid Grady between \$700 and \$900 at that time. Maes argues that part of that payment included expenses other than wages. Grady was required to supply a compressor unit, tools and nails. The record contains no evidence that Grady bought new tools or equipment for this project or that the value of tools and equipment he provided would reduce the payment’s wage component to less than \$500. Grady denied that any of the payment was for expenses other than his wages. As the arbiter of the witnesses’ credibility, the commission had the right to rely on Grady’s testimony. *See E.F. Brewer Co. v. DILHR*, 82 Wis. 2d 634, 637, 246 N.W.2d 222 (1978); *Briggs & Stratton Corp. v. DILHR*, 43 Wis. 2d 398, 409, 168 N.W.2d 817 (1969).

¹ All references to the Wisconsin Statutes are to the 1997-98 version.

² He also argues that Grady should be denied compensation for the time he was in jail without Huber privileges based on “public policy.” The commission concluded that Grady was not available for work because he was disabled. Other reasons that he might not be able to work were irrelevant. Maes’ brief does not cite any authority to the contrary, and the public policy argument is not adequately developed to compel further review. *See M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

¶3 Maes faults Grady for failing to produce documentary evidence to support his testimony. The commission reasonably refused to compel Grady to present records of nonexistent expenses. Maes's argument that some of the payment was used for expenses or paying employees or helpers is mere speculation.

¶4 The commission also correctly concluded that Grady did not satisfy all of the criteria for the independent contractor exclusion in WIS. STAT. § 102.07(8)(b). One of the criteria requires that the independent contractor "holds or has applied for a federal employer identification number." Because this is the type of issue ordinarily decided by the commission, this court must give great weight to its legal conclusion. *See UFE Inc. v. LIRC*, 201 Wis. 2d 274, 284, 548 N.W.2d 57 (1996). We would reach the same conclusion regardless of whether we give deference to the commission's decision. A social security number is not a "federal employer identification number." In light of the purpose of WIS. STAT. § 102.07(8) to extend protection to independent contractors "except in those situations where it would be reasonable to expect them to provide their own protection," *see United Way v. DILHR*, 105 Wis. 2d 447, 454, 313 N.W.2d 858 (Ct. App. 1981), the statute should not be construed to make a social security number the equivalent of a federal employer identification number. Because virtually everyone is required to have a social security number, allowing substitution of a social security number for a federal employer identification number would render the requirement meaningless and would fail to protect workers who are not in a position to provide their own protection.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

