

ARKANSAS COURT OF APPEALS

DIVISION II

No. E11-100

WESTERN LAND SERVICES, INC.
APPELLANT

V.

DIRECTOR, ARKANSAS
DEPARTMENT OF WORKFORCE
SERVICES

APPELLEE

Opinion Delivered February 22, 2012

APPEAL FROM THE DIRECTOR OF
THE ARKANSAS DEPARTMENT OF
WORKFORCE SERVICES
[NO. 2010-EC-23]

AFFIRMED

JOHN MAUZY PITTMAN, Judge

The appellant, Western Land Services, is a services company for the oil and gas industry that works for companies to develop routes and obtain leases for the purpose of running pipelines. Appellant secured the services of Ms. Dena Ennis to purchase rights of way and prepare documents. After she was terminated, Ms. Ennis filed for unemployment benefits. The Director of the Arkansas Department of Workforce Services determined pursuant to Ark. Code Ann. § 11-10-308(a) (Supp. 2011) that appellant was an employer and that services performed by Ms. Ennis for appellant constituted employment. The Director's determination is conclusive if it is supported by substantial evidence and free from other errors of law. Ark. Code Ann. § 11-10-308(c). Our appellate jurisdiction is based on Ark. Code Ann. § 11-10-308(d). Appellant contends that there is no substantial evidence to support the Director's determination. We affirm.



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In unemployment-compensation appeals, findings of fact are conclusive if supported by substantial evidence, and our review is limited to determining whether the decision is supported by substantial evidence. *Bd. of Trustees v. Williams*, 91 Ark. App. 38, 207 S.W.3d 569 (2005). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Home Care Professionals v. Williams*, 95 Ark. App. 194, 235 S.W.3d 536 (2006). We do not conduct a de novo review in determining whether the evidence supporting a decision is substantial; the credibility of witnesses and the weight to be accorded their testimony are matters to be resolved by the fact-finder. *Maxfield v. Dir.*, 84 Ark. App. 48, 129 S.W.3d 298 (2003). Instead, we review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Director or Board of Review; even when there is evidence upon which a different decision might have been reached, the scope of judicial review is limited to a determination of whether the fact-finder could reasonably reach its decision upon the evidence before it. *See Home Care Professionals v. Williams, supra.*

Arkansas Code Annotated section 11-10-210(e) (Supp. 2011) provides:

(e) Service performed by an individual for wages shall be deemed to be employment subject to this chapter irrespective of whether the common law relationship of master and servant exists, unless and until it is shown to the satisfaction of the director that:

(1) Such individual has been and will continue to be free from control and direction in connection with the performance of the service, both under his or her contract for the performance of service and in fact; and

(2) The service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and



(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.

In order to establish the exemption set forth in section 11-10-210(e), an employer must prove each of the three requirements in subsections (1) to (3). *Barb's 3-D Demo Service v. Dir.*, 69 Ark. App. 350, 13 S.W.3d 206 (2000). If there is sufficient evidence to support the factfinder's finding that any one of the three requirements is not met, the case must be affirmed. *Id.*

The evidence on the first issue, control and direction, was in dispute, but the testimony of Ms. Ennis regarding the degree of control exercised by appellant, if believed, is a sufficient basis for finding that she was not free from control and direction in connection with her work. She attended training classes and required staff meetings, had an immediate supervisor, and was given specific assignments to perform. Although she was not constantly supervised, we cannot say, as a matter of law, that she was free from control and direction in the performance of her work. With respect to the second factor, appellant asserts that the field work performed by Ms. Ennis in contacting landowners and obtaining rights of way was outside the usual course and place of business of appellant. However, the senior project manager for appellant testified that appellant was in the business of routing pipelines and obtaining leases over the land traversed by the route. "Place of business" is the place where the enterprise is performed, *Mamo Transportation, Inc. v. Williams*, 375 Ark. 97, 289 S.W.3d 79 (2008), and includes not only the location of a business's office but also the entire area in which an enterprise conducts business, including any premises where the interest of the



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business is represented by an individual. *Home Care Professionals of Ark., Inc. v. Williams, supra.* Given the nature of appellant's business, the lands along the pipeline route were places where that business was being performed, and it is uncontested that Ms. Ennis was required to do field work along that route, contacting landowners to obtain signed right-of-way easements. With regard to the third subsection, appellant's senior project manager testified that there was in fact a recognized group of independent contractors who perform the services that Ms. Ennis was required to perform for appellant. However, the credibility of this testimony was for the Director to decide. *Maxfield v. Dir., supra.*

Affirmed.

GLADWIN and MARTIN, JJ., agree.

Perkins & Trotter, PLLC, by: *Scott C. Trotter* and *Grant M. Cox*, for appellant.

Phyllis Edwards, for appellee.