

**Kentucky Court Of Appeals**  
**Cases of Note**  
**[November-December, 2021](#)**

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**WORKERS COMPENSATION**

**AIG V. DAOUD OUFABA, ET AL.**

**[2020-CA-0942-WC](#), [2020-CA-0946-WC](#) 12/10/2021 2021 WL 5856528**

Opinion by ACREE, GLENN E.; CLAYTON, C.J. (CONCURS) AND LAMBERT, J. (DISSENTS AND DOES NOT FILE SEPARATE OPINION) The Workers’ Compensation ALJ applied factors articulated in *Ratliff v. Redmon*, 396 S.W.2d 320 (Ky. 1965), and concluded that there was no employee-employer relationship between an entity that leased a taxicab and dispatch and credit card processing services (Company) to its taxicab driver lessee (Claimant) based on a written agreement and a document acknowledging Claimant’s status as an independent contractor. The Workers’ Compensation Board ruled that the ALJ incorrectly concluded that Company was a taxicab leasing company rather than a taxicab company and that this “tainted the entirety of his analysis.” The Board vacated the ALJ’s finding that Claimant was an independent contractor and remanded for an amended opinion finding that Company was a taxicab company. The Board further ordered the ALJ to conduct a renewed analysis of the *Ratliff* factors focusing on the nature of the work Claimant performed in relation to the regular business of Company as a taxicab company when considering the control factor. The Court of Appeals reversed the Board and ordered reinstatement of the ALJ’s opinion. Agreeing with the Board’s identification of the Claimant’s work in relation to the regular business of the employer as the dominant factor in the decision of whether the claimant is an employee, the Court noted that KRS 342.0011(34) defines “work” as “providing services to another in return for remuneration on a regular and sustained basis in a competitive economy[.]” There was no evidence that Claimant received any remuneration of any kind from Company. All of Claimant’s remuneration was received directly from his customers in cash or indirectly after the Company processed Claimant’s customers’ credit card payments, a service Claimant paid the Company to perform. Furthermore, the Court agreed that the Company exercised no control over Claimant’s day-to-day conduct. Claimant’s lease payments were due without regard to whether he performed any work, and Claimant was free to not work at all. The Court noted that the amount of time Claimant himself chose to work was directly proportional to the risk he would suffer a workplace injury and reasoned that it was in keeping with the theory of risk spreading embodied in compensation that he should bear these associated risks of working.