

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000794-WC

EDMOND ALDRIDGE

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-04-00659

SHAMBAUGH & SON COMPANY;
JOHN W. THACKER, ADMINISTRATIVE
LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MINTON, SCHRODER, AND TAYLOR, JUDGES.

SCHRODER, JUDGE. Edmond Aldridge petitions for a review of a decision of the Workers' Compensation Board which affirmed an order of the Administrative Law Judge dismissing Aldridge's claim for lack of jurisdiction on an out of state injury. Aldridge contends the ALJ failed to make correct findings of fact which would have given Kentucky extra-territorial jurisdiction under KRS 342.670(1)(b). We agree with the Board that the contract for hire was made in Indiana, hence we affirm.

Shambaugh & Son Company (Shambaugh) is a company engaged in the installation and retrofitting of sprinkler systems in commercial buildings. It does business in many states and has offices in four states, including Indiana, but excluding Kentucky. Edmond Aldridge was a former employee working as a union apprentice in Kentucky. In early 2003, Aldridge decided to reapply to Shambaugh. He visited his prior Shambaugh foreman, Paul Eckard, at his home in Owenton, Kentucky. According to Aldridge, Paul Eckard told Aldridge he had to call the Ft. Wayne office for approval, that the call was made to Superintendent John Cox by Paul Eckard, that Aldridge got on the phone briefly to say he wanted to be rehired, and that Cox told him it was fine if he could go to New York with Paul that Monday. It is undisputed that Aldridge was a union apprentice that had to be released by his Kentucky employer before he could start another job. He left with Eckard for New York and on Monday he received the call from his former employer that he was being released and they wanted the correct spelling of his name for the release form. Shambaugh paid for the trip to New York. Aldridge worked briefly in New York and then moved on to a job site in Oklahoma, where he was injured. Shambaugh contends Indiana compensation applies, but Aldridge contends he is entitled to extra-territorial coverage of the Kentucky Workers' Compensation Act.

Aldridge filed a claim for benefits in Kentucky. The claim was heard on September 21, 2004. Mark C. Clemons' deposition was introduced into evidence. Mr. Clemons, president of the fire protection group headquarters in Ft. Wayne, Indiana for Shambaugh, testified as to the hiring procedures used by Shambaugh. He testified that a foreman (like Paul Eckard) does not have the authority to rehire an apprentice but that in the case of a former employee, a foreman could contact a general superintendent (like John Cox) in Ft. Wayne for approval, and that the rehire would be subject to the apprentice being released by his former employer. The ALJ ruled that pursuant to KRS 342.670, he had no extra-territorial jurisdiction over Shambaugh and dismissed the claim. A petition for reconsideration was denied and the matter appealed to the Board which affirmed.

On appeal to this Court, Aldridge contends the ALJ should have exercised extraterritorial jurisdiction under KRS 342.670(1)(b) because the ALJ failed to make findings and the facts compel a finding that the employment contract was entered into in Kentucky with a company not localized in any particular state.

As to the facts, we have reviewed the record and agree with the Board that there is sufficient evidence before the ALJ for findings of fact and there was substantial probative and

material evidence to support his conclusion that the contract of hire was made in Indiana not Kentucky. See Eck Miller Transportation Corp. v. Wagers, 833 S.W.2d 854, 858 (Ky.App. 1992). The function of the Court of Appeals in reviewing a decision of the Workers' Compensation Board as to the facts is to correct the Board only where the Court perceives the Board has flagrantly erred in assessing the evidence so as to cause a gross injustice. Western Baptist Hospital v. Kelly, 827 S.W.2d 685 (Ky. 1992). We find no such errors in the ALJ's finding of the surrounding circumstances.

Western Baptist Hospital also requires us to review the issues of law to make sure the Board has not misconstrued statutes or precedent. The issue of extra-territorial jurisdiction begins with an analysis of KRS 342.670(1) subsection (b) which reads in part:

- (1) If an employee, while working outside the territorial limits of this state, suffers an injury on account of which he . . . would have been entitled to the benefits provided by this chapter had that injury occurred within this state, that employee . . . shall be entitled to the benefits provided by this chapter, if at the time of the injury . . .
 - (b) He is working under a contract of hire made in this state in employment not principally localized in any state

Subsection (b) of KRS 342.670(1) has two parts, a contract of hire made in Kentucky, and employment not principally localized in any state. We agree with the Board that if the contract of hire was not made in Kentucky, the ALJ could stop his analysis there and deny benefits.

The issue we have to decide is whether the employment contract was made in Kentucky or Indiana. The issue is one of fact and law. The facts necessary to decide the issue are that Aldridge, through Eckard, while in Kentucky, called John Cox in Ft. Wayne, Indiana, asking to be rehired. Cox agreed to hire subject to two conditions: start Monday in New York; and have a release from the previous employer. From Trinity Universal Ins. Co. v. Mills, 293 Ky. 463, 169 S.W.2d 311, 314 (1943), we have to rule that "in contracts made by telephone, the place where the acceptor speaks his acceptance is the place where the contract is made." In our case, Aldridge was the one seeking the job and called Cox, the authorized supervisor for Shambaugh, asking (or offering or applying) to be rehired. Cox, in Ft. Wayne, accepted or agreed to rehire if or on conditions precedent that Aldridge start on Monday, and have a release from his previous employer. Obviously, Shambaugh did not need him if his previous employer would not release Aldridge and if he could not start Monday. Even if we had concluded Cox made a counter-offer to Aldridge by adding two terms, the result would be the

same because the final act necessary for acceptance would be getting the release from his previous employer, and showing up in New York. He received his release before, or while in New York.

Since the contract for hire was made in Indiana (or New York), not Kentucky, it was unnecessary for the ALJ or us to determine whether Shambaugh was localized in any state. That issue is moot.

For the foregoing reasons, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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