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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001173-WC

DAVID GADDIS — APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-08-00523

LONE STAR TRANSPORTATION;
HON. CHRIS DAVIS, ADMINISTRATIVE
LAW JUDGE; AND WORKERS' COMPENSATION
BOARD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, DIXON, AND THOMPSON, JUDGES.

THOMPSON, JUDGE: David Gaddis appeals from an opinion of the Workers' Compensation Board (Board) denying his claim by finding that Kentucky did not have extraterritorial jurisdiction over his claim under KRS 342.670. For the reasons stated herein, we affirm.

In December 2007, Gaddis, a Kentucky resident, was hired as a truck driver by Lone Star, a company based in Texas. According to the record, Gaddis, from Kentucky, and Lone Star, from Texas, engaged in at least two telephone conversations regarding Gaddis's potential employment. During the administrative stage, Gaddis testified that Lone Star informed him that he was absolutely hired by telephone. He testified that Lone Star's demand that he travel to Texas for a physical, drug test, and driving test were merely formalities to his hiring, which he contends occurred in Kentucky.

According to Lone Star's Vice President of Safety Jeff Cooney, all Lone Star applicants were subjected to telephone and background screenings before being invited for "orientation" in Texas. Cooney further testified that those applicants receiving orientation invitations were then required to pass a physical examination, a drug test, and a driving test before they were offered employment. Thus, Lone Star contends that Gaddis was not hired until he completed their entire hiring orientation process in Texas.

After beginning his employment, Gaddis specialized in transporting oversized cargo and received his work assignments from a dispatcher in Texas. On December 14, 2007, Gaddis was transporting cargo when he encountered an ice storm near Pullman, Texas. Gaddis testified that his dispatcher instructed him to re-tarp his truck even after Gaddis notified the dispatcher that a foot of ice had collected on his trailer. When Gaddis climbed on his trailer to re-tarp, he slipped, fell backwards, and hit his head on heavy cargo. According to Gaddis, after

regaining consciousness, he notified his dispatcher about his injuries and completed his delivery to Lowell, Michigan.

Gaddis, who had not been employed the requisite ninety-day period to obtain company-sponsored health insurance, testified that he requested and was promised medical coverage from his manager multiple times but never received such coverage.[1] From his fall to the termination of his employment with Lone Star, Gaddis stated that his lone treatment was at an immediate care center. Gaddis ended his employment with Lone Star in February 2008.

Shortly thereafter, Gaddis arrived in Missouri to begin his new employment when he began suffering from what he believed was a stroke. After treating Gaddis for a week, the medical care personnel diagnosed him with Bell's palsy. Gaddis then contacted Lone Star and informed it that he wanted to get medical treatment for his injuries by obtaining workers' compensation benefits. Lone Star replied by informing Gaddis that his request was denied.

Subsequently, Gaddis applied for workers' compensation benefits in Kentucky, alleging permanent head, back, and shoulder injuries from his fall. On August 7, 2008, Lone Star filed a notice of claim denial contending, *inter alia*, that Kentucky did not have jurisdiction to adjudicate Gaddis's claim. After an evidentiary hearing, an administrative law judge found that Kentucky did not have extraterritorial jurisdiction over Gaddis's claim because employment was principally localized in Texas. The Board affirmed, and this appeal followed.

[1] Apparently, according to Gaddis's testimony, he was offered workers' compensation benefits after his injury but rejected the offer for fear of losing his job.

Gaddis contends that the Board should have found that his employment was "principally localized" in Kentucky and, thus, was covered under KRS 342.670(1)(a). We disagree.

Our duty is to correct the Board only where it has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice. *Max & Erma's v. Lane*, 290 S.W.3d 695, 696 (Ky.App. 2009). Moreover, "[w]hen the party with the burden of proof fails to convince the ALJ, the party's burden on appeal is to show that overwhelming favorable evidence compelled a favorable finding, in other words, that no reasonable person could fail to be persuaded by the evidence." *Clark County Bd. of Educ. v. Jacobs*, 278 S.W.3d 140, 143 (Ky. 2009).

KRS 342.670(1) provides, in relevant part, the following:

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

KRS 342.670(5)(d) provides the following:

> A person's employment is principally localized in this or another state when:
>
> 1. His employer has a place of business in this or the other state and he regularly works at or from that place of business, or
>
> 2. If subparagraph 1. foregoing is not applicable, he is domiciled and spends a substantial part of his working time in the service of his employer in this or the other state.

Accordingly, under our statutory scheme, Kentucky has extraterritorial workers' compensation jurisdiction when, at the time of injury, a person's employment is "principally localized" in Kentucky or his employment contract was made in Kentucky in employment not principally localized in any state. KRS 342.670(1)(a) and (b). Under KRS 342.670(4)(d), when deciding if employment is "principally localized" within a state, an ALJ must determine whether a person's employer has a place of business in a state and if the employee works at or from that place. *Haney v. Butler*, 990 S.W.2d 611, 616 (Ky. 1999). If both conditions are answered affirmatively, the employee's employment is deemed "principally located" in the subject state and the analysis ends. *Id*.

When the employee's workplace and the employer's place of business are not identical, an ALJ must then determine whether the employee is domiciled in a state and, if so, whether he spends a substantial part of his working time for the employer in that state. *Id*. If both conditions are answered in the affirmative, the employee's employment is deemed "principally located" in the subject state. *Id*. If an employee is domiciled in a state but does not spend a substantial part of his

working time for his employer in that state, a person's employment cannot be deemed to be principally localized in the domicile state. *Id*. In this case, the ALJ determined that Gaddis's employment was principally localized in Texas and that his contract for hire was made in Texas, so the question on appeal is whether there is substantial evidence to support these findings. *Id*.

After reviewing the record, we conclude that the ALJ's finding that Gaddis's employment was principally localized in Texas was not clearly erroneous. The evidence reveals that all of Lone Star's drivers are dispatched from Fort Worth, Texas, where drivers are assigned a driver-manager to assist them during the trip. In *Eck Miller Transp. Corp. v. Wagers*, 833 S.W.2d 854 (Ky.App. 1992), this Court concluded that a trucker, who is assigned substantially all of his work "from" his employer's place of business, will be deemed to have employment "principally localized" in the state of his employer's place of business pursuant to KRS 342.670(4)(d)(1). *Id*. at 858. Here, Gaddis received all of his work assignments from his employer's place of business in Fort Worth Texas, and, thus, cannot reasonably argue that his employment was not principally localized in Texas.

Further, we note that Gaddis makes two additional arguments: (1) that Kentucky, pursuant to KRS 342.670(1)(a) as defined by (4)(d)(2), has extra-territorial coverage over his claim because he was domiciled in Kentucky and spent a substantial part of his working time in Kentucky; and (2) that Kentucky, pursuant to KRS 342.670(1)(b), has extraterritorial coverage over his claim

because his employment contract was made in Kentucky and his employment was not principally localized in any state. However, as stated in *Eck Miller Transp. Corp.,* 833 S.W.2d 854, these arguments are irrelevant because they would "only come into play if the ALJ's findings were not supported by substantial evidence, or were incorrect as a matter of law, neither of which is the case." *Id*. at 858. Therefore, we cannot address Gaddis's two remaining arguments. *Id*.

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

ALL CONCUR.

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