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Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001424-WC

NATIONAL DISTRIBUTION — APPELLANT

v. — PETITION FOR REVIEW OF A DECISION OF THE WORKERS' COMPENSATION BOARD ACTION NO. WC-08-00757

MARVIN CRAWLEY;
HON. OTTO DANIEL WOLFF,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD — APPELLEES

AND NO. 2009-CA-001456-WC

NATIONAL DISTRIBUTION — APPELLANT

v. — PETITION FOR REVIEW OF A DECISION OF THE WORKERS' COMPENSATION BOARD ACTION NO. WC-08-00819

LLOYD MAXWELL;
HON. R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: NICKELL, THOMPSON, AND WINE, JUDGES.

THOMPSON, JUDGE: In this consolidated appeal, National Distribution appeals two opinions of the Workers' Compensation Board finding that Kentucky has jurisdiction to adjudicate the claims of Marvin Crawley and Lloyd Maxwell. For the reasons stated herein, we affirm.

On June 20, 2008, Crawley, a truck driver, filed a claim for workers' compensation benefits, alleging that he sustained work-related injuries to his neck, lower back, and left hip. He alleged that he sustained the injuries when his truck was in a serious crash in Franklin, Kentucky. Prior to filing for Kentucky benefits, Crawley had been paid benefits pursuant to Indiana's Workers' Compensation law.

Before the Administrative Law Judge (ALJ), National argued that Kentucky did not have jurisdiction over Crawley's claim due to the parties' contract binding them to Indiana's workers' compensation system. Specifically, Crawley signed a document, titled "Indiana Workers' Compensation," which provided that he would receive Indiana benefits in the event of his injury. The document further provided that Crawley's state of residence or the state where any work-related injury occurred would not affect the utilization of Indiana law.

On February 13, 2009, the ALJ issued an opinion and order dismissing Crawley's claim for workers' compensation benefits. Citing KRS

342.670(5)(e), the ALJ ruled that the parties had a legally binding contract whereby Indiana had jurisdiction over the workers' compensation claim. After Crawley appealed, the Board reversed the ALJ and ruled that Crawley could file a workers' compensation claim in Kentucky. This appeal followed.

National contends that the Board erred by not dismissing Crawley's appeal because he did not file a petition for reconsideration. We disagree.

KRS 342.285(1) provides that an ALJ's order shall be conclusive on all factual questions unless a petition for reconsideration is filed. In the context of KRS 342.285(1), in *Brasch-Barry General Contractors v. Jones*, 175 S.W.3d 81, 83 (Ky. 2005), the court drew a distinction between factual and legal findings by stating that "issues regarding questions of law need not be preserved pursuant to a petition for reconsideration, but rather, may be appealed directly to the Board."

We conclude that the Board's decision to review Crawley's appeal comports with the proper application of KRS 342.285(1). The facts of this case are not contested. The issue revolves around the legal effect of these facts.

The Board was asked to construe the legal effect of the parties' written agreement, not to determine the weight and credibility of the evidence. Therefore, the Board addressed an issue of law, not of fact, and properly considered Crawley's appeal without the need for him to file a petition for reconsideration to the ALJ. *Id.*

National next contends that the Board erred by not enforcing the parties' written agreement requiring Indiana law to govern Crawley's workers'

compensation benefits regardless of where his injury occurred. Citing *Industrial Track Builders of America v. Lemaster*, 429 S.W.2d 403 (Ky. 1968), National contends that Kentucky provides that "a compensable claim in this state [can] be lost by an election to proceed under the laws of another state." Thus, National contends that Crawley's agreement waived his right to pursue a claim in Kentucky.

Because National relies heavily on *Industrial*, we recite the key facts and holding of that case. In *Industrial*, an Indiana resident was injured while working in Indiana for a Kentucky employer. *Id*. at 405. Following his injury, the employee executed a settlement agreement based on Indiana's workers' compensation laws. *Id*. After his Indiana payments ceased, he filed a claim for benefits in Kentucky. *Id.* However, the Board found that Lemaster waived his rights under the Kentucky Act.

The appellate court held that the Indiana settlement agreement could not preclude Lemaster from pursuing a Kentucky claim for his work-related injury. The court stated that "KRS 342.265 provides that if the employee and employer reach an agreement in regard to compensation it shall be filed with the Board and unless so filed and approved shall not operate as a final settlement." *Id*. Thus, Lemaster's Kentucky claim remained viable because his employer did not file and obtain approval from the Board in compliance with KRS 342.265. *Id*.

While National contends that *Industrial* permits the creation of a valid waiver, our interpretation mandates a different result in the present case. The holding in *Industrial* simply requires that employers comply with Kentucky's

workers' compensation laws in order to exempt an employee from Kentucky's Act. *Id*. We believe National did not follow this statutory authority.

National next contends that KRS 342.670(5)(e) permitted the parties to determine by agreement in which state the workers' compensation claim would arise. Contending that this statute when applied to the parties' written agreement places exclusive jurisdiction of the claim in Indiana, National argues that Crawley's Kentucky claim must be dismissed. We disagree.

KRS 342.670(5)(e) provides that "[an] employee whose duties require him to travel regularly in the service of his employer in this and one (1) or more other states may, by written agreement with his employer, provide that his employment is principally localized in this or another state, and, unless the other state refuses jurisdiction, the agreement shall be given effect . . . ."

Determining where an employee's employment is "principally localized" is significant because this determination can provide Kentucky workers' compensation benefits to employees injured while working outside of Kentucky. *Eck Miller Transp. Corp. v. Wagers*, 833 S.W.2d 854 (Ky.App. 1992); KRS 342.670(1). Determining where an employee's employment is "principally localized" is a fact-specific analysis and controls when Kentucky has jurisdiction, not when another state is deprived of jurisdiction of a claim. *Haney v. Butler*, 990 S.W.2d 611, 614-618 (Ky. 1999) (even though Alabama workers' compensation law appeared to apply, Kentucky could exercise jurisdiction over the case as well).

Although National contends that KRS 342.670(5)(e) permits parties to determine which state exercises jurisdiction over a claim, we do not believe that this statute can be read to determine jurisdiction in all contexts. The contracting authority of KRS 342.670(5)(e) is limited to determining where an employee's employment is "principally localized" as provided in KRS 342.670(1), rather than to place exclusive jurisdiction in a particular state. That is, KRS 342.670(5)(e) permits parties to decide the result of the application of KRS 342.670(1), but does not preclude a Kentucky claim for an in-state injury.[1]

KRS 342.640(1) provides that, except as exempted under KRS 342.650, all persons, whether lawfully or unlawfully employed, in the service of an employer under a contract of hire shall be a covered employee. If an employee desires to be exempt from Kentucky coverage, KRS 342.650 provides that "[a]ny person who would otherwise be covered but who elects not to be covered in accordance with the administrative regulations promulgated by the executive director." Therefore, Kentucky law automatically extends coverage to certain classes of employees and requires them to opt out to exclude coverage.

KRS 342.395(1), in establishing the procedures to reject Kentucky workers' compensation coverage, provides the following:

> Where an employer is subject to this chapter, then every employee of that employer, as a part of his contract of hiring or who may be employed at the time of the acceptance of the provisions of this chapter by the employer, shall be deemed to have accepted all the

[1] KRS 342.670(1) only addresses circumstances where the work-related injury was sustained outside of Kentucky. *Bryant v. Jericol Min., Inc.*, 758 S.W.2d 45, 47 (Ky.App. 1988).

> provisions of this chapter and shall be bound thereby unless he shall have filed, prior to the injury or incurrence of occupational disease, written notice to the contrary with the employer; and the acceptance shall include all of the provisions of this chapter with respect to traumatic personal injury, silicosis, and any other occupational disease. However, before an employee's written notice of rejection shall be considered effective, the employer shall file the employee's notice of rejection with the Office of Workers' Claims. The executive director of that office shall not give effect to any rejection of this chapter not voluntarily made by the employee. If an employee withdraws his rejection, the employer shall notify the executive director.

Further, KRS 342.395(2) provides the following:

> An employer shall not require an employee to execute a rejection of this chapter as either a condition to obtain employment or a condition to maintain employment. An employer shall not terminate an employee for refusal to execute a rejection of this chapter.

From a review of these statutes, it is clear that the legislature has created a system for depriving Kentucky of jurisdiction to adjudicate these claims. KRS 342.395(1) *mandates* Kentucky jurisdiction unless the employer files, prior to injury, a written notice of an employee's rejection with the Office of Workers' Claims. While National contends that KRS 342.670(5)(e) deprived Kentucky of jurisdiction, KRS 342.395(1), not KRS 342.670(5)(e), is the statute that must be utilized to accomplish the desires of National's agreement with Crawley. Because there is nothing in the record to suggest National's compliance with this statute, we conclude that the Board properly permitted Crawley to file a Kentucky claim.

We further observe that "we must adhere to the general rule that the workers' compensation statutes will be liberally construed to effect their humane and beneficent purposes." *Wilson v. SKW Alloys, Inc.*, 893 S.W.2d 800, 802 (Ky.App. 1995). KRS 342.395(2) clearly expresses an intent to protect employees from being forced to waive their right to bring claims in Kentucky. As in *Bryant v. Jericol Min., Inc.*, 758 S.W.2d at 47, Crawley was covered under our laws because he was injured in Kentucky and he was within a covered employee classification. Because National did not follow statutory authority, Crawley cannot be denied the right to seek any relief that he may be entitled to in Kentucky.

On October 25, 2007, Maxwell was allegedly injured while he was working on his trailer in Frankfort, Kentucky. Like Crawley, Maxwell acknowledged signing an agreement providing that he would receive Indiana benefits regardless of the location of the injury. Maxwell testified that he felt that signing the workers' compensation agreement was a condition of employment. Juanita Stephens, National's claims manager, testified that prospective employees were required to sign the agreement as a condition of their employment.

After Maxwell filed a Kentucky claim, National made the same argument to the ALJ as it did in Crawley's case. Likewise, finding that Kentucky did not have jurisdiction, the ALJ dismissed Maxwell's claim because of the written agreement and KRS 342.670(5)(e). The Board reversed for the reasons stated in Crawley's case. We agree with the Board's decision for the reasons previously stated.

Additionally, National contends that its agreement with Maxwell must be strictly enforced because good public policy requires adherence to voluntary agreements between competent parties. Citing *Jones v. Hanna*, 814 S.W.2d 287 (Ky.App. 1991), National contends that we must enforce their valid agreement. Despite National's contention, the General Assembly has provided the method to foreclose Kentucky jurisdiction over an employee's workers' compensation claim. KRS 342.395(1). There is nothing in the record to suggest that National complied with the statute, and National was not free to create another method of foreclosure.

Thus, Maxwell may bring his workers' compensation claims under Kentucky law for any relief for which he may be entitled to receive.

For the foregoing reasons, the opinions of the Workers' Compensation Board are affirmed.

ALL CONCUR.

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