RENDERED: JULY 23, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000387-WC

ROBERT MEANS — APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF THE WORKERS' COMPENSATION BOARD ACTION NO. WC-09-00119

SCHNEIDER NATIONAL, INC.;
HONORABLE JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE AND STUMBO, JUDGES; LAMBERT,[1] SENIOR JUDGE.

STUMBO, JUDGE: Robert Means appeals from an Opinion of the Workers' Compensation Board affirming an Opinion and Order of the Administrative Law Judge ("ALJ"). The ALJ determined that Kentucky did not have jurisdiction to

[1] Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

adjudicate Means' workers' compensation claim because Means' contract of hire with Schneider National, Inc. was entered into in Green Bay, Wisconsin. We affirm the Board's conclusion that the evidence did not compel a different result than the one reached by the ALJ.

Means began working for Schneider National as a truck driver in December, 2005. The record indicates that he learned of the job opening by reading an advertisement in a Covington, Kentucky newspaper. After submitting a resume and application, Means travelled to Indianapolis, Indiana, where Schneider National provided him with transportation to Green Bay, Wisconsin. In Green Bay, he attended a six-week training course conducted by Schneider National, after which he signed paperwork memorializing the employment agreement. After signing the paperwork in Wisconsin, Means received two more weeks of training in London, Kentucky, after which he was told to pick up a truck and begin work. Means' job duties entailed driving a truck in 48 states and Canada.

On March 13, 2007, and while in California, Means injured his back while moving freight around in the back of his trailer. Means felt low back pain which radiated down his leg. Means subsequently sought medical attention, and continued to have debilitating pain which prevented him from driving.

Means subsequently filed the instant workers' compensation petition in Kentucky seeking medical and income benefits. The matter proceeded before the ALJ, where Schneider National maintained that jurisdiction to adjudicate Means' petition was found in Wisconsin and not Kentucky. As a basis for the

argument, Schneider National noted that Means received six weeks of driver training in Wisconsin, after which he executed a "contract of hire" in Wisconsin. Schneider National also maintained that Means' employment was not principally localized in any state. Means argued that he learned of the job opportunity while in Kentucky, first called Schneider National from Kentucky, and believed he was hired in Kentucky.

After taking proof, the ALJ concluded that pursuant to KRS 342.670(5)(d), Means' employment was not principally located in any state. It went on to conclude that Kentucky would only have jurisdiction if the contract of hire was made in Kentucky. The ALJ determined that while Means had been assured over the telephone of employment upon completion of the training, the contract of employment was not completed until Means was in Wisconsin. Accordingly, the ALJ dismissed the petition for lack of jurisdiction.

Means appealed to the Board, which affirmed. The Board stated that Kentucky law holds that if the party with the burden of proof before the ALJ was unsuccessful, the sole issue is whether the evidence compelled a different conclusion. It noted that while some evidence supported Means' contention that his employment originated in Kentucky, the weight of the evidence supported the ALJ's determination that the contract of hire was executed in Wisconsin, and that the evidence did not compel a different result. This appeal followed.

Means now argues that the Board erred in affirming the ALJ's determination that Kentucky does not have jurisdiction to adjudicate Means'

petition. Means contends that he always believed he was hired in Kentucky, and that he was never told anything to the contrary by Schneider National. He maintains either that he was hired by way of telephone calls with Schneider National made to or from Kentucky prior to travelling to Wisconsin, or in the alternative that he was hired in Kentucky after the completion of the two weeks of training in London, Kentucky. In either event, Means argues that his employment originated in Kentucky, that Kentucky therefore has jurisdiction to adjudicate his petition under KRS Chapter 342, and that the Board erred in failing to so rule.

We are not persuaded by Means' argument. KRS 342.670 governs the extraterritorial application of Kentucky's Workers' Compensation Act. The statute provides in relevant part that,

> (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 such injury occurred within this state, such employee ... 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, or
>
> (c) He is working under a contract of hire made in this state in employment principally localized in another state whose workers' compensation law is not applicable to his employer, or
>
> (d) He is working under a contract of hire made in this state for employment outside the United States and Canada.

KRS 342.670(5)(d) goes on to state that a person's employment is principally localized in this or another state when his employer has a place of business in this or the other state and he regularly works at or from that place of business.

The first question for our consideration, then, is whether Means' employment was principally localized in Kentucky (KRS 342.670(1)(a)). If not, the next inquiry is whether he was working under a contract of hire made in Kentucky in employment not principally localized in any state (KRS 342.670(1)(b)). We must answer each of these questions in the negative. Means does not assert that his employment was principally located in Kentucky. Rather, he contends that he was working under a contract of hire made in Kentucky in employment not principally localized in any state.

After considering the proof, the ALJ determined that Means was not working under a contract of hire made in Kentucky. As a basis for this conclusion, the ALJ found from the evidence that the "documents submitted in this claim make it clear that while the plaintiff had been assured employment upon completion of training . . . the contract of employment was not completed until the plaintiff reached Wisconsin." Additionally, Schneider National director of driver recruiting, Michael Ruminski, testified that Schneider National's principal location is Green Bay, Wisconsin, where its corporate headquarters, recruiting office and driver training center are located. Ruminski stated that the Green Bay facility handles all payroll and recruiting for the Midwest area including Kentucky, and

that Means' paperwork was signed in Green Bay by a regional training manager. Most importantly, Ruminski testified that a driver's "effective hire date" is the day that potential employees complete their initial training in Green Bay. And though not dispositive, it is noteworthy that Means sought workers' compensation benefits in Wisconsin, where he was awarded temporary total disability benefits of $320.00 per week from April 8, 2007 through May 2, 2007, and again at the rate of $420 per week from July 30, 2007 through January 18, 2009, for a total of $33,760.47. Means also received medical expenses totally $27,894.68. Based on these findings, the ALJ dismissed Means' claim for medical and income benefits.

If the party with the burden of proof before the ALJ was not successful, the sole issue on appeal is whether the evidence compels a different conclusion. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky. App. 1984). Compelling evidence is proof that is so overwhelming that no reasonable person could reach the same conclusion as the ALJ. *REO Mechanical v. Barnes*, 691 S.W.2d 224 (Ky. App. 1985), overruled on other grounds by *Haddock v. Hopkinsville Coating Corp.* 62 S.W.3d 387 (Ky. 2001). As long as any evidence of substance supports the ALJ's opinion, it cannot be said that the evidence compels a different result. *Special Fund v. Francis*, 708 S.W.2d 641 (Ky. 1986).

We agree with the Board's determination that the evidence of record does not compel a different conclusion than the one reached by the ALJ. Because evidence of substance supports the ALJ's conclusion, including documentary and testimonial evidence that Means' contract of hire was executed in Wisconsin after

he completed the drivers' training, it cannot be said that the evidence compels a different result. Accordingly, we find no error.

For the foregoing reasons, we affirm the Opinion of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

McKinnley Morgan
London, Kentucky

BRIEF FOR APPELLEE:

W. Barry Lewis
Hazard, Kentucky