

RENDERED: OCTOBER 8, 2010; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000547-WC

JEFFREY GRAHAM

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-08-001540

TSL, LTD.;
HON. R. SCOTT BORDERS, ACTING CHIEF
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KELLER AND THOMPSON, JUDGES; HARRIS,¹ SENIOR JUDGE.

¹ Senior Judge William R. Harris 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.

HARRIS, SENIOR JUDGE: Jeffrey Graham appeals from the Workers' Compensation Board (Board) opinion, entered on February 22, 2010, affirming the Administrative Law Judge's (ALJ) finding that Kentucky does not have jurisdiction over his workers' compensation claim. Graham alleges that Kentucky had jurisdiction over the claim because he entered into his employment contract in Kentucky. Our review of the record and counsels' briefs persuade us that sufficient evidence existed to support the ALJ's conclusion. Therefore, we affirm the Board's opinion.

TSL is a Missouri-based trucking company that specializes in hauling automobiles. In November 2007, Graham, a tractor-trailer truck driver, learned that TSL had open employment positions. Graham testified that he called TSL to inquire about a position. Graham was directed to send TSL copies of his commercial driver's license, documentation concerning his years of experience driving trucks, and a recent physical examination and drug test. After the items were faxed, Graham alleges that Jim Gage, a TSL employee, asked if he could start working the following day. Graham replied that he needed to give his current employer at least two weeks notice of his intention to leave. Graham testified that he believed that he was hired as a result of the conversation. Shortly thereafter, Graham received a one-way bus ticket to St. Louis, Missouri, where he was required to complete a number of procedures, including a driving test and participation in a policy and procedure training session. Then he was supplied with a TSL truck and began driving for TSL.

Graham's job with TSL required him to haul automobiles across the United States. He received dispatches from St. Petersburg, Missouri, and received directly deposited payroll checks through TSL's offices in Ohio.

On January 25, 2008, Graham was injured when he fell ten to twelve feet while unloading a jeep in New Jersey. As a result of his injuries, Graham filed a workers' compensation claim against TSL.

On October 19, 2009, the ALJ denied Graham's claim based upon Kentucky's lack of extraterritorial jurisdiction. On February 22, 2010, the Board affirmed the ALJ's decision. This appeal follows.

Graham maintains that Kentucky had jurisdiction over his claim because his employment contract was made in Kentucky, under KRS 342.670 (1)

(b). KRS 342.670 provides:

(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 . . . 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.

We agree with Graham that “in contracts made by telephone, the place where the acceptor speaks his acceptance is the place where the contract is made.” *Trinity Universal Ins. Co. v. Mills*, 293 Ky. 463, 169 S.W.2d 311, 314 (1943). However, the record contains conflicting evidence concerning where TSL’s offer of employment was actually accepted, and the contract of hire thus made.

Brian Benner, an employee of TSL, testified that a variety of factors and tests must be considered before an employee is officially hired. The applicant must complete “orientation in regards to Department of Transportation regulations and company policies,” a road test, a drug test, a physical examination, and sign paperwork. Benner further testified that all paperwork pertaining to Graham’s employment was completed in Missouri, except the initial application for employment. In light of this evidence, the ALJ concluded that while Graham “may have been assured employment over the telephone line while he was in Kentucky,” the actual contract was executed in Missouri.

As a reviewing Court, we must only decide whether the evidence is “so overwhelming . . . as to [compel] a finding” in favor of the appellant. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky. App. 1984). The ALJ has the sole role of weighing the evidence, drawing inferences, and making determinations of credibility. *Magic Coal Co. v. Fox*, 19 S.W.3d 88, 96 (Ky. App. 2000). If the

ALJ's opinion is supported by substantive evidence in the record, the decision must be upheld. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986).

Although conflicting evidence concerning the contract's formation exists in the record, conflicting evidence is not enough to overturn a decision. Our review indicates that the ALJ's opinion was supported by substantive evidence, including the testimony of Brian Brenner and the required documents and hiring procedures of TSL.

Accordingly, we affirm the Board's February 22, 2010, opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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London, Kentucky

BRIEF FOR APPELLEE TSL, LTD.:

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