2012 IL App (1st) 112409WC-U

Workers' Compensation
Commission Division
Filed: November 5, 2012

No. 1-11-2409WC

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

CHERYL CORNWELL-TATUM,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County
	)	
v.	)	
	)	No. 10 L 51828
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, et al.,	)	
(Follett Educational Services,	)	Honorable
	)	Elmer J. Tomaire, III,
Appellee).	)	Judge Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hudson, Holdridge, Turner and Stewart concurred in the judgment.

ORDER

¶ 1 Held: The Commission's finding of a lack of jurisdiction is not against the manifest weight of the evidence.

¶ 2 The claimant, Cheryl Cornwell-Tatum, appeals from an order of the Circuit Court of Cook County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), denying her benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 2008)), for a back injury she allegedly received while in the employ of Follett Educational Services (Follett) by reason of a lack of jurisdiction. For the reasons which follow,

we affirm.

¶ 3 The following factual recitation is taken from the evidence adduced at the claimant's arbitration hearing.

¶ 4 The claimant, a Georgia resident, testified that a friend referred her to a job opening with Follett. That referral led to a January or February 2008 telephone interview with Mark Peluse, a Follett employee who worked at its Woodridge, Illinois headquarters. She later had an in-person interview with another Follett representative in Atlanta, Georgia. The claimant added that Peluse told her in a subsequent telephone conversation that Follett would offer her a job and that Follett would send her an official offer letter. As she understood it, Follett would allow the claimant to work from her home in Georgia but would require her to complete training in Illinois. The claimant stated that she was "excited" at this news but that she did not verbally accept the offer during her phone conversation.

¶ 5 On February 11, 2008, following those interviews and conversations, Peluse sent the claimant a latter regarding her employment with Follett. The letter, which was admitted into evidence, stated as follows, in pertinent part:

> "It is with great pleasure that [Follett] offers you the position of Account Executive - Field Purchasing reporting to Pete Brookhart, Director of Field Purchasing - South with the following compensation package:
>
> * * *
>
> Your start date is scheduled for February 18th, 2008. On your first day, you will be given an orientation by Human Resources which will include completing employment forms, reviewing benefits, and touring the premises. Please bring appropriate documentation for your new hire forms, including proof that you are presently eligible to work in the United States ***. Failure to provide appropriate documentation within 3 days of hire will result in immediate termination of employment in accordance with the

> terms of the Immigration Reform and Control Act. Please understand that this letter is intended to confirm an offer of employment and does not constitute an employment contract or guarantee a specific term of employment. As a new employee, you are subject to a 90-day probationary period. This period provides both you and Follett an initial opportunity to assess and experience your capability with the position. Further details of your training plan can be discussed with Pete Brookhart."

Below Mark Peluse's signature line, the following message appears on the letter in bold print, above 2 lines providing space for the claimant's signature and the date:

> "The provisions of this offer of employment have been read, are understood, and the offer is herewith accepted. I understand that my employment is contingent upon verification of legal right to work in the United States as outlined in the Immigration, Reform and Control Act of 1986 as well as completion of a background check and drug test."

The claimant's signature appears beneath this message, and the signature is dated February 13, 2008.

¶ 6 According to the claimant, "[i]t was explained *** that [Follett] had to have a signed written copy [of the letter] delivered to [Follett] when [she] came in for training." She testified that Follett set up transportation for her to arrive in Illinois on February 17, 2008, to attend training from February 18 to February 22. Follett arranged her travel to Illinois, and it paid for her flight and planned to reimburse her for her lodging expenses. Before she traveled to Illinois, the claimant underwent drug testing in Georgia.

¶ 7 The claimant recalled that, on February 18, 2008, after she arrived in Illinois, she presented Follett with a signed copy of her offer letter. The claimant said that she signed the letter at Follett's Woodridge office. Although her signature on the letter is accompanied by a "February 13, 2008" date, the claimant testified that she actually signed the letter at Follett's

Woodridge office but backdated her signature to the date she remembered receiving the letter in Georgia. According to the claimant, she completed and submitted an employment eligibility verification form at the same time she submitted her signed offer letter. The employment eligibility form, which was admitted into evidence, bears signatures from both the claimant and Peluse, and both signatures are dated February 18, 2008. The claimant testified that she understood her employment to begin upon her submitting this form along with the signed letter.

¶ 8 The claimant testified that, on March 11, 2008, while unloading and sorting books for a work-related training exercise, she injured her back. The claimant described her subsequent course of treatment. She explained that her back pain continued even to the date of the hearing but that she was no longer seeking medical treatment, which she understood could provide her no further relief.

¶ 9 The claimant agreed on cross-examination that her accident occurred in Georgia, and she further agreed that she received treatment and disability benefits in Georgia following her injury.

¶ 10 Mark Peluse, Follett's human resources manager, testified that he was an employment specialist at the time he recruited the claimant to work for Follett in February 2008. Like the claimant, Peluse testified that he conducted an initial telephone interview with her before referring her to another Follett employee for a second interview. After that second interviewer told him that he had selected the claimant as the best job candidate, Peluse called the claimant "to extend the offer of employment." Peluse testified that the claimant accepted the offer verbally during that conversation.

¶ 11 Peluse testified that Follett's "offers of employment *** are conditional based upon the passing of a drug test and background check." Thus, Peluse said, he informed the claimant that he would mail her a written offer with information necessary to "complete the pre-employment process." Peluse recalled that he wanted the claimant to be able to start by February 18, so that she could attend an already-scheduled training session that would begin on that day. Peluse

testified that he suggested that the claimant bring her signed offer letter with her to training because doing so would be faster and cheaper than mail.

¶ 12 Peluse testified that Follett paid for her flight to Illinois. He explained that Follett's policy regarding paying for transportation for job candidates was that it "would only pay for a candidate to come to [Woodridge] if they are going to start training as a new hire." Peluse said that Follett paid for the claimant's flight because she had verbally accepted a job offer. According to Peluse, the claimant completed her drug test in Georgia, and he received the results on February 14.

¶ 13 On cross-examination, Peluse stated that, despite their verbal agreement on the claimant's employment, he would have rescinded her offer if she had failed a drug test. He further agreed on cross-examination that the claimant would not be considered an employee until it was determined that she was eligible to work in the United States, and that he did not verify her eligibility until February 18. Peluse acknowledged paperwork indicating that the claimant's first day at Follett was February 18. He explained that the claimant's official start date at Follett was February 18 but that he believed that she had accepted employment earlier.

¶ 14 Following the hearing, the arbitrator found that the claimant's employment contract was entered into in Illinois, that the claimant's back injury arose out of and in the course of her employment, and that the petitioner was permanently partially disabled to the extent of 7.5% of her person as a whole. As a result, the arbitrator awarded the claimant 37.5 weeks of permanent partial disability (PPD) benefits.

¶ 15 Follett sought review of the arbitrator's decision before the Commission, arguing only that the arbitrator erred in concluding that the claimant's employment contract was finalized in Illinois. On review, the Commission concluded that the claimant's employment contract was finalized in Georgia, not Illinois, and thus that the Commission lacked jurisdiction over the matter. The Commission based its decision on four findings. First, the Commission found that

the claimant accepted Follett's job offer during her February 11, 2008, telephone call with Peluse "despite her conflicting testimony on that issue." Second, the Commission found that the drug test and employment eligibility requirements were "conditions of the contract" that came into play after the claimant accepted Follett's employment offer. Third, the Commission reasoned that Follett would not have paid for the claimant's travel expenses unless she had accepted an employment offer. Finally, the Commission noted that the claimant's signature on her offer letter was signed February 13, 2008, and that her testimony that she backdated her signature "is not credible." Because it concluded that it lacked jurisdiction, the Commission vacated the arbitrator's decision and found that the claimant was not entitled to benefits under the Act.

¶ 16 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County. The circuit court confirmed the Commission's decision, and the claimant now appeals.

¶ 17 The claimant's sole contention on appeal is that the Commission erred in concluding that it lacked jurisdiction over her claim. Illinois has jurisdiction over claims under the Act asserted by persons whose employment is outside the State of Illinois, as is the case here, "where the contract of hire is made within the State of Illinois." 820 ILCS 305/1(b)(2) (West 2008); see also Mahoney v. Industrial Comm'n, 218 Ill. 2d 358, 374, 843 N.E.2d 317 (2006); Chicago Bridge & Iron, Inc. v. Industrial Comm'n, 248 Ill. App. 3d 687, 691, 618 N.E.2d 1143 (1993); Energy Erectors, Ltd. v. Industrial Comm'n, 230 Ill. App. 3d 158, 161, 595 N.E.2d 641 (1992). A contract for hire is made where the last act necessary for the formation of the contract occurs. Cowger v. Industrial Comm'n, 313 Ill. App. 3d 364, 370, 728 N.E.2d 789 (2000); see also Chicago Bridge & Iron, 248 Ill. App. 3d at 691 (contract for hire is made "where the last act necessary to give it validity occurs").

¶ 18 Whether a contract for hire was made within Illinois is a question of fact for the Commission to determine, and the Commission's decision will not be disturbed unless it is

against the manifest weight of the evidence. Energy Erectors, 230 Ill. App. 3d at 161; see also Chicago Bridge & Iron, 248 Ill. App. 3d at 691. For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. Caterpillar, Inc. v. Industrial Comm'n, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894 (1992).

¶ 19 In arguing that the Commission erred in finding that the last act establishing her employment contract occurred outside Illinois, the claimant emphasizes her testimony that she did not accept Follett's employment offer over the telephone. She asserts that her testimony is consistent with evidence that Follett sent her an official offer letter after that conversation. That letter, she contends, would not have been sent if she and Follett had already reached an agreement. The claimant offers one reasonable interpretation of the evidence, but not the only reasonable interpretation. It is also possible that, as Peluse testified, they reached agreement during their telephone conversation and the letter was meant to confirm, not establish, their agreement. As the Commission observed in its decision, this version of events is further supported by the fact that Follett paid for her transport to Illinois. Although this interpretation contradicts the claimant's version of events, the Commission found that the claimant's testimony on that point was not credible. It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting evidence. O'Dette v. Industrial Comm'n, 79 Ill. 2d 249, 253, 403 N.E.2d 221 (1980). The Commission made its credibility determination by believing Peluse's, and not the claimant's, recollection of their telephone conversation, and we defer to that determination.

¶ 20 The claimant also argues that the offer letter's text, and Peluse's testimony, establish beyond question that Follett's offer was contingent on her passing a drug test and verifying her eligibility for employment. Because she did not submit the letter and eligibility verification until she appeared in Illinois on February 18, the argument continues, her contract was not fully formed until she was in Illinois. We disagree. On the drug testing issue, we note that the

evidence established that Peluse received the satisfactory results of the claimant's drug test on February 14, before she came to Illinois. Thus, even if Follett's offer were contingent on drug testing, that contingency was satisfied while she was outside Illinois.

¶ 21 As for the eligibility verification, the parties do not dispute that the claimant did not submit her verification until February 18, when she was in Illinois. However, there is ample evidence to support the Commission's finding that the eligibility verification was not a condition precedent to the formation of an employment contract, but instead was a task she was required to perform in order to maintain her employment. The offer letter that describes the eligibility documentation requirement does not say that "the offer" is contingent on her providing documentation; it says that that her "employment" is contingent on documentation. Even more notably, the main text of the letter indicates that the documentation could have been provided after she started work. To wit, the letter states, "Failure to provide appropriate documentation within 3 days of hire will result in immediate termination of employment in accordance with the terms of the Immigration Reform and Control Act." In light of that evidence, we conclude that a rational trier of fact could have agreed with the Commission's finding that the employment eligibility verification was not a precondition to the claimant's employment.

¶ 22 For the foregoing reasons, we conclude that the Commission had sufficient evidence on which to conclude that the last act leading to her employment with Follett occurred outside Illinois. Accordingly, we conclude that the Commission's finding, that it lacked jurisdiction over the claimant's claim, is not against the manifest weight of the evidence; and we, therefore, affirm the circuit court's judgment, which confirmed that decision.

¶ 23 Affirmed.