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2013 IL App (4th) 130011WC-U

Order filed November 8, 2013

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

PAUL JOHN DHERMY,)	Appeal from the Circuit Court
)	of the Fifth Judicial Circuit,
Appellant,)	Coles County, Illinois
)	
v.)	Appeal No. 4-13-0011WC
)	Circuit No. 12-MR-120
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (Boyd Bros.)	Mitchell K. Shick,
Transportation, Inc., Appellee).)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Stewart, Hudson, and Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* The Commission's conclusion that the State of Illinois did not have jurisdiction over the claimant's claim because the claimant's contract for hire was made in Alabama was not against the manifest weight of the evidence.
- ¶ 2 The claimant, Paul John Dhermy, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2008)) seeking benefits for a leg injury which he allegedly sustained while working for the respondent, Boyd Bros.

Transportation, Inc. (employer). After conducting a hearing, the arbitrator found that it lacked jurisdiction because the claimant's contract for hire was formed in Alabama, not Illinois. The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). The Commission unanimously affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Coles County, which confirmed the Commission's ruling. This appeal followed.

¶ 3

FACTS

¶ 4 The claimant is a truck driver who resides in Illinois. The employer is a trucking company located in Clayton, Alabama. While the claimant was working as a driver for one of the employer's competitors, one of the claimant's former coworkers who had been working for the employer convinced the claimant to call the employer to learn about employment opportunities. The claimant eventually called the employer and spoke with Cindy Brown, one of the employer's driver recruiters. Brown subsequently sent some information and paperwork (including an employment application) to the claimant's home in Mattoon, Illinois. The claimant filled out the application and mailed it to the employer from his home in Illinois.

¶ 5 The claimant testified that, after the employer received his completed job application, Brown called the claimant at his home in Illinois and told him that the employer would like the claimant to "come work for [the employer]." According to the claimant, Brown told him that the employer had determined that his driving record was good and asked him "when [he] wanted to come to orientation." The claimant testified that he told Brown that he had not made up his mind whether he was going to work for the employer because he was happy at his current job.

However, after discussing the matter with his wife, the claimant called Brown a few months later from his home in Illinois and told Brown that he would "give [the employer] a try."

¶ 6 The claimant testified that, during that telephone conversation (which occurred in early June 2006), he told Brown that he wanted to know if he was hired because he did not want to leave his current job until he made sure that he had a job with the employer. According to the claimant, Brown then said "[h]ang on a minute *** I have somebody that wants to talk to you," at which point a woman identifying herself as Betty Nix¹ got on the phone and said "I want to welcome you to Boyd Brothers Transportation." The claimant testified that Nix asked him when he could come to Alabama for the orientation. He agreed to go to Alabama in approximately one month. The claimant testified that he interpreted these communications as a job offer from the employer that he could accept. He also stated that he would not have left his former employer if he had not been hired by the employer.

¶ 7 The claimant testified that the employer informed him that it would pay for his bus ticket to Alabama or, if the claimant chose to drive, the employer would reimburse him for gas money. According to the claimant, the employer never informed him that he would not be formally hired or paid until he passed a road test and a drug test. The claimant traveled to Alabama, successfully completed the employer's orientation process, and began carrying loads as a driver for the employer immediately thereafter.

¶ 8 On cross-examination, the claimant admitted that, when he applied for a job with the employer, he knew that the employer would contact his current employer to verify his employment. He also knew that he would have to undergo a drug test and a physical

¹ Betty Nix was the Director of Recruiting for the employer in June 2006.

examination before he got into a truck for the employer because such tests were required by federal law. The claimant testified that he took the drug test (a urinalysis) and physical during orientation in Alabama. He agreed that, if he did not pass those tests, he would not be driving for the employer. However, the claimant testified that he "knew" that he would pass the physical exam, the drug test, and the driving tests. He therefore assumed that he was hired during his telephone conversation with Brown and Nix prior to orientation.

¶ 9 During an evidence deposition, Nix testified that she welcomed the claimant to orientation during a telephone conversation in June 2006. Nix testified that she did not offer the claimant a job during that telephone conversation.² She stated that, before the employer made a job offer to the claimant, the claimant had to complete orientation in Alabama. During orientation, the claimant would have had to fill out a driver certification manual, undergo an interview, complete a background check, and take a physical, a drug test, and a road test. He would be offered employment and hired only after he successfully completed this orientation process. In the claimant's case, that occurred on July 7, 2006. According to Nix, if the claimant had not passed the physical, drug test, or background check, he would have been sent home without an offer of employment. Nix stated that, at the time the claimant applied for a job, approximately 15 to 20 percent of drivers did not successfully complete the orientation process and did not receive job offers. Nix testified that the claimant was not hired prior to orientation and that, to her recollection, no one at the employer offered the claimant a job prior to orientation.

² During cross-examination, Nix admitted that she had no specific recollection of this telephone conversation with the claimant. Her testimony was based on her knowledge of the employer's regular employment policies and practices.

¶ 10 Cynthia Brown also gave an evidence deposition. During her deposition, Brown testified that, while she was processing the claimant's job application in June 2006, she sent the claimant a written "orientation checklist" which she later discussed with him by phone. Brown testified that, during that telephone conversation, she went over "each and every item" of the orientation checklist.³ Brown also claimed that she had no subsequent telephone conversations with the claimant.⁴ According to Brown, she did not tell the claimant that he was hired by the employer as a driver during their June 2006 telephone conversation, and she never indicated that the claimant had a job offer from the employer during any of the phone conversations she had with the claimant prior to his orientation. She was the only recruiter involved with the claimant, and she did not believe that any other recruiters were involved in the claimant's hiring process.

³ The orientation checklist to which Brown referred does not appear in the record. However, during the arbitration hearing, the claimant's counsel showed the claimant the checklist and asked him questions about it. The claimant testified that he had not seen the checklist until his attorney showed it to him on the day before the hearing. The claimant denied that anyone ever went over anything on the checklist with him, except that the employer told him "how much [he] would get paid for orientation" and that the employer would pay the claimant for gas mileage to Birmingham, Alabama. When his counsel asked him "[d]id anybody go over with you this part [of the checklist] that starts, [f]inal decision will not be made until all paperwork, road test, drug test and personal interview are completed and passed?," the claimant responded, "No."

⁴ Brown testified that this was the employer's "normal process." She did not base her testimony on any independent recollection of her telephone conversations with the claimant.

In Brown's opinion, the claimant became an employee "after [he came] to orientation and completed what was asked of him *** that was required for him to pass."

¶ 11 On July 6, 2006, during the orientation process in Alabama, the claimant completed and signed an "Application Information Form" that had been prepared by the employer. The form noted, in relevant part:

"In making this application for employment, I understand that the [employer] may investigate my driving record and my criminal record ***

I understand that [the employer] reserves the right, to the extent permitted by law, to require a drug test or a post-offer medical examination as a condition of employment or at any time thereafter. I hereby give my consent to any such test or examination. ***

I understand that this employment application and any other Company documents are not promises of employment. ***

The information given by me in this application is true and complete in all respects, and I agree that if the information is found to be false, misleading, or unsatisfactory in any respect (in the exclusive judgment of the [employer]) that I will be disqualified from consideration for employment or subject to immediate dismissal if discovered after I am hired.

THIS APPLICATION WILL BE CONSIDERED ACTIVE FOR A MAXIMUM OF 30 DAYS. IF YOU WISH TO BE CONSIDERED FOR EMPLOYMENT AFTER THAT TIME, YOU MUST REAPPLY. DO NOT SIGN UNTIL YOU HAVE READ AND UNDERSTAND THIS STATEMENT."

The claimant signed the page containing these statements.

¶ 12 The arbitrator ruled that Illinois had no jurisdiction over the claimant's claim because the "last act" giving rise to the employment contract occurred in Alabama. The arbitrator found that it was "clear from the testimony of Brown, Nix and the [claimant] that the hiring process involved a written job application, verification by Boyd's of over-the-road truck driving experience and background information, and most importantly, completing 'orientation week.'" The arbitrator concluded that Nix and the claimant established that, before driving for the employer, the claimant "had to successfully pass orientation in Alabama" which included, among other requirements, "a physical examination, a drug test, a road test, [and] an interview." Accordingly, the arbitrator found that "[t]he last act of hiring, as described by *** Nix and confirmed by [the claimant]" was the claimant's completion of orientation in Alabama.

¶ 13 The arbitrator acknowledged that the claimant testified that he "thought he had been hired before orientation week" and quit his prior job based on that understanding. However, the arbitrator stressed that the claimant "admitted that he would not be driving for [the employer] if he did not pass the tests administered during orientation" and that "nobody provided conclusive affirmation of hiring until after orientation." The arbitrator found that "Nix's June 29, 2006 phone welcome to orientation and confirming that he was to report to Alabama on July 5, 2006

for orientation d[id] not constitute an offer, especially with confirmation by [the claimant] that he had to complete the orientation activities prior to driving as a[n] *** employee." Further, the arbitrator observed that the employer's "personnel file documents with the orientation materials including the tests, results of test[s], [and] orientation guidelines all confirm the activity involving last act of hire occurred in Alabama in July, 2006."

¶ 14 Because it found no jurisdiction, the arbitrator dismissed the remaining issues raised by the claimant.

¶ 15 The claimant appealed the arbitrator's decision to the Commission, which affirmed and adopted the arbitrator's decision. The claimant sought judicial review of the Commission's decision in the circuit court of Coles County, which affirmed the Commission's decision. This appeal followed.

¶ 16 ANALYSIS

¶ 17 Illinois has jurisdiction over claims under the Act asserted by persons whose employment is outside the State of Illinois "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 (2006); *Chicago Bridge & Iron, Inc. v. Industrial Comm'n*, 248 Ill. App. 3d 687, 691 (1993); *Energy Erectors, Ltd. v. Industrial Comm'n*, 230 Ill. App. 3d 158, 161 (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 (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. A decision is against the manifest weight of the evidence only when the opposite conclusion is "clearly apparent." *Elgin Board of Education School District U-46 v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 943, 949 (2011). The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002). "A reviewing court will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn." *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006).

¶ 19 Applying these standards, we cannot say that the Commission's conclusion that the claimant's contract for hire was made in Alabama is against the manifest weight of the evidence. Nix testified that, before the employer made a job offer to the claimant, the claimant had to complete orientation in Alabama. During orientation, the claimant had to fill out a driver certification manual, undergo an interview, complete a background check, and take a physical, a drug test, and a road test. According to Nix, the claimant would be offered employment and hired only after he completed this orientation process and passed all the required tests. Brown also testified that the claimant was hired only after he passed these tests. Moreover, the claimant admitted that, if he did not pass the drug test and physical, he would not be driving for the employer. It is undisputed that the claimant took the physical and drug test in Alabama. This testimony supports the inference that the claimant's employment contract was completed in Alabama, not Illinois. See, e.g., *Energy Erectors*, 230 Ill. App. 3d at 162-64 (holding that

employee's contract for hire was completed in Virginia even though the employer offered the claimant a job by telephone in Illinois where the employer testified that an employee would not be hired unless he came to the job site in Virginia and signed payroll forms and other preemployment documentation). In addition, the claimant filled out and signed an employment application during orientation on July 6, 2006, which suggests that he knew that he had not been formally hired at that point. Certain statements contained in that application, including the employer's disclaimer that the application and any other company documents "are not promises of employment" and its warning that the provision of false information in the application would "disqualif[y] [the claimant] from consideration for employment," should have removed any doubt on that issue.

¶ 20 Based upon the evidence presented, the Commission could reasonably have inferred that completing orientation and passing the required tests were conditions precedent to the parties' obligations under the employment contract,⁵ and, therefore, that the "last act necessary to give validity to the contract" occurred where those required actions took place (*i.e.*, in Alabama). *Energy Erectors*, 230 Ill. App. 3d at 162. Accordingly, the Commission's finding that Illinois lacked jurisdiction over the claimant's claim was not against the manifest weight of the evidence. See, *e.g.*, *Energy Erectors*, 230 Ill. App. 3d at 162-64.

⁵ A "condition precedent" is an event which must occur or an act which must be performed by one party to an existing contract before the other party is required to perform, *i.e.*, before the parties' contractual obligations become binding. *Vuagniaux v. Korte*, 273 Ill. App. 3d 305, 309 (1995). A "condition subsequent," on the other hand, is an event which, if it occurs, discharges preexisting contractual liability. *Id.*

¶ 21 We acknowledge that some of the evidence presented in this case arguably lends some support to the claimant's position. For example, the claimant testified that, during his June 2006 telephone conversation with Brown, he told Brown that he wanted to know if he was hired because he did not want to leave his current job until he made sure that he had a job with the employer. According to the claimant, Nix then got on the telephone and said "I want to welcome you to Boyd Brothers Transportation." In addition, the fact that the employer reimbursed the claimant for travel expenses to Alabama arguably suggests that it already considered the claimant an employee before he arrived in Alabama. That arguably makes this a closer case than *Energy Erectors*, wherein the employee's pay commenced when he arrived at the job site in Virginia and he was "not paid for travel expenses" incurred en route. *Energy Erectors*, 230 Ill. App. 3d at 163, 172.

¶ 22 Nevertheless, there is sufficient evidence to support the Commission's finding that the employment contract was completed in Alabama. As noted, Nix and Brown each testified that the claimant was hired only after he passed the required tests in Alabama.⁶ Moreover, the claimant admitted that he would not be driving for the employer if he did not pass the drug test and physical, and the employment application he completed on July 6, 2006, confirmed that he was not hired by the employer at that time.

⁶ The claimant asserts that Nix testified that the claimant was hired before the employer received the results of his drug test. The record does not support this assertion. In the deposition testimony cited by the claimant, Nix expressly stated that the employer must have received the results of the claimant's drug test before he was hired on July 7, 2006, because "he wouldn't have been hired if we hadn't have."

¶ 23 Moreover, although Nix admitted that she welcomed the claimant to orientation during the June 2006 telephone conversation, she testified that she did not offer him a job at that time and that no one offered him a job prior to orientation. Similarly, Brown testified that she did not tell the claimant that he was hired during their June 2006 telephone conversation and she never indicated that the claimant had a job offer prior to his orientation. The Commission obviously credited Nix's and Brown's testimony over the claimant's account of the June 2006 telephone conversation. It is the Commission's province to determine the credibility and weight of witness testimony and to resolve conflicts in the evidence, and we will not overturn the Commission's determinations on these matters unless they are against the manifest weight of the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). We do not find the Commission's credibility determinations to be against the manifest weight of the evidence, particularly considering the language of the July 6, 2006, employment application and the claimant's admission that he would not be driving for the employer unless he passed the drug test and physical.

¶ 24 It is also the Commission's province to draw reasonable inferences from the evidence (*Hosteny*, 397 Ill. App. 3d at 674), and we "will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn." *Durand*, 224 Ill. 2d at 64. Although some of the evidence in this case arguably supports the inference that the contract for hire was formed in Illinois before the claimant showed up for orientation in Alabama, the weight of the evidence supports the reasonable inference that the completion of orientation and the taking of the required tests were conditions precedent to the formation of the contract. Because it is undisputed that those events

took place in Alabama, there is sufficient evidence to support the Commission's conclusion that the contract was completed in Alabama.

¶ 25 The claimant contends that "last act" analysis does not apply in this case because the parties reached a "meeting of the minds" during the June 2006 telephone conversation.

Specifically, the claimant contends that, during that conversation, he accepted the employer's unequivocal offer of employment and the parties agreed on the essential terms of the employment contract, including the services to be performed by the claimant and the wages to be paid by the employer. According to the claimant, nothing more needed to occur to trigger the formation of an employment contract, and the "last act" analysis is therefore irrelevant and inapplicable.

¶ 26 We disagree. Based on the evidence presented in this case, the Commission could have reasonably found that, during the June 2006 telephone conversation, the parties agreed that the claimant would be hired *if he completed orientation in Alabama and passed all of the required tests*. Because those events were arguably conditions precedent to the formation of an employment contract, it was both necessary and appropriate for the Commission to employ a "last act" analysis. See, e.g., *Energy Erectors*, 230 Ill. App. 3d at 162-64. Regardless, the Commission's ruling can be affirmed under a "meeting of the minds" analysis as well. Based on the evidence presented, the Commission could have reasonably concluded that, if there was a meeting of the minds between the parties before the claimant showed up for orientation, the parties' shared understanding must have been that the claimant would *not* be formally hired until he passed all of the required tests during orientation. The claimant denied that he had this understanding and denied that the employer ever communicated this understanding to him during the June 2006 telephone conversation. As noted, however, it is within the Commission's

province to determine the credibility and weight of the claimant's testimony and to resolve conflicts in the evidence. The Commission's finding of no jurisdiction was not against the manifest weight of the evidence.

¶ 27

CONCLUSION

¶ 28 For the foregoing reasons, we affirm the judgment of the Coles County circuit court, which confirmed the Commission's decision.

¶ 29 Affirmed.