2018 IL App (2d) 170925WC-U

FILED: July 19, 2018

NO. 2-17-0925WC

IN THE APPELLATE COURT

OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JOHN MAJOR, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Thermo-Tech Windows, Appellee).	))))))))	Appeal from Circuit Court of Kane County No. 17MR433 Honorable David R. Akemann, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Hudson, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: The Illinois Workers' Compensation Commission did not err in finding claimant's employment was not principally localized in Illinois and that Illinois lacked jurisdiction over his workers' compensation claim.

¶ 2 On April 30, 2013, claimant, John Major, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2012)), seeking benefits from the employer, Thermo-Tech Windows. Following a hearing, the arbitrator found Illinois lacked jurisdiction over the claim. On review, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision. The circuit court of

Kane County confirmed the Commission. Claimant appeals, arguing the Commission erred in finding his employment was not principally localized in Illinois and that Illinois lacked jurisdiction over his claim. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Claimant alleged that he sustained work-related injuries to his upper extremities and neck as the result of a fall at work on August 4, 2011. On March 14, 2016, an arbitration hearing was conducted in the matter. At the outset of the hearing, the parties represented to the arbitrator that there was a dispute as to jurisdiction. Claimant's counsel asserted that pursuant to section 1(b)(2) of the Act (820 ILCS 305/1(b)(2) (West 2012)), Illinois had jurisdiction over an employee's workers' compensation claim if (1) the contract for hire was made in Illinois, (2) Illinois was the site of the accident, or (3) the claimant's employment was principally localized in Illinois. Claimant stipulated that his contract for hire with the employer was made in Minnesota and his alleged work accident occurred in Iowa. He maintained, however, that his employment was principally localized in Illinois and, thus, Illinois had jurisdiction over his claim.

¶ 5 In January 2009, claimant began working for the employer. He testified that he was an Illinois resident but he traveled to the employer's location in Minnesota "to be hired." Claimant worked for the employer as a territory sales representative and his job duties included introducing the employer's products to lumber yards and builders, supplying customers with quotes, customer service duties, performing sales presentations, and working "contractor shows." Claimant estimated that the employer had eight "territories." Initially, claimant's territory was only in Illinois and Iowa; however, by August 2011, his territory had been expanded by the employer to include South Dakota and Nebraska. At some point, claimant's territory also included parts of Indiana.

¶ 6 Claimant testified he had a home office at his Illinois residence where he performed paperwork, caught up on call logs and correspondence, ordered materials, and set his travel schedule. Claimant stated he set his own travel schedule except if there was a scheduled show that the employer wanted him to attend. He testified that, during a typical work week, he spent 25% to 30% of his time using his home office. (Claimant also estimated that he spent 2 ½ days per week working in his home office.) At arbitration, the employer submitted a computer printout from the Commission showing the employer was insured and listing claimant's home address as its Illinois address. Claimant stated the employer had no other office in Illinois other than his residence. Further, he testified he received business-related mail and packages at his home, sometimes every day and sometimes "not for a couple of weeks." The mail was sent from the employer in Minnesota and included claimant's paychecks. Claimant stored the business materials he received in his garage.

¶ 7 Claimant asserted that the employer also had no other employees in Illinois and that he serviced all of its Illinois "markets." He testified that he was supervised by, or reported to, individuals located in Minnesota. To claimant's knowledge, all of the employer's employees reported to "someone in Minnesota."

¶ 8 Claimant testified he attended annual sales meetings in Minnesota but otherwise did not go to the employer's Minnesota "plant." He traveled to meet customers and stated that his trips would begin and end at his home in Illinois. Claimant estimated that he stayed overnight outside of Illinois two to three nights a week. He stated that approximately 25% to 30% of his work-related expenses were generated in Illinois. In 2010, claimant traveled 70,000 miles for the employer. Again, he estimated that 25% to 30% of those miles were in Illinois.

¶ 9 Finally, claimant testified that the employer provided him with a car and a cell

phone. The car had Minnesota license plates and the phone had a number with a Minnesota area code.

¶ 10 On May 2, 2016, the arbitrator issued her decision, finding Illinois lacked jurisdiction over claimant's workers' compensation claim. She concluded the evidence failed to establish that claimant's employment was "principally localized" in Illinois. On March 21, 2017, the Commission affirmed and adopted the arbitrator's decision without further comment. On October 27, 2017, the circuit court of Kane County confirmed the Commission's decision.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, claimant argues the Commission's finding that he failed to prove his employment was "principally localized" in Illinois and that, as a result, jurisdiction over his claim was lacking was against the manifest weight of the evidence. He maintains the Commission failed to address all relevant factors for consideration and that its analysis excluded relevant case authority.

¶ 14 "Pursuant to the Act, Illinois may acquire jurisdiction over a claim (1) if the contract for hire was made in Illinois, (2) if the accident occurred in Illinois, or (3) if the claimant's employment was principally located in Illinois." *Cowger v. Industrial Comm'n*, 313 Ill. App. 3d 364, 369-70, 728 N.E.2d 789, 793 (2000) (citing 820 ILCS 305/1(b)(2) (West 1998)). As discussed, claimant concedes that his contract for hire was made in Minnesota and his alleged accident occurred in Iowa. He maintains only that his employment was principally located in Illinois.

¶ 15 The term "principally localized" has been defined as follows:

> " 'A person's employment is principally localized in this or another State when (1) his employer has a place of business in this or such other State and he

> regularly works at or from such place of business, or (2) if clause (1) foregoing is not applicable, he is domiciled and spends a substantial part of his working time in the service of his employer in this or such other State.' " *Patton v. Industrial Comm'n*, 147 Ill. App. 3d 738, 743, 498 N.E.2d 539, 543 (1986) (quoting 4 Larson, Workmen's Compensation Law app. H 629, 649–50 (Model Act) (1986)).

The "principally localized" definition "focuses first, and foremost, upon the situs where the employment relationship is centered" and "[o]nly in the event that such situs cannot be established is the alternative test involving domicile and substantial working time to be considered." *Id.* at 744.

¶ 16 Factors that are relevant to determining the situs of an employment relationship include the following:

> " '(1) where the employment relationship is centered, *i.e.*, the center from which the employee works; (2) the source of remuneration to the employee; (3) where the employment contract was formed; (4) the existence of a facility from which the employee received his assignments and is otherwise controlled; and (5) the understanding that the employee will return to that facility after the out-of-[s]tate assignment is complete.' " *Cowger*, 313 Ill. App. 3d at 373 (quoting *Montgomery Tank Lines v. Industrial Comm'n*, 263 Ill. App. 3d 218, 222, 640 N.E.2d 296, 299 (1994)).

"Whether a claimant's employment is principally localized in Illinois is a question of fact for the Commission and its resolution of this question will not be disturbed on appeal unless it is against the manifest weight of the evidence." *Montgomery Tank Lines*, 263 Ill. App. 3d at 222-23. A finding is contrary to the manifest weight of the evidence where an opposite conclusion is clearly

apparent. *Id.* at 223. On review, "[t]he appropriate test is whether there is sufficient evidence in the record to support the Commission's decision." *Sharwarko v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 131733WC, ¶ 57, 28 N.E.3d 946.

¶ 17 Here, the Commission determined that "the situs of the employment relationship [between claimant and the employer] is in Minnesota and, consequently, jurisdiction is not proper in Illinois." The record contains sufficient evidence to support that decision and an opposite conclusion from the one reached by the Commission is not clearly apparent.

¶ 18 Initially, claimant contends the Commission failed to address or consider three of the five relevant factors involved in determining the situs of the employment relationship. We disagree. The Commission set forth all five factors in its decision and the record otherwise fails to reflect that it ignored any factor or relevant consideration. Rather, the Commission determined the evidence simply did not weigh in claimant's favor. We can find no error in that determination.

¶ 19 Evidence showed claimant received his paychecks from Minnesota and that Minnesota was where the employment contract was formed. Thus, factors two and three clearly weigh in favor of Minnesota as the situs of the employment relationship. Sufficient evidence was also presented to show that the fourth factor—the existence of a facility from which the employee received his assignments and is otherwise controlled—weighed in favor of Minnesota. As the Commission noted, claimant received his territorial assignments from Minnesota. Evidence further reflected that claimant always reported to someone located in Minnesota and nowhere else, he was provided with a car with Minnesota plates, and he was given a cellular phone with a Minnesota area code. All of the business and promotional materials claimant received at his home office came from Minnesota and claimant attended annual sales meetings in Minnesota.

Finally, although claimant typically set his own travel schedule, the employer did direct him to attend certain shows. We find this evidence sufficiently demonstrates that claimant received his assignments from Minnesota and was otherwise controlled from that State rather than Illinois.

¶ 20 As claimant points out, the evidence also shows that claimant worked out of a home office in his Illinois residence and that his periods of travel would begin and end at his home. Thus, he maintains factors one and five—concerning the center from where an employee works and the facility that an employee returns to after completing out-of-state assignments—weigh in favor of Illinois as the situs of the employment relationship. However, even accepting that these factors favor Illinois, we cannot find that an opposite conclusion from that reached by the Commission is clearly apparent. In setting forth its decision, the Commission noted the following statement of law:

> " 'In some kinds of employment, like trucking, flying, selling, or construction work, the employee may be constantly coming and going without spending any longer sustained periods in the local state than anywhere else; but a status rooted in the local state by the original creation of the employment relation there, is not lost merely on the strength of the relative amount of time spent in the local state as against foreign states. An employee loses this status only when his or her regular employment becomes centralized and fixed *so clearly* in another state that any return to the original state would itself be only casual, incidental and temporary by comparison. This transference will never happen as long as the employee's presence in any state, even including the original state, is by the nature of the employment brief and transitory.' " (Emphasis added.) *Cowger*, 313 Ill. App. 3d

at 374 (quoting 9 A. Larson & L. Larson, Workers' Compensation Law § 87.42(a), (b)(1998)).

¶ 21 As discussed, the original employment relationship between the parties began in Minnesota. Although claimant resided in Illinois and operated in large part independently in his employment as a sales representative, performing many of his work duties in Illinois, a significant amount of control was still exercised over claimant from the employer's Minnesota location. Thus, in this instance, we cannot say that claimant's employment became "so clearly" fixed in Illinois such that Minnesota lost its status as the situs of the employment relationship. Ultimately, the majority of factors weigh in favor of finding that the parties' employment relationship was centered in Minnesota.

¶ 22 Claimant also challenges the Commission's decision on the basis that its analysis excluded relevant case authority. In particular, claimant contends that his case is most factually similar to *Associates Corporation of North America v. Industrial Comm'n*, 167 Ill. App.3d 988, 522 N.E.2d 102 (1988), and that the Commission should have relied on that case in determining the principal location of his employment. However, claimant's case turned on its own unique set of facts. A review of this court's decision in *Associates Corporation of North America* does not warrant a different result than that reached by the Commission, which was supported by the record and not against the manifest weight of the evidence.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the circuit court's judgment, confirming the Commission's decision.

¶ 25 Affirmed.