2015 IL App (1st) 133234WC-U

Order filed April 10, 2015

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JERRY CAMPBELL,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois
	)	
Appellant,	)	
	)	
v.	)	Appeal No. 1-13-3234WC
	)	Circuit No. 13-L-50418
	)	
ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION, *et al.*, (Corico, Inc.,	)	Eileen O'Neill Burke,
Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The Commission's finding that the State of Illinois did not have jurisdiction over the claimant's claim was against the manifest weight of the evidence where the last act necessary to give validity to the employee's contract for hire occurred in Illinois.

¶ 2 The claimant, Jerry Campbell, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)), seeking benefits for

injuries he allegedly sustained while he was working for Corico, Inc. (employer). An arbitrator conducted a hearing on the issue of whether Illinois had jurisdiction over the matter. Following the hearing, the arbitrator found that she lacked jurisdiction because the claimant's contract for hire was formed in Indiana, 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 Cook County, which confirmed the Commission's ruling. This appeal followed.

¶ 3 FACTS

¶ 4 The claimant worked for the employer as an over-the-road semi-truck driver who traveled throughout the country delivering liquid tanker products. He filed the instant claim seeking benefits for injuries he allegedly suffered to his right shoulder and back during a work-related accident on April 25, 2011.

¶ 5 The employer is a franchisee of Quality Carriers and it hauls freight exclusively for that company. The employer has an office and dispatch center in Gary, Indiana.

¶ 6 The claimant initially worked for the employer from early 1999 until October 2001. After working elsewhere for approximately 13 months, he sought employment with the employer again in November 2002. At that time, the claimant ran into Don Bergin, one of the employer's dispatchers, in the claimant's neighborhood. The claimant asked Bergin if the employer was still hiring. Bergin confirmed that the employer was hiring and gave the claimant a job application.

The claimant completed the application and gave it to Bergin, who submitted it to Jeff Pruden, the employer's operations manager.

¶ 7 Pruden subsequently contacted the claimant and told him to come talk to him at the employer's Gary, Indiana facility. The claimant testified that Pruden was the person who ultimately hired him and that any conversation he had about getting hired were with Pruden. The claimant stated that he had to meet with Pruden in Gary because the employer "[didn't] do any hiring over the phone" and "everything [had] to be in person."

¶ 8 When the claimant met with Pruden in Indiana, Pruden told him that, before the employer could consider offering him a job, the claimant had to pass a background check, an over-the-road driving test, and a drug screening at the employer's Gary, Indiana facility. He was also required to attend and successfully complete tanker certification training at Quality Carriers' training facility in Summit, Illinois. The claimant passed the background check, drug screening, and over-the road driving test in Indiana on November 25, 2002. He then returned to Illinois to undergo the tanker certification training.

¶ 9 According to the claimant, the training in Illinois lasted from three to five days and consisted of both road and classroom training relating to tanker operations and safety. Campbell had to pass both road tests and written tests before being hired by the employer. If he did not pass the tests in Illinois, he could not haul freight for the employer. The claimant described passing the tests in Illinois as "the last thing" he needed to do before the employer "put [him] in their computer."

¶ 10 The claimant testified that, on December 3, 2002, while he was still in Summit, Illinois, he was informed that he had passed the tanker certification training. He immediately called the

employer's dispatcher and told the employer that he had passed the training. The claimant stated that the dispatcher then arranged for the claimant to transport his first load. The claimant testified that he was hired by the employer at that time, while he was still in Summit, Illinois.

¶ 11 After he spoke with the employer's dispatcher by phone, the claimant traveled from Illinois to the Gary, Indiana terminal, picked up a truck, and departed on his first work run to Kansas City, Missouri. The claimant initially testified that he traveled to Gary to pick up his first load "maybe three days" after he told the employer that he had passed the tanker certification training. However, he later testified that he picked up a truck in Gary and left for Kansas City on December 3, 2002, the same day that he had learned that he had passed the tanker certification tests in Summit. The claimant stated that, when he went to pick up the truck in Gary, the employer did not give him any additional paperwork to fill out. He claimed that the employer "just gave [him] the keys, and that was it."

¶ 12 The claimant testified that, when he returned from Kansas City to the employer's Gary terminal on December 6, 2002, he renegotiated his salary with the employer. The employer pays its drivers according to a set pay scale. Drivers have the option to be paid either by the hour or by a percentage of the line haul revenue earned on each load they carry. Drivers who choose the percentage option begin at 22% and are increased by 1% for each year they drive for the employer. The claimant testified that, because he had previously driven for the employer for more than a year, he assumed that he was being rehired at the 23% rate. However, while he was returning from Kansas City, the claimant learned that the employer would be paying him only 22%. When he got back to the employer's office in Gary, the claimant asked the employer to pay him 23% in recognition of the time he had already worked for the company. The employer

agreed. That same day (December 6, 2002), the claimant signed a document indicating that he had chosen to be paid according to the percentage option at a rate of 23%. When asked on cross-examination whether he had left for his first work trip without "nail[ing] down" his salary, the claimant replied that he had assumed that he would be earning 23%. He further explained that "the 22 or 23 [percent]" "wasn't the pillar of the thing" and that he "wanted a job."

¶ 13 Pruden testified on the employer's behalf. Pruden stated that, ever since he began working for the employer 25 years ago, he has exclusively handled interviewing job applicants, negotiating with such applicants, and extending job offers to applicants on behalf of the employer. Pruden testified that, in 2002, the claimant filled out an application and passed a background check, physical examination, and drug test. At that time, according to Pruden, the claimant still had to pass the Quality Carriers' training session before Pruden could extend him an offer. Pruden confirmed that the claimant's training session with Quality Carriers took place in Summit, Illinois between November 25, 2002, and December 3, 2002.

¶ 14 Pruden stated that, after a job applicant attends the Quality Carriers' training session in Summit, Illinois, he would receive an e-mail or fax from Quality Carriers indicating whether the applicant had passed or failed. Pruden testified that he cannot put an applicant into the employer's computer until Pruden receives an e-mail or fax from Quality Carriers stating that the applicant has passed the Quality Carriers' training sessions because the applicant would not be assigned a number until that time. Moreover, Pruden noted that, even after he receives written confirmation that an applicant has passed the Quality Carriers' training, the applicant "still has to come in and finish his application process with [the employer]."

¶ 15 Although he admitted that he had no specific recollection of the events surrounding the

claimant's rehiring in 2002, Pruden testified that he has never extended an offer to any applicant before the applicant passed the Quality Carriers' training course because he is not allowed to hire an employee until Quality Carriers approves the applicant to haul quality Carriers' freight.

¶ 16 Pruden also agreed that, before anyone gets into a rig to work for the employer, he must first "sign off on how they are getting paid and what they are getting paid for." Pruden testified that the claimant did not sign any such document until December 6, 2002, after he had renegotiated his salary. Pruden claimed that he would not have discussed salary with an applicant immediately after he learned that the applicant had passed the Quality Carriers' training course in Illinois (*i.e.*, before the applicant came back to the employer's Gary office to complete the application process). Pruden testified that, when he met with the claimant at the employer's Gary, Indiana facility on December 6, 2012, he made the claimant a written offer of employment, the claimant countered with a differed rate of compensation, and Pruden agreed to the claimant's counter-offer. At that time, the claimant signed the written offer containing the agreed-upon rate of compensation, completed his final paperwork for payroll (including a W-4 tax withholding form), and was assigned a truck to drive.

¶ 17 On cross-examination, Pruden acknowledged that the Quality Carriers training was the "last thing that needed to be completed before [the claimant] was hired." He also conceded that certain of the employer's documents relating to the claimant's rehiring in 2002 suggested that the claimant was "hired" on December 3, 2002. For example, the "New Hire Check List" for the claimant reflects the claimant's "hire date" as "12-3-02," and a "Driver/Tractor Status Form" (which assigned the claimant an employee number and a "fuel number" which allowed him to purchase fuel on the road) reflected an "effective date" of "12-3-02."). After reviewing these

documents during cross-examination, Pruden admitted that the claimant was "hired" on December 3, 2002.

¶ 18 On redirect examination, Pruden testified that the claimant did not drive for the employer between December 3, 2002, and December 6, 2002, and did not begin working for the employer under December 6, 2002, when he signed the final paperwork and renegotiated his rate of pay. Pruden noted that the claimant could not have begun driving for the employer until he came to the Gary, Indiana terminal (after he passed the Quality carrier training course in Illinois) to pick up a truck and a fuel card. He also clarified that claimant's hiring documents showed that: (1) on December 3, 2002, Pruden offered the claimant 22% of the haul freight revenue; (2) the claimant did not accept that offer; (3) on December 6, 2002, the claimant came into the Gary, Indiana office to renegotiate his salary and to sign all of the final documents; (4) at that time, the claimant made a counteroffer for 23% of the haul freight revenue; (5) Pruden accepted the claimant's counteroffer and hired the claimant at the higher rate on December 6, 2002.

¶ 19 Following the hearing, the arbitrator found that she lacked jurisdiction because the claimant's contract for hire was formed in Indiana, not Illinois. The arbitrator noted that, "[i]n trying to determine whether the contract for hire was made in Illinois, it is necessary to evaluate the circumstances under which the [claimant] was hired and where the last act necessary for the formation of a contract for hire occurred." The arbitrator then outlined all the steps in the hiring process, noting where each step occurred. Specifically, the arbitrator noted that:

> "[t]he application was received in Indiana, reviewed in Indiana, the [claimant] was interviewed for the job in Indiana, had his physical, drug screen, back evaluation and PFT in Indiana and his 30 mile road test in Indiana. He then went

> to Illinois for about a week for training and testing on loading and unloading the tankers. The results of the test (pass) were reported to the facility/terminal in Indiana and an offer of employment was then able to be extended to [the claimant]. The individuals that conducted and evaluated the training and determined whether [the claimant] passed or failed did not extend an offer of employment to the [claimant]. The [claimant] called the facility in Indiana and spoke with Mr. Pruden. [The claimant] was directed by Mr. Pruden to report to the terminal in Indiana, to fill out information for payroll and taxes, pick up his credit card for fueling the truck and pick up the tractor assigned to him. He was dispatched from Indiana to Kansas City to make a delivery and returned to the terminal in Indiana at the end of his run. He negotiated a higher percentage of the load for his payment and signed the agreement regarding his pay in Indiana. Although he drives across the country for the job and occasionally receives some dispatches from the terminal on the west coast his principal place of employment is in Gary, Indiana."

¶ 20 Based on these facts, the arbitrator concluded that, "[c]learly with the exception of training regarding loading and unloading tankers the contract for hire was made in Indiana." Accordingly, the Commission found that "Illinois does not have jurisdiction over the [claimant's] claim," and dismissed as moot all other issues raised by the claimant.

¶ 21 The claimant appealed the arbitrator's decision to 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 Cook County, which confirmed the

Commission's ruling. This appeal followed.

¶ 22 ANALYSIS

¶ 23 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); *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 *Correct Construction Co. v. Industrial Comm'n*, 307 Ill. App. 3d 636, 640 (1999).

¶ 24 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, 164; see also *Chicago Bridge & Iron, Inc. v. Industrial Comm'n*, 248 Ill. App. 3d 687, 691 (1993).[1] A

[1] Citing *Mahoney*, 218 Ill. 2d at 363, the claimant argues that we should review the Commission's finding of no jurisdiction *de novo*. *Mahoney* addressed a pure question of law that was entirely dependent on the construction of statutory language, namely whether the site of a contract of hire is the sole determining factor for applying the [Act] to an employment injury sustained by a worker outside this state." *Id.* at 359, 363. Thus, *de novo* review applied. *Id.* at 363. Here, by contrast, we address whether a contract for hire was made in Illinois. We have repeatedly held that this presents a factual question that we review under the manifest weight of the evidence standard. *Energy Erectors*, 230 Ill. App. 3d at 161, 164; *Chicago Bridge & Iron*,

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). However, while we are reluctant to set aside the Commission's decision on a factual question, we will not hesitate to do so when the clearly evident, plain, and indisputable weight of the evidence compels an opposite conclusion. *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567 (1993).

¶ 25 The evidence in this case establishes that the last act necessary for the formation of the claimant's employment contract was the claimant's successful completion of the Quality Carriers' training course in Summit, Illinois. The claimant described passing the training in Illinois as "the last thing" he needed to do before the employer "put [him] in their computer" and testified that the employer hired him immediately after he passed this training, while he was still in Summit, Illinois. Pruden acknowledged that the Quality Carriers training was the "last thing that needed

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248 Ill. App. 3d at 691. The question can be characterized as one of law only if the facts are "undisputed" and "permit but a single inference." Such is not the case here because some of the relevant facts (such as when the claimant delivered his first load to Kansas City) are disputed. *Energy Erectors*, 230 Ill. App. 3d at 161.

to be completed before [the claimant] was hired." Moreover, some of the employer's documents relating to the claimant's rehiring in 2002 suggest that the claimant was hired on December 3, 2002, the date the claimant passed the Quality Carrier's training in Summit, Illinois. For example, the "New Hire Check List" for the claimant reflects the claimant's "hire date" as "12-3-02," and a "Driver/Tractor Status Form" (which assigned the claimant an employee number and a "fuel number" which allowed him to purchase fuel on the road) reflected an "effective date" of "12-3-02." After reviewing these documents during cross-examination, Pruden admitted that the claimant was "hired" on December 3, 2002. However, Pruden claimed that the claimant did not return to the Gary, Indiana facility from Illinois until December 6, 2010. Thus, Pruden's own testimony establishes that the claimant was hired immediately after he completed the Quality Carriers training, while he was still in Illinois.

¶ 26 Pruden noted that, even after he receives written confirmation that an applicant has passed the Quality Carriers' training, the applicant "still has to come in and finish his application process with [the employer]." However, he did not explicitly state that this must occur before a job applicant is *hired*, *i.e.*, he did not suggest that an employment contract is not formed until the applicant returns to Indiana and completes the application process. Any such suggestion would have contradicted Pruden's unequivocal testimony that completing the Quality Carriers' training in Illinois was the "last thing that needed to be completed before [the claimant] was hired." Moreover, Pruden admitted that he had no specific recollection of the events surrounding the claimant's rehiring in 2002, and he admitted that the employer's own documents showed that the claimant was "hired" on December 3, 2002 (the date the claimant passed the training in Illinois).

¶ 27 Pruden testified that the claimant could not have begun driving for the employer until he

came to the Gary, Indiana terminal (after he passed the Quality carrier training course in Illinois) to pick up a truck and a fuel card. Pruden also stated that, before anyone gets into a rig to work for the employer, he must first "sign off on how they are getting paid and what they are getting paid for." Pruden testified that the claimant did not sign any such document until December 6, 2002, after he had renegotiated his salary. Pruden claimed that he would not have discussed salary with an applicant immediately after he learned that the applicant had passed the Quality Carriers' training course in Illinois (*i.e.*, before the applicant came back to the employer's Gary office to complete the application process).

¶ 28 However, none of this testimony establishes that the claimant was not hired in Illinois. At most, it suggests that an employee cannot *begin work* until he returns to Indiana after completing the training in Illinois. However, Pruden's testimony is consistent with (and, in fact, supports) the claimant's assertion that he was hired while he was still in Illinois, regardless of when he actually began work for the employer in Indiana.

¶ 29 In addition, the claimant testified that he delivered a load for the employer before he signed the document reflecting his agreement to a compensation rate of 23% on December 6, 2002. Pruden denied this, but he never produced the billing records that would have established exactly when the claimant starting driving for the employer in 2002. When a party fails to produce evidence in its control, "[a] presumption arises that the evidence would be adverse to that party" unless the party shows "that there was a reasonable excuse for the failure to produce the evidence and that the evidence was equally available to the other side." *Reo Movers, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 216, 223 (1992). The employer made no such showing here. Thus, we presume that the employer's billing records would have shown that the claimant began

driving for the employer again on December 3, 2002, before he signed his final salary agreement three days later.

¶ 30 On redirect examination, Pruden testified that claimant's hiring documents showed that: (1) on December 3, 2002, Pruden offered the claimant 22% of the haul freight revenue; (2) the claimant did not accept that offer; (3) on December 6, 2002, the claimant came into the Gary, Indiana office to renegotiate his salary and to sign all of the final documents; (4) at that time, the claimant made a counteroffer for 23% of the haul freight revenue; (5) Pruden accepted the claimant's counteroffer and hired the claimant at the higher rate on December 6, 2002. However, this testimony is contradicted by the overwhelming weight of the evidence, including: (1) Pruden's and the claimant's testimony that the claimant was "hired" on December 3, 2002; (2) the employer's documents showing a hire date of December 3, 2002; (3) the claimant's testimony that he began driving for the employer on December 3, 2002; (4) the employer's failure to produce billing records to refute that claim; (5) the claimant's testimony that, when he hauled a load to Kansas City for the employer on December 3, 2002, he had assumed that he would be earning 23% according to the employer's established pay scale for drivers due to his prior work with the company, and that he difference between 22% and 23% "wasn't the pillar of the thing" because he "wanted a job."[2]

[2] Moreover, Pruden's testimony regarding the dates of offer and acceptance was inconsistent. As noted above, on redirect examination, Pruden claimed that the initial offer of employment was made to the claimant on December 3, 2002 (which the claimant rejected), and that the employer accepted the claimant's counteroffer of 23% on December 6, 2002. However, at another point

¶ 31 Accordingly, the record evidence is insufficient to support the Commission's finding of no jurisdiction. Although the Commission stated that "it is necessary to evaluate the circumstances under which the [claimant] was hired and where the last act necessary for the formation of a contract for hire occurred," it appeared to base its analysis on the fact that most of the events leading up to the claimant's hiring took place in Indiana. For example, the Commission noted that the claimant's job application was received and reviewed in Indiana, the claimant was interviewed for the job in Indiana, and had his physical, drug screen, and 30-mile road test in Indiana. The Commission also noted that the claimant negotiated a higher percentage of the load for his payment and signed the agreement regarding his pay in Indiana. Further, the Commission noted that he was dispatched from Indiana and his "principal place of employment is in Gary, Indiana." However, the only relevant fact is where the *last act necessary for the formation of the contract* occurred. On this dispositive issue, the Commission's decision is silent. After thoroughly reviewing the record, we conclude that the manifest weight of the evidence in this case suggests that last act necessary for the formation of the contract occurred in Illinois.

¶ 32 We acknowledge that the applicable standard of review is deferential to the Commission's findings. Moreover, we note that certain aspects of Pruden's testimony, if true, provide support for the employer's claim that the last act necessary for the formation of the contract occurred in Indiana. For example, Pruden testified that he was not authorized to extend

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during his testimony, Pruden claimed that the employer made the offer of employment on December 6, 2002, in Indiana.

an offer to an applicant until he had received word that the applicant had passed the Quality Carriers' training (and he never did so), and both Pruden and the claimant testified that Pruden only made job offers in person, never over the telephone. However, as noted above, Pruden admitted that he did not recall the specifics of the claimant's situation. Moreover, at various points in his testimony, Pruden testified that he made an offer to the claimant on December 3, 2002, and that the claimant was "hired" on that date, even though Pruden testified that the claimant did not return to Indiana until December 6, 2002. The employer's documents also suggest that the claimant was hired on December 3, as does the claimant's testimony that he delivered a load for the employer on that date. Further, both the claimant and Pruden testified that completing the training in Illinois was the last thing that needed to be completed before the claimant was hired. Taken together, this evidence strongly suggests that, while the parties may have already agreed to most of the terms of the employment relationship in Indiana before the claimant began the Quality Carriers' training, passing that training in Illinois was the "last act necessary" for the formation of the contract. Thus, the manifest weight of the evidence suggests that Illinois has jurisdiction over the claimant's claim.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, we reverse the judgment of the circuit court of Cook County confirming the Commission's decision, vacate the decision of the Commission, and remand this matter to the Commission for further proceedings consistent with our decision.

¶ 35 Reversed; cause remanded.