

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409567

GALEN E. BROWN, EMPLOYEE	CLAIMANT
OVERNITE TRANSPORTATION COMPANY, EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED MARCH 23, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on February 21, 2005, at Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. James W. Stanley, Jr., Attorney-at-Law, North Little Rock, Arkansas.

Respondents represented by Mr. Andy L. Caldwell, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted February 21, 2005, to determine issues set out further below. This claim has an unusual procedural history. A prehearing conference was conducted in the claim on December 1, 2004, and a Prehearing Order was filed on said date. At the initial prehearing conference, it was stipulated that the employment relationship existed between the parties at all relevant times, including September 2, 2003; that the claimant sustained compensable injuries as the result of a motor vehicle accident on said date; that the claimant received certain benefits which were paid under the laws of the State of Mississippi for which respondents would be entitled to credits on whatever payments were previously made; and that the respondents controverted the claimant's entitlement to additional

benefits.

At the December 1, 2004, prehearing conference, the parties agreed that the issues to be presented for determination included:

- 1) Whether the Arkansas Workers' Compensation Commission had jurisdiction over the claim.
- 2) If answered affirmatively, claimant's entitlement to payment of outstanding medical expenses.

The claimant contended, in summary, that the Arkansas Workers' Compensation Commission had jurisdiction over this claim, while maintaining that as a resident of Arkansas, place of employment, Arkansas, and work-related injury in Arkansas, that Arkansas had the most significant contacts to establish proper jurisdiction rather than the State of Mississippi. The claimant further maintained that he never elected to file a claim in Mississippi, while acknowledging respondents' entitlement to a credit or offset. In the event jurisdiction was overcome, claimant contended that the respondents should be held responsible for any outstanding medical and related treatment, together with continued, reasonably necessary medical treatment.

The respondents contended that the claimant filed a claim in the State of Mississippi and received all benefits to which he was entitled pursuant to Mississippi Workers' Compensation Law, while further contending that the claimant could not now elect Arkansas as a forum to pursue additional benefits.

During the prehearing conference, it was pointed out that the claimant had

been involved in a subsequent motor vehicle accident which would require further development of the medical evidence related to any claim for benefits following the independent intervening accident. By agreement of the parties, any benefits following the second motor vehicle accident were reserved. A hearing was scheduled for January 10, 2005.

Immediately prior to the scheduled hearing, and, without permission of this administrative law judge, the parties conferred and agreed to submit the claim on legal briefs. Accordingly, the scheduled hearing was cancelled and a prehearing conference was conducted in lieu of the formal hearing on January 10, 2005. At the second prehearing conference, the parties jointly requested that the claim be submitted based upon a stipulated record and legal briefs.

By agreement of the parties, the sole issue to be presented for determination was whether the claimant made an election of remedies in the State of Mississippi and/or whether said election precluded jurisdiction in the State of Arkansas.

By agreement of the parties, all additional issues were specifically reserved. The following deadlines were established at the January 10, 2005, prehearing conference:

- 1) On or before January 21, 2005, the parties are to submit a comprehensive set of written stipulations, signed by both parties.
- 2) On or before February 1, 2005, the original discovery deposition of the claimant is to be filed.
- 3) Simultaneous letter briefs will be due on February 10, 2005.
- 4) Response briefs, if desired, must be submitted on or before February 17,

2005, at which time the claim will be submitted on the stipulated record, aforementioned.

After reviewing the claimant's discovery deposition, as well as the proposed stipulations, it was determined by this administrative law judge that the proposed stipulations were confusing, self-contradicting, and inconsistent with the discovery deposition. Accordingly, the parties were advised, in writing, that a hearing would be required. Following telephonic communications, both parties agreed that a hearing should be rescheduled for February 21, 2005, as set out above.

At the February 21, 2005, hearing, the parties stipulated that the employee/employer/carrier relationship existed at all relevant times, including September 2, 2003; that the claimant sustained a compensable injury arising out of and during the course of his employment with Overnite Transportation Company on said date; that the claimant earned sufficient wages to entitle him to compensation rates of \$440.00 per week for temporary total disability and \$330.00 per week for permanent partial disability in the event Arkansas retains jurisdiction over the claim; and that the respondents have previously controverted all benefits beyond those previously paid. It was further agreed that the claimant was, at all times, a resident of Little Rock, Arkansas; that his contract of hire was entered into in Little Rock, Arkansas; that respondents' home office was in Richmond, Virginia; that the claimant secured loads out of both Fulton, Mississippi, and at the Little Rock terminal; that immediately prior to his injury, he picked up a load at the terminal in Fulton, Mississippi, and dispatched to another state; and that the injury

occurred in the State of Arkansas.

At the hearing, the claimant contended, in summary, that the State of Arkansas was the proper forum for this claim; that the claimant never knowingly filed a claim in the State of Mississippi; that all principal contacts with the claim lie in Arkansas, and, that Mississippi had no contact other than a local terminal, while questioning whether Mississippi had jurisdiction over the claim. The claimant asserted that, even if Mississippi had jurisdiction, which was not conceded, Arkansas should maintain jurisdiction because all principal contacts involved the State of Arkansas and that jurisdiction should be retained by this State.

Respondents contended that the claimant proceeded with an election of remedies by knowingly filing a claim for workers' compensation benefits pursuant to Mississippi workers' compensation law; that he received benefits from the State of Mississippi and made no objection to the claim being filed in Mississippi; that all appropriate benefits had been paid pursuant to Mississippi workers' compensation law and that the claimant is, therefore, in fact, precluded from filing a claim in Arkansas based upon the election of remedies doctrine.

The claimant testified in his own behalf. Mikki Stanley was called as a witness by the respondents. The record is composed solely of the February 21, 2005, hearing, together with the claimant's discovery deposition which was introduced as "Respondent's Exhibit 1" and retained in the Commission file in bound form. Both parties submitted post trial briefs in support of their respective positions.

The Prehearing Orders, aforementioned, filed in this claim are incorporated as part of the record.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties at the February 21, 2005, hearing are hereby accepted as fact.
3. A preponderance of the credible evidence reflects that the claimant never filed a workers' compensation claim in Mississippi.
4. A preponderance of the credible evidence reflects that the claimant did not make an election of remedies in Mississippi.
5. Respondents have controverted all benefits beyond those previously paid.
6. All additional issues have been specifically reserved.

#### DISCUSSION

Rather than conduct an exhaustive analysis of the record in this cause, suffice it to say that there is no credible evidence whatsoever that the claimant ever

filed a claim for workers' compensation benefits in Mississippi. The only claim personally filed by the claimant was a claim for additional medical benefits filed by his attorney of record on or about October, 2004, in the State of Arkansas. The record does reflect that the third-party administrator for the employer, Gallagher Bassett Services, Inc., filed the claim in Mississippi. The employer acknowledged that the claimant sustained a compensable injury arising out of and during the course of his employment. The election of remedies, if any, was made by the third-party administrator and not the claimant or respondent employer.

The determination as to whether an election of remedies has been made depends upon whether the claimant actively initiated the proceedings or knowingly received benefits pursuant to the laws of another state. *Biddle vs. Smith & Campbell, Inc.*, 28 Ark. App. 46, 773 S.W.2d 840 (1989); *Elliot vs. Maverick Transportation*, \_\_\_\_ Ark. App. \_\_\_\_, \_\_\_\_ S.W.3d \_\_\_\_ (C.A.03-1348, Opinion delivered June 23, 2004). Whether or not the claimant made an election of remedies is a question of fact. *Biddle, supra*.

Again, there is no evidence whatsoever that the claimant actively initiated any proceedings in Mississippi. Apparently, respondents argue that the claimant made an election of remedies because he knowingly received benefits from another state. The record does not support this assertion. The claimant is not a highly educated individual. The employer accepted the claimant's injury as compensable and promptly notified its third-party administrator. The claimant should not be punished

because the administrator improperly filed the claim in Mississippi rather than in Arkansas which appears to be the proper forum. Further, the claimant should not be held to have made an election simply because he knowingly received a check issued by a state other than Arkansas. Unfortunately, many third-party administrators operate in offices throughout the United States and routinely issue compensation checks from banks throughout the United States. It cannot be rationally argued that by accepting a disability check, the claimant knowingly received benefits under the laws of another state. Clearly, the claimant cannot receive double recovery. However, there is no allegation that the claimant is seeking any such recovery. Rather, the claimant is pursuing additional benefits in Arkansas. It cannot be rationally argued that Arkansas does not have jurisdiction. As previously pointed out all of the substantial contacts in this claim occurred in this state. The claimant is a resident of Arkansas. The claimant was hired in this State. The compensable injury occurred in Arkansas. All of the claimant's medical treatment has been provided in Arkansas. The employer maintained a terminal in various states, including Arkansas. Any contacts with the State of Mississippi are minimal. The right to elect a remedy lies with the claimant. The respondents cannot usurp the claimant's rights and make that election. It is herein concluded that the claimant did not make an election of remedies in the State of Mississippi and is not precluded from pursuing additional benefits in the State of Arkansas.

By agreement of both parties, and as a matter of necessity, all additional

issues have been specifically reserved.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge