

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F613351

TONY GRAHAM, EMPLOYEE

CLAIMANT

**PILGRIM'S PRIDE CORPORATION,
SELF-INSURED EMPLOYER**

RESPONDENT

**SEDGWICK CLAIMS MANAGEMENT SERVICES (TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION FILED AUGUST 22, 2007

Hearing before Administrative Law Judge Barbara Webb on May 31, 2007, in Monticello, Drew County, Arkansas.

Claimant represented by Mr. Billy J. Hubbell, Attorney at Law, Crossett, Arkansas.

Respondents represented by Mr. Michael R. Mayton, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on May 31, 2007, before Administrative Law Judge Barbara Webb to determine whether the Arkansas Workers' Compensation Commission has jurisdiction to adjudicate this claim. A Pre-hearing Order was entered in this case on April 17, 2007. The Pre-hearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at the hearing. A copy of the Pre-hearing Order was made Commission's Exhibit No. 1 to the hearing record. The following stipulations as submitted by the parties on the record are hereby accepted:

1. On June 22, 2006, the date of the alleged compensable injury, the claimant was employed by Pilgrim's Pride at their plant in Farmerville, Louisiana.
2. Respondents have denied and controverted the claim.

3. The place of hire was at the Pilgrim's Pride plant in Farmerville, Louisiana.
4. The place of employment for the claimant was at the Pilgrim's Pride plant in Farmerville, Louisiana.
5. The alleged injury occurred at the Pilgrim's Pride plant in Farmerville, Louisiana.
6. Claimant is a resident of Arkansas and has been a resident of Arkansas during the entire time he has been employed at Pilgrim's Pride in Farmerville, Louisiana.
7. After the injury, the claimant's initial medical treatment was provided in Farmerville, Louisiana; but after the initial emergency room visit, claimant's medical treatment was provided in Arkansas.
8. The claimant was paid under the direction of the Farmerville, Louisiana, plant from a bank in Harris, Pennsylvania, and the check was directly deposited in claimant's bank account in Crossett, Arkansas.
9. Pilgrim's Pride is a corporation authorized to do business in Arkansas and has at least four plants located in El Dorado, DeQueen, Batesville, and Clinton, Arkansas, from which they conduct business in Arkansas.

By agreement of the parties, the sole issue to be presented at the hearing is whether the Arkansas Workers' Compensation Commission has jurisdiction of this claim. The parties have reserved all other issues.

The record consists of a one volume transcript of the May 31, 2007 hearing, consisting of the testimony of the claimant, Howard Anthony Graham, and all documentary evidence consisting of Commission's Exhibit No. 1 (Pre-hearing Order).

DISCUSSION

The claimant, Tony Graham, is forty-one years old. His birthday is July 24, 1966. He has been a resident of Arkansas most of his life. Graham testified that for a period of time, he lived in Texarkana and worked in Hope, Arkansas, for Tyson Foods until his divorce. He has been a resident of Crossett, Arkansas, for four years. While living in Crossett, he has worked and continues to work as maintenance personnel at Pilgrim's Pride, a poultry processing plant, in Farmerville, Louisiana. In order to get the job with Pilgrim's Pride, Graham initially contacted Reggie Moss, the Maintenance Superintendent of the Farmerville plant by telephone. He went to Farmerville to complete his employment application, take his physical examination, and complete his drug test.

The claimant testified that during his employment with Pilgrim's Pride in Farmerville, he has traveled on two occasions to the respondents' processing plant in El Dorado, Arkansas, to pick up parts. He explained that his regular work involved working on scales, computers, and automated equipment. In connection with his regular work, he explained that he had phone conversations with personnel at the El Dorado plant to work on computer problems. His pay check is directly deposited in his bank account in Arkansas. He testified that he initially went to the emergency room in Farmerville after his injury on the job, but that he was subsequently treated by Arkansas doctors.

He testified that he drives approximately fifty-eight (58) miles each way to and from work. At the time of his injury, he was working 2:30 to 10:30, the evening shift. He described the injury, as follows:

I put on all my gear, we have to wear a hair net, and a smock, and things like that, to go out on the production floor. When I get to work, I make a round through the floor to make sure nobody's been having any problems that day. Make sure everything's running good. I was walking along the floor, I was leaving the floor actually, and somebody yelled, and I just turned suddenly, and just left a pop in my back. I mean it was just an instantaneous thing. Immediately went and put my tool bag and everything up, and went to the nurse then.

He was given Tylenol. Approximately one and a half hours later, he went back to the nurse because his back continued to get worse and was taken to the emergency room in Farmerville, Louisiana.

On cross-examination, he admitted that all of his work with Pilgrim's Pride had been through the plant and under the supervision of personnel at Farmerville, Louisiana. He explained that he receives a check stub on Thursdays at his job location in Farmerville when paychecks are handed out to reflect the amount of the direct deposit. He testified that he had approximately eight to ten visits with either his family doctor in Crossett, Arkansas, or Dr. Redding in Little Rock, Arkansas.

The claimant contends that he sustained a compensable injury on June 22, 2006, while walking the production floor for respondent employer and that he is entitled to medical benefits, temporary total disability benefits, permanent partial disability benefits and attorney's fees. The claimant further contends that the Arkansas Workers' Compensation Commission has jurisdiction of the claim.

The respondents contend that the Arkansas Workers' Compensation Commission does not have jurisdiction of this claim, that the claimant was employed in Louisiana and that the alleged accident occurred in Louisiana. The respondents controvert this claim in its entirety contending that the claimant did not sustain a compensable injury on June 22, 2006, regardless of the jurisdiction.

The threshold issue in this case is whether the Arkansas Workers' Compensation Commission has jurisdiction of this claim. Under Ark. Code Ann. § 11-9-707(1)(Repl. 2002), there is a statutory prima facie presumption that the Commission has jurisdiction over any claims filed before the Commission. Conrad v. Continental Express, 1995 AWCC 84, Full Commission Opinion filed April 12, 1995 (E119927). Before the Commission can assume jurisdiction over the claim, there must be a statutory basis for entertaining the claim. International Paper Co. v. Tidwell, 250 Ark. 623, 466 S.W.2d 488 (1971); McKeag v. Hunt Transportation, Inc., 36 Ark. App. 46, 818 S.W.2d 581 (1991); Patton v. Brown & Root, Inc., 31 Ark. App. 141, 789 S.W.2d 745 (1990). The Arkansas Workers' Compensation Act does not specify what extrastate situations it covers. Tidwell, supra; R. Leflar, American Conflicts Law, 161 (3d Ed. 1977). Under the Arkansas Workers' Compensation law, an employer's liability is statutorily based upon disability or death from an injury arising out of and in the course of employment. Ark. Code Ann. § 11-9-401 (1987). In addition, "employment" is defined as "every employment carried on in the state" (subject to statutorily specified limitations). Ark. Code Ann. § 11-9-102(3)(1987).

The application of the Arkansas Workers' Compensation Act must not violate federal constitutional principles, particularly the full faith and credit clause. Id. In considering the federal constitutional requirements, Professor Larson points to six grounds on which the applicability of a particular compensation act has been asserted. They are:

- 1) Place where the injury occurred;
- 2) Place of making the contract;
- 3) Place where the employment relation exists or is carried out;
- 4) Place where the industry is localized;
- 5) Place where the employee resides;
- 6) Place whose statute the parties expressly adopted by contract.

4 A. Larson, Larson's Workmen's Compensation § 86.10 (1994); Tidwell, supra. According to Larson, any state which is the locus of any one of the first three criteria, and perhaps of the next two, can constitutionally apply its statute.

The Courts in Arkansas have held that this statutory provision must be applied liberally in favor of a claimant in light of the humane purposes of the Act. Tidwell, 250 Ark. at 633 (Arkansas law applied where claimant was injured in another state where performance was contemplated but employment contract was entered in Arkansas between an Arkansas resident and employer who maintains an office exercising general supervision in Arkansas); Missouri City Stone, Inc. v. Peters, 257 Ark. 917, 521 S.W.2d 58 (1975) (Jurisdiction found in Arkansas where injury occurred in Oklahoma, employee was an Arkansas resident hired by

telephone call placed to him in Arkansas, employer maintained office in Arkansas, and paid the employee by checks drawn on Arkansas bank); Midwest Dredging Co. v. Etzberger, 270 Ark. 936; 606 S.W.2d 619 (Ark. App. 1980) (Jurisdiction found where injury occurred in Louisiana where contract of hire occurred in Arkansas); but see contra, Patton v. Highlands Ins. Co., 31 Ark. App. 141, 789 S. W. 2d 745 (Ark. App. 1990) (No jurisdiction where only contact with Arkansas is claimant's residency).

In the instant case, I find that the preponderance of the evidence fails to provide a sufficient basis to invoke the jurisdiction of the Arkansas Workers' Compensation Act. The cases cited above which conclude that the Arkansas Commission can properly exercise jurisdiction over the claim all contain circumstances which, viewed in the light of liberal construction, connect the employment, and not merely the employee, to Arkansas. Patton v. Highlands Ins. Co., 31 Ark. App. 141, 789 S. W. 2d 745 (Ark. App. 1990). By stipulation of the parties as corroborated by the testimony of the claimant, the only circumstance in the case at bar bearing on jurisdiction is that the appellant is an Arkansas resident who received his medical treatment in Arkansas. On the other hand, the facts demonstrate that the contract of hire was made in Louisiana, the work was performed and supervised in Louisiana, and the injury occurred in Louisiana. Although there was evidence that the respondents maintained similar processing plants in Arkansas, the claimant testified that all of his work was directed, controlled, and supervised from the plant in Louisiana.

On a final note, I recognize the arguments that there are public policy concerns that this State is interested in minimizing the likelihood of one of its citizens becoming a public charge or an object of local charity in the event the claimant becomes devoid of financial resources. However, neither the fact that Graham was at all times a resident of the State of Arkansas or the interest of the State of Arkansas in securing compensation to Arkansas physicians and hospitals, or the combination thereof, can confer jurisdiction on this Commission without affirmative legislative action. See, Missouri City Stone, Inc. v. Peters, 257 Ark. 917, 521 S.W.2d 58 (1975) (*J.Fogelman*, concurring opinion). Therefore, based on the preponderance of the evidence, I find that the statutory basis required for the Commission's jurisdiction is absent and there is not a sufficient basis for the Arkansas Workers' Compensation Commission to invoke its jurisdiction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On June 22, 2006, the date of the alleged compensable injury, the claimant was employed by Pilgrim's Pride at their plant in Farmerville, Louisiana.
2. Respondents have denied and controverted the claim.
3. The place of hire was at the Pilgrim's Pride plant in Farmerville, Louisiana.
4. The place of employment for the claimant was at the Pilgrim's Pride plant in Farmerville, Louisiana.
5. The alleged injury occurred at the Pilgrim's Pride plant in Farmerville, Louisiana.

6. Claimant is a resident of Arkansas and has been a resident of Arkansas during the entire time he has been employed at Pilgrim's Pride in Farmerville, Louisiana.
7. After the injury, the claimant's initial medical treatment was provided in Farmerville, Louisiana; but after the initial emergency room visit, claimant's medical treatment was provided in Arkansas.
8. The claimant was paid under the direction of the Farmerville, Louisiana, plant from a bank in Harris, Pennsylvania, and the check was directly deposited in claimant's bank account in Crossett, Arkansas.
9. Pilgrim's Pride is a corporation authorized to do business in Arkansas and has at least four plants located in El Dorado, DeQueen, Batesville, and Clinton, Arkansas, from which they conduct business in Arkansas.
10. The preponderance of the evidence does not establish a sufficient basis for the Arkansas Workers' Compensation Commission to exercise jurisdiction over the claim since the injury occurred in Louisiana, the contract of hire was made in Louisiana, and the employment relationship existed and was carried out in Louisiana.

ORDER

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

HONORABLE BARBARA WEBB
Administrative Law Judge