

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F808615

TOMMY J. WILSON, EMPLOYEE	CLAIMANT
EMERSON ELECTRIC COMPANY, SELF-INSURED EMPLOYER	RESPONDENT
SEDGWICK CMS, TPA	RESPONDENT

OPINION FILED JUNE 8, 2009

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE M. SCOTT WILLHITE, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE BILL H. WALMSLEY, Attorney at Law, Batesville, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed January 12, 2009. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the present claim, growing out of the claimant's accidental injury of September 13, 2006, which occurred in or near Cartersville, Georgia.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the January 12, 2009 decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the

Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that Arkansas has jurisdiction of the above referenced claim. After reviewing the record and the relevant cases, I find that Missouri has jurisdiction of this matter.

The claimant was employed by the respondent employer as a truck driver. The claimant was a teacher driver riding as a passenger when they stopped near Cartersville, Georgia to get a drink and ask directions. The claimant fell while exiting the truck. He was knocked out for a period of time and hurt his elbow.

After the incident, the claimant went into the sleeper compartment to rest. His team driver, approximately three hours later, noticed that the claimant's left elbow was very swollen. They stopped at a hospital in Decatur, Alabama. The claimant also complained of neck and back pain.

The claimant sought additional treatment from his primary care physician in Paragould. He continued to work for the respondent employer during this period of time.

This case was before the Administrative Law Judge on a jurisdictional question. The Administrative Law Judge determined that both Arkansas and Missouri had sufficient ties to the claim but he determined Arkansas had jurisdiction. The respondents appealed arguing that Arkansas was an inconvenient forum and that Missouri was the appropriate forum. The respondents, on appeal, argued that the Commission should find that under the doctrine of forum non conveniens, the case should be referred to Missouri. Alternatively, the respondents argue that Arkansas does not have jurisdiction. After reviewing the relevant case law, I agree that jurisdiction lies with Missouri.

A review of the evidence in this case sets forth that the claimant has lived in Arkansas most of

his life. He was hired to drive a truck for the respondent employer by applying at the Emerson Transportation Division in Missouri. He would leave his home, go to a Penske facility to pick up a truck (the truck is owned by Penske), drive to the Emerson plant located in Paragould, pick up a trailer and deliver the trailer to points all over the United States but mostly his routes were in the Southeastern portion. The claimant filed income taxes in Arkansas. The claimant begins receiving wages, of approximately .23 per mile, from the time he leaves the Emerson plant until he returns to Arkansas.

The claimant obtained employment with the respondent employer in 2000. He filled out an application and mailed it to St. Louis, Missouri, where the respondent's corporate offices are located. He attended a one day orientation session at the St. Louis facility and was hired during that visit to St. Louis. The claimant received his dispatch orders from the office in Missouri and his supervisor is located in Missouri. Although not explicit in the record, since the claimant was classified by respondents as a Missouri employee, it is axiomatic that no premium tax was collected on this employee in the State of Arkansas.

The respondent's argue that pursuant to Ark. Code Ann. §16-4-101(D) the claim should be heard in Missouri. This relevant statutory provision states:

Inconvenient Forum. When the court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or dismiss the action in whole or in part on any conditions that may be just.

The factors to be considered are the convenience of the parties, availability of witnesses or documents, expense involved to each party, condition of the trial court's docket, and any other facts or circumstances affecting a just determination of the matter. See, Life of America Ins. Co. v. Baker-Lowe-Fox Ins. Marketing, Inc., 316 Ark. 630, 873 S.W.2d 537 (1994); Wal-Mart Stores, Inc. v. U.S. Fidelity & Guaranty Co., 77 Ark. App. 217, 76 S.W.3d 895 (2002).

The respondents state that the claimant's contract of hire, employment orientation, driving assignments, dispatch and payroll check all come from Missouri. He was injured in Georgia, received initial medical treatment in Alabama and his group health insurance is issued by Blue Cross/Blue Shield of Alabama. Although the claimant receives driving assignments to all contiguous 48 states and Canada, the

majority of his pick-up points and destination points are outside of Arkansas. The First Report of Injury was filed in Missouri on September 16, 2006, as the claimant was considered an employee of the Transportation Division in Missouri.

The respondents argue that because it operates in all states and Canada, it would create a hardship if it had to administer claims in every state it operates thereby having increased workers' compensation costs. The respondents contend that its expenses would be appreciably higher if it had to litigate cases factually similar to this claim in multiple jurisdictions. I agree.

The jurisdictional question is one of fact and law. Although a prima facie presumption is created by Ark. Code Ann. §11-9-707 that Arkansas has jurisdiction, the following factors are considered when finding that Arkansas lacks jurisdiction:

1. place of injury
2. place of contract of hire
3. place where employment relationship is carried out
4. place where industry is located
5. place where employee resides
6. place whose statute the parties adopt by contract

Baker v. Frozen Food Express Transport, 336 Ark. 451, 987 S.W.2d 658 (1999). The decision in Baker also suggests that the quality of the contacts is more important than the quantity of the contacts. In Baker, the Commission and the Court held that Arkansas lacked jurisdiction when the sole contacts with the state consisted of the location of the injury and a designated fuel stop and unsupervised drop yard. The employment relationship was entered in another state and the claimant was paid out of another state. Like the facts in Baker, the facts in the present case indicate that Arkansas lacks jurisdiction. The claimant may live in Arkansas and begin his routes in Arkansas, but he was hired in Missouri, paid out of Missouri, supervised out of Missouri and dispatched out of Missouri. For all purposes the claimant was considered an employee of the Emerson Transportation Division that operates out of Missouri.

When considering these factors, it is clear Missouri has jurisdiction of this matter. Although the claimant has been a resident of the state of Arkansas for most of his life and pays Arkansas income tax, the claimant has lived in Missouri at various times in his life. The claimant's contract of employment was made in Missouri and he was trained at the respondent's

corporate headquarters in St. Louis. The accident took place in Georgia. Although the claimant's work always began with a trip to the Penske facility in Paragould, the claimant would drive his trailer to various places throughout the continental United States and Canada. Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner