

**BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION**

SCWCC NO. 1701045

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SC Court of Appeals

THOMAS GARNER,
Claimant,

vs.

USA LOGISTICS,
Employer.

APPELLATE PANEL DECISION AND ORDER

SUMMARY OF THE PROCEEDINGS BELOW

This claim involves an out of state injury to the claimant on 1/16/2017, who was a truck driver for the employer, USA Logistics. The employer was uninsured, but has not executed a compliance order or ever been found subject to the South Carolina Act. The claimant alleged that he injured various parts of his body while unloading. The UEF denied jurisdiction. A hearing was held on April 29, 2021, and the single commissioner issued his order dated June 29, 2021, finding that the Commission had no jurisdiction over this claim. At that hearing both the claimant and Uninsured Employers' Fund (UEF) submitted records and documents as provided by the APA and the claimant testified. There was no other evidence offered by any party.

STATEMENT OF THE CASE ON APPEAL

This matter came before the Appellate Panel on September 20, 2021, by way of a Zoom video hearing on the issues raised by the Form 30 of the claimant. The claimant was represented by Tyler Bathrick and the UEF was represented by Robert M. Cook II. The employer did not appear at either hearing and was not represented by counsel at either the single commissioner or Appellate

Panel hearings. In his Form 30 the claimant requests that the determination that the Commission lacked jurisdiction be reversed.

The single commissioner made the following findings of fact and conclusions of law in his order dated June 29, 2021:

FINDINGS OF FACT OF THE SINGLE COMMISSIONER

1. USA Logistics is based in North Carolina. The claimant concedes this point and the documents introduced by the UEF show this to be case. For example, see the 4/4/2016 contract between the claimant and USA Logistics which states, "This agreement made ... in the count of Lincolnton, State of North Carolina" (APA at p. 291) and also the 2016 1099 submitted by the claimant (APA at p. 62).
2. There is no show cause order by the Commission finding that USA Logistics was subject to the Act and there is no capitulation agreement by USA Logistics acknowledging that it was covered by the Act.
3. The alleged injury by accident did not occur in South Carolina. The testimony was that he was injured in Wyoming and the Form 50 states it occurred in Colorado. The medical records also reflect that this alleged injury occurred out of state. See e.g., same day treatment records from North Colorado Medical Center (APA at p. 3). There simply is no evidence that the injury occurred in South Carolina and the claimant does not claim otherwise.
4. The claimant was hired in North Carolina. His own testimony reveals that he drove to North Carolina to initially discuss the job with USA Logistics, underwent testing for the job in North Carolina, returned home, and then received a call by USA Logistics after which went back to North Carolina to negotiate his compensation with USA Logistics. He would not have taken the job if the compensation discussed in North Carolina was not acceptable to him. Further, the written agreement between the claimant and USA Logistics explicitly states that it was entered into in North Carolina (APA at p. 291) and governed by the laws of North Carolina (APA at p. 292).
5. The Commission lacks jurisdiction over this claim as the claimant's mere residence in South Carolina does not confer jurisdiction over this claimed injury by accident.
6. No findings are made with regard to employment status, the average weekly wage, temporary total disability, permanent partial disability, or medical benefits.

CONCLUSIONS OF LAW OF THE SINGLE COMMISSIONER

1. South Carolina Code Section 42-15-10 provides that the claimant can bring his claim only in the state where he is hired, the state where he was injured, or the state where his employment was located. This statute creates a threshold jurisdictional question: does the South Carolina Commission have the authority/jurisdiction to adjudicate this claim? The conclusion of law in this case is that the Commission lacks jurisdiction.
2. South Carolina uses the "base of operations" rule to determine the location of the claimant's employment. Holman v. Bulldog Trucking Co., 311 S.C. 341, 428 S.E.2d 889 (Ct. App. 1992) (finding that the claimant's employment as a truck driver was not located in South Carolina). In this case, the conclusion of law is that the claimant's employment was located in North Carolina based upon the evidence in the record. The Commission has no jurisdiction based upon the location of the employment of the claimant.
3. The claimant was not injured in South Carolina. This is undisputed. The Commission has no jurisdiction based upon where the injury occurred.

4. The claimant was not hired in South Carolina. The terms of the claimant's employment were negotiated at USA Logistics in North Carolina and the written agreement between those parties provided that the employment agreement took place in North Carolina. The Commission has no jurisdiction over this claim based upon the location of where the claimant was hired.
5. As the Commission lacks jurisdiction over this claim, it is dismissed on that basis.

**APPELLATE PANEL ANALYSIS AND AFFIRMANCE IN FULL OF THE
SINGLE COMMISSIONER'S ORDER**

The Form 30 of the claimant states the following grounds for appeal:

1. Did the Single Commissioner err in finding that South Carolina did not have jurisdiction for this claim?
2. Did the Single Commissioner err in finding that Thomas Garner was hired in North Carolina?
3. Did the Single Commissioner err in refusing to find that Thomas Garner's base of operations was in South Carolina?

We find no error in the order of the single commissioner and adopt his reasoning and order in full. It is undisputed that the accident did not happen in South Carolina. The claimant's own testimony and his written contract with the employer compel a determination that he was hired in North Carolina. The claimant's mere residence in South Carolina is insufficient to support a determination that the base of operations was located in this state or that the Commission otherwise had jurisdiction over this claim. Accordingly, we make the following findings of fact and conclusions of law:

FINDINGS OF FACT OF THE APPELLATE PANEL

1. We find that USA Logistics is based in North Carolina. The claimant concedes this point and the documents introduced by the UEF show this to be case. For example, see the 4/4/2016 contract between the claimant and USA Logistics which states, "This agreement made ... in the count of Lincolnton, State of North Carolina" (APA at p. 291) and also the 2016 1099 submitted by the claimant (APA at p. 62).
2. We find that there is no show cause order by the Commission finding that USA Logistics was subject to the Act and there is no capitulation agreement by USA Logistics acknowledging that it was covered by the Act.
3. We find that the alleged injury by accident did not occur in South Carolina. The testimony was that he was injured in Wyoming and the Form 50 states it occurred in Colorado. The medical records also reflect that this alleged injury occurred out of state. See e.g., same day treatment records from North Colorado Medical Center (APA at p. 3). There simply is no evidence that the injury occurred in South Carolina and the claimant does not claim otherwise.

4. We find that the claimant was hired in North Carolina. His own testimony reveals that he drove to North Carolina to initially discuss the job with USA Logistics, underwent testing for the job in North Carolina, returned home, and then received a call by USA Logistics after which went back to North Carolina to negotiate his compensation with USA Logistics. He would not have taken the job if the compensation discussed in North Carolina was not acceptable to him. Further, the written agreement between the claimant and USA Logistics explicitly states that it was entered into in North Carolina (APA at p. 291) and governed by the laws of North Carolina (APA at p. 292).
5. We find that the Commission lacks jurisdiction over this claim as the claimant's mere residence in South Carolina does not confer jurisdiction over this claimed injury by accident.
6. We make no findings are made with regard to employment status, the average weekly wage, temporary total disability, permanent partial disability, or medical benefits.

CONCLUSIONS OF LAW OF THE APPELLAT PANEL

1. We conclude that South Carolina Code Section 42-15-10 provides that the claimant can bring his claim only in the state where he is hired, the state where he was injured, or the state where his employment was located. This statute creates a threshold jurisdictional question: does the South Carolina Commission have the authority/jurisdiction to adjudicate this claim? The conclusion of law in this case is that the Commission lacks jurisdiction.
2. We conclude that South Carolina uses the "base of operations" rule to determine the location of the claimant's employment. Holman v. Bulldog Trucking Co., 311 S.C. 341, 428 S.E.2d 889 (Ct. App. 1992) (finding that the claimant's employment as a truck driver was not located in South Carolina). In this case, the conclusion of law is that the claimant's employment was located in North Carolina based upon the evidence in the record. The Commission has no jurisdiction based upon the location of the employment of the claimant.
3. We conclude that the claimant was not injured in South Carolina. This is undisputed. The Commission has no jurisdiction based upon where the injury occurred.
4. We conclude that the claimant was not hired in South Carolina. The terms of the claimant's employment were negotiated at USA Logistics in North Carolina and the written agreement between those parties provided that the employment agreement took place in North Carolina. The Commission has no jurisdiction over this claim based upon the location of where the claimant was hired.
5. We conclude that as the Commission lacks jurisdiction over this claim, it is dismissed on that basis.


ORDER OF THE APPELLATE PANEL

IT IS THEREFORE ORDERED, AJUDGED AND DECREED that the June 29, 2021, order of the single commissioner is affirmed in full and adopted by the Appellate Panel. This claim is dismissed for lack of jurisdiction for the reasons stated within the order of the single commissioner.

AND IT IS SO ORDERED.



SUSAN BARDEN
COMMISSIONER, SCWCC



MELODY JAMES
COMMISSIONER, SCWCC



AISHA TAYLOR
COMMISSIONER, SCWCC

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Valerie Deller on January 20, 2022