

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

SCWCC NO. 1701045

THOMAS GARNER,)
)
 Claimant,)
)
 vs.)
)
 USA LOGISTICS,)
)
 Employer/Carrier.)
 _____)

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ORDER DISMISSING/DENYING CLAIM
SC Court of Appeals

The matter captioned above arises out of allegations of an out of state injury on January 16, 2017, and came before the Commission on April 29, 2021, for a hearing on the issues raised by the Forms 50 and 51. The claimant was present and represented by Tyler Bathrick, Esquire. The alleged employer, USA Logistics, was properly given notice of the hearing, but did not attend either by way of counsel or representative. The Uninsured Employers' Fund (UEF) was represented by Robert M. Cook II, Esquire. The UEF contends that the Commission lacks jurisdiction to hear this claim. For the reasons discussed below, the undersigned finds that the Commission lacks jurisdiction over this claim and this claim is DISMISSED/DENIED.

APA SUBMISSIONS

The following materials were submitted pursuant to the provisions of the Administrative Procedures Act. The claimant objected to the UEF's introduction of a 5/9/20 CDL medical examination and a South Carolina criminal SLED report. The UEF voluntarily withdrew the SLED report and the 5/9/20 CDL medical examination was admitted over the claimant's objection. There was no documentation offered or submitted by USA Logistics.

Claimant's Submissions:

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|----------------------------------|-----------|--------|
| 1. North Colorado Medical Center | 1/16/2017 | 1 - 28 |
|----------------------------------|-----------|--------|

2. Southeastern Orthopedics	1/26/2017	29 – 33
3. Dr. Craig Chebuhar-IME	6/30/2020	34 – 37
Exhibit A Subpoenas from claimant’s attorney		38 – 61
Exhibit B Parts of deposition of Annie Cordes		62 – 63
No Exhibit C		
Exhibit D Claimant’s 1099		64
Exhibit E Drivers’ Logs		65 – 289
Exhibit F Subpoena to C. Davis		290 - 292

UEF Submissions:

1. 4/2016 Independent Contractor Contract		291 - 292
2. Employment Application with Fields Trucking		293 – 302
3. 2019 W-2 from Fields Trucking		303
4. 7/31/2020 Pay Stub from Fields Trucking		304
5. 5/9/2020 CDL Medical Examination		305 – 310
6. South Carolina SLED Criminal Report (Removed by consent)		311 – 312
7. <u>Young v. Tide Craft, Inc.</u> , 270 S.C. 453 (1978)		313 – 323
8. <u>Stephen v. Avins Construction Co.</u> , 324 S.C. 334 (Ct. App. 1996)		324 – 331
9. Claimant’s Quarterly Earnings Statement (SCDEW)		332
10. Response from Claimant’s attorney dated August 11, 2020 regarding Claimant’s tax returns.		333

STATEMENT OF THE CASE

The claimant alleges a compensable injury by accident to his right lower extremity and right hand on 1/16/2017 while he was employed by USA Logistics as a long-distance truck driver. He asserts entitlement to benefits by way of temporary total disability, permanent partial disability, and

medical care. The UEF contends that the Commission lacks jurisdiction over this claim as the injury by accident is alleged to have occurred outside of South Carolina, the employer is located outside of South Carolina, and that the claimant was not hired in South Carolina. The UEF also asserts various defenses as to the compensability of the claim and the claimant's entitlement to the benefits he claims.

EVIDENCE OF THE CASE

The claimant was the only witness. He testified that he was injured on 1/16/2017 when he was unloading certain items from a trailer. He stated the injury occurred in Wyoming, but acknowledged that the Form 50 stated it occurred in Colorado. He testified that he was an employee of USA Logistics and that his employer was located in Lincolnton, North Carolina. He sought contemporaneous treatment for his injuries in Colorado and then followed up on 1/26/17 with treatment by a local South Carolina medical practice. There was testimony as to his injuries to his right lower extremity and right hand, and the effect of those injuries upon his ability to work. On cross-examination the claimant acknowledged that his contract with USA Logistics provided that this agreement was entered into in North Carolina and controlled by the laws of North Carolina. Further, he stated that he traveled to USA Logistics in North Carolina to complete his agreement with USA Logistics and that he would not have taken that job if the compensation offered to him during that meeting in North Carolina was not satisfactory to him.

FINDINGS OF FACT

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

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.

ORDER

IT IS ORDERED, AJUDGED AND DECREED that the Commission lacks jurisdiction over this claim as the claimant was not injured in South Carolina, was not hired in South Carolina, and his employment was not located in South Carolina. This claim is dismissed based on the lack of jurisdiction.

AND IT IS SO ORDERED.



T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

June 29, 2021

By: Shawnee DeBruhl, Administrative Assistant to Commissioner Beck