

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION FULL
COMMISSION PANEL

Case No. 2022 - 000135

Thomas Garner,

Appellant, **RECEIVED**
MAY 27 2022
SC Court of Appeals

v.

USA Logistics,

Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

DID THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERR IN FINDING THERE IS NO JURISDICTION WHEN CLAIMANT WAS HIRED IN SOUTH CAROLINA, AND/OR HIS BASE OF OPERATION WAS LOCATED IN SOUTH CAROLINA.

STATEMENT OF THE CASE

On January 16, 2017, Thomas Garner (Mr. Garner or Appellant) was injured while working for USA Logistics (Respondent). Because the injury arose out of and in the course of his employment with Respondent, Mr. Garner filed a claim with the South Carolina Workers' Compensation Commission (Commission), requesting, among other things, medical treatment.

Respondent denied Mr. Garner's claim. And the basis for the denial, at least in part, is because Respondent believes the Commission lacks jurisdiction.

The Commission agreed with Respondent. On April 29, 2021, the Single Commissioner dismissed Mr. Garner's claim for lack of jurisdiction. Specifically, the Single Commissioner found the Commission lacked jurisdiction because the accident did not occur in South Carolina, Mr. Garner was not hired in South Carolina, and Mr. Garner's employment was not located in South Carolina. The Appellate Panel affirmed.

But the Commission has jurisdiction. To be sure, Mr. Garner was hired in and his employment is located in South Carolina. The Commission therefore erred in dismissing Mr. Garner's claim. Mr. Garner filed this appeal to correct the err.

STANDARD OF REVIEW

The Administrative Procedures Act (APA), S.C. Code Ann. § 1-23-310 et. seq. (2005 & Supp. 2006), governs appellate review of a final decision from an administrative agency. Shealy v. Aiken County, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). The APA generally requires this Court to uphold the Commission's findings of fact if they are supported by substantial

evidence in the record and the decision is not affected by an error of law. S.C. Code Ann. § 1-23-380(A)(5) (Supp. 2006); Baxter v. Martin Bros., Inc., 368 S.C. 510, 513, 630 S.E.2d 42, 43 (2006). But, when the jurisdiction of the Commission is at issue, this Court is not bound by the Commission's findings of fact. Gray v. Club Group, Ltd., 339 S.C. 173, 182, 528 S.E.2d 435, (Ct.App. 2000). Indeed, "[t]he question of subject matter jurisdiction is a question of law." Id. (citing to Canady v. Charleston County Sch. Dist., 265 S.C. 21, 216 S.E.2d 755 (1975) (in determining whether Commission had jurisdiction of claim presented, this Court is not bound by the finding of fact by the Commission; this Court, and Circuit Court, has both the power and the duty to review entire record and find therefrom jurisdictional facts, without regard to the conclusion of Commission on such issue, and will decide jurisdictional question in accord with the preponderance of evidence)).

And, any "doubts of jurisdiction will be resolved in favor of inclusion of employees within workers' compensation coverage rather than exclusion." Wilson v. Georgetown County, 316 S.C. 92, 94, 447 S.E.2d 841, 842 (1994).

FACTS

Respondent is a trucking company located in Lincolnton, North Carolina. (Claimant's APA p. 62). Mr. Garner resides in Leesville, South Carolina. (HT p. 6, lines 22-25; p. 11, lines 1-7). Leesville, South Carolina is approximately three and a half hours from Respondent. (HT p. 11, lines 18-23).

On March 24, 2016, Claimant presented to Respondent's main office in Lincolnton, North Carolina, completed an employment application, and took a drug test. (HT p. 9, lines 3-25). Mr. Garner was not hired that day. (HT p. 10, lines 1-3). Approximately three to five days later Mr. Garner contacted Respondent via telephone regarding the status of his application and drug test.

He was advised that he was hired and that he could come to Lincolnton, North Carolina to start working. (HT p. 10, lines 1-15; p. 11, lines 16-17). Mr. Garner was located at his home in Leesville, South Carolina when said conversation took place. (HT p. 11, lines 1-7). Mr. Garner testified that he believed he was hired during the conversation of March 24, 2016. (HT p. 13-17).

On April 4, 2016, Mr. Garner drove three and a half hours from his home in Leesville, South Carolina to Respondent's office in Lincolnton, North Carolina in order to begin work. (HT p. 11, lines 18-23). Mr. Garner would not have driven that distance if he was not guaranteed a job. (HT p. 12, lines 2-9).

On April 4, 2016, while in Lincolnton, North Carolina, Mr. Garner and Respondent memorialized the employment agreement in an Independent Contractor Agreement. (Defendants APA pp. 291-292). The contract states, "Contractors Principal place of business located at 114 Rikard Road, Leesville, South Carolina." (Defendants APA p. 291, number 2). The contract does not indicate when Mr. Garner was formally hired by Respondent. Mr. Garner signed the agreement after reviewing it for approximately five minutes before he started work on April 4th. (HT p. 18, lines 15-24).

As part of his job for Respondent, Mr. Garner regularly picked up products from West Marine in Rock Hill, South Carolina, and transported them out of state. (Claimant's APA pp. 65-289). Mr. Garner normally kept Respondent's tractor trailer truck at his house in Leesville, South Carolina. He kept the trailer at West Marine in Rock Hill, South Carolina. (HT p. 21, lines 2-7). He made pick ups at West Marine in Rock Hill approximately once a week. (HT p. 26, lines 6-16).

On January 16, 2017, Mr. Garner sustained an injury by accident during the course and scope of his employment with Respondent when he fell while unloading freight. The accident

occurred in Wyoming. (HT p. 26, lines 24-25; p. 27, lines 1-25; p. 28, lines 1-20). As a result of the accident, Mr. Garner sustained an acute intra-articular fracture of the right lateral tibial plateau that necessitated emergency medical care and orthopaedic follow up. (Claimant's APA p. 11 and p. 16).

Following the injury, Mr. Garner was advised to remain non-weight bearing. (Claimant's APA p. 32). He missed approximately six months of work due to the injury. (HT p. 30, lines 22-24). He incurred medical bills that have not been paid. (HT p. 29, lines 18-25; p. 30, line 1). Mr. Garner continued to experience right knee pain approximately once or twice a month, primarily with bending activities. (HT p. 34, lines 3-10). On June 30, 2020, Dr. Chebuhar provided a 5% impairment rating to Mr. Garner's lower extremity pursuant to the AMA Guides. Dr. Chebuhar recommended Hyalgan and Synvisc injections to the knee. (Claimant's APA p. 35).

ARGUMENT

The South Carolina Workers' Compensation Commission has jurisdiction over this matter because Claimant was hired in and his employment is located in South Carolina. The Commission has jurisdiction over a workers compensation claim if (1) the employee is hired in South Carolina, (2) the employee is injured in South Carolina, or (3) the employment is located in South Carolina. S.C. Code Ann. § 42-15-10 (1976). Mr. Garner was hired in South Carolina and his employment is located in South Carolina. The Commission therefore has jurisdiction over his workers' compensation claim.

Mr. Garner was hired in South Carolina. The Commission has jurisdiction when the injured worker is "hired" in South Carolina. S.C. Code Ann. § 42-15-10 (1976). The question of where Mr. Garner was hired is primarily one of contract. See Hill v. Eagle Motor Lines, 373 S.C. 422, 645 S.E.2d 424, 428 (2007) ("The employer-employee relationship is the jurisdictional

foundation upon which workers' compensation is awarded; the existence of a contract, not the commencement of work, establishes the employer-employee relationship.”). And, of course, a written contract is not required for a contract to exist. See id. (“The place of contracting is where the minds of the parties meet or the place where the final act occurred which made a binding contract.”) More specifically, “[w]here acceptance is given over the telephone, the place of contracting is where the acceptor speaks his acceptance.” Id. (internal quotation marks omitted).

And this isn't anything new. In O'Briant v. Daniel Constr. Co., 279 S.C. 254, 305 S.E.2d 241(1983) (finding when an employer offers a job over the phone and the employee signals an acceptance to the offer, the place of hiring is the state in which the employee accepts). For example, in Hill, the injured worker accepted a job offer as a truck driver from an Alabama employer over the phone while he was in South Carolina. 645 S.E.2d at 248. Although the injured worker had to travel to his employer's office in Alabama after hiring to finalize things, his place of hiring was South Carolina because it is where he accepted the job offer. Id.

Mr. Garner's facts (regarding how he was hired) mirror Hill. Prior to being hired, Mr. Garner drove to Lincolnton, North Carolina to complete a drug test and employment application. Approximately 3-5 days later, Respondent contacted Mr. Garner by telephone and advised him he was hired. (HT p. 9, lines 8-10; and HT p. 10, lines 10-14). Mr. Garner testified that the date he received that phone call was the date of his hire. (HT p. 11, lines 13-17).

Similar to Hill, after accepting the job offer, Mr. Garner drove three and a half hours from his home in Leesville, South Carolina to Respondent's office in Lincolnton, North Carolina in order to begin work. While there, he negotiated his pay and signed an employment contract. Mr. Garner testified that he would not have driven that distance if he was not guaranteed a job. (HT

p. 12, lines 2-9). And, while it may be true that all the details of the job had not been hashed out upon acceptance, Mr. Garner was nonetheless hired when he accepted the job offer over the phone.

Mr. Garner's employment is located in South Carolina. The Commission has jurisdiction when the injured worker's "employment is located" in South Carolina. S.C. Code Ann. § 42-15-10. South Carolina uses the "base of operations" rule to determine if Mr. Garner's employment is located in South Carolina. Hill, 645 S.E.2d at 429. "Under the base of operations rule, the worker's employment is located at the employer's place of business to which he reports, from which he receives his work assignments, and from which he starts his road trips, regardless of where the work is performed." Id.

In Hill, as already discussed, the injured worker accepted a job offer from an Alabama employer. The injured worker was hired as a truck driver. 645 S.E.2d at 426. Despite the injured worker's employer's place of business being in Alabama, the supreme court found the injured worker's employment was located in South Carolina. 645 S.E.2d at 429. Specifically,

[The injured worker] received his work assignment from dispatch at his South Carolina home; started his road trips from his home; used drop yards in South Carolina; kept his truck at his home on the weekends; and received his paycheck at his home in South Carolina. Although [the injured worker] was required to call the Alabama office at the end of each delivery in order to find out where to pick up his next load, he was not required to report to the Alabama office for duty or return to Alabama after completing each assignment.

Id.

Just like the injured worker in Hill, Mr. Garner kept the employer's tractor trailer truck at his home in Leesville, South Carolina (thus he departed in the tractor trailer from his home and received work assignments from his home). He kept the actual trailer at West Marine in Rock Hill, South Carolina. (HT p. 21, lines 1-7). Additionally, the employer and Mr. Garner agreed that Mr. Garners principal place of business was located at 114 Rikard Road, Leesville, South

Carolina.” (Defendants APA p. 291, number 2). A preponderance, if not all, of the evidence indicates that Mr. Garner’s base operation or principal place of business was located at 114 Rikard Road in Leesville, South Carolina.

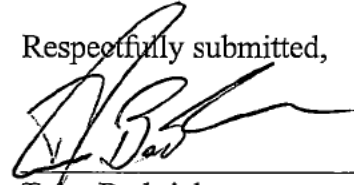
CONCLUSION

The Commission found it lacks jurisdiction because Mr. Garner was hired in North Carolina and Mr. Garner’s employment is located in North Carolina. To support the first point, the Commission found Mr. Garner negotiated his compensation in North Carolina and signed the employment contract in North Carolina. In other words, the Commission found Mr. Garner did not accept the job offer when he received the phone call in South Carolina. But, the only evidence on that point is Mr. Garner’s testimony that he did. Moreover, the Commission did not make factual findings or legal conclusions establishing where the contract was formed. On the second point, the Commission made no factual findings to support its conclusion that Mr. Garner’s employment is located in North Carolina. If this Court were bound by the Commission’s factual findings in this case, it would still have to remand for the Commission to make factual findings. But, the Court is not so bound, and the preponderance of evidence shows the Commission has jurisdiction.

Mr. Garner respectfully asks this Court to find the Commission has jurisdiction and remand to the Single Commissioner for additional Findings of Fact and Conclusions or Law regarding the additional issues raised but not addressed by the Commission.

[Signature Page to Follow]

Respectfully submitted,



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May 23, 2022
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COMMISSION PANEL

Case No. 2022 – 000135

Thomas Garner,

Appellant,

v.

USA Logistics,

Respondent.


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I certify that I have served the Initial Brief and Designation of Matter on the following listed below by depositing a copy of it in the United States Mail, postage prepaid, on May 23, 2022

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Appellate Case No.: 2022-000135

Dear Ms. Kitchings:

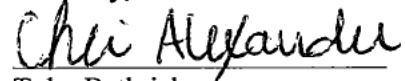
Enclosed please find the original and one (1) copy of Initial Brief of Appellant, Designation of Matter and Proof of Service for filing. Please date-stamp the extra copy of each and return them to our office.

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