IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 19-603-2

Filed: 5 May 2020

I.C. NO. 16-744994

EARL M. LEQUIRE, Plaintiff,

v.

SOUTHEASTERN CONSTRUCTION AND EQUIPMENT COMPANY, INC., Employer, CINCINNATI CASUALTY COMPANY, Carrier, Defendants.

Appeal by plaintiff from Opinion and Award entered 21 February 2019 by the North Carolina Industrial Commission. Heard in the Court of Appeals 13 November 2019.

The Law Offices of Gary A. Dodd, by Gary A. Dodd, for Plaintiff-Appellant.

Anders Newton, PLLC, by J. William Crone, for Defendants-Appellees.

YOUNG, Judge.

This appeal arises out of a workers' compensation claim. We find that the Industrial Commission correctly concluded that it did not have jurisdiction to adjudicate Plaintiff's claim, and therefore, we affirm.

I. Factual and Procedural History

Earl M. Lequire ("Plaintiff") alleges that he sustained a compensable injury while working for Southeastern Construction and Equipment Inc. ("Southeastern") in South Hill, Virginia on 8 February 2015. Plaintiff initially filed a workers' compensation claim with the Virginia Workers' Compensation Commission. Defendants accepted compensability for Plaintiff's 8 February 2015 injury and paid benefits under the Virginia Workers' Compensation Act. A dispute arose regarding Plaintiff's request for additional medical treatment, and the case was scheduled for hearing before the Virginia Workers' Compensation Commission on 25 April 2016. However, prior to the hearing, Plaintiff requested a voluntary dismissal of his Virginia claim, and his claim was withdrawn pursuant to an Administrative Order entered on 25 July 2016. Plaintiff filed an Industrial Commission Form 18 to initiate a claim in North Carolina on 24 August 2016.

Southeastern is a land clearing company that specializes in utility projects. The parties stipulated that Southeastern's principal place of business was in Tennessee at all relevant times. Southeastern hires employees to work specific projects without any guarantee regarding the availability of work upon completion of the project for which the employee is hired. As a result, the work force is often "laid off."

Plaintiff worked for Southeastern during three separate terms of employment: from 1999 to 2001, from May 2013 to December 2013, and from September 2014 to

April 2015. After Southeastern terminated Plaintiff's employment in 2001, he worked for other employers from 2001-2013. Plaintiff's second term of employment with Southeastern began in 2013. Plaintiff had to go through the new hire process, including a pre-employment drug screen, background check, pre-employment paperwork, and complete tax forms. Once that job was finished, Plaintiff returned to North Carolina and received unemployment benefits for 26 weeks.

Plaintiff then worked for another employer for about six weeks before Southeastern asked him to work for them again. Southeastern was on the jobsite in Virginia, and Plaintiff was in Kansas when Plaintiff accepted the 2014 offer of employment via telephone. Because Plaintiff was a rehire, he was not required to complete all the pre-employment paperwork he previously completed. However, he was required to show his valid DOT Certification when he arrived at the jobsite in Virginia. The projects Plaintiff worked on were confined to specific states: Oklahoma, Texas, and Virginia respectively. Plaintiff did not work on any pipelines that ran from one state to another state. After starting work for Southeastern in 2013, Plaintiff never performed any work on behalf of Southeastern in the state of North Carolina.

On 8 February 2015, Plaintiff was dropping a trailer when a part of the trailer slapped him against the side of the truck, causing pain in his shoulder, arm, and back. On 10 February 2015, Plaintiff received a diagnosis that his injuries were

"consistent with a ruptured tendon." He was placed in a sling and referred to an orthopedic surgeon. The orthopedic doctor diagnosed Plaintiff with a ruptured biceps tendon and referred him for shoulder surgery in North Carolina. After being seen by Virginia doctors, Plaintiff returned to North Carolina where Cincinnati Insurance Company ("Carrier") directed Plaintiff for treatment. The North Carolina surgeon operated on Plaintiff's shoulder, and informed Plaintiff that Carrier instructed the doctor not to discuss with Plaintiff any treatment for his hip and lower back pain. After Plaintiff was released from the surgeon's care, he was denied any further treatment by Carrier. Since that time, he continues to have back and hip pain, has received extensive therapy at the Veterans Association Medical Center, and has undergone two hip replacements.

Defendants denied Plaintiff's claim for workers' compensation benefits on the basis that the North Carolina Industrial Commission lacks jurisdiction to adjudicate Plaintiff's claim. On 28 October 2016, Plaintiff filed a Form 33, Request that Claim Be Assigned for Hearing, contesting Defendants' denial of Plaintiff's claim. On 15 March 2017, Defendants filed a Motion to Dismiss Claim with Prejudice. On 11 April 2017, Deputy Commissioner William H. Shipley ("Deputy Commissioner Shipley") issued an Order holding Defendants' Motion in abeyance pending an evidentiary hearing and bifurcating the issue of Industrial Commission jurisdiction from all other issues before the Commission.

On 18 December 2017, Deputy Commissioner Shipley issued an Opinion and Award granting Defendants' Motion to Dismiss Claim with Prejudice and denying Plaintiff's claim for compensation based on the lack of jurisdiction. On 21 February 2019, the Full Commission issued an Opinion and Award affirming Deputy Commissioner Shipley's decision and dismissing Plaintiff's claim with prejudice. The Commission found that Plaintiff's principal place of employment was not in North Carolina and that Plaintiff's employment contract was not made in North Carolina.

II. Standard of Review

"The question of subject matter jurisdiction may be raised at any time, even in the Supreme Court." *Lemmerman v. A.T. Williams Oil Co.*, 318 N.C. 577, 580, 350 S.E.2d 83, 85 (1986). "Whether a trial court has subject-matter jurisdiction is a question of law, reviewed *de novo* on appeal." *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010).

III. Jurisdiction

Plaintiff contends that the Full Commission incorrectly concluded that the Industrial Commission lacks jurisdiction to adjudicate Plaintiff's claim. We disagree.

The Workers' Compensation Act imposes certain conditions which must be met before the Industrial Commission can exercise jurisdiction over claims arising from accidents occurring outside North Carolina. N.C. Gen. Stat. § 97-36 provides, in pertinent part, as follows:

> Where an accident happens while the employee is employed elsewhere than in this State and the accident is one which would entitle him or his dependents or next of kin to compensation if it had happened in this State, then the employee or his dependents or next of kin shall be entitled to compensation (i) if the contract of employment was made in this State, (ii) if the employer's principal place of business is in this State, or (iii) if the employee's principal place of employment is within this State; provided, however, that if an employee or his dependents or next of kin shall receive compensation or damages under the laws of any other state nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Article.

N.C. Gen. Stat. § 97-36 (2017). This statute provides clear and unambiguous limitations on the Commission's jurisdiction over claims arising from accidents which occur outside of North Carolina. *See Thomas v. Overland Exp., Inc.*, 101 N.C. App. 90, 95, 398 S.E.2d 921, 925 (1990) (holding that N.C. Gen. Stat. § 97-36 is the controlling jurisdictional statute in workers' compensation cases even if a party had substantial contacts with North Carolina and met the minimum due process requirements for jurisdiction under N.C. Gen. Stat. § 1-75.4(1)(d)).

It is undisputed that Plaintiff's alleged injury occurred in Virginia, and that Southeastern's principal place of business was in Tennessee at all relevant times. Therefore, the only remaining jurisdictional issues are (1) whether North Carolina was Plaintiff's principal place of employment; and (2) whether Plaintiff's employment contract was made in North Carolina.

Under North Carolina law, an employee's principal place of employment is

located in the state "most important, consequential, or influential" to the employment. *Perkins v. Arkansas Trucking Svcs., Inc.*, 351 N.C. 634, 638, 528 S.E.2d 902, 904 (2000). Plaintiff admits that he did perform the majority of his job duties in specific states other than North Carolina, including Virginia, Oklahoma, and Texas. Plaintiff presented evidence of his North Carolina residency, evidence that he keeps his work truck in North Carolina, and evidence that his wages and other cash payments were deposited into his bank account in North Carolina. However, these alleged various contacts with North Carolina are irrelevant, because Plaintiff worked and earned all of his income in states other than North Carolina. After careful *de novo* review, we hold that the Industrial Commission does not have jurisdiction based on Plaintiff's principal place of employment.

Plaintiff further argues that the Industrial Commission had jurisdiction because his employment contract was made in North Carolina. "To determine where a contract for employment was made, the Commission and courts of this state apply the 'last act' test. For a contract to be made in North Carolina, the final act necessary to make it a binding obligation must be done here." *Murray v. Ahlstrom Indus. Holdings, Inc.*, 131 N.C. App. 294, 296, 506 S.E.2d 724, 726 (1998). The last act of the employment contract is generally the employee's acceptance of employment or the completion of other conditions of employment such as a pre-employment drug screen or background check. *Holmes v. Associated Pipe Line Contractors, Inc.*, __ N.C. App.

__, __, 795 S.E.2d 671, 675-75 (2017).

Plaintiff worked for Southeastern as an employee under three separate employment contracts; however, the only one at issue here is the 2014 employment contract. Assuming *arguendo*, that the May 2013 to December 2013 employment contract was relevant, because Plaintiff was a re-hire and did not have to complete new employee procedures, Plaintiff did not present any evidence showing that the last act necessary to form his 2014 employment contract with Southeastern occurred in North Carolina. Plaintiff acknowledged that he accepted Southeastern's offer to work in Virginia via telephone while present in Kansas. Plaintiff's acceptance of employment from Kansas was the last act necessary to form his 2014 employment contract. Alternatively, Plaintiff's showing proof of DOT certification in Virginia was arguably the last act of his 2014 employment contract. Whether we determine that Plaintiff's acceptance of the job offer from Kansas or his providing proof of DOT certification in VA was the last act, no act in the formation of the employment contract was done in North Carolina. After careful *de novo* review, we hold that the Industrial Commission does not have jurisdiction based on Plaintiff's employment contract.

AFFIRMED.

Judges TYSON and COLLINS concur.

Report per Rule 30(e).