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2012 IL App (3d) 110657WC-U

Order filed July 18, 2012

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MARK VONGPHOUTHONE,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit
Appellant,	)	Peoria County, Illinois
	)	
v.	)	Appeal No. 3-11-0657WC
	)	Circuit No. 11-MR-163
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION *et al*. (Harlan Laboratories,	)	Michael E. Brandt,
Inc., Appellee).	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice McCullough and Justices Hoffman, Hudson, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's conclusion that the State of Illinois did not have jurisdiction over the claimant's claim was not against the manifest weight of the evidence where there was evidence suggesting that the last act necessary for the formation of the claimant's employment contract occurred in Wisconsin.

¶ 2 The claimant, Mark Vongphouthone, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2008)) seeking benefits

for injuries he allegedly sustained while working for the respondent, Harlan Laboratories, Inc. (employer). The arbitrator conducted a hearing on the issue of whether Illinois had jurisdiction over the matter. Following a hearing, the arbitrator found that it lacked jurisdiction because the claimant's contract for hire was formed in Wisconsin, not Illinois. The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). The Commission unanimously affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Peoria County, which confirmed the Commission's ruling. This appeal followed.

¶ 3 FACTS

¶ 4 The claimant began working for the employer in 1996 at the employer's facility in Bartonville, Illinois. After the Bartonville facility closed in 1999, the claimant transferred to the employer's Madison, Wisconsin facility, where he worked until June 7, 2000. The employer manufactures food for laboratory animals. While the claimant worked for the employer in Wisconsin, he operated a food manufacturing machine called an "extruder."

¶ 5 In June 2000, the claimant resigned from his job with the employer, returned to Illinois, and began working at Morton Metalcraft, where he worked for approximately five months.

¶ 6 Tom Siegel, the operations manager for the employer's Madison facility, called the claimant in November 2000 at his home in Illinois and offered him his old job back. The claimant agreed to come back to Wisconsin to work for the employer. The parties agreed that the claimant's start date would be December 11, 2000.

¶ 7 The claimant traveled to Wisconsin on Sunday, December 10, 2000, and spent the night at a Days Inn in Madison. The employer reimbursed the claimant for the room charge. The

employer also paid a $200 security deposit on an apartment that the claimant rented in Madison. The employer made the latter payment by means of a check dated December 1, 2000. The claimant reported for work at the employer's Madison facility on December 11, 2000, and worked there for several years thereafter.

¶ 8 On July 14, 2009, the claimant filed an "Application for Adjustment of Claim" with the Commission, alleging that he suffered work-related injuries when he was hit by a forklift on May 5, 2009. A hearing was held before an arbitrator. The arbitrator noted that the only issue presented at the hearing was whether Illinois had jurisdiction over the claimant's claim.

¶ 9 During the hearing, the claimant testified that he reported to work at the employer's Madison facility on Monday, December 11, 2000, at 5 a.m. According to the claimant, he punched a time card when he arrived and immediately proceeded to work at the same machine he had operated during his previous employment at the Madison facility. The claimant stated that he did not know what kind of animal food was being prepared in the machine at the time. The claimant testified that, after he had been working for few hours, some office personnel required him to fill out employment paperwork, including an "Employee Animal Contract Declaration Agreement", a form acknowledging his receipt of an "Employee Handbook", and a W-4 tax form. That same day, the claimant was also sent to a local hospital for a physical and a drug screening test. The claimant testified that, after these tests were completed, he returned to work and finished his shift. He claimed that he worked a normal 40-hour work week that week and was paid for working 40 regular hours that week. The claimant's pay stub for the pay period ending December 23, 2000, indicates that the claimant worked 80 regular hours and 19.75 hours of overtime during that period.

¶ 10 Tom Siegel testified on behalf of the employer. Siegel testified that he has worked for the employer for 10 years as the operations manager. His responsibilities include overseeing the production of animal foods for laboratory research animals. Siegel testified that the animal foods manufactured by the employer are prepared under strict recipes and guidelines to ensure that there is consistency from one production lot to the next. Siegel stated that, because the food that the employer manufactures is fed to animals that are being used for medical research purposes, it is important that the food not introduce any unwanted materials.

¶ 11 Siegel testified that, after the claimant submitted his resignation in June 2000, he was terminated and "severed completely" from the company. Siegel later contacted the claimant and made him an offer of employment which included accommodation for six months. Siegel stated that, pursuant to the employer's regular business practice, the claimant would have been required to attend an orientation session and complete all required paperwork before beginning work on the production line. For example, pursuant to the employer's biosecurity policy, the claimant would have been required to sign an "Employee Animal Contract Declaration Agreement" stating that he had not been exposed to any laboratory research animals, their waste, or any associated materials for a specified period of time prior to his first day of employment. Siegel testified that it was important that each employee sign this declaration to ensure that he had not been exposed to any virus or other disease that could contaminate the animal food he would be producing. Siegel testified that the claimant signed this declaration, along with all of the other required preemployment paperwork, at the Wisconsin facility on his first day of work. He stated that the claimant would not have been hired if he had refused to fill out these documents. Siegel also testified that the claimant took a required preemployment drug screening and physical at a

hospital in Madison during his first day of work, that these tests were a condition of employment for any new employee, and that the claimant would not have been hired if he had refused to take these tests.

¶ 12 During cross-examination, Siegel testified that he could not recall whether the claimant started work at 5 a.m. on his first day back to work and conceded that it was possible that he did so. Moreover, Siegel testified that the office administrator who would have given the claimant the required preemployment documentation did not arrive to work until 7 a.m. Thus, although Siegel testified that the employer's policy was that no newly-hired employee may begin work until he fills out the required documentation, he conceded that it was possible that the claimant began working before filling out the required forms. Moreover, although Siegel testified that a new employee would have to learn the employer's current production schedule before he could know what type of animal food to make, he admitted that the claimant could have obtained this information from the production group leader, who arrived at work at 5 a.m.[1]

¶ 13 Nevertheless, Siegel testified that it was "very unlikely" that the claimant would have been scheduled to begin working at 5 a.m. on his first day because company policy required that new employees attend orientation before beginning work and because the employer already had an existing extruder operator. Moreover, Siegel testified that the claimant could not have punched in at 5 a.m. on December 11, 2000, as he claimed because his time card was provided to him during his preemployment orientation.[2]

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[1] The production group operator who worked the 5 a.m. shift at the employer's Madison facility on December 11, 2000, did not testify.

[2] The employer did not introduce the claimant's December 11, 2000, time card into

¶ 14 Relying on this court's decision in *Energy Erectors, Ltd. v. Industrial Comm'n*, 230 Ill. App. 3d 158 (1992), the arbitrator found that Illinois lacked jurisdiction over the claimant's claim because his employment contract was completed in Wisconsin. Although the arbitrator acknowledged that the claimant was offered a job while he was in Illinois, the arbitrator found that the preemployment paperwork and medical tests were conditions of employment that had to be completed before he was hired. Accordingly, the arbitrator concluded that the contract of hire was completed in Wisconsin when the claimant filled out the preemployment paperwork and took a preemployment physical and drug screen.

¶ 15 The arbitrator rejected the claimant's argument that his employment began when he punched in and switched on the extruder machine rather than when he signed the preemployment paperwork and took the drug screen and physical. As an initial matter, the arbitrator found the claimant's testimony that he began work at 5 a.m. before undergoing orientation "questionable." In support of this finding, the arbitrator noted that the claimant admitted that he did not know what type of food was being processed in the extruder on his first day back. Moreover, the arbitrator noted that the claimant's testimony was contradicted by Siegel's testimony in several respects. For example, Siegel testified that the claimant "would not have been scheduled to work that first day back and a different worker would have been already scheduled to work the machine that day." In addition, contrary to the claimant's claim that he punched in at 5 a.m., Siegel testified that the claimant "would have been given a time card at his orientation and not before then." In any event, the arbitrator found that, even if the claimant had operated the extruder machine for some period of time prior to his orientation, he would have done so

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evidence.

"without his employer's knowledge or consent." Accordingly, the arbitrator found that the claimant's contract for hire was completed only after the claimant filled out the required preemployment paperwork and took the required physical and drug screen.

¶ 16 The claimant appealed the arbitrator's decision to the Commission, which unanimously affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Peoria County, which confirmed the Commission's ruling. This appeal followed.

¶ 17 ANALYSIS

¶ 18 Illinois has jurisdiction over claims under the Act asserted by persons whose employment is outside the State of Illinois "where the contract of hire is made within the State of Illinois." 820 ILCS 305/1(b)(2) (West 2008); see also *Mahoney v. Industrial Comm'n*, 218 Ill. 2d 358, 374 (2006); *Chicago Bridge & Iron, Inc. v. Industrial Comm'n*, 248 Ill. App. 3d 687, 691 (1993); *Energy Erectors, Ltd. v. Industrial Comm'n*, 230 Ill. App. 3d 158, 161 (1992). A contract for hire is made where the last act necessary for the formation of the contract occurs. *Cowger v. Industrial Comm'n*, 313 Ill. App. 3d 364, 370 (2000); see also *Chicago Bridge & Iron*, 248 Ill. App. 3d at 691 (contract for hire is made "where the last act necessary to give it validity occurs").

¶ 19 Whether a contract for hire was made within Illinois is a question of fact for the Commission to determine, and the Commission's decision will not be disturbed unless it is against the manifest weight of the evidence. *Energy Erectors*, 230 Ill. App. 3d at 161; see also *Chicago Bridge & Iron*, 248 Ill. App. 3d at 691. A decision is against the manifest weight of the evidence only when the opposite conclusion is "clearly apparent." *Elgin Board of Education School District U-46 v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 943, 949

(2011). The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002). "A reviewing court will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn." *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006).

¶ 20 Applying these standards, we cannot say that the Commission's conclusion that the claimant's contract for hire was completed in Wisconsin is against the manifest weight of the evidence. Siegel testified that, pursuant to the employer's policy, the claimant would not have been hired unless he (1) signed the "Employee Animal Contract Declaration Agreement" and other required preemployment paperwork, and (2) underwent the required preemployment physical examination and drug screening test. It is undisputed that the claimant signed these documents and took the physical and drug screening test in Wisconsin. This testimony supports the inference that the claimant's employment contract was completed in Wisconsin, not Illinois. See, *e.g.*, *Energy Erectors*, 230 Ill. App. 3d at 162-64 (holding that employee's contract for hire was completed in Virginia even though the employer offered the claimant a job by telephone in Illinois where the employer testified that an employee would not be hired unless he came to the job site in Virginia and signed payroll forms and other preemployment documentation). Based upon Siegel's testimony, the Commission could reasonably have inferred that signing the required preemployment documents and taking the physical and drug test were conditions precedent to the parties' obligations under the employment contract,[3] and, therefore, that the "last

[3] A "condition precedent" is an event which must occur or an act which must be

act necessary to give validity to the contract" occurred where those required actions took place (*i.e.*, in Wisconsin). *Energy Erectors*, 230 Ill. App. 3d at 162. Accordingly, the Commission's finding that Illinois lacked jurisdiction over the claimant's claim was not against the manifest weight of the evidence. See, *e.g.*, *Energy Erectors*, 230 Ill. App. 3d at 162-64.

¶ 21 The claimant argues that the evidence in this case overwhelmingly suggests that his contract for hire was completed in Illinois, not Wisconsin. Specifically, the claimant argues that he accepted the employer's offer of employment by telephone while he was in Illinois, and he notes that the employer paid the security deposit on his new apartment 10 days before he started work and reimbursed him for his hotel charge the night before he started. Moreover, the claimant testified that he began working before he signed the preemployment documentation and took the drug test and physical, and he argues that the employer did not conclusively refute this testimony. In fact, Siegel conceded that it was possible that the claimant began working before signing the required documents and taking the required tests. Further, the claimant testified that he worked a regular 40-hour work week beginning at 5 a.m. on December 11, 2000, and his pay stub for that pay period shows that he was paid for 80 regular hours from December 11 through December 23, 2000. According to the claimant, this evidence establishes that he was already hired before he showed up for work in Wisconsin and that the signing of the required documents

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performed by one party to an existing contract before the other party is required to perform, *i.e.*, before the parties' contractual obligations become binding. *Vuagniaux v. Korte*, 273 Ill. App. 3d 305, 309 (1995). A condition subsequent, on the other hand, is an event which, if it occurs, discharges preexisting contractual liability. *Id.*

and taking of the physical and drug test were conditions for *continued* employment rather than conditions precedent.

¶ 22 We acknowledge that the evidence identified by the claimant lends some support to his position. In particular, the fact that the employer paid the claimant's security deposit and reimbursed him for hotel expenses before he showed up for work arguably suggests that it already considered the claimant an employee before he arrived in Wisconsin. That makes this a closer case than *Energy Erectors*, wherein the employee's pay commenced when he arrived at the job site in Virginia and he was "not paid for travel expenses" incurred en route. *Energy Erectors* 230 Ill. App. 3d at 163.

¶ 23 Nevertheless, there is sufficient evidence to support the Commission's finding that the employment contract was completed in Wisconsin. Siegel testified that, pursuant to company policy, the claimant was not hired until he signed the required preemployment documentation and took the required physical and drug test. Siegel testified that it was particularly important that the claimant sign the "Employee Animal Contract Declaration Agreement" before starting work to ensure that he had not been exposed to any virus or other disease that could contaminate the animal food he would be producing. Moreover, although Siegel conceded that it was possible that the claimant began work before signing the required documents and taking the required tests, he testified that it was "very unlikely" that the claimant would have been scheduled to work before doing so given the employer's established policy and the fact that the employer had another extruder operator on the payroll at the time. Further, Siegel testified that, contrary to the claimant's testimony, the claimant could not have punched in at 5 a.m. on his first day back to

work because he would not have been given his time card until his subsequent orientation session (when he signed the preemployment documents).

¶ 24 Based on this testimony, the arbitrator found the claimant's testimony that he began work at 5 a.m. "questionable." The Commission adopted this credibility finding and obviously credited Siegel's testimony over the claimant's. It is the Commission's province to determine the credibility and weight of witness testimony and to resolve conflicts in the evidence, and we will not overturn the Commission's determinations on these matters unless they are against the manifest weight of the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). We do not find the Commission's credibility determinations to be against the manifest weight of the evidence.

¶ 25 It is also the Commission's province to draw reasonable inferences from the evidence (*Hosteny*, 397 Ill. App. 3d at 674), and we "will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn." *Durand*, 224 Ill. 2d at 64. Although some facts in this case arguably support the inference that the contract for hire was formed in Illinois before the claimant showed up for work in Wisconsin, Siegel's testimony supports the reasonable inference that the signing of the required documentation and the taking of the physical and drug test were conditions precedent to the formation of the contract. Because it is undisputed that those events took place in Wisconsin, there is sufficient evidence to support the Commission's conclusion that the contract was completed in Wisconsin.[4]

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[4] As noted above, the claimant testified that he worked 40 regular hours during his first week of work, and his pay stub indicates that the employer paid him for 80 regular hours worked

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, we affirm the judgment of the Peoria County circuit court, which confirmed the Commission's decision.

¶ 28 Affirmed.

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during his first two weeks (*i.e.*, from December 11 through December 23, 2000). However, these facts do not compel us to overturn the Commission's finding that signing the required documentation and taking of the physical and drug test were conditions precedent to the claimant's employment. Neither the claimant's testimony nor the pay stub definitively establish that the claimant was paid for any hours worked before he signed the required documents and took the physical and drug test. In any event, even if the claimant were paid for any such hours, that would not establish that the employment contract was formed in Illinois. It is undisputed that all of the work for which the claimant was paid was performed in Wisconsin.