CASE NO. 5754 CRB-2-12-5 : COMPENSATION REVIEW BOARD
CLAIM NO. 200167080

RALPH IORLANO
CLAIMANT-APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

: APRIL 29, 2013

ELECTRIC BOAT CORPORATION
EMPLOYER
SELF-INSURED
RESPONDENT-APPELLANT

and

ACE USA
ST. PAUL THE TRAVELERS
INSURERS
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by David N. Neusner, Esq., Embry & Neusner, 118 Poquonnock Road, PO Drawer 1409, Groton, CT 06340.

The respondent Electric Boat Corporation Self-Insured was represented by Peter D. Quay, Esq., Law Office of Peter D. Quay, LLC, PO Box 70, Taftville, CT 06380.

The respondents Electric Boat Corporation and ACE USA and St. Paul Travelers were represented by Michael J. McAuliffe, Esq., Pomeranz, Drayton & Stabnick, 95 Glastonbury Boulevard, Suite 216, Glastonbury, CT 06033.

This Petition for Review[1] from the May 4, 2012 Finding and Award of the Commissioner acting for the Eighth District was heard November 30, 2012 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Jodi Murray Gregg and Daniel E. Dilzer.

[1] We note that postponements were granted during the pendency of this appeal.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondent Electric Boat Company has appealed from a Finding and Award that determined that the State of Connecticut had jurisdiction to hear the claimant's claim for permanent partial disability benefits. The respondent argues that since the claimant's employment relocated to Rhode Island during his tenure at Electric Boat Connecticut no longer had a substantial interest herein to confer jurisdiction. After reviewing the record and recent precedent, we determine that additional issues must be resolved in order to ascertain if Connecticut's interests were significant enough to engage our jurisdiction. We remand this matter for further proceedings to determine if the claimant's execution of an employment contract in Connecticut was sufficient in and of itself, considering the other facts on the record, to confer Connecticut jurisdiction over this claim.

The trial commissioner reached the following factual findings at the conclusion of the formal hearing. The claimant worked at Electric Boat's Groton, Connecticut facility from 1960 to early 1976. The claimant was re-hired by Electric Boat in mid-1977. In 1978 the claimant was requested by Electric Boat to transfer to their Quonset Point, Rhode Island facility, where the claimant worked until he retired in 1991. There was no new contract of hire due to the claimant's transfer. The claimant sustained exposure to asbestos during his entire work history with the respondent, creating a work-related injury, and was adjudged with a 9% permanent partial impairment to his lungs. The commissioner noted that prior to 1980 Electric Boat was insured by Travelers Insurance and ACE Insurance, and subsequent to that point was a self-insured employer. The

commissioner noted that jurisdiction was being contested in the case, but determined that Connecticut was the place of hire and where the contract of employment was made and existed. Therefore, he ordered Electric Boat to pay the claimant benefits in this case.

Counsel for Electric Boat filed a Motion to Correct and a Motion for Articulation. The trial commissioner denied both motions. In response, they have pursued this appeal. They challenge the commissioner's finding that Connecticut had jurisdiction over this injury, as the claimant is not a Connecticut resident and the claimant had not had injurious exposure within the State of Connecticut for many years prior to his retirement. They assert that the applicable case law such as Johnson v. Atkinson, 283 Conn. 243 (2007) and Burse v. American International Airways, Inc., 262 Conn. 31 (2002) stands for the principle that the employment relationship must have a significant relationship to Connecticut in order to confer jurisdiction on this Commission. As the appellant Electric Boat views the record, the State of Connecticut does not have a significant enough relationship to the claimant's employment to confer jurisdiction.

Counsel for the claimant and for Travelers finds no error on the part of the trial commissioner, focusing on the fact the claimant was originally hired to work in Connecticut, and did not execute a new contract to work for Electric Boat when he was relocated to the Rhode Island facility. The claimant cites Falvey v. Sprague Meter Co., 111 Conn. 693 (1930) for the proposition that once he was hired in Connecticut, jurisdiction affixed and was retained even though he was working for the respondent in another state.

The Appellate Court has recently issued two decisions focusing on the issue of when a claimant injured outside Connecticut can seek benefits under Chapter 568. The

precedent in Healey v. Hawkeye Construction, LLC., 124 Conn. App. 215 (2010) could be read as being supportive of the outcome in this case. In Healey the claimant contacted the respondent in New York by telephone from his home in Connecticut, and the trial commissioner concluded that an offer of employment was made during the phone call and accepted by the claimant. As a result of this factual finding, the Appellate Court determined that a contract of employment was formed during the telephone conversation notwithstanding the fact the claimant didn't perform any work in Connecticut, and was injured in Florida. Id., 224-225. The Appellate Court considered the holding in Burse, supra, where the Supreme Court did not find Connecticut jurisdiction, but reached a different result based on the facts in this case. "Applying the foregoing precedent, particularly that of *Burse*, to the facts of this case, we conclude that this state's relationship to the employment contract, Connecticut being *both* the place of the plaintiff's residence *and* the place of the contract's formation, was sufficiently significant such that Connecticut law may be applied to the plaintiff's claim for workers' compensation benefits." Id., 227. (Emphasis added.)

If the claimant were a Connecticut resident, we might conclude the present case cannot be distinguished on the facts from Healey and affirm the trial commissioner's decision. A more recent decision, however, Baron v. Genlyte Thomas Group, LLC., 132 Conn. App. 794 (2012) reiterates the principle in Burse, supra, that jurisdiction requires ". . . a showing of a *significant* relationship between Connecticut and either the employment contract or the employment relationship." Id., 801. (Emphasis in original.) The Appellate Court in Baron rejected the claimant's argument that a later case, Jaiguay v. Vasquez, 287 Conn. 323 (2008), had materially modified the test in Burse, supra. Id.,

fn7. Applying the test in Burse to the facts in Baron the Appellate Court found a significant relationship did not exist. While Mr. Baron lived in Connecticut, the court found that he was injured in New York and the employment contract was entered into in New Jersey. The Appellate Court then evaluated his employment relationship with the respondent and determined that as the claimant was an outside salesman servicing customers in New York State, Connecticut lacked a significant relationship with the employment relationship. The Appellate Court further determined that Mr. Baron's home office constituted the sort of "peripheral relationship" with employment that pursuant to Burse was inadequate to create Connecticut jurisdiction. Id., 805.

In the present case, the claimant does not live in Connecticut and the record reflects he did not live in Connecticut at the time he was hired in 1977 or at any time thereafter. The record reflects the claimant performed virtually all his work for the respondent in Rhode Island for the last thirteen years of his employment. The trial commissioner did reach a finding that established Connecticut was the place of hire and where the contract of employment was made and existed. Findings, ¶ 11. However, after reviewing the precedent in Burse and Baron we conclude that this finding standing on its own is not sufficient to confer jurisdiction. Looking at the three prong test for establishing jurisdiction first enunciated in Cleveland v. U.S. Printing Ink, Inc., 218 Conn. 181, 195 (1991) we find a claimant must prove Connecticut is (1) the place of the injury, *or* (2) the place of the employment contract, *or* (3) the place of the employment relationship. In addition, pursuant to Burse a claimant must prove that there is a significant relationship between Connecticut and either the employment contract or the employment relationship. In this case, the trial commissioner did not reach a finding on

whether Connecticut had a significant relationship to the employment contract, and thus made no finding on this threshold issue of jurisdiction.

In Cormican v. McMahon, 102 Conn. 234 (1925) the Supreme Court held "[n]o case under this Act should be finally determined when the trial court, or this court, is of the opinion that, through inadvertence, or otherwise, the facts have not been sufficiently found to render a just judgment." Id., 238. Whether the place of the claimant's employment contract created a significant relationship between the State of Connecticut and the contract constitutes a factual question which must be resolved by the trial commissioner. We remand this matter for factual findings on that issue.[2]

Commissioners Jodi Murray Gregg and Daniel E. Dilzer concur in this opinion.

[2] The appellant filed a Motion for Articulation seeking to have the trial commissioner clarify his grounds for finding Connecticut jurisdiction in this case. The trial commissioner denied this Motion. While we are aware that a commissioner need not explain why he or she chooses not to rely on evidence or legal arguments presented that they do not find probative, Biehn v. Bridgeport, 5232 CRB-4-07-6 (September 11, 2008), in the present matter a fuller explanation as to the legal underpinning of the commissioner's jurisdictional finding was warranted. We believe based on the standard delineated in Brown v. State/Dept. of Correction, 4609 CRB-1-03-1 (December 17, 2003), *aff'd*, 89 Conn. App. 47 (2005), *cert. denied*, 274 Conn. 914 (2005) that an articulation should have been granted in this matter. See also Bazelais v. Honey Hill Care Center, 5011 CRB-7-05-10 (October 25, 2006).