CASE NO. 5760 CRB-2-12-6 CLAIM NO. 200173595	: COMPENSATION REVIEW BOARD
DANIEL DANEK CLAIMANT-APPELLANT	: WORKERS' COMPENSATION COMMISSION
v.	: JUNE 5, 2013
ELECTRIC BOAT CORPORATION EMPLOYER SELF-INSURED RESPONDENT-APPELLEE	

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 was represented by Peter D. Quay, Esq., Law Office of Peter D. Quay, LLC, PO Box 70, Taftville, CT 06380.

This Petition for Review from the May 30, 2012 Finding and Dismissal of the Commissioner acting for the Second District was heard on January 18, 2013 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Charles F. Senich and Peter C. Mlynarczyk.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has petitioned for review from the May 30, 2012 Finding and Dismissal of the Commissioner acting for the Second District. We find error and accordingly affirm in part and remand in part the decision of the trial commissioner for additional proceedings consistent with this Opinion.[1]

The trial commissioner made the following factual findings which are pertinent to our review of this matter. The employer, Electric Boat Corporation (hereinafter "EB"), is a division of General Dynamics. EB builds submarines for the U.S. Navy and has its principal shipyard and place of business in Groton, Connecticut. The claimant was employed by EB at its Groton shipyard from 1973 to 1992, and then from 1994 until 1995, when he was laid off. On February 18, 2002, the claimant again began working for EB in Groton as a shipfitter, and was eventually promoted to the position of steel trades supervisor, again at the Groton facility. In 2003, EB began recruiting workers for a joint venture with the Navy which involved converting Trident ballistic missile submarines into guided missile platforms (the "SSGN" program). Two of these conversions were to be done at the Norfolk Naval Shipyard (hereinafter "Norfolk) located in Portsmouth, Virginia. The claimant attended one or more seminars sponsored by EB in order to inform potential applicants of the terms and benefits associated with employment at the Norfolk project; the claimant was made aware that the employment would last for up to four years and he would be required to relocate to Virginia.

[1] We note that two motions for an extension of time were granted during the pendency of this appeal.

The claimant submitted an on-line application and, after an interview at the Groton shipyard, was offered a position as "Assistant Superintendant of Steel Trades" for the Norfolk project. The claimant was given a relocation package which contemplated that he would remain in Norfolk for approximately four years. The package included a fifteen-percent field assignment pay increase, a signing bonus and a completion bonus. It also included financial assistance associated with selling the claimant's home in Dudley, Massachusetts and purchasing a new home in the Norfolk area. On October 20, 2003, the claimant signed a written "Relocation Expense Repayment Agreement" in which he agreed that he would repay the employer-borne costs associated with the relocation if he left the new job within one year. The claimant was not guaranteed a job in Groton when the Norfolk project was finished, although he thought that might be a possibility.

On November 16, 2003, the claimant was officially transferred from Department 226 in Groton to Department 861 in Norfolk. The claimant did not physically relocate to Virginia until January 2004; prior to his relocation, he worked at the Groton shipyard reviewing work packages and preparing for his new position. Following his relocation, the claimant purchased a home in Virginia, obtained a Virginia driver's license, and registered his vehicle in Virginia. The claimant also registered to vote in Virginia, paid Virginia state income taxes, and found a new primary care physician in Virginia.

The claimant reported directly to supervisors on site in Norfolk; his duties consisted of supervising the tradesmen involved in the overhaul of the submarines and interviewing applicants for a position with the Norfolk project. On October 11, 2005, the claimant slipped while walking along a bank of pipes on one of the submarines and sustained an injury to his right shoulder when he tried to prevent himself from falling.

The injury arose out of and in the course of his employment with EB. Although the claimant did not lose any time from work, he did require medical treatment; EB accepted the compensability of the injury pursuant to the Longshore and Harbor Workers' Compensation Act and paid for the claimant's medical treatment. In March 2006, the claimant's physician recommended, and EB authorized, surgery but the claimant decided to defer having surgery and continued to work for EB at Norfolk from 2003 to 2007. In 2007, the claimant left EB for a position with General Dynamics Information Technology, and left that job in October 2008 for a position with a company not affiliated with General Dynamics.

As of the date of the formal hearing in this matter on December 20, 2011, the claimant continued to live in Virginia and had never returned to work or live in Connecticut. The claimant is now requesting authorization for the surgery recommended in 2006; however, rather than seeking to have his medical treatment and lost wages covered by the Longshore Act, the claimant is seeking a determination that his injury is compensable under the Connecticut Workers' Compensation Act. The claimant claims that jurisdiction lies in Connecticut because he was initially hired by EB in Connecticut.

The trier concluded that under the terms of the contract entered into with EB in February 2002, the claimant satisfied the definition of "employee" as set forth in § 31-275(9)(A)(i) C.G.S.[2] However, the trier determined that the claimant entered into a new contract of employment with EB in October 2003, which contract "provided for the

[2] Pursuant to § 31-275(9)(A)(i) C.G.S. (Rev. to 2005), an employee is defined as any person who: [h]as entered into or works under any contract of service or apprenticeship with an employer, whether the contract contemplated the performance of duties within or without the state." Pursuant to § 31-275(10) C.G.S. (Rev. to 2005), an employer is defined as "any person, corporation, limited liability company, firm, partnership, voluntary association, joint stock association, the state and any public corporation within the state using the services of one or more employees for pay, or the legal representative of any such employer…."

performance of duties in the Commonwealth of Virginia." Conclusion, ¶ C. At the time of the contract signing, although the claimant did remain at the Groton facility reviewing work packages for a brief period prior to his relocation to Virginia, the claimant was not a resident of Connecticut. Moreover, the new contract required that the claimant remain in Virginia for the duration of the Trident conversion project and "did not include a right to return to work at the Groton shipyard at the end of the contract." Conclusion, ¶ D. In addition, the employer provided a higher rate of pay as well as "significant financial and other incentives" to the claimant which were not available to workers who remained in Groton. Conclusion, ¶ E. The trier denied the claim, concluding that under the terms of the contract formed in October 2003, pursuant to § 31-275(9)(B)(vi) C.G.S., the claimant was no longer an employee of EB for purposes of the Connecticut Workers' Compensation Act when he sustained his injury on October 11, 2005.[3]

The claimant filed a Motion to Correct which was granted in part, and this appeal followed.[4] On appeal, the claimant contends that the trial commissioner's determination that a new employment contract was formed in 2003 constituted error. The claimant also claims as error the trial commissioner's failure to find a significant relationship between Connecticut and the employment contract formed in 2003. Finally, the claimant asserts

[3] Section 31-275(9)(B)(vi) C.G.S. (Rev. to 2005) excludes from the definition of "employee" "[a]ny person who is not a resident of this state but is injured in this state during the course of his employment, unless such person (I) works for an employer who has a place of employment or a business facility located in this state at which such person spends at least fifty per cent of his employment time, or (II) works for an employer pursuant to an employment contract to be performed primarily in this state." In his Finding and Dismissal of May 30, 2012, the trier cited the statute as "§31-275(B)(iv)." We deem this harmless scrivener's error. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 729 (2002), *cert. denied*, 262 Conn. 933 (2003).

[4] Our review of the balance of the proposed corrections suggests that the claimant, in seeking to characterize many of the trier's findings as irrelevant and/or immaterial, was primarily engaged in a thinly disguised effort to reiterate the same arguments made at trial which ultimately proved unavailing. As such, we find no error in the trier's decision to deny the balance of the claimant's Motion to Correct. D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003).

that the trial commissioner erroneously determined that the Workers' Compensation Act does not apply to non-residents injured outside Connecticut.

The standard of deference we are obliged to apply to a trial commissioner's findings and legal conclusions is well-settled. "The trial commissioner's factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), *citing* Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003). "This presumption, however, can be challenged by the argument that the trial commissioner did not properly apply the law or has reached a finding of fact inconsistent with the evidence presented at the formal hearing." Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

We begin with an analysis of the claimant's assertions of error relative to the issue of whether the parties entered into a new contract in 2003 and, if so, whether a significant relationship exists between that contract and Connecticut. Such an inquiry is critical to the assessment of whether the trier's conclusions in this matter comport with legal precedent setting forth the circumstances under which the claimant can invoke Connecticut law. "The existence of a contract is a question of fact to be determined by the trier on the basis of all of the evidence…." Cruz v. Visual Perceptions, LLC, 136 Conn. App. 330, 334 (2012), *quoting* Fortier v. Newington Group, Inc., 30 Conn. App. 505, 509 (1993). Moreover, "[t]he rules governing contract formation are well settled.

To form a valid and binding contract in Connecticut, there must be a mutual understanding of the terms that are definite and certain between the parties…. Certain material terms such as the duration, salary, fringe benefits and other conditions of employment are deemed essential to an employment contract." (Citation omitted; internal quotation marks omitted.) Id., at 335, *quoting* Geary v. Wentworth Laboratories, Inc., 60 Conn. App. 622, 627-628 (2000).

Our review of the instant record indicates that the respondent submitted into evidence a document entitled, "General Dynamics Electric Boat Trident Conversion (SSGN) – Relocation Package Overview" dated February 24, 2003. Respondent's Exhibit 2. The document details the various benefits, cost-sharing arrangements and bonuses available under the different types of temporary and permanent relocation packages offered by EB.[5] The document also sets out the general parameters of the projects associated with the conversion program and includes a "Frequently Asked Questions" section as well as some general area information for Portsmouth, Virginia. This document does not appear to have been signed by the claimant, and respondent's counsel admitted that the employer was unable to provide a signed copy.[6] Joint Exhibit 1, p. 11.

However, the record also contains a "Summary of Relocation Allowances Trident Conversion (SSGN) WA/VA" setting forth, *inter alia*, the terms for receipt of relocation and tax reimbursements and providing for a sign-on bonus of $3,000.00 and a completion

[5] The document described three types of temporary relocation packages: Business Travel, lasting less than 31 days; a Short Term Extended Work Assignment, lasting 31-120 days; and a Mid Term Extended Work Assignment, lasting 121 to 364 days. Permanent Relocation was defined as lasting three years or more. Respondent's Exhibit 2. See also Findings, ¶ 12.

[6] At trial, the claimant testified that he did not remember ever seeing the relocation summary document. Joint Exhibit 1, p. 11.

bonus of $7,000.00. Respondent's Exhibit 3. The document also includes a Relocation Expense Repayment Agreement providing for the repayment of employer-borne relocation expenses if an employee resigns or is terminated for cause within one year of hire or transfer. Both the Summary and the Repayment Agreement appear to have been signed by the claimant on October 20, 2003, along with an inter-office memo addressing the IRS treatment of relocation expenses.

The trier, having found that the claimant signed the Relocation Expense Repayment Agreement on October 20, 2003, Findings, ¶ 14, concluded that the claimant "entered into a new contract of employment with the respondent" in October 2003. Conclusion, ¶ C. It may thus be reasonably inferred that the trial commissioner, having reviewed the evidentiary submissions, concluded that the scope of the changes in the claimant's employment contemplated by those documents was sufficient to support a finding that the parties had entered into a new contract. We affirm this determination, as we are not empowered to disturb findings reached in the exercise of a trier's discretion unless the findings are "clearly erroneous in view of the evidence and pleadings…. Conclusions are not erroneous unless they violate law, logic or reason or are inconsistent with the subordinate facts." Berube v. Tim's Painting, 5068 CRB-3-06-3 (March 13, 2007).

In addition, we note that at trial, the claimant himself referred to the formation of a new contract, testifying that he expected to remain in Virginia "until the contract ended," Joint Exhibit 1, p. 13, and that he had "accepted [the] position under contract in Groton, Connecticut." Id., at 21. Thus, in light of the foregoing, although the employer submitted into evidence a Job Summary for the claimant indicating the position in

Norfolk was a "promotion," Respondent's Exhibit 4, it may be reasonably inferred that the trier was not sufficiently persuaded that this internal document accurately characterized the claimant's new position.

However, the claimant also asserts that the trier, having found that a new contract was formed in Connecticut, erred in failing to determine whether there was a significant relationship between Connecticut and the contract. We agree.

In Cleveland v. U.S. Printing Ink, Inc., 218 Conn. 181 (1991), our Supreme Court, after observing that "the question of whether one state will award supplemental workers' compensation benefits to a claimant who previously received benefits under the laws of another state is more appropriately deemed a question of conflict of laws," id., at 187, went on to hold that:

> The remedial purpose of our Workers' Compensation Act supports application of its provisions in cases where an injured employee seeks an award of benefits and Connecticut is the place of the injury, the place of the employment contract or the place of the employment relation.

Id., at 195.

Our Supreme Court further elaborated upon this three-pronged analysis in Burse v. American International Airways, Inc., 262 Conn. 31 (2002), wherein it stated, "[a]fter reviewing the sources on which we relied in Cleveland, we now clarify that this test requires, at a minimum, a showing of a significant relationship between Connecticut and either the employment contract or the employment relationship." (Emphasis in the original.) Id., at 38-39. The court reiterated the relevance of the application of this three-pronged test in Jaiguay v. Vasquez, 287 Conn. 323 (2008) but indicated that it "applies only when the case involves a claim for workers' compensation benefits and not

when, as in the present case, the case involves a tort claim." Id., at 345. The court distinguished the choice of law analysis for tort claims from workers' compensation, noting that "[a] markedly different choice of law issue is posed … when, as in the present case, an injured employee brings a tort action that ostensibly falls within an exception to the exclusivity provisions of our Workers' Compensation Act." Id., at 347. The court stated:

> In that category of cases, the choice of law question is not which state among one or more other states has a sufficient interest in having its statutes invoked for the benefit of the employee. The issue, rather, is which state's law, to the exclusion of the law of all other potentially interested states, is the governing or controlling law. (Emphasis in the original.)

Id.

As such, the court determined that,

> the choice of law question posed by a claim for workers' compensation benefits in this state is not whether Connecticut has the most significant relationship to or interest in the matter but, rather, whether Connecticut's relationship or interest is sufficiently significant to warrant an award of benefits under its workers' compensation statutes.[7] (Emphasis in the original.)

Id., at 346.

Following the issuance of Jaiguay, the matter of Healey v. Hawkeye Construction, LLC, 5336 CRB-2-08-4 (February 26, 2009) came before this board. The trial commissioner had determined that although the employment contract between the employer and the claimant was "formed and consummated" in Connecticut, the employment relationship occurred exclusively outside Connecticut. As such, the trier denied the claim, and the decision was appealed to this board. We affirmed the trier's

[7] The Supreme Court is referring to the "most significant relationship" as set forth in §§ 6 and 145 of the Restatement (Second) of Conflict of Laws.

decision, but the Appellate Court reversed, holding "that because the employment contract between the plaintiff employee, who at all relevant times was a resident of this state, and the defendant employer was formed in Connecticut, this state possessed a significant relationship to that contract."[8] Healey v. Hawkeye Construction, LLC, 124 Conn. App. 215, 216 (2010). While Healey does provide some guidance in our analysis of the instant matter, it may be factually distinguished on the basis that the Healey claimant was evidently a resident of Connecticut at the time he entered into the employment contract, whereas the instant claimant was a resident of Massachusetts.

Of perhaps more relevance to the matter at bar is this board's recent decision in Iorlano v. Electric Boat Corporation, 5754 CRB-2-12-5 (April 29, 2013). The claimant, who worked at the Groton facility from 1960 to 1976, was re-hired by EB in Groton in 1977 and then transferred to the Quonset Point, Rhode Island facility where he worked until his retirement in 1991. The claimant sustained a nine-percent permanent partial impairment to his lungs as a result of sustained exposure to asbestos throughout his employment with the respondent. The respondent raised a jurisdictional challenge, and the trial commissioner determined that because there was no new contract of hire associated with the claimant's transfer, Connecticut was therefore the place of hire and the situs of the contract of employment.

The trier awarded benefits to the claimant pursuant to the Connecticut Workers' Compensation Act. The respondent appealed on the basis that the claimant was not a Connecticut resident and had not been exposed to asbestos within Connecticut for many

[8] It should be noted that the Supreme Court granted certification in Healey on the question of "[d]id the Appellate Court properly determine that the formation of the employment contract in Connecticut provided sufficient basis for application of this state's workers' compensation laws?" Healey v. Hawkeye Construction, LLC, 299 Conn. 927 (2011). However, the matter was subsequently withdrawn.

years. In reviewing the appeal, this board stated that although the trier had found that Connecticut was the place of contract, this finding in and of itself was insufficient to determine jurisdiction. Noting that "[w]hether 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," id., the board remanded the matter for additional factual findings on that issue.

Turning to the appeal at bar, we note, as was the case in Iorlano, supra, that the trial commissioner did not reach a specific finding as to whether the circumstances surrounding the claimant's signing of the new contract constituted a significant relationship between the contract and Connecticut. Although the instant trier determined that the claimant was not a resident of Connecticut at the time of the contract signing, and the contract "provided for the performance of duties in the Commonwealth of Virginia," Conclusion, ¶ C, these findings do not fully satisfy the inquiry as set forth in Burse, supra, and Jaiguay, supra, and we are therefore compelled to remand this matter for additional findings on the issue of whether the circumstances surrounding the claimant's signing of the new contract in Connecticut constituted a significant relationship between the contract and Connecticut.

The claimant also asserts that the trial commissioner "erred in finding that the [Workers' Compensation] Act does not apply to non-residents injured outside the State of Connecticut." Appellant's Brief, p. 9. We reject this characterization of the trier's findings in this matter, particularly as any such determination would be patently at odds with the language of § 31-275(9)(A)(i) C.G.S., which defines an employee as "any person who [h]as entered into or works under any contract of service or apprenticeship

with an employer, whether the contract contemplated the performance of duties within or without the state."[9] (Emphasis added.) Such a blanket determination could also fall afoul of § 31-275(9)(B)(vi) C.G.S., which excludes from the definition of employee "[a]ny person who is not a resident of this state but is injured in this state during the course of his employment" but then goes on to include "any individual who: (I) works for an employer who has a place of employment or a business facility located in this state at which such person spends at least fifty per cent of his employment time, or (II) works for an employer pursuant to an employment contract to be performed primarily in this state."[10]

We recognize that the trier did specifically find that the claimant was not a resident of Connecticut at the time the contract was formed and never returned to Connecticut upon terminating his employment with Electric Boat. As mentioned previously herein, this factual finding distinguishes the instant matter from Healey, supra. However, the trier also made several findings indicating that the claimant's new job duties would occur in Norfolk and noting that the employer had provided a number of incentives to the claimant as a result of the relocation. In addition, the trier made several findings relative to the claimant's physical relocation to Virginia, and indicated that the new contract did not provide for a return to Connecticut but, rather, was a "permanent" reassignment. Conclusion, ¶ D. Having reviewed these findings in their entirety, it would appear that the most logical interpretation is that the findings provide a basis for the inference that the trier had concluded, consistent with the analysis set forth in Burse, supra, and Jaiguay, supra, that once the claimant commenced his employment in Virginia,

[9] See footnote 2, supra.
[10] See footnote 3, supra.

there was no longer any significant relationship between Connecticut and the employment relationship.[11] Given, then, that the injury occurred in Virginia, the instant claim for benefits rests on the issue of whether the circumstances surrounding the contract signing constituted a significant relationship between the contract of employment and Connecticut and, as previously stated herein, we hereby remand this matter for additional proceedings on that issue.

There is error; the Finding and Dismissal of the Trial Commissioner acting for the Second District is hereby affirmed in part and remanded in part for additional proceedings consistent with this Opinion.

Commissioners Charles F. Senich and Peter C. Mlynarczyk concur in this opinion.

[11] We note the trier found that in 2005, EB flew the claimant to Groton to interview for another position, and in February 2006, EB flew the claimant to Groton where he underwent the testing required to renew his qualifications as an inspector. Findings, ¶¶ 21, 23. It may be reasonably inferred, however, in light of the overall tenor of the trier's conclusions, that the trier was not persuaded that either of these trips significantly altered the essential nature of the employment relationship.