CASE NO. 5861 CRB-2-13-7 : COMPENSATION REVIEW BOARD
CLAIM NO. 200177490

MICHAEL JOHNSON
CLAIMANT-APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

: DECEMBER 22, 2014

HEARTLAND EXPRESS, INC.
EMPLOYER

and

GALLAGHER BASSETT SERVICES
INSURER
RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by Randall A. Ortega, Esq., 60 Chelsea Harbor Drive, Norwich, CT 06360.

The respondents were represented by David C. Davis, Esq., McGann, Bartlett & Brown, LLC, 111 Founders Plaza, Suite 1201, East Hartford, CT 06108.

This Petition for Review[1] from the May 28, 2013 Finding and Award of the Commissioner acting for the Second District was heard May 30, 2014 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Stephen B. Delaney and Michelle D. Truglia.

[1] We note that a postponement was granted during the pendency of this appeal.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondents have appealed from a Finding and Award to the claimant, who was an interstate truck driver injured while in the state of New Jersey. The respondent, a Nevada firm with its principal place of business in Iowa, argues that while the claimant is a Connecticut resident, that this Commission lacks jurisdiction over his injury as the claimant's truck operated out of their Carlisle, Pennsylvania hub. The trial commissioner found, however, that Connecticut had a significant relationship to the claimant's employment with the respondent. The existence of this significant relationship made the claimant's out-of-state injury compensable under Chapter 568. We agree with this assessment and therefore affirm the Finding and Award.

The trial commissioner found the following facts at the conclusion of the formal hearing. He found that the claimant was a resident of Ledyard, Connecticut when on July 15, 2011 he sustained a back injury in New Jersey while employed as a truck driver by the respondent Heartland Express, Inc. ("Heartland"). As previously noted, this firm was incorporated in Nevada and headquartered in Iowa. The firm's eastern hub was in Pennsylvania and they did not maintain a facility in Connecticut. Heartland did not dispute the fact that the claimant was injured in the course of his employment. It accepted the compensability of his work injury under the workers' compensation laws of the state of New Jersey, and began paying benefits as provided for by the laws of that state. The claimant did not seek compensation in New Jersey, but filed a claim for compensation under Chapter 568. The respondents deny that Connecticut has jurisdiction over the claimant's work injury.

The commissioner restated the circumstances under which the claimant began working for Heartland. In early 2011 the claimant phoned Heartland to inquire about employment. The claimant was at his home in Ledyard when he received a call back from a representative of Heartland inviting him to their Pennsylvania hub where they had an orientation facility. On March 21, 2011 the claimant reported to the Carlisle facility, filled out an application for employment and various other forms and authorizations, and began his orientation. While there, he underwent a "Pre-work Screening" for physical abilities on March 21, 2011. He also underwent testing for drugs or alcohol. On March 23, 2011, while still in Pennsylvania, the claimant passed his road test and was hired as an employee of Heartland and assigned a tractor.

The claimant's workload for Heartland was varied and involved traveling throughout a 14 state area in the Northeast which was assigned to drivers dispatched out of the Carlisle depot. Heartland paid drivers such as the claimant by the mile, and he received the same rate whether hauling a load or driving with an empty trailer, i.e., running "deadhead." The firm attempted to schedule deliveries so the last one of the week was close to the driver's home. The drivers would then drive the truck home over the weekend. As the claimant worked a Monday through Friday week and was allowed to bring his truck home over the weekend; his work week would generally begin and end near his home in Ledyard. The claimant would typically start out on Monday with an empty trailer. He would conduct a pre-trip inspection of the vehicle and then drive the empty trailer to a pick-up location specified by the dispatch order. Heartland did not require the claimant to live in Connecticut, but Heartland tried to organize its routes to minimize deadhead miles, so they typically arranged for a driver's first pick up of the

week to be relatively close to their home. The claimant received his dispatches/assignments via a computer provided by the employer and kept it in his assigned truck. This computer also maintained the mandatory log of the claimant's hours, miles and deliveries. The claimant was dispatched and supervised out of the Carlisle facility.

The claimant drove for Heartland from March 24, 2011 through July 21, 2011. During that time, he picked up 74 loads. Of those, 10 loads were picked up in Connecticut. During that time he also dropped off 74 loads. Of those, 11 were deliveries within the state of Connecticut. During his time driving for Heartland, the claimant officially drove a total of 24,651 miles (standardized, so-called "Rand-McNally miles," as opposed to actual mileage which could vary based on detours). Of the 24,651 miles driven, 4,282 were "deadhead" miles, i.e., miles driven while moving from one assignment to another without a load for which the company could charge a customer; while 20,369 miles were laden miles for which the employer billed customers and had earnings. During the time the claimant drove for Heartland his mileage produced earnings for the company of $52,199. Of that number, trips that either began or ended in Connecticut accounted for $14,109 in earnings.

The commissioner further noted that the claimant had had all his treatment for his injury in Connecticut and had not sought benefits for this injury from the state of New Jersey. The commissioner also noted on March 29, 2012 the claimant filed a timely Form 30C notice of claim for compensation with the Second District office of the Connecticut Workers' Compensation Commission.

Based on these factual findings the trial commissioner concluded the claimant was injured while in the course of his employment with Heartland in the state of New Jersey. The contract of employment between the claimant and the respondent was formed on March 23, 2011 in Carlisle, Pennsylvania. However, in reviewing the employment relationship the commissioner noted the claimant did not drive a consistent assigned route for the respondent employer and did not report to any one location or facility on a regular basis. The claimant was dispatched by and supervised from the employer's Carlisle facility, but this was not a base of operations for the claimant. The claimant was home in Connecticut over the weekends and the claimant would bring his truck there and park it over the weekend. This arrangement benefited the employer, who did not have a Connecticut facility, in that it allowed it to have a truck and driver in eastern Connecticut to make pickups on Monday while keeping down the number of deadhead miles for which it could not bill a customer. The commissioner noted that the claimant "essentially lived out of his truck" during the week as he lacked a set base of operations. As roughly 30% of the work the claimant performed from Heartland was directly connected to assignments in the state of Connecticut; there was a significant relationship between the state of Connecticut and the employment relationship between the claimant and the respondent employer. Therefore, the Commission had jurisdiction over the claimant's injury and the trial commissioner ordered the respondent to pay the benefits due under Connecticut law. The trial commissioner also prepared a Memorandum outlining his reasoning for finding that Connecticut had jurisdiction over the claimant's injury.

The respondents filed a Motion to Correct in response to the Finding and Award. The trial commissioner denied the requests seeking to vacate the conclusions and orders reached in the Finding and Award, but granted in part two corrections regarding the trial commissioner's findings as to the claimant's level of work activity within the state of Connecticut.[2] The respondents have appealed this Finding and Award. The gravamen of the appeal is the claimant's work activities in the state of Connecticut were inadequate to confer jurisdiction on this Commission for an injury sustained in New Jersey.

There have been a number of appellate cases that have addressed the appropriate standard under Connecticut law to ascertain when Connecticut has jurisdiction over an injury sustained by a worker engaged in interstate commerce. In particular we look to Jaiguay v. Vasquez, 287 Conn. 323 (2008) and Cleveland v. U.S. Printing Ink, Inc., 218 Conn. 181 (1991) as enunciating this standard. We have cited Jaiguay as establishing a three prong test to determine Connecticut jurisdiction.

> Consequently, 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. Thus, in *Cleveland*, we concluded that this state's interest in awarding workers' compensation benefits to an injured employee is satisfied *either* when Connecticut is (1) the place of the injury, *or* (2) the place of the employment contract, *or* (3) the place of the employment relationship. *Cleveland v. U.S. Printing Ink, Inc.*, supra, 195.

Jaiguay, supra, 346. (Emphasis in original.)

[2] We do not believe it was essential for the trial commissioner to have granted this correction. As we note later in this opinion, the number of miles a driver drives solely within Connecticut are not a dispositive factor in determining whether jurisdiction is present pursuant to Chapter 568. See Springer v. J.B. Hunt Transport, Inc., 145 Conn. App. 805 (2013), n. 19.

There is no dispute in this case regarding the locus of the claimant's injury or the place of the employment contract. Connecticut would lack jurisdiction over the claimant's injury were those the only two prongs to be considered. The claimant asserts that Connecticut has a sufficiently significant relationship over the employment relationship to confer jurisdiction over the claim. The trial commissioner accepted this position. We must ascertain if the evidence on the record supported this conclusion, noting that "appellate review requires every reasonable presumption in favor of the action." Daniels v. Alander, 268 Conn. 320, 330 (2004).

We note many similarities between this case and another case where we grappled with the extent of our state's employment relationship when a claim was filed for an out-of-state injury sustained by a truck driver who lived in Connecticut. In Springer v. J. B. Hunt Transport, 5573 CRB-5-10-7 (October 19, 2011), a widow filed a claim after her husband sustained a fatal injury while working in West Virginia. The trial commissioner determined the claimant had failed to establish that the decedent's work activities within Connecticut were sufficient in order to confer jurisdiction over the claim. This tribunal affirmed this dismissal.

> We find the facts in this case establish the decedent worked for a firm based outside of Connecticut. The decedent's center of operation with that firm was at a facility outside Connecticut. Connecticut was but one of a number of states in which the decedent performed work for the respondent. The decedent had not made a delivery to a Connecticut location or picked up any merchandise in Connecticut in the week prior to his demise. We cannot find as a matter of law that the level of activity the decedent had in Connecticut was inherently "sufficiently significant" to confer jurisdiction under Chapter 568.

Id.

The claimant appealed this decision and the Appellate Court decided to vacate our decision and remand the matter for a new factual determination by the trial commissioner, Springer v. J.B. Hunt Transport, Inc., 145 Conn. App. 805 (2013). The Appellate Court decision in Springer hinged on their position that the claimant's argument was meritorious "that the commissioner abused her discretion by failing to 'consider all aspects of [the decedent's] employment [that] support a relationship to Connecticut . . . .'" Id., 819. In so doing, the Appellate Court reviewed the precedent in Burse v. American International Airways, Inc., 262 Conn. 31 (2002). In Burse, the Supreme Court found that when a pilot sustained a work injury out of state, Connecticut lacked jurisdiction as based on the facts in that case, the employment relationship with Connecticut was "at most, a peripheral relationship." Id., 40. The claimant in Burse had only flown in or out of Bradley Airport twelve times in a four year period, and therefore the relationship between his employment and Connecticut was found to be inadequate to confer jurisdiction. Id., 45.

The Appellate Court in Springer, supra, thus looked at this precedent and concluded,

> that the proper focus of the commissioner's inquiry as to whether there is a significant relationship between the state of Connecticut and the employment relation between an injured employee and his employer must be on the specific nature of the employee's work. This fact-based determination requires, inter alia, consideration of the purpose and location of the employee's job responsibilities. After clearly identifying those responsibilities and the places where and purposes for which the employee is assigned or authorized to perform them, the commissioner must determine whether the extent of the employee's work in Connecticut or on behalf of his employer's Connecticut clients constituted such a significant part of his overall work for the employer as to

> give Connecticut a significant interest in requiring his employer to provide to him or his dependents benefits under Connecticut law in the event he was injured on the job.

Id., 822-23.

The court concluded that the commissioner's findings in Springer "failed to take into account all of the decedent's employment activities within or in relation to this state." Id., 826. Instead, the trial commissioner improperly considered the relative impact Connecticut had to the respondent's total revenue. Id., 828. As a result, the matter was remanded for new findings as to the claimant's work relationship within the state of Connecticut and whether this was sufficiently significant to confer jurisdiction on this Commission. Id., 830.

We believe Springer controls this case and is supportive of the trial commissioner's decision. This case stands for the proposition that many of the arguments raised by the respondents, which focused on Connecticut's relatively small impact on their firm's activities, are not germane to a consideration of whether jurisdiction exists over an employee's injuries. That test is dependent on the claimant's actual employment activities for the respondent. The trial commissioner pointed out in the Finding and Award and the Memorandum substantive reasons to find that the claimant's employment relationship with the respondents within Connecticut was more accurately described as "significant" rather than "peripheral." See Findings, ¶¶16, 19, 20 and 22. While the claimant may have made more pickups and deliveries in Pennsylvania than Connecticut, we cannot conclude that as a matter of law that the 10 loads picked up

in Connecticut and the 11 loads delivered within Connecticut over a four month period were an insignificant part of his work activities. Clearly the claimant was actively engaged in work for his employer within Connecticut to a materially greater extent than the claimant in Burse, who over a four year period rarely performed any work for his employer within Connecticut. As a result, we believe that it was an issue left to the trial commissioner's discretion whether the claimant established a significant relationship between his employment and the state of Connecticut, and we may not second-guess this determination on appeal.

We note that the claimant received his dispatch order for the week while his truck was parked in Connecticut. May 28, 2013 Commissioner's Memorandum, p. 3. The trial commissioner also found that the respondent derived a benefit from the truck being parked in Connecticut over the weekend as it placed the truck closer to its first stop on Monday. Conclusion, ¶ G. This situation creates a circumstance where the employer's acquisance to having the truck garaged in Connecticut created a mutual benefit for respondent and claimant which we believe is relevant in determining the significance of connection to the business relationship.[3]

The respondents' argument is focused on the alleged inadequacy of the claimant's evidence that a substantial amount of his work activities were performed in Connecticut.

[3] We note a similarity with a case where we were asked to rule on a finding of compensability for a parole officer injured driving a state issued car home. In King v. State/Department of Correction, 5339 CRB-8-08-4 (March 20, 2009) we concluded that since the employer derived a mutual benefit from having a specially equipped vehicle parked at the claimant's home to respond to emergency calls, and the claimant was obligated to use this vehicle to travel from his home to work, that an injury sustained while bringing this vehicle home at the end of a business day was within the scope of employment. The employer in this case, similar to the employer in King, obtained a mutual benefit with the claimant from having its truck parked in Connecticut over the course of the weekend. In both cases the respondent derived a benefit from this arrangement, in the present case by reducing the number of non-revenue miles it would need to compensate the claimant for. In a contested case, such a factor argues in favor of finding compensability.

In particular, they point to the finding added by the trial commissioner responsive to the Motion to Correct, Findings, ¶ 27a, which states,

> [o]n the existing record it is not possible to determine how many of the driven [miles] by the claimant during his employment with Heartland were driven within the borders of the state of Connecticut. As such, the percentage of his earnings for the employer that come from miles he drove in Connecticut cannot be determined.

As the respondents view this evidence, unless the claimant could demonstrate that the claimant drove a high percentage of his paid miles for Heartland within the state of Connecticut, there is no jurisdiction for the claimant's out-of-state injury. We reject this interpretation. We note that by denying the respondents' proposed correction to find a lack of jurisdiction (see Correction, ¶ 6) the trial commissioner rejected this interpretation. The nature of the interstate trucking industry, and Connecticut's status as a geographically small, but economically dense state could reasonably be considered by a finder of fact to make a simplistic calculation of miles driven within the state less weighty than a consideration of how many loads were picked up or delivered by the claimant within the state. We further note that the methodology the respondents seeks to apply herein is akin to the methodology the trial commissioner accepted in denying jurisdiction for the claim in Springer, and which the Appellate Court argued must be revisited on remand. See Springer, supra, 826, n.19, "…..the commissioner could not reasonably determine the significance of Connecticut's relationship to or interest in that employment relation without making findings as to and considering the **miles he drove to, through and back from Connecticut** in performing his assigned work." (Emphasis added.) This is clearly a broader concept than the miles the claimant was paid for **within**

Connecticut and an inquiry based solely on paid miles within Connecticut would not, in our opinion, comport with the Springer precedent.

The respondents then argue that as the trial commissioner did not reach a specific determination as to the revenue miles the claimant worked within Connecticut and associated with pickups and deliveries within the state of Connecticut that there can be no finding of Connecticut jurisdiction. At oral argument before our tribunal the respondents acknowledge that the computer log which would presumably document the precise mileage of the claimant's truck for each trip was not admitted into evidence, although it had been presented to the DOT for compliance purposes. The respondents argue that this would not have added additional probative evidence to the record.[4] We are skeptical of this argument. In any event, since this evidence was not placed on the record we do not find fault with the trial commissioner relying on the probative evidence which was introduced, such as the number of times the claimant picked up a load or delivered a load within the state of Connecticut; or the amount of revenue derived from trips which commenced or ended within Connecticut. The trial commissioner cited this uncontroverted evidence and as we must defer to a trial commissioner's determination as

[4] The respondents noted that the computerized vehicle log which tracked the location of the claimant's truck was not introduced into evidence. We do note that the precedent of our Commission has been not to apply the "Secondino rule" (see Secondino v. New Haven Gas Co., 147 Conn. 672 (1960)) wherein a trier of fact may reach an adverse inference from the failure of a party to present evidence which would be presumed to support their position. See Evans v. Shelton, 16 Conn. Workers' Comp. Rev. Op. 155, 3108 CRB-4-95-6 (May 2, 1997), *dismissed for lack of a final judgment,* A.C. 17196 (January 14, 1998). While the trial commissioner in this case was not obligated to draw an adverse inference from the respondents' not submitting the log into evidence, we find no error in his decision to rule on the evidence proffered by each party to reach a decision on jurisdiction. Claimant's Exhibit H, the vehicle "run sheets", are sufficient probative evidence for the commissioner to rule on the issue of jurisdiction. See Lembrick v. State/ Dept. of Correction, 5543 CRB-1-10-4 (February 10, 2011). In Lembrick, the respondents argued that when neither party submitted the actual pre-employment physical the claimant could not argue that he had successfully passed the required physical for § 5-145a C.G.S. benefits. We rejected that argument and upheld a trial commissioner who ruled on the evidence and testimony on the record.

to what evidence he or she finds most weighty, we must respect this determination. See Berube v. Tim's Painting, 5068 CRB-3-06-3 (March 13, 2007).

We find many of the issues in this case similar to those we decided in Zolla v. John Cheeseman Trucking, Inc., 5261 CRB 5-07-8 (August 4, 2008), *appeal dismissed*, A.C. 30251 (March 5, 2009). In Zolla, the claimant was a Connecticut resident employed by an Ohio trucking firm who was injured while working in New Jersey. Applying the test in Jaiguay, supra, we concluded that based on the facts of that case the respondent's business relationship with the claimant within Connecticut was substantial enough to confer jurisdiction under our laws. While the respondent in Zolla had a physical base of operations within Connecticut, and the respondent herein did not; after reviewing the totality of the evidence we are satisfied that the business relationship between the claimant and respondent within Connecticut in the present case was significant enough for the trial commissioner to find that Connecticut had jurisdiction pursuant to Chapter 568.[5]

We believe there were sufficient facts on the record for the trial commissioner to find that Connecticut had a significant relationship to the claimant's employment relationship with the respondents.

Therefore, we affirm the Finding and Award.

Commissioner Stephen B. Delaney concurs in this opinion.

[5] As we held in Weir v. Transportation North Haven, 5226 CRB-1-07-5 (April 16, 2008), we extend a great deal of discretion to a trial commissioner to determine what quantum of activity or responsibility is "significant" or "substantial."

MICHELLE D. TRUGLIA, COMMISSIONER, CONCURRING. I concur in the ultimate outcome reached in the trial Commissioner's Finding and Award but believe certain points should be addressed in consideration of cases involving claimants who sustain out-of-state injuries while employed by out-of-state employers.

First, this case involves a "choice of law" or "conflicts of law" question rather than a jurisdictional issue. This point has been made in precedent such as Springer v. J.B. Hunt Transport, Inc., 145 Conn. App. 805, 817 (2013), Baron v. Genlyte Thomas Group, LLC, 132 Conn. App. 794, 798 n.4 (2012) and Burse v. American International Airways, Inc., 262 Conn. 31, 37-38 (2002). In the present case, there is no question that the Connecticut Workers' Compensation Commission ("Commission") has subject matter jurisdiction over workers' compensation claims, Castro v. Viera, 207 Conn. 420, 428 (1988), and that Heartland Express voluntarily submitted to personal jurisdiction through its third-party administrator ("TPA"), Gallagher Bassett Services, L.L.C. Whether a significant employment relationship exists between the parties and the State of Connecticut sufficient to cause the State of Connecticut to share financial responsibility for this claim with the State of New Jersey is another issue.

Second, there was a paucity of evidence before the trial commissioner regarding the "substantial relationship" (third prong of the Burse test). In reaching his conclusion that the law of Connecticut applied to the claim, the trial commissioner referred to the amount of revenue generated by the claimant during his period of employment; the percentage of loads the claimant either dropped off or picked up in Connecticut and the fact that there was some benefit to the respondent in saving "deadhead" miles (driving miles without cargo). While revenue and mileage figures appear insignificant, we must

keep in mind that the claimant had worked for the respondent only four months, or 119 days, prior to his date of injury. A close examination of Claimant's Ex. "H" reveals that 30 of his 74 trips (or 40% of 74 trips) involved runs to and from Connecticut to drop-off or pick-up loads in this state, or involved runs through Connecticut to drop-off or pick-up loads in New Hampshire, Massachusetts or Rhode Island. The 40% figure is much higher than the previously estimated 10 pick-up loads or 13% and 11 drop-off loads or 14% of the overall 74 trip manifest. Accordingly, I concur that there is significant employment relationship with Connecticut, sufficient to support the application of Connecticut law for the purpose of sharing responsibility with the State of New Jersey.

Finally, I raise a point, while not essential to the adjudication of this claim that is relevant to the future administration of similar cases involving out-of-state employers. The Chairman's office has no record of the respondent having complied with its obligation to either commercially insure or having fulfilled the statutory requirements to self-insure its workers' compensation liability in the State of Connecticut under the provisions of C.G.S. Sec. 31-275(10)[definition of "Employer"] or under C.G.S. Sec. 31-284. Further, the Secretary of the State has no record of the respondent being registered as a foreign corporation in Connecticut. While the respondent has voluntarily submitted to personal jurisdiction for now, enforcement of any future awards or orders may be problematic for the claimant and for the Second Injury Fund who was not a party to these proceedings.