

FINAL AWARD DENYING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 05-074507

Employee: Shaun Jordan
Employer: J. B. Hunt Transportation, Inc.
Insurer: AIG Claims Service
Date of Accident: May 10, 2005
Place and County of Accident: Tennessee

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 18, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Emily S. Fowler, issued December 18, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 19th day of August 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

FINAL AWARD

Employee: Shaun Jordan

Injury No: 05-074507

Dependents: N/A

Employer: J.B. Hunt Transportation, Inc.

Insurer: AIG Claims Service

Additional Party: N/A

Hearing Date: October 31, 2007

Checked by: ESF/pd

FINDINGS OF FACT AND RULINGS OF LAW

- Are any benefits awarded herein? No.
- 2. Was the injury or occupational disease compensable under Chapter 287? No.
- 3. Was there an accident or incident of occupational disease under the Law? Yes.
- 4. Date of accident or onset of occupational disease: May 10, 2005.
- 5. State location where accident occurred or occupational disease was contracted: Tennessee.
- 6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
- 7. Did employer receive proper notice? Yes.
- 8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
- 9. Was claim for compensation filed within time required by Law? Yes.
- 10. Was employer insured by above insurer? Yes.
- 11. Describe work employee was doing and how accident occurred or occupational disease contracted: In the course and scope of his employment, Shaun Jordan was involved in an automobile accident in the State of Illinois.
- 12. Did accident or occupational disease cause death? No. Date of death? N/A
- 13. Part(s) of body injured by accident or occupational disease: Back,head,neck
- 14. Nature and extent of any permanent disability: N/A
- 15. Compensation paid to-date for temporary disability: \$5,258.14
- 16. Value necessary medical aid paid to date by employer/insurer? \$8,903.16.

17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$814.37.
19. Weekly compensation rate: \$354.05/\$542.91.
20. Method wages computation: By stipulation.

COMPENSATION PAYABLE

21. Amount of compensation payable: None.
22. Second Injury Fund liability: None.
23. Future requirements awarded: None.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Shaun Jordan Injury No. 05-074507

Dependents: N/A

Employer: J. B. Transportation, Inc.

Insurer: AIG Claims Service

Additional Party: N/A

Hearing Date: October 31, 2007 Checked by: ESF/pd

On March 14, 2007, the Employee and the Employer appeared for a final hearing. The Employee, Shaun Jordan, appeared in person and was represented by Jason Osteen. The Employer was represented by Michelle Haskins. This Court has jurisdiction to hear this case pursuant to Section 287.110 RSMo.

STIPULATIONS

The parties stipulated as follows:

- that J.B. Hunt Transportation's liability was fully insured by AIG Claims Service;
- that Shaun Jordan was its Employee;
- that the Employee notified the Employer of the alleged injuries required by law;
- that the Employee's claim was filed within the time allowed by law;

- that the Employee's average weekly wage was \$814.37, resulting in a compensation rate of \$540.91 for temporary total disability and \$354.05 for permanent partial disability compensation;
- that Employer has paid temporary total disability compensation totaling \$5,259.14 and medical care costing \$8,903.16;
- that the Employee does not seek any additional temporary total disability nor any additional unpaid medical care.

ISSUES

The parties request the Division to determine:

- whether the State of Missouri has jurisdiction herein;
- whether the Employee sustained an accident or occupational disease arising out and in the course of its employment;
- whether the Employee suffered any disability and, if so, the nature and extent of the Employee's disability.

FINDINGS AND RULINGS

The Employee testified on his own behalf. The Employee presented the following exhibits which were admitted into evidence without objection:

- Exhibit A) Report of Dr. Koprivica;
- Exhibit B) Letter to Ms. Haskins from Mr. Dempsey;
- Exhibit C) Medical records of Employee.

The Employer provided no live testimony but presented the following exhibits, all of which were admitted into evidence without objection:

- No. 1) Affidavit of Mark J. Whitehead;
- No. 3) Employee Personnel File of Shaun Jordan from J.B. Hunt;
- No. 4) A deposition of Shaun W. Jordan.

The following exhibit was offered by employed but not admitted:

- No. 2) Arkansas Workers' Compensation Acknowledgment.

At the time of the hearing, Employee, Shaun Jordan (hereinafter referred to as Employee) was 36 years of age. He was a truck driver for J.B. Hunt Transportation. He was hired by J. B. Hunt to drive one of their trucks on a dedicated route from Kansas City, Missouri to Bristol, Tennessee. He would pick up his truck at the beginning of the week at the J.B. Hunt facility in Kansas City, Missouri, drive to the Ford plant near Bristol, Tennessee, and by the end of the week would return and drop his vehicle off, again, at the J.B. Hunt facility in Kansas City, Missouri.

Employee testified on direct examination, as follows:

On or about May 10, 2005, Employee had gone back to his vehicle, which at that time was parked in Tennessee. He had climbed into the truck and had gone to sleep when he was struck from behind by another vehicle. He was thrown from his bunk to the floor, hitting his head. By the time he opened the door, the vehicle that had struck him was moving back and forth in an attempt to get loose from his vehicle. When he hit the floor, he initially hurt his arm and hand; and, eventually, his neck and back started tingling very badly and he felt a great deal of pain. He immediately took the accident kit from inside the truck and followed the procedure, calling a State Trooper; speaking to J.B. Hunt, and waiting for the State Trooper to come and take a report. He followed the step-by-step program, including getting information from the other truck driver.

Employee did not go to the emergency room at that time, but on his drive back to Kansas City, he had pain in his neck and his vision was bad. He called the dispatcher and was told to seek medical attention immediately. He stopped in Mt. Vernon, Illinois at the hospital. In that emergency room, Employee had a CT scan of his head that was negative. The X-rays of the cervical spine and lumbar spine did not reveal any acute bony abnormalities. He was treated for musculoskeletal injury involving the cervical and thoracic muscles and given Vicodin, Soma and Reliefan.

When he returned to Kansas City, he contacted the dispatcher approximately a week after on May 19th, stating he still did not feel well and was told to go to the hospital. He went to Concentra Medical Center on May 19th, 2005 where he underwent therapy. He was given an MRI scan of the cervical spine on July 14th due to continued problems and complaints of tingling into the left upper extremity. The MRI showed a cervical spondylosis at C4-C5, C5-C6 and C6-C7. There was no critical stenosis identified, and it was felt that he had a non-operative problem. Electrodiagnostic studies were performed on the cervical paraspinals and left upper extremities by Dr. Egea on July 25th, 2005. These studies were reportedly within normal limits.

Employee treated with therapy through August 5th, 2005 at Concentra Medical Centers. Employee has continued to remain symptomatic since he was released from care. He has continued seeking treatment on his own and has continued on Vicodin on an as-needed basis.

Employee states he continues to have low back pain. He also continues to have neck pain with intermittent tingling down the left arm. He uses a heat pad and hot towels on his left arm and neck and upper back when he is sleeping. He has to sleep on his back because of the musculoskeletal discomfort he develops at night. He says he has trouble sleeping because he always has pain and he also has problems lifting and he cannot grasp things very easily.

Employee has lived in the State of Missouri for approximately three to four years. He was living in Missouri when he went to seek employment with J.B. Hunt. He stated he went to their office in Kansas City, Mo at the Ameristar after having called an 800 number and was told to come in. He sat down with a representative who explained what he would be doing, how much money he would be making, the vacation time; and, as Employee states, he was told "he had the job." He understood that he would have so many days of vacation after he had worked there for one year, and he also understood his rate of pay. He was told he would be given a dedicated run from Claycomo to Tennessee, then back again, using the same route every time. After he left, he celebrated that he had a job with his girlfriend.

When he started his job, he would go to the Kansas City, Missouri terminal for J. B. Hunt near the Ameristar to pick up his trailer and then proceed to Tennessee. The truck would then be unloaded and then reloaded where he would then go to Penske's, unload, and then go back to the Ameristar station. Basically, he would pick up the truck on Monday in Kansas City, Missouri and would eventually return it on Friday to Kansas City, Missouri once again. He believed employer's home base was in Kansas City, Missouri. He never drove a

truck in Arkansas, and the trucks were always serviced either in St. Louis or at the Ameristar station for J. B. Hunt.

Upon cross-examination, the Employee confirmed he had a meeting at the J. B. Hunt office in Kansas City, where he filled out information. He admitted he was then told to report to Lowell, Arkansas for training for two weeks and spent two weeks in Arkansas. When asked if he understood that in order to be hired he had to pass his training, he stated that he did know that, but he was told he had a job when he was at J. B. Hunt in Kansas City, Missouri. He was asked whether he signed a contract, and he admitted that he signed a number of papers down in Arkansas but was not sure what they were. When asked if he had to take a urine test in Arkansas and get a clean result as a condition of employment, he stated yes. When shown Exhibit 1, "Jurisdiction Agreement", Employee did not recall signing that particular agreement. He did not specifically recognize that document, but that it was, in fact, his signature. He admitted that he was dispatched out of the State of Arkansas; although, at the time, he did not realize it. Finally when questioned regarding his medical treatment he admitted that the brain scan, MRI and EMG were all within normal limits, there was no need for surgery due to the accident, and he was not presently under a doctor's care today.

On redirect-examination, the Employee was asked if he was paid for training in Arkansas, and the Employee stated that he was. He gave his personal information to J. B. Hunt before he went down to Arkansas but stated he could not remember if he signed his W-9 in Kansas City or not.

The first issue to be determined in this matter is whether or not the State of Missouri has jurisdiction over this case. Employee argues that Missouri case law and the statutes under Section 287, specifically, 287.110.2, give jurisdiction to the State of Missouri regarding this case. However, this Court does not agree and finds that, in fact, Missouri does not have jurisdiction over this matter. The parties agree that the applicable statute is Section 287.110.2 RSMo. The jurisdictional requirements of Missouri Workers' Compensation law can be found in Section 287.110 and, specifically, with regard to this case in Section 2. Section 2 reads as follows:

"This chapter shall apply to all injuries received and occupational diseases contracted in this state, regardless of where the contract of employment was made, and also to all injuries received and occupational diseases contracted outside of this state under contract of employment made in this state, unless the contract of employment in any case shall otherwise provide, and also to all injuries and occupational diseases contracted outside of the state where the Employee's employment was principally localized in this state."

In reading this statute, the Court first looks to the first section reading, "This chapter shall apply to all injuries received and occupational diseases contracted in this state, regardless of where the contract of employment was made..." This does not apply to the case at hand as the injury clearly did not occur in the State of Missouri.

The next part of the statute, "to all injuries received and occupational diseases contracted outside of this state under contract of employment made in this state, unless the contract of employment in any case shall otherwise provide," does not apply as well. Although Employee alleges he was hired in Kansas City, upon his first interview, he also admitted that he completed his training and was hired while in Arkansas. After reviewing the documentation provided in Employer/Insurer's Exhibit No. 3 as well as Employer's Exhibit No. 1, it is apparent that Employee signed his application, performed his testing, underwent his training and signed other paperwork while in the State of Arkansas.

It is important to note that in Exhibit 3 on the J. B. Hunt application, page 4 of 4, under Section 1, General Disclaimers, it states:

"I understand that J. B. Hunt Transport, Inc., (hereafter J. B. Hunt), is under no obligation to hire me, that any employment I am offered will not be for any specified period of time, that my employment is terminable by either party at will with or without notice or cause, and that no representative of J. B. Hunt has authority to enter into any agreement with me contrary to the foregoing. I understand that nothing contained in my employment application or in granting of an interview is intended to create an employment contract between J. B. Hunt for either employment or for the providing of any benefit."

It is apparent to this Court that Employee was, in fact, not hired until he presented at training and finished his training in Arkansas and signed his employment contract in Arkansas. Therefore, this section of the statute does not apply either. As an aside, had this Court found that Employee was hired in Missouri then the jurisdictional agreement would have controlled and it would have been clear that Arkansas had jurisdiction.

The final section of the statute states "to all injuries and occupational diseases contracted outside of the state where the Employee's employment was principally localized in this state." Employee argues that he should have Missouri jurisdiction because his employment was principally localized in Missouri and based upon the statutory language this fact would override any specific contractual language to the contrary. Employee argues that he entered into a contract in January of 2005 at Employer's office in Kansas City; was a resident of the State of Missouri; hired by J. B. Hunt at their office in Kansas City to drive trucks on a dedicated route from Kansas City to St. Louis, Missouri over to the Ford plant near Bristol, Tennessee and return along the same route with a stop in Claycomo, finally dropping his truck off at the J.B. Hunt facility in Kansas City, Missouri.

He argues that his base during his employment for J.B. Hunt was where his J.B. Hunt truck was stationed and localized, which was Kansas City, Missouri at the J.B. Hunt dispatch yard. Employee states he was regularly dispatched out of the J. B. Hunt terminal in Kansas City, Missouri for his round-trip dedicated trip. Further, he would deliver his truck for routine inspections at the J.B. Hunt terminal in St. Louis, Missouri as well as the J.B. Hunt dispatch yard in Kansas City, Missouri.

In short, he argues he initially met with a representative of J. B. Hunt in Kansas City, Missouri where he was hired before attending orientation for two weeks in Arkansas. His truck was stationed in Missouri at the J.B. Hunt facility. He returned home to his residence in the state of Missouri every weekend. He traveled across the state of Missouri on a weekly basis and he made a number of necessary stops on his dedicated route in the state of Missouri.

The Court has already determined that Employee was not hired in Missouri but in Arkansas. Although Employee states he was dispatched out of Kansas City he actually admitted he was dispatched out of the Lowell, Arkansas facility by J.B. Hunt. Although his truck was housed locally in Kansas City, he testified that he spent just minutes early Monday mornings and then in the afternoons on Friday when he would return in terms of picking and dropping off his vehicle, otherwise, he was on the road the entire rest of the week traveling to Tennessee. There was no testimony regarding the amount of time or miles actually spent driving in the State of Missouri versus any other state he would have driven through. In fact it appears that the route Employee drove would have actually placed him outside the state of Missouri for more miles and time than within the state. As such, the Employee did not bring forth any quantitative evidence as to how much time he spent in Missouri as opposed to Tennessee or elsewhere. Further, it should be noted Employee was paid and accepted payment for temporary total disability under Arkansas benefits. This Court therefore determines that Employee failed to carry his burden of proof regarding his argument that he was principally employed in the State of Missouri.

Because the Court finds that Employee was not principally employed in Missouri, the Court returns to 297.110 for further guidance as to how to proceed herein. Although it has already been determined that the case at hand does not fit neatly within the statute we can still look to the statute for some guidance. The

statute clearly states that wherein an injury received outside the state under contract of employment made in this state shall be covered under Missouri law *"unless the contract of employment shall otherwise provide."* The one difference herein is that this Court finds that the contract for employment was made in Arkansas. In the case at hand, there is a very specific agreement placing jurisdiction for any injury contracted while under the employ of employer within the jurisdiction of the State of Arkansas.

The Employee acknowledged he signed the document entitled Jurisdiction Agreement while in Arkansas. This was Employer/Insurer's Exhibit No. 1, which basically stated:

"I agree that I am being hired as an over-the-road driver for J. B. Hunt Transport, Inc. I also agree that I am being hired, managed and dispatched Out of the State of Arkansas and will be treated as an Arkansas employee. Therefore, I agree that if I am injured on the job, I will pursue all workers' compensation benefits related to my injury in the State of Arkansas. I also agree that in the event of an employee/employer Dispute or any other dispute arising out of my job, I agree to resolve the dispute under applicable Arkansas laws."

This agreement controls. An accident which occurred outside the State of Missouri under contract of employment which specifically set jurisdiction in Arkansas shall be determined under Arkansas law.

Employee further argues that case law has determined that when an employee's employment is principally localized in Missouri, this state then has jurisdiction regardless of any contractual agreement between employer and employee to the contrary. Again, this Court does not find that Employee was principally employed in Missouri. The cases offered do not convince this court of Employee's argument. None of the cases cited -- Cable v. Schneider Transportation, Inc., 957 S.W.2d 802 (Mo. Ct. App. S.D. 1997), Miller v. Hirschbach Motor Lines, Inc., 714 S.W.2d 652 (Mo.App. S.D. 1986), Weiderhoff v. Neal, 6F. Supp 798, (D.Ct. W.D. Mo. 1934) --are on point herein. Each discusses the concept of a situation wherein the Courts determined that Employee's employment was principally located in Missouri. This is not the case herein.

Employer, offers the case of Woodward v. J.J. Grier Co., 270 S.w.2d 155 (W.D. 1954). In that case, the Court held that where the Claimant signed a similar type jurisdiction agreement, it was, in fact, binding and deprived Missouri of jurisdiction. In that case, the contract was signed in Missouri but had a clause wherein the parties agreed that jurisdiction would be held in whatever State the injury occurred. This clearly falls under language of the statute. However, once again, the facts of the case are not quite the same, as the Woodward case has a contract signed in Missouri.

The difficulty of this case, as has been discussed, is that the situation does not fall strictly within the parameters for the statute. If the Court had found Employee was hired in Missouri, the statute would then have directed a finding that Arkansas had jurisdiction pursuant to the agreement. Had the Employee proven he was, in fact, principally employed in Missouri, then Missouri would have had jurisdiction. However, because Employee did not carry his burden of proof therein, this Court is unable to follow the specific statutory language and again the jurisdictional agreement controls.

Therefore, having reviewed the arguments, evidence and case law presented to this Court, this Court finds that Missouri, in fact, does not have jurisdiction over this case. Having made such determination, all other questions herein are moot.

Date: _____

Made by: _____

Emily S. Fowler
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Jeffrey Buker
Director
Division of Workers' Compensation