Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 13, 2021

CLAIM NO. 202000755

BASHIR ADEN PETITIONER

VS. **APPEAL FROM HON. PAUL L. WHALEN, ADMINISTRATIVE LAW JUDGE**

SUMMITT TRUCKING and
HON. PAUL L. WHALEN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and BORDERS, Members.

ALVEY, Chairman. Bashir Aden ("Aden") seeks review of the Opinion & Order rendered December 17, 2020, by Hon. Paul L. Whalen, Administrative Law Judge ("ALJ"). The ALJ dismissed Aden's claim for Kentucky workers' compensation benefits against Summitt Trucking, LLC ("Summitt") for lack of extraterritorial jurisdiction pursuant to KRS 342.670. Aden also appeals from the ALJ's January 22, 2021 Order denying his Petition for Reconsideration.

On appeal, Aden argues the ALJ erred in dismissing his claim based upon a lack of jurisdiction. He admitted the accident occurred in Cincinnati, Ohio. However, he argues Summitt has a "drop lot" in Brooks, Kentucky, and therefore it has a place of business in Kentucky. He argues KRS 342.670 only requires Summitt to have "a" place of business in Kentucky, not necessarily its principal place of business. He argues the ALJ misapplied the holding in Haney v. Butler, 990 S.W.2d 611 (Ky. 1999). We determine the ALJ did not err in finding the extraterritorial jurisdiction provisions contained in KRS 342.670 are not satisfied, and therefore we affirm.

On March 20, 2020, while employed as a truck driver for Summitt, Aden allegedly sustained injuries to his head, neck, back, both shoulders, both feet, and both knees in a motor vehicle accident caused by excessive wind. The claim was bifurcated for a decision on whether Kentucky has jurisdiction of this claim. Therefore, we will not discuss the medical evidence.

Aden testified by deposition on September 14, 2020. He was born in Somalia on January 1, 1986, and he grew up in Kenya. He moved to Louisville in 2004, and is a U.S. citizen. He completed the tenth grade, and later attended a truck driving school, eventually obtaining a CDL. He began working for Summitt as a local driver in October 2014, and he last worked there on July 6, 2020. He testified that as a local driver, he picked up loads in Indiana and Kentucky, and delivered them to Chicago and Ohio, returning home each day. When he began working for Summitt, he picked up his truck each day at its terminal in Clarksville, Indiana. He was later allowed to drop his truck at a lot in Brooks, Kentucky. He benefitted from

this accommodation by no longer having to pay for the tolls incurred in crossing the bridge to and from Clarksville, Indiana to get to work.

Aden was not required to load or unload trailers. He was only required to hook up, drive, and drop the trailers. He continued to work for Summitt after the accident performing what was supposed to be light duty at its offices in Clarksville, Indiana.

On the date of the accident, Aden picked up his truck and an empty trailer, in Brooks, Kentucky, and he drove to Jeffersonville, Indiana. He was on his way to Millersport, Ohio (near Cincinnati) to transfer the load to another driver, when a storm arose. The high winds caused his truck to flip over. He was taken to a hospital in Cincinnati where he stayed overnight. He continues to treat with a chiropractor in Louisville for ongoing problems associated with the accident.

Aden filed as evidence a 2015 news article from Louisville Business First, indicating Summitt's plan to open a Bullitt County facility. He also filed the results of a google search for Summitt in Shepherdsville, Kentucky.

David Summitt, ("Mr. Summitt"), co-owner of Summitt Trucking, testified by deposition on November 10, 2020. He co-owns the business with his wife. He stated the business is a limited liability company ("LLC") organized in Indiana. He testified that in the year prior to the accident, Aden was permitted to park and pick up his truck in Brooks or Shepherdsville, Kentucky. He testified Summitt does not own or lease property there. All of Summitt's fueling, maintenance, scales, safety, and dispatch are located in Clarksville, Indiana.

The lot where Aden parked his truck is owned by Sliver Creek, LLC, which is a separate entity. He stated all loads were coordinated and dispatched from Clarksville, Indiana, but are picked up at multiple locations. Mr. Summitt stated other drop lots Summitt drivers use include Walton, Kentucky; Atlanta, Georgia; and occasionally Memphis, Tennessee. Summitt makes deliveries to multiple states, but the operations, dispatch, and terminal are located in Clarksville, Indiana. Likewise, all truck maintenance activities are located in Clarksville, Indiana. Mr. Summitt testified the plan to open a facility in Shepherdsville, Kentucky indicated in the 2015 Business First article never materialized.

Tim Gehm ("Mr. Gehm"), Summitt's Manager of Customer Service and Load Planning, testified by deposition on November 5, 2020. Mr. Gehm previously worked as a recruiter for Summitt from 2016 to 2017. In his current position, Mr. Gehm oversees the booking of freight and assignment of delivery drivers. He testified some Summitt drivers use a drop lot in Shepherdsville, Kentucky owned by Truck America, a truck driving school that is a separate entity from Summitt. Prior to permitting drivers to use the drop lot, they had to pick up trucks at the Clarksville, Indiana location.

Mr. Gehm began working for Summitt in 2003. He was the operations director in 2014 when Aden was hired. He testified potential drivers submit applications online. Once processed and eligibility is determined, potential drivers must come to Summitt in Clarksville, Indiana for orientation, D.O.T. physicals, drug screens, and a driver testing. All testing, paperwork, and hiring are completed in Clarksville, Indiana.

On November 2, 2020, Summitt filed records from the Kentucky Secretary of State noting Summitt is a foreign LLC located in Clarksville, Indiana, qualified to do business in Kentucky. Summitt also filed records from Truck America Training of KY, LLC, also a foreign LLC, located in Jeffersonville, Indiana, authorized to do business in Kentucky. Summitt additionally filed records pertaining to Truck America Training, LLC, which is a Kentucky LLC. Attached to those filings is a letter from Brittany Davis, the Human Resources Manager at Summitt Trucking. The letter states Aden used the drop lot at Truck America Training to pick up his truck to avoid paying tolls out of his own pocket, which he would have been responsible for if he drove directly to Clarksville, Indiana.

A Benefit Review Conference was held on October 7, 2020. At that time, the claim was bifurcated for a determination solely regarding the issue of whether Kentucky has jurisdiction of the claim.

The ALJ dismissed Aden's claim in the Opinion & Order issued December 17, 2020. The ALJ determined Summitt is a foreign LLC, in good standing, whose principal office is located in Clarksville, Indiana. He found Aden's employment is localized in Clarksville, Indiana, and the accident occurred in Ohio. He determined Kentucky does not have jurisdiction of the claim. The ALJ analyzed the pertinent statute, KRS 342.670 (1) & (5). The ALJ also referenced the holding in Haney v. Butler, supra, and additionally analyzed the claim pursuant to the holding in Eck Miller Transp. Corp. v. Wagers, 883 S.W.2d 854 (Ky. App. 1992), in reaching his determination.

Aden filed a Petition for Reconsideration on December 28, 2020, arguing the ALJ misinterpreted the facts of the case. He argued he had used the Brooks' "terminal" for over a year prior to the date of the accident. On the date of the accident, he picked up the truck at the Brooks location, drove to Jeffersonville, picked up a load, and headed to Cincinnati where the accident occurred. He also referenced a news article from 2015 he filed indicating Summitt's intent to open a terminal in Brooks. He also argued the ALJ misapplied the holding in Haney v. Butler, supra, because he argues Summitt owned or leased a location in Brooks, thereby establishing jurisdiction pursuant to KRS 342.670(5). The ALJ denied the Petition for Reconsideration by Order dated January 22, 2021. He reiterated his determinations, and found the facts of this claim more closely resemble those in Eck Miller Transp. Corp. v. Wagers, supra.

On appeal, Aden argues the ALJ erred in dismissing his claim, and Kentucky has jurisdiction pursuant to KRS 342.670(5). We initially note the relevant portions of KRS 342.670 read as follows:

> Extraterritorial coverage
>
> (1) If an employee, while working outside the territorial limits of this state, suffers an injury on account of which he, or in the event of his death, his dependents, would have been entitled to the benefits provided by this chapter had that injury occurred within this state, that employee, or in the event of his death resulting from that injury, his dependents, shall be entitled to the benefits provided by this chapter, if at the time of the injury:
>
> (a) His employment is principally localized in this state, or

> (b) He is working under a contract of hire made in this state in employment not principally localized in any state, or
>
> (c) He is working under a contract of hire made in this state in employment principally localized in another state whose workers' compensation law is not applicable to his employer, or

. . .

> (5) As used in this section:
>
> . . .
>
> > (d) A person's employment is principally localized in this or another state when:
> >
> > > 1. His employer has a place of business in this or the other state and he regularly works at or from that place of business, or
> > >
> > > 2. If subparagraph 1. foregoing is not applicable, he is domiciled and spends a substantial part of his working time in the service of his employer in this or the other state;

Aden, as the claimant in this workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since he was unsuccessful before the ALJ, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Compelling evidence is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under

the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

In rendering a decision, Kentucky's workers' compensation Act grants the ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. See KRS 342.275; KRS 342.285; AK Steel Corp. v. Adkins, 253 S.W.3d 59 (Ky. 2008). The ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977). Although a party may note evidence which would support an outcome other than that reached by the ALJ, this is not adequate to support a reversal on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact finder by superimposing its own appraisals as to weight and credibility or by noting reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). In order to reverse the decision of the ALJ, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Aden does not meet any of the necessary requirements set forth in KRS 342.670(1) extending jurisdiction to Kentucky. In order for that to apply, his employment would be required to be principally located in Kentucky, or not in any state. In the alternative, the contract for hire must have been reached in Kentucky. Neither of those conditions is applicable to this situation.

The ALJ set forth the statutory language in KRS 342.670(1) and (5)(d) as noted above to conclude Aden's employment was principally located in Indiana. The Kentucky Supreme Court has construed the term "has a place of business" as used in the extraterritorial coverage provision to mean, "the employer must either lease or own a location in the state at which it regularly conducts its business affairs, and the subject employee must regularly work at or from that location." Haney v. Butler, supra.

In Haney v. Butler, supra, the Kentucky Supreme Court provided a detailed annotation of Kentucky extraterritorial jurisdiction cases. The definition of "principally localized", as defined by KRS 342.670, was outlined as follows:

> Fourth, is the question of whether Kentucky has extraterritorial jurisdiction over this claim. The employer argues that because the decedent worked most of the time in Alabama and was injured in Alabama, public policy favors Alabama jurisdiction over the claim. We observe, however, that such considerations were presumably taken into account by the legislature in the drafting of KRS 342.670. As was recognized by the tribunals below, an analysis of whether the Kentucky Act applies to an extraterritorial claim turns upon the definition of the term 'principally localized' which is provided in KRS 342.670(4)(d)1. and 2. A review of the provision makes it clear that a particular set of facts must be considered, first, in view of subsection (4)(d)1. Only if that provision does not apply, does the analysis proceed to subsection (4)(d)2. It may be concluded that a particular employment is not principally localized in any state only after a determination that both subsections (4)(d)1. and (4)(d)2. do not apply.
>
> Here, the ALJ determined that the decedent's employment was principally localized in Alabama pursuant to subsection (4)(d)1., so the question on appeal is whether there was substantial evidence that the employer 'ha[d] a place of business' in Alabama and substantial evidence that the decedent regularly worked

at or from that place of business. We are aware of no decision which construes the phrase 'has a place of business' for the purpose of determining if a worker's employment is principally localized in a particular state.

In Eck Miller Transportation Corporation v. Wagers, Ky. App., 833 S.W.2d 854 (1992), the injured truck driver was a Kentucky resident; there was evidence that he did a substantial amount of work-related activities (paperwork, vehicle maintenance, etc.) at his home in Kentucky; the employer had a freight terminal in Kentucky; and the worker's paychecks were drawn on a Kentucky bank. Although the worker was notified of his hiring in Kentucky, the necessary paperwork was done at the employer's principal office which was located in Indiana, and he was subsequently assigned to the employer's freight terminal in Tennessee. It was from the Tennessee terminal that he essentially received all his work orders, and he was injured in Tennessee. In reinstating the ALJ's decision, the court concluded that the worker regularly worked from the employer's Tennessee freight terminal and that, regardless of other factors, there was substantial evidence that his employment was principally localized in Tennessee pursuant to KRS 342.670(4)(d)1. There, it was undisputed that the Tennessee freight terminal constituted a place of business for the employer.

In Davis v. Wilson, 619 S.W.2d 709 (Ky. App. 1980), the employer purchased junked cars and crushed them with a mobile car-crusher. He lived in Kentucky and conducted the business from a location in Pineville, Kentucky, but the car-crushing device was used both in Kentucky and in Tennessee. The injured worker was a Kentucky resident and was hired in Kentucky but injured in Tennessee. At the time of the injury, he had been employed for a total of eleven weeks, working two weeks (18% of the total) in Kentucky and nine weeks (82% of the total) in Tennessee. The 'old' Workers' Compensation Board had denied extraterritorial coverage. Addressing KRS 342.670(4)(d)1., the Court of Appeals determined that, even if it were assumed that the employer had a place of business in both Kentucky and Tennessee, there was no steady or uniform practice of working in either state. In other words, the injured worker worked sporadically in both states but 'regularly'

> in neither; therefore, the court concluded that subsection (4)(d)1. did not apply on those facts. However, because the worker was a Kentucky resident and spent a substantial amount of time working in Kentucky, the evidence compelled a determination that the employment was principally localized in Kentucky pursuant to subsection (4)(d)2. As a result, the claim was held to come within the requirements of KRS 342.670(1)(a).
>
> As is apparent, neither case sheds light on what the legislature intended by the phrase 'has a place of business;' furthermore, neither does Larson, Larson's Workers' Compensation Law, § 87.40, et. seq., although it is instructive concerning the principles of extraterritorial jurisdiction. We observe, however, that the use of the word 'has' denotes possession. Webster's New Collegiate Dictionary, 1975 edition. Having considered KRS 342.670 in its entirety, the arguments of the parties, and the opinions of the tribunals below, we conclude that for an employment to be principally localized within a particular state for the purposes of KRS 342.670(4)(d)1., the employer must either lease or own a location in the state at which it regularly conducts its business affairs, and the subject employee must regularly work at or from that location.

Haney v. Butler, 990 S.W.2d at 616, 617.

In Eck Miller Transportation Corporation v. Wagers, supra, the Kentucky Court of Appeals noted as follows:

> The ALJ correctly noted that the key to extraterritorial coverage under the statute is the determination of the situs at which an employee's work activity is 'principally localized.'

Wagers' employer had a terminal in Tennessee and the ALJ determined "Wagers' assignment to the Chattanooga terminal during one and one-half years prior to his accident resulted in his working from Tennessee for statutory purposes." Accordingly, the ALJ determined Wagers' employment was principally

localized in Tennessee and he regularly worked at or from Miller's Tennessee terminal. Therefore, Kentucky did not have extraterritorial jurisdiction. Further, the ALJ concluded nothing in the record indicated Wagers would not be eligible for Tennessee workers' compensation benefits.

In this instance, extraterritorial coverage is not available to confer Kentucky jurisdiction pursuant to KRS Chapter 342, and the ALJ correctly dismissed the claim. It is undisputed Aden was hired in Clarksville, Indiana. Likewise, the evidence establishes Aden drove to Clarksville, Indiana for several years until he was permitted to park his truck at a lot in Brooks or Shepherdsville, Kentucky, in order to accommodate him so that he would not have to pay tolls out of his own pocket for his daily commute. There is no evidence Summitt owns any property in Kentucky, or that it has any interest in the property in Kentucky where the drop lot is located, which would satisfy the requirement necessary to establish Kentucky jurisdiction. The evidence establishes that the drop lot is owned by a separate and distinct entity. While the news article filed into evidence indicated the plan to establish a terminal in Shepherdsville, it never came to fruition. The evidence establishes that Summitt's offices, dispatch, and maintenance facilities are located in Clarksville, Indiana, and all loads are coordinated from that location. On the date of the accident, Aden drove from the drop lot to Jeffersonville, Indiana, where he picked up a load to take to Ohio when the accident occurred.

We find Mr. Summitt's testimony, along with that of Mr. Gehm, and the letter from Brittany Davis, in addition to the records from the Kentucky Secretary of State, establish evidence of substantial probative value sufficient to support the

outcome selected by the ALJ. We find the ALJ correctly reviewed and applied KRS 342.670(1)(a), and (5)(d), and a contrary result is not compelled.

Accordingly, the December 17, 2020 Opinion & Order, and the January 22, 2021 Order on Petition for Reconsideration rendered by Hon. Paul L. Whalen, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER: **LMS**

HON CHED JENNINGS
401 WEST MAIN ST, STE 1910
LOUISVILLE, KY 40202

COUNSEL FOR RESPONDENT: **LMS**

HON BONNIE HOSKINS
PO BOX 24564
LEXINGTON, KY 40524

ADMINISTRATIVE LAW JUDGE: **LMS**

HON AMANDA PERKINS
MAYO-UNDERWOOD BLDG
500 MERO STREET, 3rd FLOOR
FRANKFORT, KY 40601