

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 22, 2019

CLAIM NO. 201800156

FAWAZ AKOUTON

PETITIONER

VS.

**APPEAL FROM HON. STEPHANIE KINNEY,
ADMINISTRATIVE LAW JUDGE**

US EXPRESS INC.,
DR. RYAN KRUPP,
And HON. STEPHANIE KINNEY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

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

RECHTER, Member. Fawaz Akouton appeals from the October 26, 2018 Opinion and Order and the November 19, 2018 Order on Reconsideration rendered by Hon. Stephanie Kinney, Administrative Law Judge ("ALJ"). The ALJ dismissed

Akouton's claim for injuries resulting from a motor vehicle accident, concluding Kentucky does not have jurisdiction over his claim. Akouton appeals that conclusion. For the reasons set forth herein, we affirm.

The facts relevant to this appeal are largely uncontested. Akouton worked as a truck driver and a trainer for US Express. He attended trucking school in Elizabethtown, Kentucky. He first learned of US Express at trucking school, and completed an on-line application in June, 2016. A US Express recruiter then contacted Akouton by telephone. According to Akouton, he was offered a position as a driver during this phone conversation and began to receive a daily payrate the next day.

Akouton was provided a Greyhound bus ticket to travel from his home in Louisville to Springfield, Ohio on June 23, 2015. Over the course of three days, he attended orientation in Springfield, and also underwent physical examinations, road testing, and drug screening. His hotel, transportation and food expenses for this trip were paid by US Express. Akouton returned home to Louisville, but did not commence his job training until two weeks later. He was paid his daily pay rate for these two weeks.

US Express does not have an office in Louisville. Akouton received his assignments via an application on his phone, and performed his work in various states. His dispatches came from US Express' Georgia office. In between routes, he would park his truck at his home in Louisville. He would also sometimes use a

“drop yard” located in Louisville, which was shared with several other trucking companies and not owned by US Express.

On January 6, 2017, Akouton was involved in a motor vehicle accident in northern Indiana, while en route to Michigan. He suffered injuries to his left hip, left shoulder, left knee and neck. He returned to light duty work at US Express’ Springfield, Ohio office, performing paper work. When no further light duty work within his restrictions was available, Akouton quit working at US Express.

Scot Rambo, a director of driver compliance at US Express, testified by deposition. Rambo explained US Express’ hiring process begins with an online application and telephone interview. Then, an applicant is provided a pre-approval of employment which is contingent upon passing certain testing and completing orientation in Springfield, Ohio. Once all of the tests and orientation have been successfully completed, an applicant is officially hired. If a claimant fails any portion of the testing or orientation, he is disqualified from employment at US Express.

In Akouton’s case, Rambo stated that he was officially hired on June 26, 2015. He was assigned to the Mississippi terminal and received his dispatches from the Georgia office. Payroll records indicate Akouton’s first paycheck covered the period from June 24, 2015, his first day of orientation, to June 30, 2015. US Express also provided mileage logs beginning on Akouton’s first training trip through the date of the accident. The records indicate Akouton travelled in Kentucky 4.75% of his time.

The ALJ first addressed whether jurisdiction over this claim lies in Kentucky, as the injury occurred in Indiana. Referencing KRS 342.670(1)(a), the ALJ considered whether Akouton's employment was principally localized in Kentucky. Citing KRS 342.670(5)(d), the ALJ determined his employment was not principally localized in Kentucky because he drove in multiple states with most miles logged in Pennsylvania, and US Express does not have an office or place of business in Kentucky.

The ALJ next considered whether Akouton's contract for hire was made in Kentucky and concluded it was not. Though he was in Kentucky when he spoke with a US Express recruiter via telephone, the ALJ concluded Akouton received only a contingent offer prior to June 26, 2015. Only after he completed testing and orientation in Ohio did he receive a final offer of employment. To reach this conclusion, the ALJ relied on Rambo's testimony and the payroll records. Having concluded Akouton's employment was not principally localized in Kentucky, and he was not hired in Kentucky, the ALJ dismissed the claim for lack of jurisdiction.

Akouton petitioned for reconsideration. He argued the ALJ incorrectly determined he received only a conditional offer via telephone from the US Express recruiter. Akouton claimed that he received a daily payrate immediately, and was sent a paycheck and a bus ticket prior to his travel to Springfield. Akouton also argued the ALJ incorrectly concluded US Express uses only a drop yard in Louisville. Rather, he emphasized that his truck was frequently

parked at his home between jobs. The ALJ denied the petition as a re-argument of the merits of the claim.

On appeal, Akouton argues it was incorrect for the ALJ to determine he accepted only a conditional offer over the phone. According to Akouton, he was paid a daily rate beginning the day after his phone interview with US Express, in addition to reimbursement for his travel expenses to Springfield. Alternatively, Akouton claims his work was principally localized in Kentucky because he frequently parked his truck at his home and received his dispatches via phone while present in Kentucky.

As the claimant in a workers' compensation proceeding, Akouton bore 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). Because he was unsuccessful in establishing extraterritorial jurisdiction in this state, 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 they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

Because Akouton's accident occurred in Indiana, he sought to establish extraterritorial jurisdiction in Kentucky pursuant to KRS 342.670. KRS 342.670(b) allows an out-of-state injury to be adjudicated in Kentucky if the claimant was working under a contract for hire made in this state. The ALJ determined Akouton's contract for hire was made in Springfield, Ohio after he completed the three-day orientation and testing process. While Akouton claims an offer of employment was extended over the phone to him, substantial evidence supports a different conclusion. Rambo explained that no contract for hire is extended until an applicant completes the orientation and testing process, and payroll records indicate Akouton first received wages the day after orientation was completed. This proof constitutes the requisite substantial evidence to support the ALJ's conclusion. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). Akouton has essentially asked this Board to re-evaluate the proof and reach an alternate conclusion, which we may not do. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999).

Alternatively, Akouton relies on KRS 342.670(1)(a), which allows a claim to be adjudicated in Kentucky even though the injury occurred elsewhere if the claimant's employment is "principally localized" in this state. Employment is principally localized in Kentucky if the employer has a place of business in this state or the claimant regularly works from that place of business. KRS 342.670(5)(d). Alternatively, employment is principally localized in Kentucky if the claimant spends a substantial part of his or her working time in this state. Id.

Again, the proof does not compel a result in Akouton's favor. The mileage records indicate the majority of Akouton's driving occurred in Pennsylvania. This is adequate proof from which to conclude a substantial portion of Akouton's work did not occur in Kentucky. Further, Akouton offers no support for the contention that his home constitutes a place of US Express' business because he frequently parked his truck there while awaiting his next dispatch. We find no language in KRS 342.670 or corresponding case law that would permit this expansive definition of "place of business". The ALJ's determination that Akouton's work was not principally localized in Kentucky is supported by substantial evidence, and the proof does not otherwise compel a different result.

For the foregoing reasons, the October 26, 2018 Opinion and Order and the November 19, 2018 Order on Reconsideration rendered by Hon. Stephanie Kinney are hereby **AFFIRMED**.

ALL CONCUR.

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