

RENDERED: OCTOBER 22, 2010; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2009-CA-001829-WC

ANTHONY TRAUOGOTT

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-08-01484

VIRGINIA TRANSPORTATION;  
HON. IRENE STEEN, ADMINISTRATIVE  
LAW JUDGE; AND WORKERS'  
COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE AND MOORE, JUDGES; BUCKINGHAM,<sup>1</sup> SENIOR  
JUDGE.

ACREE, JUDGE: Anthony Traugott appeals the opinion of the Workers'

Compensation Board affirming the order of the Administrative Law Judge which

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<sup>1</sup> Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

determined Kentucky lacks jurisdiction to hear Traugott's Workers' Compensation claim. Because we agree Kentucky lacks jurisdiction over the matter, we affirm.

Traugott began employment with Virginia Transportation in March 2008 as a truck driver. He sustained an injury to his left shoulder on September 25, 2008, in Bridgton, Missouri, notified the employer of the injury, and filed for Workers' Compensation benefits.

In preparation for adjudication of the claim, Traugott provided deposition testimony regarding his hiring and employment. Traugott testified he contacted a representative in Virginia Transportation's Rhode Island headquarters to inquire about employment opportunities. An employee from that office faxed Traugott an application, which he completed and returned via fax. Traugott stated he later placed a phone call to the Rhode Island office and learned he had been hired. He then rented a car, as instructed, and drove from his home in Harrodsburg, Kentucky, to Rhode Island for training, drug testing, and completion of tax forms. Virginia Transportation reimbursed him for the car rental. Traugott testified that, to his knowledge, the employer had only one office, the one in Rhode Island, and none in Kentucky.

Upon beginning employment as a truck driver, his schedule varied. Traugott testified he initially stayed on the road for two consecutive weeks before returning home to Harrodsburg to rest for two to three days. Time on the road later changed to three-week stretches, and would sometimes last as long as a month. According to testimony, his last stop prior to a break at home was always in

Louisville, Kentucky, and his first stop upon returning from his time off was always in either Louisville or Lexington, Kentucky. His assignments required travel to all forty-eight contiguous states, and he was not assigned primarily to any one state.

Both Traugott and Virginia Transportation moved to bifurcate the claim. The ALJ granted the employer's motion, deciding to determine the threshold issue of jurisdiction before adjudicating Traugott's entitlement to benefits.

Pursuant to KRS 342.760, and based on Traugott's deposition testimony, the ALJ found Kentucky does not have jurisdiction over the extraterritorial claim because the employment contract was made in Rhode Island and the employment was not principally localized in Kentucky. The ALJ also found that Traugott did not spend substantial time performing his work in Kentucky and that Virginia Transportation did not have a place of business in Kentucky. The Board upheld this decision, concluding the ALJ's recommendation was based upon substantial evidence and correct application of the law. This appeal followed.

Traugott argues on appeal that the ALJ erred in concluding his employment contract was made in Rhode Island. If it had been made in Kentucky, Kentucky could exercise jurisdiction over the claim pursuant to KRS 342.670(1)(c).

Virginia Transportation contends the Board's opinion was based upon substantial evidence and correct application of law, and therefore cannot be disturbed. We agree.

On appeal, we will alter a decision of the Workers' Compensation Board "only where the . . . Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice." *Pike County Board of Education v. Mills*, 260 S.W.3d 366 at 368 (Ky. App. 2008) (quotation omitted).

KRS 342.670(1) provides for an award of Workers' Compensation benefits to certain workers injured outside Kentucky:

(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:

. . . .

(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

(d) He is working under a contract of hire made in this state for employment outside the United States and Canada.

KRS 342.670(1).<sup>2</sup> Our only task is to determine whether it was error for the Board to conclude the contract of hire was made in Rhode Island instead of Kentucky.

Kentucky has adopted the rule enunciated in the original Restatement of Contracts: “A contract is made at the time when the last act necessary for its formation is done, and at the place where that final act is done.” *Green River Steel Corporation v. Globe Erection Company*, 294 S.W.2d 507, 509 (Ky. 1956) (quoting Restatement of Contracts § 74). For a contract to exist, all parties to it must assent to the contract and express their assent, either by words or actions. *See Harlan Public Service Co. v. Eastern Construction Co.*, 71 S.W.2d 24, 29 (Ky. 1934). Furthermore it is a “rule of universal application [that] in contracts made by telephone, the place where the acceptor speaks his acceptance is the place where the contract is made.” *Trinity Universal Ins. Co. v. Mills*, 293 Ky. 463, 169 S.W.2d 311, 314 (1943)(citing American Law Institute’s Restatement of the Law of Conflicts, p. 326, comment B; and 17 C.J.S., Contracts, § 356, p. 814).

In the instant case, the contract for hire was not formed until both Traugott and Virginia Transportation had manifested their assent. The evidence before the ALJ indicated Traugott first expressed intent to enter employment: he submitted his application, and then called the employer to learn whether he had been hired. Stated differently, he called to seek manifestation of the employer’s assent. A Virginia Transportation representative expressed the employer’s acceptance of his application from the location in Rhode Island. No other act was

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<sup>2</sup> KRS 342.670(1)(a) provides that benefits may be recoverable in Kentucky if the claimant’s “employment is principally localized in this state[.]” However, Traugott has not argued on appeal that it was error to conclude the employment was not primarily localized in any state.

necessary for completion of the employment contract. The Board properly determined the contract was formed in Rhode Island when the Virginia Transportation representative spoke the employer's assent in that state.

The Board also affirmed the ALJ's determination that the contract was contingent upon Traugott's completion of several other steps after the employer informed Traugott he was hired. These actions included traveling to Rhode Island to watch orientation videos and complete paperwork. For the contract to have been formed after Traugott arrived in Rhode Island, it would have had to be contingent upon completion of those tasks. However, neither party presented evidence that it was so contingent. While performance of those tasks may have been necessary for Traugott to begin driving a truck for Virginia Transportation, they occurred after the employment contract had been completed. The evidence clearly did not support a conclusion otherwise. However, the Board reached the correct result by concluding the contract was made in Rhode Island.

Because the contract for hire was completed in Rhode Island, KRS 342.670(1)(c) does not confer jurisdiction upon Kentucky. For that reason, we affirm the Board's order upholding the ALJ's dismissal of Traugott's claim for want of jurisdiction.

ALL CONCUR.

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