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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2021-CA-1049-WC

BASHIR ADEN — APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-20-00755

SUMMITT TRUCKING;
HONORABLE PAUL LEWELLIN
WHALEN, ADMINISTRATIVE LAW
JUDGE; AND WORKERS'
COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, JONES, AND K. THOMPSON, JUDGES.

ACREE, JUDGE: Bashir Aden appeals the Workers' Compensation Board's final order affirming the Administrative Law Judge's order dismissing Aden's claim for lack of jurisdiction. Having carefully reviewed the record, we affirm.

BACKGROUND

Aden drove a truck for Summitt Trucking from 2014 until March 2020. On March 20, 2020, he was driving in inclement weather when the truck rolled over in Ohio, near Cincinnati. He suffered multiple injuries and has not driven for Summitt since. Aden filed for workers' compensation in Kentucky.

Aden was a "local driver" meaning he returned to his residence every night after making deliveries. He is domiciled in Kentucky and, every morning, he drove his personal vehicle to Brooks, Kentucky, where he would pick up his truck. He made deliveries for UPS, picking up shipments either at the Louisville Airport or at a Summitt trucking terminal in Clarksville, Indiana. Summitt's dispatcher instructed Aden from Clarksville whether to pick up loads at the airport or Summitt's Clarksville terminal.

Aden delivered goods mostly outside Kentucky. After picking up a load, he typically would drive to Chicago or a location in Ohio. When finished for the day, Aden drove back to Kentucky, parked and secured his truck, entered his personal vehicle at the yard in Brooks, Kentucky, and returned home.

Silver Creek LLC, not Summitt, owns the yard in Brooks, Kentucky. Silver Creek LLC and Summitt do not have a written lease or agreement to allow Summitt truckers to use the yard, but Silver Creek allows Summitt drivers to park in the yard without charge to Summitt or the drivers. Both Silver Creek and

Summitt are owned by the same individuals – David and Jenny Summitt. (Record ("R.") at 170.) Mr. Summitt stated in his deposition that Silver Creek LLC does not charge Summitt for use of the yard because both companies share the same owners. However, Silver Creek LLC requires other trucking companies to pay for use of the yard. (R. at 161.)

Aden had not always used the yard at Brooks. When he was first employed, he had to park his truck in a yard in Indiana, requiring him to commute across the Ohio River to the Clarksville terminal and pay tolls each day in his personal vehicle. Being allowed to use the Brooks yard meant he could avoid paying the toll out of his own pocket. However, the Brooks yard did not contain fueling stations, scales, dispatchers, or maintenance facilities.

Recognizing the preliminary question of the Board's jurisdiction of Aden's workers' compensation claim, the ALJ bifurcated the issue. On December 17, 2020, the ALJ entered an order dismissing the claim for want of jurisdiction. The Workers' Compensation Board affirmed the ALJ's order on August 13, 2021. This appeal follows.

STANDARD OF REVIEW

Our Supreme Court explained that the "standard of review in workers' compensation claims differs depending on whether we are reviewing questions of law or questions of fact." *Miller v. Tema Isenmann, Inc.*, 542 S.W.3d 265, 270

(Ky. 2018). As to questions of fact, "the ALJ, not this court and not the Board, has sole discretion to determine the quality, character, and substance of the evidence." *Abbott Laboratories v. Smith*, 205 S.W.3d 249, 253 (Ky. App. 2006).

However, "we are bound neither by an ALJ's decisions on questions of law or an ALJ's interpretation and application of the law to the facts. In either case, our standard of review is *de novo*." *Bowerman v. Black Equip. Co.*, 297 S.W.3d 858, 866 (Ky. App. 2009). Jurisdiction is a question of law and our review of the ALJ's ruling as to jurisdiction is *de novo*. *Appalachian Reg'l Healthcare, Inc. v. Coleman*, 239 S.W.3d 49, 54 (Ky. 2007) ("The question of jurisdiction is ordinarily one of law, meaning that the standard of review to be applied is *de novo*.").

ANALYSIS

Jurisdiction concerning extraterritorial coverage of a worker's injuries is governed by KRS[1] 342.670. As relevant here, KRS 342.670(1) states:

> (1) If an employee, while working outside the territorial limits of this state, suffers an injury on account of which the employee, or in the event of the employee's death, his or her 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 the employee's death resulting from that injury, his or her dependents, shall be entitled to the benefits provided by this chapter, if at the time of the injury:

[1] Kentucky Revised Statutes.

> (a) His or her employment is principally localized in this state . . . .

For purposes of this statute, a person's employment is principally localized in Kentucky when:

> 1. His or her employer has a place of business in this or the other state and he or she regularly works at or from that place of business, or
>
> 2. If subparagraph 1. foregoing is not applicable, he or she is domiciled and spends a substantial part of his or her working time in the service of his or her employer in this or the other state . . . .

KRS 342.670(5)(d).

The circumstances of this case are contemplated by these provisions. It is undisputed Aden's injuries occurred while he was working for Summitt in Ohio. There is no evidence that Aden contracted in Kentucky to work for Summitt, meaning Aden must fall under KRS 342.670(1)(a) if Kentucky is to have jurisdiction.[2] The ALJ determined jurisdiction is lacking in this case because Aden did not satisfy the requirements of KRS 342.670(1)(a) as defined by KRS 342.670(5)(d)1. We agree.

For Kentucky to have jurisdiction under KRS 342.670, Summitt must have a "place of business" in Kentucky, and Aden must "regularly work[] at or

[2] Evidence of record indicates Indiana as being the state in which Aden entered into his contract for hire.

from that place of business" or Aden's employment must not be localized to any jurisdiction. KRS 342.670(5)(d)1. The Kentucky Supreme Court interpreted this statute to mean "for an employment to be principally localized within a particular state for the purposes of KRS 342.670(4)(d)1., [now, KRS 342.670(5)(d)1.[3]] 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 611, 617 (Ky. 1999).

If we agree with the ALJ and the Board that subsection (5)(d)1. applies, and that Aden's employment is localized to a state other than Kentucky, there is no need to analyze the facts further. *Haney*, 990 S.W.2d at 616 ("Only if that provision does not apply, does the analysis proceed[.]").

The record shows that under the first part of KRS 342.670(5)(d)1., Aden's "employer has a place of business in . . . the other state"; *i.e.*, Indiana at Clarksville. It also shows that Aden's employer does not own or lease a place of business in Kentucky.

The second part of KRS 342.670(5)(d)1. requires that Aden "regularly works at or from that place of business[.]" KRS 342.670(5)(d)1. For this element,

[3] In 1996, the Kentucky legislature amended KRS 342.670, resulting in a renumbering of this section. *See* 1996 Ky. Laws ch. 355 (S.B. 161) (eff. Jul. 15, 1996). The Supreme Court in *Haney* applied the earlier version of the statute because the accident occurred in 1992. 990 S.W.2d at 613.

the ALJ looked to *Eck Miller Transportation Corporation v. Wagers*, 833 S.W.2d 854 (Ky. App. 1992). In that case, the employee "was required to do a substantial amount of paperwork, vehicle maintenance, and other work-related activities at his home in Kentucky." *Id.* at 855. The Court found it more significant that the employee "received all his work orders from Chattanooga . . . ." *Id.* Applying the same concept in this case, the ALJ said, "In this claim, the ALJ[] finds Mr. Aden to have received all his work orders from a Clarksville, (IN) terminal." The ALJ's conclusion, based on all the facts of record, was that "Aden does not have localized employment in Kentucky. The ALJ finds [Aden's] localized employment is Clarksville, Indiana as it is the location of not only his employer but the location of his dispatcher."

The Board's opinion addressed both the ALJ's opinion and order and its order on petition for reconsideration when it concluded as follows:

> Aden does not meet any of the necessary requirements set forth in KRS 342.670(1) extending jurisdiction to Kentucky. . . . 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. . . . 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.

After finding the facts were supported by substantial evidence, the Board affirmed the ALJ and concluded "a contrary result is not compelled."

We agree. A trucker's use of property not owned or leased by the employer can be likened "to a trucker's use of public truck stops[.]" *Haney*, 990 S.W.2d at 614. Similarly, the finding in *Eck Miller Transport* that the employee performed "vehicle maintenance . . . at his home in Kentucky" indicates his truck was not parked at a property owned or leased by the employer. *See Eck Miller Transp.*, 833 S.W.2d at 857 n.2 (describing but rejecting ALJ's implication of a legal fiction that the employee "worked 'at or from' the Miller facility at Owensboro, Kentucky" where he applied for the job). Hence, we have the ALJ's conclusion that, given these facts, a trucker's employment is localized at his employer's place of business when that is where his work order is dispatched.

In *Haney*, "there [wa]s no substantial evidence that the employment was principally localized in Alabama, Tennessee, or any other state" including Kentucky. *Haney*, 990 S.W.2d at 618. That is not so here. Aden's employment was found to be localized in Indiana, based on the evidence summarized in the

Board's opinion affirming. Consequently, there was no need to analyze the facts under KRS 342.670(5)(d)2. or any other part of the statute. *Eck Miller Transp.*, 833 S.W.2d at 857 n.2 ("a (4)(d)[1.] determination precludes consideration under (4)(d)[2.] and (1)(b)").

CONCLUSION

Based on the foregoing, this Court concludes the ALJ correctly held that Kentucky does not have jurisdiction under KRS 342.670 to proceed with Aden's claim. We affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ched Jennings
Louisville, Kentucky

BRIEF FOR APPELLEE SUMMITT TRUCKING:

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