SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, Delaware 19801-3733
(302) 255-0664

Gary S. Nitsche, Esquire
Samuel D. Pratcher, III, Esquire
Weik, Nitsche, Dougherty & Galbraith
305 North Union Street, Second Floor
P.O. Box 2324
Wilmington, Delaware 19899
Attorney for Appellant Steven L. Burton

Nathan V. Gin, Esquire
Elzufon Austin Tarlov & Mondell, P.A.
300 Delaware Avenue, 17th Floor
P.O. Box 1630
Wilmington, Delaware 19899
Attorney for Appellee PLS Construction

Re: Steven L. Burton v. PLS Construction
C.A. No. N14A-10-001 RRC

Submitted: April 28, 2015
Decided: July 6, 2015

On Appeal from a Decision of the Industrial Accident Board.
AFFIRMED.

Dear Counsel:

I. INTRODUCTION

Before the Court is an appeal by Appellant Steven L. Burton from a decision of the Industrial Accident Board dated September 11, 2014. The Board's decision

denied Appellant's Petition to Determine Compensation Due for lack of jurisdiction.[1]

On appeal, Appellant seeks to have the Board's decision reversed, arguing that the Board committed an error of law when it found that a contract of hire was not made in Delaware and that it followed that the Board did not have jurisdiction to hear Appellant's petition. The Court finds that the Board committed no error of law. Accordingly, the decision of the Board is hereby **AFFIRMED.**

I. FACTUAL AND PROCEDURAL HISTORY

Appellant Steven L. Burton was allegedly injured in an occupational accident on November 6, 2013 while employed by Appellee, PLS Construction. Appellant allegedly injured his spine and shoulder while attempting to pull heavy grates from a trench.[2] On April 14, 2014, Appellant filed a Petition to Determine Compensation Due seeking medical expenses and total disability benefits. The parties agreed below that Apellant's medical treatment was reasonable and necessary, but disagreed regarding whether Appellant's cervical spine injury was causally related to the accident. The parties' dispute below centered on whether the Industrial Accident Board had jurisdiction over Appellant's case. The Board conducted a hearing on August 28, 2014 and issued a decision on September 11, 2014.[3]

The Board found that Appellant did not meet the burden of proof to establish jurisdiction pursuant to 19 *Del. C.* § 2303(a).[4] Section 2303(a) states in pertinent part:

> (a) If an employee, while working outside the territorial limits of this State, suffers an injury on account of which the employee . . . would have been entitlted to the benefits provided by this chapter had such injury occurred within this State, such employee . . . shall be entitled to the benefits provided by this chapter, provided that at the time of such injury:
>
> (1) The employee's employment is principally localized in this State; or
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> (2) The employee is working under a contract of hire made in this State in employment not principally localized in any state; or
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> (3) The employee is working under a contract of hire made in this State in employment principally localized in

[1] *Burton v. PLS Construction*, No. 1411328 at 22 (Del. I.A.B. Sept. 11, 2014) (hereinafter "I.A.B. Decision"), available at R. and Tr. from the I.A.B., D.I. 5 (Dec. 3, 2014). The record is not clear as to the exact name of Appellee.

[2] I.A.B. Decision at 5.

[3] I.A.B. Decision at 2.

[4] I.A.B. Decision at 18.

> another state whose workers' compensation law is not applicable to the employee's employer; or
> (4) The employee is working under a contract of hire made in this State for employment outside the United States and Canada.[5]

The Board found that Appellant's employment was not principally localized in Delaware under (a)(1) because the circumstances of Appellant's employment did not satisfy 19 *Del. C.* § 2303(d)(4), which provides that a person's employment is principally localized in this state or another state when:

> a. A person's employer has a place of business in this or such other state and the person regularly works at or from such place of business; or
> b. If paragraph (d)(4)a. of this section is not applicable, the person is domiciled and spends a substantial part of the person's working time in the service of the person's employer in this or such other state.[6]

The Board also found that Appellant's employment did not satisfy § 2303(d)(4) because there was insufficient evidence that Appellee had a place of business in Delaware. The Board found that "the storage area in the back of someone else's property that PLS uses because a friend of Mr. Nabb [the PLS East Coast Supervisor] owns the property is not sufficient to be considered a place of business in Delaware."[7] Also contributing to the finding that PLS did not have a place of business in Delaware was the fact that there was no telephone or mail service at the property and there was no building on the property for PLS to use. The Board also noted that PLS is neither incorporated in Delaware, nor did it have a business license in Delaware. The Board found that "[s]ince PLS does not have a place of business in Delaware, [Appellant] does not regularly work at or from any place of business in Delaware, and [Appellant] does not spend a substantial amount of his time working in Delaware."[8] As a result, the Board found that Appellant was not entitled to workers' compensation benefits in Delaware under subsection (a)(1).[9]

As to whether jurisdiction could be established under subsection (a)(2), the Board found that Appellant's contract of hire was not made in Delaware, but rather was made in Texas.[10] The Board found that all the major events that occurred

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[5] 19 *Del. C.* § 2303(a)(1)-(4).
[6] 19 *Del. C.* § 2303(d)(4); *See also* I.A.B. Decision at 19.
[7] I.A.B. Decision at 19.
[8] I.A.B. Decision at 20.
[9] *Id.*
[10] I.A.B. Decision at 21.

during the hiring process, including processing Appellant's application, making the decision to hire Appellant, and accepting and processing Appellant's "new hire" documents, took place in Texas. The Board explained that Appellant "could have signed the job application in any state and just because he completed the job application in Delaware, it does not make it a contract of hire made in Delaware."[11] The Board also explained that despite the fact that Appellant was interviewed in Delaware, the interviewer did not possess the authority to make a hiring decision, but rather could only make a recommendation which would then be passed on to executives in Texas. For these reasons, the Board found that the contract of hire was made in Texas, not in Delaware.[12] The Board did not reach the issue of whether the employment was not principally located in any state as a result of finding no contract for hire was made in Delaware.

Finally, the Board found that subsections (a)(3) and (a)(4) were inapplicable, as no argument was made that the claim could not be brought in Texas, and there was no dispute that Appellant was working in the United States.[13] As a result, the Board denied Appellant's petition and this appeal followed. The Board did not reach the issue of whether Appellant's cervical spine injury was causally related to the November 16, 2013 incident.

II. THE PARTIES' CONTENTIONS

A. Appellant's Contentions

Appellant contends that the Board's decision that it did not have jurisdiction to hear Appellant's claim constitutes legal error.[14] Specifically, Appellant argues that the Board had jurisdiction to hear his claim under § 2303(a)(2) because he was working under a contract of hire made in Delaware and his employment was not principally localized in any state.[15] Appellant contends that the contract of hire was made in Delaware because he interviewed for the position in Delaware, he was told he was hired in Delaware, and completed his new hire paperwork in Delaware.[16] Appellant points out that he did not receive an offer from Texas, he did not have any communications during the interview process with any employees other than PLS' East Coast Supervisor, and importantly, "the offer and acceptance of employment

[11] *Id*.
[12] *See id*.
[13] *See id*.
[14] *See* Appellant's Amended Opening Br. at 8, D.I. 10 (Feb. 2, 2015).
[15] *See id*. at 9. Notably, Appellant does not advance any argument on appeal that the Board erred in finding that it did not have jurisdiction under subsection (a)(1).
[16] *See id*.

with PLS was made in the State of Delaware."[17] These facts, Appellant argues, establishes that a contract of hire was made in Delaware. Finally, Appellant argues that his employment was not principally localized in Delaware and that "there is no dispute that [Appellant] worked in many states."[18]

B. Appellee's Contentions

Appellee first asserts that Appellant has not argued on appeal that the circumstances of his employment fall within subsection (a)(1).[19] As to subsection (a)(2), Appellee argues that the Board did not err when it concluded that a contract for hire was made in Texas, not Delaware. Appellee notes that "[t]he record is clear that the application had to be sent by the [Appellant] to Texas for processing and a formal hiring decision."[20] In addition, Appellee argues that the Mr. Nabb did not have the authority to make a hiring decision, but rather, "such hiring authority came from only one location: Texas."[21] Appellee further notes that Appellant's new hire paperwork was sent from Texas to be returned once completed, Appellant's time sheets, expense sheets, and job updates were also sent to Texas.[22] Taken together, Appellee argues these facts demonstrate that a contract of hire was made in Texas, not Delaware.

III. STANDARD OF REVIEW

On appeal from a decision of the Industrial Accident Board, this Court's review is limited to a determination of whether the Board's decision was supported by substantial evidence and free from legal error.[23] Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[24] Deference is given to the experience and specialized competence of the Board regarding questions of fact.[25] The Court reviews the entire record to

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[17] *Id*. at 10.
[18] *Id*. at 11.
[19] *See* Appellee's Ans. Br. at 10, D.I. 11 (Feb. 18, 2015).
[20] *Id*. at 11.
[21] *Id*.
[22] *See id*. at 12-13 (citing *Sanchez v. Clestra* , 783 N.Y.S.2d 676 (2004) (holding contract was made in New York where employment agreement was faxed from Georgia to New York and employment agreement was accepted in New York).
[23] *Stoltz Management Co. v. Consumer Affairs Bd.*, 616 A.2d 1205 (Del. 1992); *See also* 29 D*el C*. § 10142(d).
[24] *Oceanport Indus., Inc. v. Wilmington Stevedores, Inc*., 636 A.2d 892, 899 (Del. 1994) (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).
[25] *Id*.

determine if, based on the evidence, the Board could fairly and reasonably have reached the conclusion that it did.[26] This Court "does not weigh the evidence, determine questions of credibility, or make its own factual findings."[27] Errors of law are reviewed *de novo*, but "absent an error of law, this Court will not disturb the Board's decision where substantial evidence exists to support its conclusions."[28] This Court "must view the record in the light most favorable to the prevailing party below."[29]

IV. DISCUSSION

The issue before this Court is whether the Board erred as a matter of law when it found that it did not have jurisdiction to hear Appellant's Petition. Statutory interpretation is a question of law and as a result, the Board's decision on this issue will be reviewed *de novo*. "Unless a statute is ambiguous or subject to interpretation, this Court is bound by the plain language of the statute."[30] Section 2303 is unambiguous, and thus the Court applies the plain language of the statute to the circumstances of this case.[31]

Appellant has made no argument that the Board erred as a matter of law when it declined to find jurisdiction pursuant to subsection (a)(1). Accordingly, the only subsection of 19 *Del. C.* § 2303(a) that this Court will review is subsection (a)(2), which grants the Board jurisdiction if "[t]he employee is working under a contract of hire made in this State in employment not principally localized in any state."[32] The Court finds that substantial evidence exists on the record to support the Board's conclusion that a contract of hire was not made in Delaware, but rather, was made in Texas. Appellant completed his job application in Delaware, but nonetheless, the Court agrees with the Board's finding that Appellant "could have signed the job application in any state and just because he completed the job application in Delaware does not make it a contract of hire in Delaware."[33] The Court also finds it persuasive that by Appellant's own admission, Appellant's

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[26] *See Canyon Const. v. Williams*, 2003 WL 1387137, at *1 (Del. Super. Mar. 5, 2003); *National Cash Register v. Riner,* 424 A.2d 669, 674-675 (Del. Super. 1980).
[27] *Johnson v. Chrysler Corp*., 213 A.2d 64, 65 (Del. 1965).
[28] *See Dellachiesa v. General Motors Corp*., 140 A.2d 137 (Del. Super. 1958); *See also McKirby v. A&J Builders, Inc.*, 2009 WL 713887 (Del. Super. Mar. 18, 2009).
[29] *Wyatt v. Rescare Home Care*, 81 A.3d 1253, 1259 (Del. 2013) (internal citations omitted).
[30] *Garcia v. E.I. DuPont deNemours & Co*., 2000 WL 1211308, at *3 (Del. Super. Mar. 16, 2000) (citing *State v. Cooper,* Del.Supr., 575 A.2d 1074, 1075 (1990)).
[31] *See Garcia*, 2000 WL 1211308, at *3 (Del. Super. Mar. 16, 2000).
[32] 19 *Del. C.* § 2303(a)(2).
[33] I.A.B. Decision at 21.

application and other new hire paperwork to was accepted and processed in Texas.[34]

Although there was contact between Appellant and Mr. Nabb (the PLS East Coast Supervisor) in Delaware, the Court notes that Mr. Nabb possessed no authority to make a hiring decision regarding Appellant. Rather, Mr. Nabb was authorized only to make a recommendation to the PLS executives located in Texas, where the ultimate hiring decision was made.[35] The decision to hire Appellant was made in Texas, and though it was communicated to Appellant in Delaware, Appellant's new hire paperwork, including a completed job application, had to be sent to Texas for ultimate approval.[36]

A finding that a contract of hire was made in Texas is consistent with the rulings of several other courts. In *In re Almgren*,[37] the Bankruptcy Court for the District of Idaho held that a contract of hire was made in Tennessee, not in Idaho, where, among other things, the employment application was mailed from the employee's home in Idaho to the employer's home office in Tennessee and the hiring decision was made in Tennessee.[38] Additionally, in *Ex parte Tri-State Motor Transit Co*.,[39] the court found contracts of hire were made in Missouri, not Alabama, where applications were completed in Alabama, forwarded from Alabama to Missouri, and subject to approval by employer in Missouri.[40]

Both *Almgren* and *Tri-State* are strikingly similar to the facts of this case. In all three cases, the applications were forwarded from one location to another. Importantly, in each case, the Court held, as this Court does here, that the contract of hire was made in the state where the hiring decision was made and the application was approved. In sum, The Court finds that all of the meaningful events in the hiring process took place in Texas, and accordingly, looking at the record in the light most favorable to the Appellee, substantial evidence exists to support the Board's conclusion that a contract of hire was made in Texas.[41]

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[34] *See* Tr. of Admin. Hrg., R. at 31.
[35] *See* I.A.B. Decision at 21;
[36] *See* Tr. of Admin. Hrg., R. at 93; *See also* 1 Modern Workers Compensation § 104:9 ("If employment applications are sent to another state for approval and acceptance by the employer, they are deemed completed in that state and the contract of hire is not made where the applications are executed and signed.");
[37] 384 B.R. 12 (Bankr. D. Idaho 2007).
[38] *See id*. at 17.
[39] 541 So. 2d 557 (Ala. Civ. App. 1989)
[40] *See id*. at 559.
[41] As a result of this finding, the Court need not reach the issue of whether Appellant's employment was "not principally localized in any state" pursuant to § 2303(a)(2).

V. CONCLUSION

For the foregoing reasons, the Board's decision is **AFFIRMED.**

IT IS SO ORDERED.

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Richard R. Cooch, R.J.

oc: Prothonotary