IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION PANEL
AT JACKSON

FILED

January 15, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

PAM FENNER,	)	
	)	BENTON COUNTY CIRCUIT
Plaintiff / Appellant,	)	
	)	NO. 02S01-9703-CV-00023
v.	)	(No. 3675 below)
	)	
D.B.C. ENTERPRISES and TRAVELERS	)	
INSURANCE COMPANY,	)	HON. JULIAN P. GUINN
	)	CIRCUIT COURT JUDGE
Defendant / Appellee.	)	

For the Appellant:

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For the Appellee:

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MEMORANDUM OPINION

Members of Panel:

Justice Janice Holder
Senior Judge John K. Byers
Special Judge Robert L. Childers

AFFIRMED **CHILDERS, Special Judge**

This workers' compensation appeal has been referred to the Special Workers'

Compensation Appeals Panel of the Supreme Court in accordance with TENN. CODE ANN. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The trial court granted summary judgment in favor of the defendants for lack of jurisdiction and dismissed the cause with prejudice at the plaintiff's cost.

We affirm the judgment of the trial court on the grounds that Tennessee does not have jurisdiction over this case under the provisions of TENN. CODE ANN. § 50-6-115, which governs extraterritorial jurisdiction of the Tennessee Workers' Compensation Law.

The plaintiff contacted the defendant D.B.C. Enterprises' headquarters in Grand Rapids, Michigan by telephone in late August 1993 from Camden, Tennessee after she learned of the possibility of employment. She stated in her deposition that at the time she made the initial inquiry, the only contact that she and her husband had with Tennessee was their ongoing attempt to purchase real property. Plaintiff first spoke by telephone to the hiring agent for D.B.C., Pete Carroll, who told her that she would have to travel to Grand Rapids to finalize employment with the company. She was not hired during the course of this initial phone call. By the plaintiff's own admission, her employment was contingent upon passing a physical examination and completing entrance paperwork at the defendant's Grand Rapids headquarters. She was actually hired in Grand Rapids, Michigan on September 1, 1993, after taking a physical examination, completing an interview and finalizing the formal paperwork.

The affidavit of Victor Mainwaring, D.B.C. Enterprises Safety Director, states that no contract for hire was ever entered between D.B.C. and the plaintiff in Tennessee and that the plaintiff's employment was not principally localized in Tennessee. His affidavit further states that [D.B.C.] Enterprises does not run, operate, or own a terminal in Tennessee and that driver trip data sheets completed by the plaintiff and her husband indicate that at no time did the plaintiff deliver, pick up, load or unload anything in the State of Tennessee.

Plaintiff alleges that on October 22, 1993, she was injured in Gallup, New Mexico while enroute from California carrying cargo for the defendant. Under Tennessee law, a court may assume jurisdiction of a workers' compensation action

where the accident occurred in another state only in limited circumstances. These circumstances are set out in T.C.A. § 50-6-115 as follows:

> If an employee, while working outside the territorial limits of this state suffers an injury on account of which such employee . . . would have been entitled 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 employment was principally localized within this state;
> (2) The contract of hire was made in this state.

The plaintiff does not contend that her employment activities were principally localized in Tennessee and thus our inquiry must focus on whether the contract of hire was made in Tennessee.

In this case, the contract of hire was not made in Tennessee. Plaintiff's initial phone call to Pete Carroll did not finalize a contract for hire by D.B.C. Enterprises. The term "contract of hire" contained in T.C.A. § 50-6-115 makes it clear that a telephone call notifying a prospective employee of a job opening is not a contract for hire. *Perkins v. BE & K, Inc.*, 802 S.W.2d 215, 216 (Tenn. 1990); *Burns v. Werner Enterprises*, 20 T.A.M. 50-7, at 2 (Tenn. 1995). The contract of hire was not complete until the plaintiff completed a physical examination, an interview and her formal paperwork. Therefore, the contract for hire was executed in Grand Rapids, Michigan.

Our review is *de novo* on the record accompanied by the presumption that the findings of fact of the trial court are correct unless the evidence preponderates otherwise. TENN. CODE ANN. § 50-6-225(e)(2). Where the trial judge has seen and heard witnesses, we must accord considerable deference on review to his findings, especially where issues of credibility and weight of oral testimony are involved. *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355 (Tenn. 1989). However, where proof is documentary, so that all impressions of weight and credibility must be drawn from the contents thereof and not from the appearance of witnesses on oral testimony at trial, no such deference is required and we must make an independent assessment, of where the preponderance of the evidence lies. *Id.*

We find that the trial court did not err when it found that it lacked jurisdiction to hear this case. We find that the courts of Tennessee do not have jurisdiction of this case because it does not meet the provisions of TENN. CODE ANN. § 50-6-115. Accordingly we affirm the grant of summary judgment by the trial court.

The cost of this appeal is assessed against the plaintiff/appellant.

Robert L. Childers, Special Judge

CONCUR:

Janice M. Holder, Justice

John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

PAM FENNER,	)	BENTON CIRCUIT
	)	NO. 3675
Plaintiff/Appellant,	)	
	)	Hon. Julian P. Guinn,
vs.	)	Judge
	)	
D.B.C. ENTERPRISES and TRAVELERS, INSURANCE COMPANY,	)	NO. 02S01-9703-CV-00023
	)	
	)	
Defendants/Appellees.	)	AFFIRMED.

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JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Appellant, and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 15th day of January, 1998.

PER CURIAM

(Holder, J., not participating)