BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BRIAN NIELSEN, Claimant, v. MARTEN TRANSPORT, LTD., Self-Insured Employer, Defendant.	**IC 2009-031331** **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** **Filed April 5, 2012**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Idaho Falls on November 3, 2011. Dennis R. Petersen of Idaho Falls represented Claimant. David P. Gardner of Pocatello represented Defendant. No post-hearing depositions were taken. Both parties submitted post-hearing briefs. The matter came under advisement on February 21, 2012, and is now ready for decision.

ISSUE

By agreement of the parties, the sole issue to be decided is whether the Industrial Commission of the State of Idaho has jurisdiction of Claimant's industrial accident that occurred in Barstow, California, on October 2, 2009.

All other issues are reserved.

CONTENTIONS OF THE PARTIES

Claimant contends that he is entitled to a finding that Idaho has jurisdiction over his workers' compensation claim under Idaho Code § 72-217 (2) because he was hired in Idaho.

Defendants counter that Claimant was hired in Oregon and, therefore, he has failed to meet the requirements of any statute that would confer jurisdiction upon the Idaho Industrial Commission to adjudicate his workers' compensation claim.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Transcript of deposition of Claimant, taken June 21, 2011;
2. Transcript of telephonic deposition of Thomas Schneck, taken October 18, 2011;
3. Transcript of November 3, 2011 hearing;
4. Claimant's Exhibits 1-2, admitted at the hearing; and
5. Defendant's Exhibits 1-7, admitted at the hearing.

After having considered the above exhibits and the briefs of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. At all relevant times, Claimant was a resident of Idaho.

2. Claimant was a truck driver. There is no dispute that Employer invited Claimant, via a September 30, 2008 letter, to attend a three-day "orientation program" in Wilsonville, Oregon. The letter specifically stated that Claimant had not yet been hired and that his employment was contingent upon successful passage of a DOT physical, a drug test, a road test, and completion of an I-9 Verification form. "Job offers are not extended until and unless you have successfully completed all aspects of orientation." DE 1, p. 4. The letter also discusses Claimant's potential starting wage and certain costs he may need to pay back to Employer, *if* he is hired, and/or if he were to then leave within six months.

2. The letter is upbeat and encouraging, but it distinguishes between the application approval process, which Claimant had successfully completed, and the hiring process, which, as described above, was contingent upon Claimant's successful completion of orientation. "We are excited about your application approval and look forward to hearing from you to answer any questions and schedule you for orientation." DE 1, p. 4.

3. Claimant successfully passed his orientation requirements, and Employer hired him while he was at the orientation location in Wilsonville. He executed a number of employment forms on October 7, 2008, one of which acknowledges that his hire date is contingent upon successful completion of orientation requirements. "I understand that my hire date is based on successful completion of Marten Transport Ltd.'s orientation, passing a DOT physical, and a reported negative result of the drug screen." DE 1, p. 6.

4. Thomas Schneck, workers' compensation manager for Employer, confirmed that employees are not hired until after successful completion of orientation. An invitation to attend orientation is not tantamount to an offer of employment.

5. Employer was incorporated in Delaware, is headquartered in Wisconsin, and maintains locations and terminals in 12 states, but not Idaho.

6. Claimant suffered an accident in Barstow, California, on October 2, 2009. He received workers' compensation benefits related to the Barstow accident through the State of Wisconsin.

DISCUSSION AND FURTHER FINDINGS

The provisions of the Idaho Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 793 P.2d 187 (1990). The humane purposes that it serves leave no room for narrow technical construction. *Ogden v.*

Thompson, 128 Idaho 87, 910 P.2d 759 (1996). While the workers' compensation statutes are to be liberally construed, the benefit of liberal construction does not apply to the findings of fact. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 834 P.2d 878 (1992).

JURISDICTION

7. I.C. § 72-217 describes the circumstances under which Idaho Workers' Compensation laws may be given extraterritorial effect. That section provides:

> Extraterritorial coverage. If an employee, while working outside the territorial limits of this state, suffers an injury or an occupational disease on account of which he, or in the event of death, his dependents, would have been entitled to the benefits provided by this law had such occurred within this state, such employee, or, in the event of his death resulting from such injury or disease, his dependents, shall be entitled to the benefits provided by this law, provided that at the time of the accident causing such injury, or at the time of manifestation of such disease:
> (1) His employment is principally localized in this state; or
> (2) He is working under a contract of hire made in this state in employment not principally localized in any state; or
> (3) He is working under a contract of hire made in this state in employment principally localized in another state, the workmen's compensation law of which is not applicable to his employer; or
> (4) He is working under a contract of hire made in this state for employment outside the United States and Canada.

Idaho Code § 72-220 defines when a person's employment is "principally localized" in a particular state:

> Locale of employment. (1) A person's employment is principally localized in this or another state when:
> (a) His employer has a place of business in this or such other state and he regularly works at or from such place of business; or
> (b) He is domiciled and spends a substantial part of his working time in the service of his employer in this or such other state.
> (2) An employee whose duties require him to travel regularly in the service of his employer in this and one or more other states may, by written agreement with his employer, provide that his employment is principally localized in this or another such state, and, unless such other state refuses jurisdiction, such agreement shall be given effect under this law.

Pursuant to these provisions, Idaho law may govern an injured worker's right to Workers' Compensation benefits where the injured worker's employment is either "principally localized" in the state <u>or</u> the claimant is working under a contract of hire made in this state where certain other attendant conditions are met. The existence of the attendant conditions appended to sub-parts (2) through (4) of I.C. § 72-217 are not relevant to the determination of this case, since the facts demonstrate that Claimant's employment was neither principally localized in this state nor was Claimant working under a contract of hire made in this state.

8. First, the evidence fails to disclose that Claimant's employment was principally localized in the state of Idaho. Simply, none of the circumstances set forth at I.C. § 72-220 are implicated in this case, leaving the Referee to conclude that Claimant has failed to establish that his employment is localized in the state of Idaho.

9. Next, the evidence wholly fails to establish that the other path to application of Idaho law to the facts of this case has been established. Specifically, the facts fail to demonstrate that Claimant worked under a contract of hire made in the state of Idaho. Assuredly, Claimant had contact with Employer while Claimant was in the state of Idaho, and, the initial discussions that led to employment may have taken place in the state of Idaho. However, the facts unambiguously establish that whatever discussions or offers may have taken place between the parties within the bounds of the state of Idaho were contingent upon Claimant's completion of certain actions in the state of Oregon. Claimant was not hired until those conditions were satisfied, and those conditions were satisfied while Claimant was in Wilsonville. The contract of hire was made in Wilsonville, Oregon.

10. Claimant has failed to establish that the laws of the state of Idaho should be given extraterritorial effect under the provisions of I.C. § 72-217.

CONCLUSION OF LAW

1. Claimant has failed to establish any legal grounds upon which Idaho can properly exercise jurisdiction over his workers' compensation claim.

RECOMMENDATION

Based upon the foregoing Findings of Fact, Conclusion of Law, and Recommendation, the Referee recommends that the Commission adopt such findings and conclusion as its own and issue an appropriate final order.

DATED this _23rd___ day of March, 2012.

INDUSTRIAL COMMISSION

/s/_____
Michael E. Powers, Referee

ATTEST:

/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __5th_____ day of ___April_____, 2012, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

DENNIS R PETERSEN
PO BOX 1645
IDAHO FALLS ID 83403-1645

DAVID P GARDNER
PO BOX 817
POCATELLO ID 83204-0817

Ge/mw

_/s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BRIAN NIELSEN, Claimant, v. MARTEN TRANSPORT, LTD., Self-Insured Employer, Defendant.	**IC 2009-031331** **ORDER** **Filed April 5, 2012**

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusion of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with the recommendation. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusion of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has failed to establish any legal grounds upon which Idaho can properly exercise jurisdiction over his workers' compensation claim.

2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this __5th____ day of ___April_____, 2012.

INDUSTRIAL COMMISSION

_/s/_____
Thomas E. Limbaugh, Chairman

_/s/_____
R.D. Maynard, Commissioner

_/s/_____
Thomas P. Baskin, Commissioner

ATTEST:

_/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the ___5th___ day of ___April_____, 2012, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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