

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JULIE A. WALTER,

Claimant,

v.

C. R. ENGLAND – LOGISTICS TEAM
SORRENTO LACTALIS, Employer, and
NEW HAMPSHIRE INSURANCE
COMPANY, Surety,

and

INTERPATH LABORATORY, INC., an
Oregon Corp., Employer, and
IDAHO STATE INSURANCE FUND, Surety,

Defendants.

IC 2011-007890

IC 2012-006952

**FINDINGS OF FACT,
CONCLUSION OF LAW,
AND RECOMMENDATION**

Filed March 28, 2013

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee LaDawn Marsters, who conducted a hearing on December 20, 2012 in Boise, Idaho. Bradford S. Eidam of Boise represented Claimant. Alan K. Hull, also of Boise, represented Employer, named herein as C.R. England-Logistics Team Sorrento Lactalis, and New Hampshire Insurance Company (“Surety”), Defendants.¹ No post-hearing depositions were taken.² Both parties submitted post-hearing briefs. The matter came under advisement on February 27, 2013, and is now ready for decision.

¹ The issue presented for decision involves only these Defendants and IC No. 2011-007890.

² Defendants filed a motion to reopen the record to allow post-hearing deposition testimony; however, that motion was denied.

ISSUE

By agreement of the parties, the sole issue to be decided as a result of the hearing is whether the Industrial Commission of the State of Idaho holds jurisdiction of Claimant's claim related to her March 9, 2010 work-related injury/accident. All other issues are reserved.

CONTENTIONS OF THE PARTIES

Claimant contends that Idaho has jurisdiction over her workers' compensation claim under Idaho Code § 72-217(1) because her employment is principally located in Idaho.

Defendants do not dispute that Claimant's employment is principally located in Idaho pursuant to the criteria set forth in Idaho Code § 72-220(1) and *Martin v. Eagle/F.B. Truck Line Co.*, 1984 IIC 0001. However, they counter that Claimant is not entitled to workers' compensation benefits in Idaho because she selected Utah as the sole jurisdiction for her workers' compensation claim, pursuant to Idaho Code § 72-220(2), when she executed the Conditional Offer of Employment ("Conditional Offer"), which contains a forum selection clause.

Claimant argues that she never agreed to principally locate her employment in Utah. Even if the Conditional Offer constitutes such an agreement under Idaho Code § 72-220(2), it would not be applicable to her time-of-injury employment because England Logistics, her time-of-injury employer, was not a party to the Conditional Offer; Claimant's job changed materially after she executed the Conditional Offer; and the Conditional Offer constitutes a waiver of benefits due to Claimant under Idaho law and, as such, is void pursuant to Idaho Code § 72-318.

Defendants assert that C.R. England was Claimant's employer for purposes of workers' compensation liability and Idaho Code § 72-220(2) at all relevant times, and that Idaho Code

§ 72-318 does not prevent enforcement of the Conditional Offer as an agreement under Idaho Code § 72-220(2).

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, Debbie Roark, and Brandi Coulter taken at the hearing; and
2. Joint Exhibits numbered 1-10.

After having considered the stipulated 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. Claimant, a truck driver, has lived in Nampa, Idaho (“Idaho”) since approximately 2006. England Logistics, Inc., (“England Logistics”) and its parent company, C.R. England, Inc., (“C.R. England”) have at all relevant times maintained their principal places of business in Salt Lake City, Utah (“Utah”), and they each perform work in several states, including Utah, Idaho and California. “Sorrento Lactalis” refers to the cheese factory in Nampa, Idaho.

2. The record evidences some confusion over time, on Claimant’s part, as to the proper identification of her time-of-injury employer. Claimant’s Complaint names “C.R. England – Logistics Team Sorrento Lactalis”, yet the derivation of that moniker is unknown. Neither party claims that it names a company separate from either C.R. England or England Logistics. Further, neither party asserts that Sorrento Lactalis was ever an employer. Claimant served her Complaint, by U.S. Mail, addressed to “C.R. England” at a Nampa, Idaho address. Defendants do not dispute that C.R. England would be liable for Claimant’s compensable workers’ compensation claims, regardless of whether jurisdiction lies in Utah or Idaho.

3. Before she was hired, C.R. England paid Claimant's expenses to attend a job orientation in Utah. There, on July 28, 2008, Claimant executed a one-page Conditional Offer containing, among others, the following clauses:

- I acknowledge and agree that the venue of any claims filed for injuries, accidents or incidents will be handled through the State of Utah.
- I acknowledge and agree that the venue of litigations that may arise from this employment shall be in the State of Utah.
- I acknowledge and agree that Utah law shall apply exclusively to any such claims or litigation.
- I acknowledge and agree to medical treatment and light duty in Salt Lake City, Utah as part of my employment responsibilities with C.R. England, Inc.

JE-181.

4. Claimant does not remember signing the form, but she agrees that she probably did. It was presented to her and the other orientation attendees along with other employment forms. A company representative guided the group through the forms via a Power Point presentation. No one personally discussed the relevant provisions of the Conditional Offer with Claimant before she signed it.

5. Claimant also signed a Pre-Employment Check List on July 28, 2008 that notified her, among other things, that she must be willing to operate in all customer service areas, including 48 states and Canada, and to be away from home for an average of three weeks at a time.

6. At orientation, Claimant was advised that she could be a company driver, an owner-lessee, or a contract driver. The distinctions between these positions involve the degree of ownership she would hold in the vehicle(s) she would operate. Claimant understood that, regardless of her decision in this regard, she would be driving all over the country, wherever

C.R. England operated (with the singular exception that she refused to drive in New York City). Claimant described this job as her “great adventure.” Tr., p. 32.

7. Following orientation and a training period, Claimant was hired by C.R. England. During her test drive with a trainer, she was dispatched from Salt Lake City to Gary, Indiana. Difficulties ensued, including her trainer quitting mid-trip and mechanical problems. On Claimant’s return to Salt Lake City, she was offered a new and different position by someone at C.R. England, as a “dedicated driver” at the Sorrento Lactalis plant location. The job meant better pay, a better truck, and more time at home, since all of her loads would either originate or terminate in Nampa. Claimant accepted the position without completing any additional training or employment forms.

8. From Claimant’s perspective, her transition between jobs was seamless even though England Logistics employees were responsible for the trucking operation at Sorrento Lactalis. Claimant was told to report only to Nampa (England Logistics) personnel, and all of her loads were dispatched from Nampa. Claimant’s paychecks were still prepared by C.R. England in Salt Lake City, and that office still maintained her employment records and administered her employment benefits.

9. On March 9, 2010, Claimant suffered a shoulder injury while delivering a load in California. Claimant immediately reported the accident to Ed Darosa, one of her supervisors at England Logistics in Nampa. At Mr. Darosa’s direction, Claimant contacted Phyllis at C.R. England in Utah, who advised her to seek medical care. Claimant was treated in California, after which she returned to Idaho and received additional medical care there. Claimant was unaware of the details concerning the relationship between C.R. England and England Logistics until after

she began receiving treatment for her industrial injury, through coverage provided by C.R. England.

10. Claimant received workers' compensation benefits, administered by C.R. England, pursuant to Utah law. She was not aware of that fact until sometime after she began receiving benefits. Claimant's Utah claim is still open.

11. Following her industrial injury, Claimant engaged in light duty work in Idaho.

12. Unlike Idaho, Utah does not provide benefits for partial permanent disability.

13. The Referee finds all of the witnesses credible.

DISCUSSION AND FURTHER FINDINGS

The provisions of the Idaho Workers' Compensation Law are to be liberally construed in favor of the employee. *Reese v. V-1 Oil Co.*, 141 Idaho 630, 115 P.3d 721 (2005); *Davaz v. Priest River Glass Co.*, 125 Idaho 333, 870 P.2d 1292 (1194). 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

14. Claimant incurred her accident and injury in California. Idaho Code § 72-217 describes the circumstances under which Idaho workers' compensation laws may be given extraterritorial effect. That section provides, in relevant part, that an employee whose employment is principally localized in Idaho is entitled to workers' compensation benefits under Idaho law.

15. Idaho Code § 72-220(1) defines when a person's employment is "principally localized" in a particular state, as well as the limited circumstances under which an employee may enter into an agreement to select a principal location. That statute provides:

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.

16. The parties have stipulated that under Idaho Code § 72-220(1), as applied in *Martin v. Eagle/F.B. Truck Line Co.*, 1984 IIC 0001, Claimant's employment is principally localized in Idaho. Based upon the parties' stipulation and substantial evidence in the record to support it, the Referee finds Claimant's employment is localized in Idaho pursuant to Idaho Code § 72-220(1). If the inquiry were to end here, Claimant would be entitled to workers' compensation benefits under Idaho law pursuant to Idaho Code § 72-217.

IDAHO CODE § 72-220(2) AGREEMENT

17. Defendants assert that jurisdiction for Claimant's workers' compensation claim does not lie in Idaho because, by executing the Conditional Offer, Claimant selected Utah as the sole jurisdiction for any workers' compensation claim that may arise. To prove their defense, Defendants must first establish that Claimant entered into an agreement to principally localize her employment in Utah pursuant to Idaho Code § 72-220(2). Idaho Code § 72-220(2) provides:

- (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.

18. The Idaho Supreme Court reiterated the statutory interpretation analysis in *Werneke v. St. Maries Joint School Dist. No. 401*, 147 Idaho 277, 207 P.3d 1008 (2009):

...Statutory interpretation begins with the literal language of the statute. [Citation omitted.] That statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. [Citation omitted.] When the statutory language is unambiguous, the plain meaning of the statute must be given effect, and the court need not consider rules of statutory construction. [Citation omitted.] It should be noted that the court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. [Citation omitted.]

When interpreting the Act, we must liberally construe its provisions in favor of the employee in order to serve the humane purpose for which it was promulgated. [Citation omitted.] The Act is designed to provide sure and certain relief for injured workers and their families and dependents. [Citation omitted.] The primary objective of an award of permanent disability benefits is to compensate the claimant for his or her loss of earning capacity. [Citation omitted.]...

Id.

19. The plain language of Idaho Code § 72-220(2) is unambiguous. It requires the proponent to prove: 1) the employee travelled regularly in the course of employment in Idaho and one or more other states; and 2) the employee and the employer entered into a written agreement to localize the employee's employment in Idaho, or another state in which he or she is required to travel regularly. In order to give effect to all of the words in the statute, it must be recognized that the first clause of the statute defines "principally localized", making it a term of art within the workers' compensation context. The meaning attributed to these words is clear to Idaho workers' compensation practitioners, but not to those outside that arena. Therefore, a written agreement to principally localize employment pursuant to the statute must, at a minimum, express the parties' desire to select a state as a principal employment location specifically for purposes of workers' compensation administration. Here, there is no dispute as to the first prong of Idaho Code § 72-220(2). Defendants' difficulty lies in proving the second prong; that is, that the Conditional Offer comprises an enforceable agreement under the statute.

20. To determine whether the Conditional Offer constitutes an agreement pursuant to Idaho Code § 72-220(2), Idaho contract formation principles are instructive. “Contract formation requires that the parties have a common and distinct understanding. [Citation omitted.]...A promisee's bargained-for action or forbearance, given in exchange for a promise, constitutes consideration. [Citation omitted.] [F]orbearance to exercise a right against either a promisor or a third person is sufficient consideration for a contract. [Citation omitted.]” *McColm-Traska v. Valley View, Inc.*, 138 Idaho 497, 501, 65 P.3d 519, 523 (2003).

21. Whether a contract has been formed is typically a question for the trier of fact:

In Idaho, contract formation is typically a question of fact for the trier of fact to resolve. [Citation omitted.] A valid contract requires a meeting of the minds evidenced by a manifestation of mutual intent to contract, formed by an offer and acceptance. [Citation omitted.] ‘In a dispute over contract formation it is incumbent upon the [party with the burden] to prove a distinct and common understanding between the parties.’

Baugh v. Gale Lim Holdings, Inc., 2009 WL 333149 (United States District Court, Idaho, applying Idaho law).

22. Few decisions are available from which to draw guidance regarding what constitutes an enforceable agreement under Idaho Code § 72-220(2). The most instructive is *Martin v. Eagle/F.B. Truck Line Co.*, 1984 IIC 0001, in which the Commission determined that an employment contract requiring “any suit arising out of the employment agreement” to be filed in Utah was unenforceable under Idaho Code § 72-220(2). In holding that the employment agreement did “not constitute the type of agreement contemplated by Section 72-220(2),” the Commission observed that the contract provision had “nothing to do with” workers’ compensation benefits and that the contract, itself, did not address the payment of workers’ compensation benefits or the forum or state in which disputes over workers’ compensation benefits should be litigated. *Id.*

23. Like the broad language found wanting in *Martin*, the language in the Conditional Offer says nothing about principal location or workers' compensation benefits. It selects Utah as the sole venue for "...any claims filed for injuries, accidents or incidents...litigations that may arise from this employment...[and]...any such claims or litigation." JE-181. This language is more abundant and more specific than the language in the *Martin* contract. And, by its broadly inclusive language encompassing all injuries, accidents and incidents, it invites the Commission to find workers' compensation rights belong under that all-inclusive umbrella. However, as with the language in *Martin*, the language in the Conditional Offer fails to evidence any mutual understanding as to Claimant's workers' compensation rights or an intention to principally locate Claimant's workers' compensation benefit jurisdiction in Utah such as to invoke Idaho Code § 72-220(2). Thus, the Conditional Offer fails to cross the minimum possible threshold established by *Martin* or to otherwise evidence a mutual understanding that Claimant's workers' compensation rights would be governed by Utah, and not Idaho.

24. The Conditional Offer also fails to evidence a mutual understanding as to Claimant's scope of work or anticipate that her base of operations would be located in her domiciliary town. These terms are material to determining whether the parties intended the Conditional Offer to pertain to Claimant's time-of-injury employment, which was otherwise principally localized in Idaho, and which differed from her initial employment.

25. Finally, the fact that Defendants did not require Claimant to obtain medical treatment or to perform light duty work in Utah, as required by the Conditional Offer, and did not seek to modify those terms following Claimant's industrial injury, also tend to show that Defendants did not believe the agreement pertained to Claimant's work in Idaho. These after-the-fact omissions tend to prove that there was no mutual assent, when the Conditional Offer

was signed, that it would extend to workers' compensation claims arising from Claimant's Idaho-based work.

26. Defendants have failed to prove that the Conditional Offer constitutes a distinct and common understanding that Claimant's principal location of employment for workers' compensation purposes is Utah. The Conditional Offer does not constitute an enforceable agreement under Idaho Code § 72-220(2).

27. Claimant also asserts that the Conditional Offer is not enforceable under Idaho Code § 72-220(2) because it does not constitute an agreement with England Logistics. Claimant reasons that England Logistics was her time-of-injury employer and, thus, the only party that could enter into an agreement under § 72-220(2) as the "employer," because it possessed the "right-to-control" her employment. This argument need not be addressed because it was determined, above, that even if the Conditional Offer was in full force and effect at the time of the accident, it did nothing to shift the principal location of Claimant's employment from Idaho to some other state..

28. The parties expertly and comprehensively briefed their respective positions regarding the interplay between Idaho Code § 72-318³ and Idaho Code § 72-220(2), and it is apparent that they sought a ruling addressing that issue. However, the Referee declines to address that inquiry for two reasons. First, it is rendered moot by the foregoing analysis. Moreover, it is not ripe because the Conditional Offer does not satisfy Idaho Code § 72-220(2). Orders of the Commission must be specific, based upon the particular facts of a given case. Here, the facts are insufficient to invoke Idaho Code § 72-220(2); therefore, any determination

³ Idaho Code § 72-318 provides, in relevant part, "No agreement by an employee to waive his rights to compensation under this act shall be valid."

regarding the interplay between that statute and Idaho Code § 72-318 in this case would necessarily be speculative and outside the Commission's reach.

29. Idaho has jurisdiction over Claimant's workers' compensation claim under Idaho Code § 72-217(1) because her employment is principally located in Idaho.

CONCLUSION OF LAW

1. Claimant has proven that Idaho has jurisdiction over her 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 19th day of March, 2013.

INDUSTRIAL COMMISSION

/s/ _____
LaDawn Marsters, Referee

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 2013, 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:

BRADFORD S EIDAM
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/s/ _____

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IC 2011-007890

IC 2012-006952

ORDER

March 28, 2013

Pursuant to Idaho Code § 72-717, Referee LaDawn Marsters submitted the record in the above-entitled matter, together with her 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 recommendations of the Referee. The Commission concurs with these recommendations. 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 proven that Idaho has jurisdiction over her workers' compensation claim.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 28th day of March,
2013.

INDUSTRIAL COMMISSION

/s/
Thomas P. Baskin, Chairman

/s/
R.D. Maynard, Commissioner

/s/
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 2013, 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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sjw

/s/