

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MIKE MARION NIDAY,

FILED

Claimant,

APR 04 2016

File No. 5048754

vs.

WORKERS COMPENSATION

ARBITRATION

ROEHL TRANSPORT, INC.,

DECISION

Employer,
Defendant.

Head Note No.: 2303

STATEMENT OF THE CASE

Claimant, Mike Marion Niday, filed a petition in arbitration seeking workers' compensation benefits from Roehl Transport, Inc., employer, as defendant, as a result of an alleged injury sustained on November 1, 2013. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on June 11, 2015, in Des Moines, Iowa. The record in this case consists of claimant's exhibits 1 through 11, defendant's exhibits A through F, and the testimony of the claimant. The parties submitted post-hearing briefs, the matter being fully submitted on June 29, 2015.

ISSUES

The parties submitted the following issues for determination:

1. Whether the Iowa Workers' Compensation Commissioner has subject matter jurisdiction over this case pursuant to Iowa Code section 85.71;
2. Whether claimant sustained an injury arising out of and in the course of his employment on November 1, 2013;
3. Whether the alleged injury is a cause of permanent disability;
4. The extent of claimant's industrial disability;
5. Whether defendant is responsible for various medical expenses;
6. Whether claimant is entitled to reimbursement of an independent medical examination pursuant to Iowa Code section 85.39; and
7. Specific taxation of costs.

The stipulations of the parties in the hearing report are incorporated by reference in this decision.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Claimant's testimony was clear and consistent as compared to the evidentiary record and his deposition testimony. During the course of evidentiary hearing, claimant was quite personable and his demeanor gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible.

Claimant was 58 years of age at the time of hearing. He is single and resides in Allerton, Iowa. Claimant graduated high school in 1974. In 2000, claimant earned a bachelor's degree in business administration, with a minor in management, from Graceland University. Claimant also successfully completed truck driving school at Indian Hills Community College in 2013. (Claimant's testimony)

Claimant began work at the company subsequently known as DairiConcepts in January 1976. He began as a bagging operator, but worked his way up in the company, ultimately serving as supply chain manager. After 34 years of employment, claimant's position was downsized. At the time of his lay off in February 2010, claimant earned a salary of \$65,000.00 per year plus the possibility for bonuses. From July 2010 to July 2012, claimant worked as a purchasing manager for Rembrandt Enterprises; at the conclusion of his employment, claimant earned \$55,000.00 per year. Claimant left employment with Rembrandt Enterprises for a position as supply chain manager at Liguria Foods. At Liguria Foods, claimant worked as a production manager, earning \$65,000.00 per year, plus the opportunity for bonuses. (Claimant's testimony; Exhibit 6, page 5)

Claimant testified he was unhappy at Liguria Foods, as he was homesick and wanted to return to his hometown of Allerton, Iowa. In order to facilitate a return to Allerton, claimant testified he began taking truck driving classes on the weekends through Indian Hills Community College (IHCC). Claimant completed the program and earned his CDL license in May 2013. (Claimant's testimony)

Claimant testified he observed posters, literature, and business cards from defendant at IHCC. He spoke with his instructor, who indicated defendant was a good company to work for. As a result, when claimant finished truck driving school, he applied online through defendant's website for a position as a driver. (Claimant's testimony; Ex. 8, p. 9) On May 7, 2013, claimant submitted a Driver Application for Employment with defendant. (Ex. 6, pp. 1-7) At the time of his application, claimant believed the flatbed division was run from a terminal in Gary, Indiana and defendant was headquartered in Marshfield, Wisconsin. (Claimant's testimony; Ex. 8, p. 9)

Following submission of his application, claimant received a notice from defendant, authored by Alice Favour-Smith, indicating claimant had passed the initial screening process. In order to continue the hiring process, Ms. Favour-Smith advised claimant to complete a survey and contact her within 48 hours. (Ex. 6, p. 8)

Ms. Favour-Smith then telephoned claimant. At his deposition, claimant testified the two discussed “the process of me going to work for [defendant]” and “we started the process of me becoming an employee.” (Ex. 8, p. 9) Claimant indicated he did not recall the exact details of the conversation, but knew he expressed a desire to drive flatbed and to do so on a regional route. (Claimant’s testimony)

Ms. Favour-Smith authored a confirmation letter to claimant dated May 10, 2013. The letter stated:

Based on the information we’ve received so far, I’m pleased to inform you that you qualify for a driving position with TeamRoehl. Our employment offer is conditional based on:

- All the information you provided on your application or by any other method is accurate, true and complete.

- There have been no changes in your qualifications (job history, motor vehicle record, or criminal history) since you submitted your application

- We don’t receive any additional information from any source, including previous employers, motor vehicle reports and criminal conviction records, which would cause you not to meet Roehl’s qualification requirements.

- Successfully complete a pre-work screening on the first day of Phase 1 Safety and Job Skills Training Program. This screening will determine if you can safely perform physical demands typically associated with the truck driving position.

- Pass a pre-employment drug screen.

- You successfully complete all the requirements of our Safety and Job Skills Program.

(Ex. 6, p. 9)

The letter further noted claimant had applied for a position and would like a “career path into the Flatbed division.” Ms. Favour-Smith again noted claimant would need to successfully complete defendant’s Safety and Job Skills Training program, which involved two phases. She indicated Phase 1 would last up to nine days and “[u]pon hire” claimant would be paid a hiring bonus of \$600.00, split into two \$300.00 payments. Ms. Favour-Smith indicated Phase 2 would last up to 13 days, during which claimant would be paid \$90.00 per full day worked with a trainer. (Ex. 6, p. 9)

Ms. Favour-Smith noted claimant had “selected” to work in the flatbed Midwest regional fleet, earning \$0.33 per mile. (Ex. 6, p. 9) She further indicated defendant’s

goal was to provide drivers 2,100 to 2,400 miles per week, with claimant generally home for 24 to 48 hours weekly. (Ex. 6, p. 10)

Additionally, Ms. Farvour-Smith indicated prior to "Qualification Day," claimant would be required to complete and pass a Department of Transportation medical examination and claimant must complete this physical and obtain a certification of ability to operate a commercial motor vehicle prior to beginning orientation. (Ex. 6, p. 10) Once the preemployment physical had been received and approved, a start date for Phase 1 would be selected. This training would commence at defendant's designated training facility, to which defendant would provide transportation. On the first day, claimant would be required to complete "pre-employment" drug tests, a "pre-work" physical demands screening, and begin classroom activities. (Ex. 6, p. 10)

In closing, Ms. Farvour-Smith congratulated claimant on the "conditional offer of employment" and indicated claimant had "completed the first steps" toward a career with defendant. (Ex. 6, p. 11)

Claimant testified he provided Liguria Foods with two weeks' notice. At evidentiary hearing, claimant testified he believed he had been offered a position by defendant and the only way he would not be hired would be to fail one of the requirements outlined in the letter. Claimant testified he believed he accepted a job to work for defendant prior to offering his notice to Liguria Foods and prior to presenting for defendant's training. (Claimant's testimony)

On May 21, 2013, claimant underwent a Department of Transportation medical exam at Trinity Corporate Health in Fort Dodge, Iowa. Following examination, Phuong Nguyen, M.D., opined claimant qualified for a one-year certification. (Ex. 6, pp. 12-16) Claimant testified defendant arranged this evaluation. (Claimant's testimony)

Defendant arranged for claimant to pick-up a rental car in Des Moines, Iowa on June 1, 2013 to drive and return in Mosinee, Wisconsin. (Claimant's testimony; Ex. A, p. 1) Defendant's records reveal claimant was to begin orientation on June 3, 2012 in Marshfield, Wisconsin. (Ex. A, p. 2) Claimant completed supplemental paperwork dated June 3, 2013, including an "Application Addendum" updating claimant's application from the time of the original application on May 8, 2013. (Ex. A, pp. 3-4) Claimant also underwent a urine screen to test for controlled substances on June 3, 2013 at Allied Health Chiropractic Centers in Marshfield, Wisconsin. (Ex. A, pp. 5-6)

The following day, claimant travelled to defendant's Gary, Indiana terminal. He then participated in classroom training. (Claimant's testimony)

On June 10, 2013, claimant completed a payroll form. (Ex. 7, p. 9) He then received \$300.00 payments from defendant on June 12 and June 19, 2013. (Ex. F, p. 1) Claimant testified this was the first occasion he received pay from defendant. (Claimant's testimony) At his deposition, claimant testified:

It was my understanding, actually, that once I passed the nine days and the original driving test, that we become employees of [defendant]

during the training period. Because we was paid during the training period.

(Ex. 8, p. 10)

Claimant testified following classroom training, he took a driving test in Indiana. He then began over-the-road training with another driver. Once he began this work, claimant indicated he began to receive a regular paycheck. At the conclusion of this training, claimant completed a final driving test in Gary, Indiana. Upon successful completion, defendant's employee Gina Sanders called him, introduced herself as his fleet manager, and advised him to proceed to the maintenance shop to pick up his keys and trailer. He then began driving solo routes for defendant. (Claimant's testimony; Ex. 8, p. 10)

Claimant testified he received load assignments through a computer mounted in his truck. When he was not hauling a load and was at his home in Allerton, claimant parked the truck on a frontage road approximately 3 blocks from his residence. Claimant testified he was paid \$.33 per mile, plus tarping fees. His payment for mileage began when he left his home to pick up an assigned load. As a result, claimant believes all his trips began in Iowa. Additionally, claimant testified defendant attempted to minimize deadhead miles, so when he left his home, he generally picked up a load from within Iowa. (Claimant's testimony; Ex. 8, pp. 10-11)

On November 1, 2013, claimant was tasked with picking up a load from Logan Aluminum in Kentucky. Claimant testified he pulled up to the dock and was loaded with large aluminum coils. He then retrieved a tarp, weighing approximately 125 pounds, and lifted it onto the flatbed. Next, claimant retrieved chain binders, weighing 40 pounds, and began binding the coils to the flatbed. During this process, claimant became winded and had difficulty breathing; he then developed chest pain. Claimant informed an employee of Logan Aluminum of his symptoms and was taken to an office to sit down. The on-site paramedics evaluated claimant and asked if he wanted to go to the hospital. Claimant agreed and was transported to the hospital via ambulance. (Claimant's testimony; Ex. 8, pp. 12-14)

At the local hospital, an electrocardiogram revealed claimant was suffering a heart attack. While at the hospital, claimant went into cardiac arrest. He was transported from the local hospital via ambulance to Boling Green Hospital, where he underwent placement of stents. Claimant testified after he was released from the hospital, his daughters drove him back to Iowa. After returning to Iowa, he began to follow up with Douglas Hoch, M.D. (Claimant's testimony)

His first evaluation by Dr. Hoch took place on November 8, 2013. Dr. Hoch opined claimant should remain off work, refrain from smoking, and utilize a medication regimen. Dr. Hoch also referred claimant to cardiologist, Martin Aronow, D.O. (Ex. 5, p. 3) Claimant presented to Dr. Aronow on November 20, 2013, who also recommended a medication regimen. Dr. Aronow removed claimant from work pending a repeat angiogram. (Ex. 3, p. 3) Claimant continued to follow up with Drs. Hoch and Aronow. (Ex. 5, p. 9)

Defendant's workers' compensation and leave of absence coordinator, Karen Cliver, authored a letter to claimant dated December 6, 2013. Ms. Cliver noted claimant had been on leave of absence since November 1, 2013 and requested claimant complete and return a driver job description and return to work paperwork within 10 days. In the event this paperwork was not received within 10 days, Ms. Cliver indicated defendant might not continue to employ claimant. (Ex. 6, p. 24)

As claimant suffered a heart attack, Department of Transportation regulations required him to cease driving for six months following the incident. Claimant testified approximately six weeks following the alleged work injury, he received a letter from defendant terminating his employment. (Claimant's testimony)

On December 30, 2013, Dr. Aronow performed a coronary angiography and coronary flow reserve measurement. (Ex. C, p. 1; Ex. 3, p. 10) He opined claimant suffered from nonobstructive coronary artery disease. (Ex. C, p. 2; Ex. 3, p. 11)

On January 12, 2014, claimant presented to the Emergency Room at Wayne County Hospital with complaints of chest pain with some numbness and tingling of the upper extremities. He was admitted for observation and evaluation. (Ex. 4, pp. 1-9) After ruling out myocardial ischemia, claimant was discharged on January 13, 2014 on a medication regimen. (Ex. 4, pp. 10-11)

Thereafter, claimant continued to follow up with Drs. Hoch and Aronow periodically. (Ex. 5, pp. 11-13; Ex. 3, p. 14) On April 21, 2014, Carma Dixon of Dr. Hoch's practice, authored a letter opining claimant was capable of working within restrictions of a maximum occasional lift of 40 pounds and 20 pounds repetitively. (Ex. 4, p. 12) On April 22, 2014, Dr. Aronow opined claimant's cardiac episode was substantially contributed to by his work activities on November 1, 2013 and further opined claimant's need for ongoing cardiac care was also contributed to by his work activities on November 1, 2013. (Ex. 3, p. 16)

On May 16, 2014, claimant presented to Wayne County Hospital Emergency Room with complaints of chest pain of a two-day duration. The providers assessed musculoskeletal chest wall pain. (Ex. 4, pp. 13-14, 17)

In follow up from the emergency room visit, claimant presented to Dr. Hoch on May 19, 2014. Dr. Hoch altered claimant's medications and ordered an echocardiogram for Department of Transportation purposes. (Ex. 5, pp. 14-18) The echocardiogram was performed on May 22, 2014. (Ex. 3, pp. 17-20)

Claimant also followed up with Dr. Aronow on June 4, 2014. (Ex. 3, pp. 22-25) On June 6, 2014, Craig Hoffman, PA-C opined claimant met the qualifications necessary to return to truck driving following a myocardial infarction. (Ex. 3, p. 21)

In June 2014, claimant began work with a local driver who was unable to drive due to an injury. Claimant testified he hauled dry van loads throughout the country. This scenario lasted approximately 4 weeks. (Ex. 8, p. 6) Claimant then secured employment with Alan Richey Trucking, a mail hauling company. Claimant began this

work in July 2014 and maintained his employment at the time of evidentiary hearing. Claimant drives with a partner, handling no-touch loads. During the first 6 months of employment, claimant earned \$29,000.00. He then elected to perform only shorter runs, with lesser earnings; claimant estimates he earns approximately \$50,000.00 per year. (Claimant's testimony; Ex. 8, p. 5)

Claimant returned to Dr. Hoch on August 25, 2014. Dr. Hoch recommended continuance of claimant's treatment plan. (Ex. 5, p. 21)

At the arranging of claimant's attorney, on March 18, 2015, claimant presented for independent medical evaluation with board certified occupational health physician, Sunil Bansal, M.D. (Ex. 1, p. 1) Dr. Bansal performed a records review. (Ex. 1, pp. 1-4) He also interviewed claimant, who described the cardiac event on November 1, 2013. Claimant denied prior cardiac problems, but noted two days prior to the event, he became a bit winded and suffered with some chest pain while unloading freight. (Ex. 1, pp. 4-5) Claimant also admitted to smoking for approximately 37 years prior to the event. (Ex. 1, p. 6)

Following records review, interview, and examination, Dr. Bansal opined claimant's heart attack was causally related to his work at defendant. Dr. Bansal reasoned claimant suffered the heart attack within one hour of performing extremely physically demanding tasks. He opined this period of physically demanding work, involving weights of up to 125 pounds, triggered claimant's heart attack. As a result of the event, Dr. Bansal opined claimant sustained a 10 percent whole person impairment. (Ex. 1, p. 9) He recommended restrictions of no lifting over 40 pounds occasionally and no lifting over 15 pounds frequently. (Ex. 1, p. 10)

On April 15, 2015, Karen Cliver, workers' compensation and leave of absence administrator for defendant, completed a sworn affidavit. She indicated defendant provides motor carrier services nationwide with operating authority in 48 states, including Iowa. The corporate headquarters are located in Marshfield, Wisconsin, from which Ms. Cliver is based. Ms. Cliver indicated defendant operated nine terminals, with those terminals located in Wisconsin, Georgia, Indiana, Texas, California, Arizona and Michigan. In addition to the terminals, Ms. Cliver indicated defendant operates drop yards throughout the county, but no such locations in Iowa. (Ex. 7, pp. 1-2)

Ms. Cliver indicated defendant receives applications for employment from throughout the United States; the applications are reviewed at defendant's headquarters in Marshfield, Wisconsin. (Ex. 7, p. 2) She stated:

Qualified applicants are contacted by recruiters and are required to pass a background check, pre-employment drug screen, a pre-employment physical, and pass the Safety and Job Skills Training Program before they are hired.

(Ex. 7, p. 2)

In claimant's specific case, the recruiter was Ms. Favour-Smith, who works out of Wisconsin. Ms. Cliver indicated Ms. Favour-Smith coordinated the "employment process" and sent claimant a "conditional offer of employment." (Ex. 7, p. 2)

The employment offer directed to [claimant] was conditioned upon there being no changes in his qualifications, the successful completion of a pre-employment physical, passing a pre-employment drug screen and completing the requirements of the Safety and Job Skills Training Program.

(Ex. 7, p. 2)

Ms. Cliver stated claimant successfully completed his Safety and Job Skills Training Program at the Gary, Indiana terminal. (Ex. 7, p. 3) She indicated:

Upon the successful completion of training, [claimant] was hired by [defendant] on June 10, 2013 as a solo driver within the Flatbed division. This occurred when [claimant] was in Gary, Indiana.

(Ex. 7, p. 3)

On June 10, 2013, claimant received an employee handbook, completed a payroll form, and filled out a W-4. Ms. Cliver indicated claimant was assigned a fleet manager, Gina Sanders, based out of Gary, Indiana. Ms. Cliver indicated Ms. Sanders managed claimant and sent work assignments through the Gary, Indiana terminal via the Driverlink system. (Ex. 7, pp. 3-4) By Ms. Cliver's calculations, during the course of his employment, claimant was dispatched 73 times, 25 of which either picked up or delivered in Iowa. Claimant did not have any set routes in Iowa. (Ex. 7, p. 4) Ms. Cliver stated claimant was paid mileage based on the most practical route for the work assignment, which included mileage from a driver's home to the point of pick-up. However, claimant was not paid for mileage when he drove to his home while not hauling a load. (Ex. 7, p. 4) Claimant's paychecks and employment paperwork were handled through the headquarters in Marshfield, Wisconsin. (Ex. 7, p. 4)

Defendant secured board certified thoracic surgeon, Paul Conte, M.D., to perform a records review. (Ex. B, pp. 3-4) Dr. Conte issued a report of his opinions on May 3, 2015. Dr. Conte opined the occurrence of claimant's heart attack within minutes of strenuous physical activity was "suggestive that the work accelerated or aggravated his preexisting, but undiagnosed coronary artery disease." As a result of the event, he opined claimant sustained a 10 percent whole person impairment. He did not recommend any permanent restrictions given claimant's normal recovery and lack of symptoms. (Ex. 2, p. 2)

In management of his cardiac condition, claimant continues to take prescription Meoprolol, Brilinta, and Avastin, as well as Prilosec. Claimant understands he will require these medications indefinitely. Claimant testified he did not take any of these medications prior to the alleged work injury. (Claimant's testimony; Ex. 8, p. 20) Claimant testified Dr. Aronow's assistant advised claimant not to lift any object which

prohibited him from breathing normally. Claimant believes he is capable of performing a one-time lift of 50 pounds, but would be limited to 30 to 35 pounds for repetitive lifts. (Claimant's testimony)

In treatment of his cardiac condition, claimant incurred medical expenses totaling \$23,562.04. Some of these bills were paid by health insurance, others were borne by claimant out-of-pocket. (Claimant's testimony; Ex. 10, pp. 1-51)

CONCLUSIONS OF LAW

The first issue for determination is whether the Iowa Workers' Compensation Commissioner has subject matter jurisdiction over this case pursuant to Iowa Code section 85.71.

When lack of jurisdiction is placed at issue, claimants have the burden of proof to sustain the requisite jurisdiction. LaRose v. Curoe, 343 N.W.2d 153 (Iowa 1983). Iowa Code section 85.71 governs the commissioner's subject matter jurisdiction over workers' compensation claims based on injuries sustained outside the state of Iowa. See Heartland Express, Inc. v. Terry, 631 N.W.2d 260, 265 (Iowa 2001); Henrickson v. Younglove Constr., 540 N.W.2d 254, 256 (Iowa 1995).

Iowa Code section 85.71 states:

INJURY OUTSIDE OF STATE.

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 death, the employee's dependents, would have been entitled to the benefits provided by this chapter had such injury occurred within this state, such employee, or in the event of death resulting from such injury, the employee's dependents, shall be entitled to the benefits provided by this chapter, if at the time of such injury any of the following is applicable:

a. The employer has a place of business in this state and the employee regularly works at or from that place of business, or the employer has a place of business in this state and the employee is domiciled in this state.

b. The employee is working under a contract of hire made in this state and the employee regularly works in this state.

c. The employee is working under a contract of hire made in this state and sustains an injury for which no remedy is available under the workers' compensation laws of another state.

d. The employee is working under a contract of hire made in this state for employment outside the United States.

e. The employer has a place of business in Iowa, and the employee is working under a contract of hire which provides that the employee's workers' compensation claims be governed by Iowa law.

2. This section shall be construed to confer personal jurisdiction over an employee or employer to whom this section is applicable.

Claimant argues jurisdiction over this claim is conferred to claimant pursuant to either section 85.71(1)(a) or section 85.71(1)(b). Defendant contends jurisdiction does not properly rest with the commissioner. No argument or supportive facts have been offered which would support jurisdiction under section 85.71(1)(c)-(e); therefore, no analysis of these subsections is necessary.

Claimant contends section 85.71(1)(a) grants the commissioner jurisdiction over this matter. Specifically, section 85.71(1)(a) would extend jurisdiction in the event defendant has a place of business in this state and claimant is domiciled in this state. There is no dispute claimant is a resident of Iowa. Therefore, the relevant question with respect to section 85.71(1)(a) is whether defendant has a place of business in Iowa.

Claimant argues his home in Allerton, Iowa functioned essentially as his "home terminal." It is from his home that claimant asserts his routes ultimately begin and end. Furthermore, claimant receives his work assignments via a computer mounted in his truck; a truck which he parks near his residence while off duty. Claimant is also paid mileage from his home to the location of his work assignment.

While a creative argument, the undersigned finds claimant's argument that his home and by extension, his truck, represents a place of business in Iowa, is simply too tenuous to support the basis for extending jurisdiction on these facts alone. Section 85.71(1)(a) sets forth two requirements for extending jurisdiction: a worker's domicile in the state and defendant's maintenance of a place of business in the state. Claimant's argument, if adopted, would essentially eliminate the place of business requirement with respect to many truck drivers. Defendant's headquarters, terminals, and drop yards all fall outside the territorial limits of the state of Iowa. There is no evidence defendant maintained any other property within the state. Therefore, it is determined section 85.71(1)(a) does not provide the commissioner with jurisdiction over this matter.

Claimant also argues jurisdiction is proper under section 85.71(1)(b). Section 85.71(1)(b) allows jurisdiction to be extended to an employee working under a contract of hire made in Iowa, if that employee regularly works in this state. There is no set formula for determining whether an employee regularly works within Iowa. However, Ms. Cliver's affidavit indicates claimant was dispatched 73 times, with 25 of those hauls involving a pick up or delivery in Iowa. The facts of this case reveal claimant began or ended 34 percent of his hauls in Iowa. The undersigned believes over one-third of hauls beginning or ending in this state is sufficiently great a quantity so as to determine claimant worked regularly in Iowa. In order for jurisdiction to be proper, however, claimant must also demonstrate he was working under a contract of hire made in Iowa.

Generally speaking, the place of making of a contract is determined according to the parties' intention. As a rule this is considered to be the place where the offer is accepted, or where the last act necessary to a meeting of the minds, or to complete the making of the contract, is performed. Burch Mfg. Co. v. McKee, 231 Iowa 730 at 735, 2 N.W.2d 98 at 101 (Iowa 1942). Where an acceptance is made by a worker in Iowa talking by telephone to an employer in another state, the contract should be considered made in Iowa. See Heartland Express v. Terry, 631 N.W.2d 260, 270 (Iowa 2001).

All contracts contain mutual assent; mode of assent is termed offer and acceptance. Heartland Express at 268, citing Anderson v. Douglas & Lomason Co., 540 N.W.2d 277, 285 (Iowa 1995). An offer is a "manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." Id. "The test for an offer is whether it induces a reasonable belief in the recipient that [the recipient] can, by accepting, bind the sender." Id. Determining whether an offer has been made is an objective question. To apply this test, the trier of fact is to "look for terms with precise meaning that provide certainty of performance." Id. The trier of fact must then determine if the terms were "sufficiently definite" so as to constitute an offer. Id.

Claimant argues he was working under a contract of hire made in this state by virtue of his conversation with Ms. Farvour-Smith in early May 2013 and as confirmed in Ms. Farvour-Smith's letter of May 10, 2013. Claimant testified he believed he had been extended an offer of employment, as he would not have otherwise tendered his notice at his then-employer. Claimant testified he believed the only reason he would not become an employee of defendant would be if he failed to meet the requirements set forth in Ms. Farvour-Smith's letter.

Although claimant may believe he was hired by defendant in early May 2013, the conversation with Ms. Farvour-Smith and the confirmation letter did not bind the parties into an employment relationship at that time. By the affidavit of Ms. Cliver, Ms. Farvour-Smith's call and confirmation letter were designed to begin the employment process; a fact acknowledged by claimant. The "conditional offer of employment" set forth several prerequisites to employment, with defendant requiring prospective employees to pass a background test, pre-employment drug screen, and a pre-employment physical. None of these requirements had been fulfilled at the time of the May 2013 conversation.

The May 2013 conversation and confirmation letter reflected notifications to claimant that he met the initial qualifications for employment and specifically delineated further conditions which claimant needed to meet prior to being hired as a driver with defendant. The May 2013 conversation and letter served essentially as an agreement to agree to enter into an employment contract upon successful completion of the conditions precedent. These conditions were likely met while claimant participated in the training process in Gary, Indiana; the conditions were most certainly not met while claimant remained in Iowa prior to presenting for training. The May 2013 conversation and letter did not bind defendant to an employment relationship with claimant; accordingly, it is determined claimant was not working under a contract of hire made in

the state of Iowa. As claimant was not operating under a contract of hire made in Iowa, jurisdiction is not extended pursuant to section 85.71(1)(b).

Claimant has failed to prove the commissioner is extended jurisdiction in this matter pursuant to Iowa Code section 85.71. As the Iowa Workers' Compensation Commissioner does not have proper jurisdiction over this claim, further consideration of the issues presented for determination is unnecessary, as moot.

ORDER

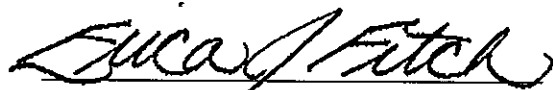
THEREFORE, IT IS ORDERED:

Claimant shall take nothing from these proceedings.

Defendant shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Costs are taxed to claimant pursuant to 876 IAC 4.33.

Signed and filed this 4th day of April, 2016.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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EJF/srs

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876 4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.