

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

CASE NO. VEN 0119774

MARK PERRY,

Applicant,

vs.

DRIVERS MGT., INC., a wholly owned subsidiary
of WERNER ENTERPRISES, permissibly self-
insured, administered in California by
CONSTITUTION STATE SERVICE COMPANY

Defendants,

FINDINGS AND ORDER

The above-entitled matter having been heard and regularly submitted, the Honorable LARRY M. GREENBLATT, Presiding Workers' Compensation Judge now makes his decision as follows:

FINDINGS OF FACT

1. That the applicant born 2/13/73, while employed on 12/23/99 as a truck driver at Effingham, Illinois by Drivers Management Inc., a subsidiary of Warner Enterprises, sustained an injury arising out of and in the course of employment to his back.
2. At the time of injury the employer was permissibly self-insured administered by Constitution State Service Company.
3. The applicant has received workers' compensation benefits pursuant to the Nebraska Workers' Compensation Laws.
4. The State of California does not have jurisdiction or concurrent jurisdiction pursuant to *Labor Code Section 3600.5 (a) and 3600.5 (b)*.
5. There is no basis to provide an attorney fee herein.


ORDER

That the applicant take nothing herein.

E. CHARLES MAKI

MAY 8 2001

DATED: May 3, 2001


~~FOR LARRY M. GREENBLATT, Presiding~~
FOR LARRY M. GREENBLATT, Presiding
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

SERVED BY MAIL ON: 5-4-01
ON THE PARTIES AS SHOWN ON THE
OFFICIAL ADDRESS RECORD

BY: Jean Nelson
Jean Nelson

OPINION ON DECISION

This matter was Bifurcated on the issue of California jurisdiction only.

Essential facts are uncontested as follows:

At the time of the applicant's initial hire he was a resident in Denver, Colorado. He had been engaged in a truck driving school in Denver, Colorado just prior thereto. He applied for an application for employment at the truck terminal of Drivers Management Inc., in Colorado. He was hired as a temporary driver and engaged in a training program for the company in Denver and then to the other 48 states where he drove with other permanent drivers.

He did not become a California resident until after completing his training. In January of 1997 he went to the Fontana, California terminal to pick up a truck for DMI.

The main terminal and the one he works out of are in Omaha, Nebraska. In addition, he picks up a truck at various terminals through out the states. His injury occurred on 12/23/99 in the state of Illinois, while he was working for DMI. The route had commenced just outside of Fort Smith, Arkansas and he was headed to Maryland. His usual course of assignment has been the West Coast region, which is the eleven Western States. He would be driving in the state of California two or three times a week during the course of his deliveries. In January of 1997, he received his own permanent truck from the Fontana terminal and he drove that truck to Houston, Texas.

There is no dispatcher in California, his dispatcher is in Omaha, Nebraska; this is where he gets his instructions and arrangements for loads for his truck.

He has been receiving all workers' compensation benefits from the state of Nebraska and all medical treatment.

There is no basis to find California jurisdiction based upon *Labor Code Section 3600.5 (a)* which states that to qualify for jurisdiction herein the applicant must be determined to have either been 'hired' or 'regularly employed' in this state.

Under the facts herein it is unquestioned that he was not hired in the state of


1 California. As to whether he was 'regularly employed', the factual evidence submitted to
2 the triar-of-fact does not establish nor maintain a sufficient burden of proof to qualify as
3 'regularly employed'.

4 In fact, reference to *Labor Code Section 3600.5 (b)* does qualify for the facts at
5 best in our scenario. The later referenced Labor Code Section reflects that anyone hired
6 outside of this state will be exempted from the provisions of California jurisdiction where
7 the employee is temporally within the state doing work for his employer if the employer
8 has furnished workers' compensation insurance coverage under the workers'
9 compensation insurance or similar laws of the state other than California. Here it is
10 stipulated that benefits have been applied for and have been received under the state in
11 which, the employer's contract of hire would establish as proper. Any further concurrent
12 receiving of benefits is not appropriate hereunder. The Webster definition of 'regular'
13 would include the description of usual or customary, consistent or habitual in action or,
14 more importantly to this triar-of-fact, recurring at set times or functioning in a normal
15 way. It is clearly established here that the applicant did not have any semblance of
16 consistency with the later referenced definition and therefore California jurisdiction can
17 not be conferred.

18 DATED AT VENTURA, CALIFORNIA

19 DATED: May 3, 2001

20 LMG:jn


FOR LARRY M. GREENBLATT, PRESIDING
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

23 Service by mail on all parties
24 as shown on the Official Address Record

25 ON: 5-4-01

26 BY: Jan Nelson

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