

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS

Brian D. Green,	)	
	)	
Employee/Claimant,	)	
	)	
vs.	)	OJCC Case No. 09-029684MHH
	)	
Irby Construction,	)	Accident date: 7/12/2008
	)	
Employer,	)	
	)	
and	)	
	)	
Gallagher Bassett Services,	)	
	)	
Carrier/Servicing Agent.	)	
_____	)	

**FINAL ORDER**

**This** cause came on for hearing before the undersigned Judge of Compensation Claims on September 9, 2010. This case was tried by the VTC system with the parties in Lakeland and the Judge of Compensation Claims in Jacksonville. The Claimant, Brian D. Green, was present and represented by Todd N. Parrish, Esquire. The Employer, Irby Construction, and the Carrier, Gallagher Bassett Services, Inc. were represented by Gregory S. Raub, Esquire.

For purposes of this order, the Employee will be referred to as "Employee" or "Claimant". The Employer/Carrier will be referred to as "Employer" or "Carrier" or "Employer/Carrier".

This Final Order resolves the petition for benefits filed April 26, 2010.

All evidence was received and the record was closed on September 9, 2010.

By prior order of June 29, 2010, this claim was bifurcated at the request of the parties and the only issue for my determination today is whether or not jurisdiction for this workers' compensation injury should be under the Florida Workers' Compensation Law.

**Claim was made for the following:**

1. Determination that the claim falls within jurisdiction of the Florida Workers' Compensation Law. The Employer/Carrier objects, stating that jurisdiction is properly within the courts of North Dakota where the accident occurred.

**The parties entered into the following stipulations:**

1. The industrial accident occurred on or about July 12, 2008, in the State of North Dakota, and on that date, there existed an employee/employer relationship between the Claimant and Irby Construction.
2. An unsuccessful mediation was held and the parties agreed to bifurcate the issues of jurisdiction and benefits.
3. There was timely notice of the accident given to the Claimant's supervisor as well as timely notice of the hearing given to the parties.
4. I have jurisdiction to determine the issue of jurisdiction.
5. If jurisdiction is found to be within the State of Florida Workers' Compensation Law, all claims for benefits under that law are preserved for the parties to agree or for a final hearing on the merits of the claim for benefits as stated in the pretrial stipulation form completed and signed by the parties not later than June 2, 2010.

**The following documents were offered into evidence:**

Judge's Exhibits:

1. A composite of the petitions for benefits (III) filed on March 2, 2010.
2. A response to those petitions filed April 28, 2010.
3. The petition for benefits filed April 26, 2010.
4. The petition for benefits filed May 6, 2010.

5. A response to petition for benefits filed May 21, 2010.
6. Prehearing stipulation form completed and signed by the parties not later than June 2, 2010.
7. The Claimant's Trial Memorandum (for argument only).
8. The Employer/Carrier's Trial Memorandum (for argument only).
9. Order bifurcating the issues entered June 29, 2010.

Claimant's exhibits:

1. Deposition of Phillip Bennett taken August 30, 2010 plus attachments.
2. Deposition of Lori Manaukes taken August 25, 2010 plus attachments.
3. Deposition of Rufus Killen taken August 10, 2010 plus attachments.
4. Deposition of Leslie Sumners taken August 10, 2010 including attachments filed September 9, 2010 and September 8, 2010.

Joint exhibits:

1. Deposition of Brian Green taken June 18, 2010.

In making my findings of fact and the conclusions of law in this claim, I have carefully considered and weighed all the evidence presented. I have observed the candor and demeanor of the witnesses and have attempted to resolve all conflicts in the testimony and evidence presented. Although I may not reference every piece of evidence presented by the parties, I have fully considered all the factual evidence in arriving at my conclusions of law.

**THEREFORE, the undersigned Judge of Compensation Claims finds that:**

1. I have jurisdiction over the parties in this claim and the subject matter in order to determine whether jurisdiction lies under the Florida Workers' Compensation Law.
2. Venue lies in Lakeland, Polk County, Florida.
3. The stipulations of the parties are adopted as facts herein.
4. The Claimant, Brian Green, applied for a job with the Employer, Irby Construction, at its Bartow location in February of 2007. This job site was located in Bartow, Florida. The

Claimant completed an application and, as part of the hiring process, underwent a drug screening test.

5. After a short time, the Claimant was notified that he had passed the drug screening and he was hired by the Employer to supply material to the linemen at the Bartow worksite. He was interviewed by Mr. Killen who explained to him the duties and the hours of the job. On the day he was hired, the Claimant met with Duane Bennett and the office manager named "Josh" and started work that day which was on or about February 23, 2007.
6. After working for a period of time at the Bartow site, the Claimant was asked to go to work for the Employer at its job site in Georgia. The Claimant was given the use of a one ton truck by the Employer and the Claimant attached his mobile home to it and pulled it to the Georgia site.
7. The Claimant then returned to work in Florida at the same Bartow site, using the Employer's truck to tow his mobile home back to Florida.
8. The Claimant went to school in Texas with the permission of the Employer, using the one ton truck to tow his mobile home. On his way back to Florida upon completion of school, he was asked to go to Arizona so he turned the truck around, hauled to Arizona, and worked there for about four and a half months.
9. After his stint in Arizona, instead of coming back to Florida, the Employer allowed the Claimant to work at its job site in North Dakota. Again, the Claimant used the Employer's truck to haul his mobile home, and went to work for the Employer in North Dakota.
10. The Claimant was injured on or about July 12, 2008 in North Dakota and received some benefits under the Workers' Compensation Law of that state. The Claimant returned to Florida in October of 2008 and has not worked for anyone since that date, although he does continue to carry the Employer's credit card.
11. At all times material from the date of hiring until the date of accident, the Claimant:
  - i. Worked only for Irby Construction.
  - ii. Received his paychecks directly from Irby Construction.

- iii. Kept the Employer's one ton truck which was used for travel and may have been or could have been used for transportation from the Claimant's mobile home setup to the various job sites in the various states.
  - iv. The Claimant always contracted Mr. Killen who he considered his boss to either receive permission to go to a different state or to be assigned to a different state.
  - v. I accept the testimony of the Claimant that there would always have been a job for him in Florida with the Employer if the Claimant had chosen to come back to Florida, as long as the Employer had work available. The Claimant's uncontradicted testimony is that he could have worked for the Employer at any of its various job sites in the State of Florida had he chosen.
12. The Claimant only filled out one application with the Employer, but at the job site in North Dakota, he was required to take a second drug test because the contractor for whom the Employer was performing work required it, not Irby Construction itself.
13. Florida Law attaches in three basic ways:
- a. The accident occurs in Florida.
  - b. The employment is primarily localized in Florida.
  - c. The contract for hire was completed in the State of Florida.
14. There is no question that the contract for hire was completed in Florida when the Claimant originally started for the Employer. I find that the nexus between the completion of the contract for hire and the Claimant's continued employment for Irby Construction, no matter what state, was never broken. At all times material hereto, the Claimant remained attached to the Employer's Florida work sites through his constant contact with Mr. Killen, the use of the Employer's one ton truck which was given to him in Florida, the permission given to him by Mr. Killen either to go to a different state or to return to Florida, and the Claimant's maintenance of his permanent residence in Florida.
15. Therefore, I find that the Florida Workers' Compensation Law should apply to this accident and jurisdiction, as well as venue, should be in Polk County, Florida.

16. The attorney for the Claimant, Todd Parrish, Esquire has performed a valuable service for his client and is entitled to reasonable attorney's fees at the expense of the Employer/Carrier, plus costs of litigation, for establishing jurisdiction within the State of Florida Workers' Compensation Law. Jurisdiction is reserved to determine the quantum of either, or both, if the parties are unable to agree.

**Wherefore, it is Ordered that:**

1. Jurisdiction for this claim lies in Florida and a hearing should be set to determine the benefits that the Claimant should be entitled to under the Florida Workers' Compensation Law if the parties are unable to agree.
2. The Employer/Carrier shall pay to the attorney for the Claimant, Todd Parrish, Esquire, reasonable attorney's fees and costs of litigation with jurisdiction reserved to determine the quantum of either, or both, should the parties be unable to agree.

**DONE AND ORDERED** in chambers in Jacksonville, Duval County, Florida.



Stephen L. Rosen  
Judge of Compensation Claims

I HEREBY CERTIFY that the foregoing Order was entered this 13<sup>th</sup> day of September, 2010, and that a true copy thereof was sent on said date by electronic mail to the parties via their counsel listed below.

Secretary to Judge Stephen L. Rosen

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