

In the Matter of the Compensation of
STEVEN R. OLEA, Claimant

WCB Case No. 03-01442, 03-01441

ORDER ON REVIEW

Ransom et al, Claimant Attorneys
Sather Byerly & Holloway, Defense Attorneys
Michael G Bostwick LLC, Defense Attorneys

Reviewing Panel: Members Kasubhai, Lowell and Bock.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Riechers' order that upheld the self-insured employer's denial of claimant's chemical exposure claim. On review, the issue is subjectivity.

We adopt and affirm the ALJ's order with the following supplementation.

Claimant is a salesman for the employer. The employer is an Arizona corporation, with its company office located in Mesa, Arizona. The employer has employees living in Arizona and in other states. All paychecks are issued from Arizona. All direction and control of employees comes from the Arizona office. The employer carries workers' compensation coverage in Arizona for its employees.

Claimant was assigned to a sales territory that included accounts in two Canadian provinces, Alaska, Washington, Oregon, Idaho, Utah, Nevada and northern California. Claimant spent approximately 60 percent of his time in Oregon, and 40 percent of his time in other parts of his sales territory. Twenty-one percent of claimant's accounts were Oregon accounts. The remaining accounts were located in other states, and Canadian provinces. The employer did not withhold any Oregon state tax from claimant's paychecks, which were issued from Arizona.

Claimant worked from his home office. The employer did not carpet or paint claimant's home office, nor did it provide any signage or office staff to claimant. The employer, however, provided a fax/printer/copier machine, cell phone and laptop computer, which claimant used to communicate with his accounts and with the employer's Arizona office. The employer maintained a storage warehouse in Oregon. Claimant did not have a key to that warehouse.

In July 2002, claimant was required to go to Arizona to attend meetings with his employer, and to demonstrate the company's products to customers. While in Arizona, claimant was exposed to spilled polyurethane products while visiting a facility for the employer. He was also exposed to some of the company's product as part of a demonstration for customers.

Claimant sought medical treatment on July 20, 2002, after returning to Portland, Oregon. The State Compensation Fund of Arizona accepted a workers' compensation claim for claimant's exposure.

The employer did not carry Oregon workers' compensation insurance coverage for the period between April 9, 2001 and September 26, 2002, the last date claimant worked for the employer. The Workers' Compensation Division (WCD) determined that the employer was in violation of Oregon workers' compensation coverage requirements set forth in ORS 656.017, 656.052, and 656.407, and assessed a civil penalty against the employer. The employer filed a request for hearing to contest WCD's order.

The employer also denied claimant's chemical exposure claim. Claimant requested a hearing.

After applying the "permanent employment relation test," the ALJ concluded that claimant was not a "subject worker" for purposes of receiving benefits under Oregon law. ORS 656.005(28); ORS 656.027; *Northwest Greentree, Inc. v. Cervantes-Ochoa*, 113 Or App 186, 188 (1992). On review, claimant contends that the ALJ misapplied the "permanent employment relation test," and that he is a "subject worker" pursuant to ORS 656.023 and 656.027. Even assuming that claimant's contention is accurate, we find that his "out-of-state" injury is not subject to Oregon workers' compensation coverage for the following reasons.

All persons who work in Oregon are "subject workers," except as excluded by ORS 656.027. Oregon workers' compensation coverage generally applies to a worker who works outside of Oregon temporarily *if* Oregon is the place of his or her *permanent* employment. *Quinton v. Lt&L Logging, Inc.*, 146 Or App 344, 347 (1997).

Thus, assuming claimant was a "subject worker," he would have been subject to Oregon workers' compensation law whether or not Oregon was the place of his *permanent* employment had he been injured while working in Oregon.

However, because claimant's injury occurred out-of-state, Oregon must be claimant's place of *permanent* employment for Oregon law to apply to his "out-of-state" injury.

Under these circumstances, we must decide whether claimant was an Oregon worker *temporarily* working in Arizona at the time of his injury. To do so, we apply the "permanent employment relation test" to determine the extent to which his work outside of Oregon was temporary. We must evaluate the following factors: the intent of the employer; the understanding of the employee; the location of the employer and its facilities; the circumstances surrounding the employee's work assignment; the state laws and regulations to which the employer otherwise was subject; and the residence of the employee. *Quinton*, 146 Or App at 347; *Power Master, Inc. v. National Council on Comp. Ins.*, 109 Or App 296, 301-02 (1991).

With these factors in mind, the record reveals the following. The employer intended for claimant to work as a traveling salesman, and assigned him a sales territory that included seven states and two Canadian provinces. While claimant was allowed to live anywhere within his sales territory, the employer's offices were in Arizona, and the employer was incorporated in Arizona. The employer has no facilities in Oregon from which it conducts business, other than a warehouse used for storage. Claimant was hired in Arizona, was paid from Arizona, and received all direction and control from Arizona.

While claimant resided in Oregon, he spent a significant amount of his work time in other states and Canadian provinces. Approximately 80 percent of his accounts were outside of Oregon. The employer purchased workers' compensation insurance for its employees in Arizona and considered itself an Arizona employer. The record does not reflect that claimant believed he was covered by Oregon law, nor that he believed that he was working for an Oregon employer.

Based on these facts, we find that, under the "permanent employment relation test," claimant is not subject to Oregon law with regard to his Arizona chemical exposure claim. Accordingly, we conclude that claimant was not an Oregon subject worker and, thus, the employer's denial must be upheld.

ORDER

The ALJ's order dated May 16, 2003 is affirmed.

Entered at Salem, Oregon on October 21, 2004