2024 IL App (1st) 241032WC-U

Workers' Compensation
Commission Division
Order Filed: December 27, 2024

No. 1-24-1032WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JEFFREY VALLES on behalf of HUNTER VALLES,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County
	)	
v.	)	Nos. 2023 L 050463
	)	
	)	
THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.*,	)	
	)	
	)	Honorable
(Metal Services LLC, d/b/a Phoenix Services, LLC, Appellee).	)	Daniel P. Duffy,
	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Holdridge and Justices Mullen, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed the judgment of the circuit court which confirmed a decision of the Illinois Worker' Compensation Commission dismissing the instant claim for want of jurisdiction.

¶ 2 Jeffery Valles on behalf of Hunter Valles (claimant) appeals the judgment of the circuit

court which confirmed a decision of the Illinois Workers' Compensation Commission dismissing the instant claim for want of jurisdiction. For the reasons which follow, we affirm.

¶ 3 The following recitation of the facts relevant to a disposition of this appeal is taken from the evidence adduced at the arbitration hearing held on June 14, 2022.

¶ 4 At all times relevant, the claimant, Hunter Valles, an Indiana resident, was a member of the International Union of Operating Engineers, Local 150 (Local 150), and employed by Metal Services, LLC, d/b/a Phoenix Services, LLC (Phoenix). Local 150's headquarters is in Countryside, Illinois, with a satellite office in Merrillville, Indiana. On March 3, 2022, the claimant was working for Phoenix as a Hot Pit Loader Operator at Cleveland-Cliffs Indiana Harbor West in East Chicago, Indiana (Harbor West), operating a front-end loader. When he dumped the vehicle's load into a pit, there was an explosion and flames engulfed both the claimant and the vehicle. The claimant suffered severe burns over 90% of his body. Jeffrey Vallas filed an application for adjustment of claim pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2020)) on behalf of the claimant. An arbitration hearing was held on the claim on June 14, 2022, at which the only disputed issue was whether, at the time of the claimant's injury, Phoenix was operating under or subject to the Act. During the course of that hearing, Michale Simms, David Fagan, Rachel Clark, and Joshua Bagnall were called as witnesses and gave the following testimony.

¶ 5 Simms, the Business Representative of Local 150, testified to the circumstances surrounding the claimant's employment engagement with Phoenix. Simms stated that he was familiar with the collective bargaining agreement between Local 150 and Phoenix (hereinafter referred to as the "agreement"). According to Simms, he was involved in the negotiations for the

agreement, was a signatory on the agreement, and applied its provisions daily. He identified the agreement, which was admitted in evidence. According to Simms, the agreement provides that when Phoenix has a production employee vacancy it posts the job, and if the vacancy is not filled by someone on the job site within five days, Phoenix is then to call in a work order to the union's dispatch office in Merrillville, Indiana. Local 150's main dispatch office is at its headquarters in Countryside, Illinois, where its seniority lists are maintained. According to Simms, all dispatch goes through the union's Countryside office. The union matches the qualifications for the available position with one of its members on its out-of-work list.

¶ 6 Simms identified the employment referral form and dispatch form for the claimant's employment by Phoenix's Harbor West facility in East Chicago, Indiana. He stated that an interview, drug testing, and a medical examination are considered pre-employment requirements for which a prospective employee is not paid. Sims testified that for his employment with Phoenix the claimant had his interview, drug test, and medical exam on May 8, 2018, and the dispatch from the union's Countryside office was dated May 9, 2018. The claimant's May 9, 2018, dispatch was for Phoenix's Harbor West location. Simms testified that the referral form is the last act that confirms the individual's employment, adding "we have to confirm that the employee was hired by the company." He stated that, if the claimant had not called the union and requested to be released by dispatch, he would not be considered an employee of Phoenix. The claimant would have to have called the union to be released to work on May 9. According to Simms, the claimant could not start working until he was formally dispatched. He confirmed that the claimant had worked for Phoenix for 11 months at its Riverdale, Illinois, facility but was laid off and had a 2 ½-month break in employment before he started working for Phoenix at its Harbor West facility on

May 9, 2018.

¶ 7 When cross-examined, Simms admitted that the union confirmed the claimant's employment by Phoenix before a dispatch was issued. He stated that, when the claimant was dispatched, Phoenix had accepted his application and agreed to hire him. Simms testified that the union's seniority list reflects that the claimant was hired by Phoenix on May 9, 2018, and the claimant's referral form is time stamped May 9, 2018, 7:00 a.m. According to Simms, Monica Sutton, who worked at the union's Merrillville, Indiana, office, is listed as the issuer of the claimant's referral form. Simms appeared to have been referring to the union's referral form and its dispatch form interchangeably. He testified that a referral form is issued by the union internally after being notified that the candidate had been accepted for employment.

¶ 8 On redirect examination, Simms stated that the claimant did not accept employment with Phoenix until he was actually dispatched by the union. It was his testimony that dispatch of a prospective employee was required to go through the union's Countryside, Illinois, office and Sutton was required to obtain approval from the Countryside office before sending a dispatch. However, when cross-examined further, he stated that the claimant was dispatched only after it was determined that both Phoenix had accepted his employment application and the claimant had accepted the offered position. According to Simms, the dispatch is an internal union document.

¶ 9 David Fagan testified that he is the financial secretary of Local 150. Describing the hiring process, Fagan stated that, when an employer calls in a work order, the union matches the qualifications for the position with one of its members on its out-of-work list. The member is then dispatched to go through the employer's hiring process. If the member is hired by the employer, the union is notified, and the member is no longer available for a referral from the out-of-work list.

According to Fagan, a member cannot accept employment before he is dispatched. He stated that the final step that a member must take is to notify the union that he is working. According to Fagan, dispatch forms are called "employment referrals." He reviewed the claimant's referral form and testified that the claimant was classified as a Phoenix employee on May 9, 2018, and he was removed from the referral list.

¶ 10 On cross-examination, Fagan acknowledged that he was not aware of all of the circumstances surrounding the hiring of the claimant by Phoenix. He agreed that at 7:00 a.m. on May 9, 2018, the claimant was already an employee of Phoenix. Timing wise, Fagan testified that, in his mind, the claimant called the union at 7:00 a.m. to inform the union that he was starting work that day. He admitted, however, that he did not know when the claimant actually began working for Phoenix. According to Fagan, everything in the union's satellite offices is controlled by the Countryside office.

¶ 11 On redirect examination, Fagan testified that, in order to confirm his employment, the claimant had specific responsibilities, the last of which being the dispatch. According to Fagan, in order for the claimant to accept employment with Phoenix, he was required to call the union and request a dispatch. He stated that, until the claimant requested to be dispatched, he could have taken another job with another company. Fagan admitted, however, that the referral form in this case was an internal union document, the purpose of which was to take the claimant off of the out-of-work list as of 7:00 a.m. on May 9, 2018. He testified that the decision to hire the claimant was Phoenix's. When questioned by the arbitrator, Fagan stated that referral form and dispatch form are not interchangeable terms referring to the same document.

¶ 12 Rachel Clark testified that she was Phoenix's production manager working out of the

Harbor West facility. In 2018, she was the office manager and involved in the hiring process. She stated that, if no qualified person from the job site took a vacant position within five days, she was advised and then sought an applicant from Local 150. According to Clark, she contacted either Monica Sutton or Tracy Hadley at Local 150's Merrillville, Indiana, office. She admitted, however, that, although she knew the claimant, she did not remember any of the specifics of his hire by Phoenix in May 2018.

¶ 13 Clark was shown the claimant's job application dated May 8, 2018, which was filled out immediately before his interview. She testified that the application was filled out in Indiana and the claimant's interview with Paul Benson, Phoenix's General Manager, took place on May 8, 2018, in Indiana. After the interview, the claimant was sent to Comprehensive Care in Gary, Indiana, for a drug test and a physical examination. He passed both tests and the results were received by Phoenix on May 8, 2018. According to Clark, normal procedure after being informed that the claimant had passed his drug test and physical examination would have been for either her or Benson to call the claimant and instruct him to come in to start work at 6:00 a.m. the following day. Clark admitted, however, that she did not specifically remember calling the claimant. She testified that she would have prepared a timecard for the claimant and a new hire packet. On May 9, 2018, the claimant would then have been instructed to fill out paperwork, get his personal protective gear, and begin safety training. May 9, 2018, was the claimant's first day working at a new job for Phoenix. Clark considered the claimant to be a new hire even though he had previously worked for Phoenix in Riverdale, Illinois. She testified that according to Phoenix's Service Personnel Action form, the claimant was not eligible for rehire at the Riverdale facility.

¶ 14 On cross-examination, Clark testified that she knew that the claimant started working for

Phoenix at 6:00 a.m. on May 9, 2018, because that was when he started getting paid. She admitted, however, that she was not in possession of Phoenix's payroll records and had no personal knowledge of when the claimant actually started work on May 9, 2018. Clark was not aware of the claimant working for anyone else between the time that he was laid off from his job with Phoenix in Riverdale, Illinois, and his employment at the Indiana facility. She testified that, although the claimant had worked for Phoenix at its Riverdale facility, he was a new hire at the Indiana facility and filled out a new employment application and started at the bottom of the seniority list. Clark agreed that, under the agreement, the claimant had to be dispatched by the union. However, she did not know the difference between an applicant being referred and an applicant being dispatched. Clark stated that the claimant's drug test and physical examination were pre-employment tests and agreed that the claimant was not hired on May 8, 2018.

¶ 15 On redirect examination, Clark reiterated that the claimant filled out a new hire application, was interviewed, took a drug test, and had a physical examination all on May 8, 2018, in Indiana. She again stated that the claimant was engaged as a new hire and his seniority began on May 9, 2018. According to Clark, she had not contacted any union hall for applicants other than Local 150's Merrillville, Indiana, office. She denied ever seeing the union's referral document for the claimant. Clark also identified Phoenix's seniority list which showed May 9, 2018, as the claimant's seniority date.

¶ 16 Joshua Bagnall testified that he is Phoenix's General Manager at its Harbor West facility. In May 2018, he was the Blast Furnace Production Manager at the Harbor West facility. His description of Phoenix's hiring process was consistent with the testimony of Simms, Fagan, and Clark. Bagnall stated that the union had 48 hours after notification of a position vacancy to send a

candidate qualified for the position. He testified that Phoenix has the right to reject an unqualified applicant. After a prospective candidate is interviewed, he is sent for a drug test. Phoenix also has the right to reject a candidate who was unqualified or who failed his drug test. According to Bagnall, the claimant's start date was May 9, 2024, and his seniority began that date. He testified that the claimant was offered and accepted employment at some time prior to May 9, 2018. It was his assumption that Benson made the telephone call informing the claimant he had been hired. If an applicant is currently unemployed, he would start the application process after his tests and background check. New hires start at 6:00 a.m. for daylong safety training during which they fill out their paperwork, including tax documents.

¶ 17 On cross-examination, Bagnall admitted that he had no personal knowledge of any conversation that the claimant may have had with Benson in 2018. According to Bagnall, a candidate is not an employee until he accepts the offer of employment, and Bagnall had no personal knowledge of when the claimant accepted the offer of employment. Although he had no role in hiring the claimant, Bagnall testified that he knew that the claimant started working on May 9, 2018.

¶ 18 Received in evidence was the agreement, the union's referral form for the claimant's employment with Phoenix dated May 9, 2018, Phoenix's seniority list which lists the claimant's start date at the Harbor West facility as May 9, 2018, the claimant's new hire job application, the results of the claimant's preemployment drug test and physical examination dated May 8, 2018, the union's dispatch form for the claimant's employment with Phoenix at its Riverdale, Illinois, facility, and Phoenix's Services Personnel Action form stating that the claimant was not eligible for rehire at the Riverdale, Illinois, facility.

¶ 19 Following the arbitration hearing, the arbitrator entered a written decision on November 22, 2022, finding that, on March 3, 2022, the date of the claimant's accident, Phoenix was not operating under and subject to the provisions of the Act. Specifically, the arbitrator concluded that the last act necessary to form a contract for hire between the claimant and Phoenix occurred in Indiana when the claimant reported for work on May 9, 2018, at Phoenix's Harbor West facility. As a consequence, the arbitrator denied the application for adjustment of claim brought on behalf of the claimant.

¶ 20 The claimant filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On August 21, 2023, with one commissioner dissenting, the Commission issued a decision affirming and adopting the arbitrator's decision and setting forth its explanation for so doing. The Commission found that Local 150 referred the claimant to work at Phoenix's East Chicago, Indiana, facility on May 9, 2018, and Phoenix's seniority list states that May 9, 2018, was the claimant's date of hire. It noted that the claimant's employment application states that he was available to start work on May 9, 2018. The Commission found that the claimant passed his drug screening test, hearing test, and vision test on May 8, 2018, which tests were performed in Gary, Indiana. The Commission also noted that the claimant had worked for Phoenix at its Riverdale, Illinois, facility from April 2017 until March 29, 2018, when he was terminated because his job classification was eliminated, and he was not eligible for rehire.

¶ 21 The Commission concluded that, based on the agreement, Local 150 was the exclusive bargaining agent for Phoenix's production and maintenance employees; it was not, however, the hiring agent for those employees. Phoenix had an obligation to get referrals from the union, but it

retained the right to hire or not hire any applicant referred to it by the union. According to the Commission, it appears that the claimant had already been offered a job, accepted the offer, and began working before the union's referral/dispatch was actually issued. It found that, "[i]n effect the document was an internal memorialization that Mr. Valles was hired and working for Respondent [Phoenix]." By affirming and adopting the arbitrator's decision, the Commission found that that the last act necessary to form a contract of hire between the parties occurred in Indiana when the claimant accepted Phoenix's offer of employment on May 9, 2018, by reporting to the jobsite for his first day of work. The Commission dismissed the claim for want of jurisdiction, concluding that claimant and Phoenix "were not operating under the Act."

¶ 22 The dissenting commissioner found that the Commission had jurisdiction over the instant claim under the Act, concluding that the last act necessary for the claimant's employment by Phoenix occurred in Illinois on May 9, 2018, "when the union referred the Petitioner [the claimant] to Respondent [Phoenix], removing him from the referral list."

¶ 23 The claimant sought a judicial review of the Commission's decision in the circuit court of Cook County. On May 1, 2024, the circuit court confirmed the Commission's decision, and this appeal followed.

¶ 24 Before addressing the issue raised in this case, we find need to comment on several of the case citations used by the Commission in its decision. In citing a number of cases upon which it relied, the Commission employed a citation method unknown to this court. Rather than setting forth the name of the case followed by either its official or unofficial citation, the Commission set forth the name of the case followed by a parenthetical phrase which includes the district and year of the decision. By way of example, the Commission cited *Correct Construction Co., Inc v.*

Industrial Comm'n, 307 Ill. App. 3d 636 (1999) as *Correct Construction Co. v. I.I.C.* (1st Dist. W.C. Div. 1999). The Commission employed the same citation method for short citations. Fortunately, the parties have supplied the Court with the correct citations to a majority of the cases relied upon by the Commission. We suggest that in drafting its decisions, the Commission employ a recognized citation method. With that admonition, we turn to the merits of this appeal.

¶ 25 The claimant argues that the "Commission erred in concluding that the last act necessary to form the employment contract between Defendant Metal Services, LLC, d/b/a Phoenix Services and Plaintiff Hunter Valles took place in Indiana." The issue as fixed by the claimant underlies the questions of (1) whether the Commission's determination that the claimant's contract of hire was not made in Illinois is against the manifest weight of the evidence and (2) whether the Commission's conclusion that, at the time of the claimant's injury, Pheonix and the claimant were not operating under the Act, and it, therefore, does not have jurisdiction to adjudicate the claim is contrary to law.

¶ 26 The claimant asserts, as did the dissenting commissioner, that the parties were operating under and subject to the Act because the union's dispatch, which he argues was the last act necessary to form the employment contract between him and Phoenix, occurred in Countryside, Illinois. Relying on the reasoning in *Hunter Corporation v. Industrial Commission*, 268 Ill. App. 3d 1079 (1994), the claimant contends that, pursuant to the agreement, Local 150 was the exclusive referral agent for production employes engaged by Phoenix and the union's "formal dispatch is the final requirement to form the employment agreement."

¶ 27 Phoenix argues that the facts establish that it hired the claimant before the union issued its dispatch. According to Phoenix, "[t]he last acts necessary to formulate a contract [of hire between

it and the claimant] had already been completed before Local 150 compiled what amounted to an internal memorandum for the Union to take Mr. Valles off the roll for alternative employment." Relying on the reasoning of the court in *Correct Construction Co., Inc v. Industrial Commission*, 307 Ill. App. 3d 636 (1999), Phoenix argues that the claimant's contract of hire did not take place in Illinois, as the last act necessary to the formation of the contract, its acceptance of the claimant as an employee, occurred in Indiana. It concludes, therefore, that the Commission "properly held Illinois lacked jurisdiction over Mr. Valles workers' compensation claim as the last act necessary to formulate the contract was completed in Indiana." We agree with the conclusion drawn by Phoenix.

¶ 28 Under the Act, the Commission has jurisdiction over workers' compensation claims if (1) the accident occurred in Illinois, (2) the claimant's employment was principally located in Illinois, or (3) the contract for hire was made in Illinois. 820 ILCS 305/1(b) (West 2020). It is undisputed that the claimant's accident occurred in Indiana and his employment with Phoenix was principally located in Indiana, not Illinois. Consequently, in determining whether, at the time of the claimant's injury, Phoenix was operating under or subject to the Act, the issue is whether the contract of hire between the claimant and Phoenix was made in Illinois.

¶ 29 The place of contracting for hire is the place where the last act necessary to give validity to the contract of hire is accomplished. *Youngstown Steel & Tube Co. v. Industrial Comm'n*, 79 Ill. 2d 425, 433 (1980). The determination of whether a contract of hire was entered into in Illinois is a question of fact to be resolved by the Commission, and its resolution of the issue will not be disturbed on review unless it is against the manifest weight of the evidence. *Hunter Corp. v. Industrial Comm'n*, 268 Ill. App. 3d 1079, 1083 (1994).

¶ 30 For the Commission's resolution of a fact question to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Tolbert v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130523WC, ¶ 39. Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 31 The record in this case established that under the agreement Local 150 was the exclusive bargaining agent for Phoenix's production and maintenance employees at its Harbor West, Indiana, facility. If a production job vacancy occurred at Phoenix's Harbor West facility, the job was posted, and if no qualified person from the job site took the position within five days, Phoenix called in a work order to the union's dispatch office in Merrillville, Indiana, requesting the referral of one of its members qualified for the position. The union had 48 hours to match the qualifications for the available position with one of its members on its out-of-work list. Once matched, the union referred the individual to Phoenix. The individual referred completed an employment application, was interviewed, and was sent for drug testing and a medical examination. Simms testified that the interview, drug test, and medical examination were considered pre-employment steps. Under the agreement, Phoenix maintained the exclusive right in matters of hiring. Both Simms and Fagan acknowledged that it is Phoenix, not the union, that determines whether a referred individual is qualified for an available position. According to Fagan, Pheonix has the right to accept or reject an individual referred by the union.

¶ 32 In this case, Phoenix had a production job vacancy at its Harbor West facility. The job was posted, and when no one on site applied, Phoenix called in a work order to the union's Merrillville,

Indiana office. The union referred the claimant to Phoenix for the position. The claimant completed a new-hire employment application which states that he was available to work beginning May 9, 2018. The claimant was interviewed on May 8, 2018, and on that same day, he was sent to Comprehensive Care in Gary, Indiana, for drug testing and a medical examination. The claimant passed the examinations, and Phoenix was so notified on May 8, 2018. Clark testified that either she or Bensen, the General Manager, would have notified the claimant to start work the following day. The claimant began working on May 9, 2018. Although there is no direct evidence as to the exact time on May 9, 2018, that the claimant began work, Clark testified that all new hires were instructed to report to work at 6:00 a.m. on their first day of work. Phoenix's Services Seniority List reflects that the claimant began work at the Harbor West facility on May 9, 2018. The union's internal dispatch form for the claimant is time stamped 7:00 a.m. May 9, 2018.

¶ 33 Relying on the testimony of Simms and Fagan, the claimant argues that he was not a Phoenix employee until he was dispatched by the union. Consequently, the last act necessary to give validity to the contract of hire between himself and Phoenix was the union's dispatch. He asserts that, although his dispatch form lists Monica Sutton of the union's Merrillville, Indiana, office as the issuer, Sutton was required to obtain approval to issue the dispatch from the union's Countryside, Illinois, office. He concludes, therefore, that it was the union's Countryside, Illinois, office that dispatched him to work at Phoenix's Harbor West facility. The claimant reasons that, because the issuance of the union's dispatch authorized by its Countryside, Illinois, office was the last act necessary to form his employment contract with Phoenix, his contract of hire was made in Illinois and the Commission has jurisdiction over his claim. In support of his argument, the claimant relies principally on the reasoning and holding in *Hunter*. However, we believe that the

facts in *Hunter* are readily distinguishable from the instant case.

¶ 34 In *Hunter*, the employer, Hunter Corporation, placed a call to the union located in Illinois, requesting boilermakers to work at its jobsite in Indiana. The union's referral officer called the claimant and told him to report to work in Indiana. After arriving at Hunter Corporation's Indiana jobsite, the claimant filled out various forms, including tax forms and an "employment record" referred to as a "sign-up form." *Hunter*, 268 Ill. App. 3d at 1084. Although Hunter Corporation retained the right to reject a referred union member, if a referred individual was rejected for any reason other than physical incapacity or lack of qualifications a grievance would be filed under the union's contract. *Id.* The Commission found significant the fact that Hunter Corporation was obligated to pay a referred individual two hours pay plus travel expenses if it declined to hire him. *Hunter*, 268 Ill. App. 3d at 1082. Based on those facts, the Commission found that the last act necessary to complete the contract of hire between the claimant and Hunter Corporation was made in Illinois. The decision in *Hunter* is a bit unclear as to whether the Commission determined that that the last act was the union's referral or the claimant's acceptance of the referral. Nevertheless, this court on review held that the Commission's finding was not against the manifest weight of the evidence. *Id.*

¶ 35 This case is distinguishable from *Hunter* on each of the facts that the Commission in that case found significant in arriving at its conclusion as to where the last act necessary to the formation of the contract of hire occurred. In this case, Phoenix retained the right to accept or reject the union's referrals and there is no evidence that its decision to reject a referred individual would give rise to a grievance under the agreement if the rejection was for any reason other that a lack of qualifications or failure of either the drug test or the medical examination. Further, unlike the facts

in *Hunter*, Phoenix was not obligated the pay a referred individual if it declined to hire him. The claimant in this case filled out a new hire employment application, not a sign-up form as did the claimant in *Hunter*. Further, the evidence of record, particularly the testimony of Simms and Fagan, established that the interview, drug test, and medical examination of a referred individual such as the claimant were pre-employment steps. Simply put, there is no evidence in the record that the last act necessary to the formation of a contract of hire between Phoenix and the claimant occurred when the union referred him for an available position or when the claimant accepted the referral, as was the case in *Hunter*. See *Correct Construction Co, Inc*., 307 Ill. App. 3d at 644-45.

¶ 36 Unlike the claimant in *Hunter*, the claimant in this case does not allege that his contract of hire was complete when Phoenix called in its work order to the union or when he accepted the referral and presented at Phoenix to file his employment application. Rather, relying on the testimony of Simms and Fagan, the claimant argues that the last act necessary to the formation of his contract of hire was when the union issued its dispatch, which was approved by the union at its Countryside, Illinois, office. Clearly, both Simms and Fagan testified that the claimant was not employed by Phoenix until he was dispatched. It is also true that both gave contradictory testimony. As Phoenix points out, during Simms's testimony, the following exchange took place:

"Q. He is hired before he is dispatched? That's the order of events; would that be accurate?

A. I would say, yes, the company hires him.

Q. And then the dispatch is issued?

A. Correct."

Fagan testified that, by 7:00 a.m. on May 9, 2018, the time that the union's dispatch was issued, the claimant was already an employee of Phoenix. Simms also testified that dispatch is the last act

that confirms the individual's employment, adding, "we have to confirm that the employee is hired by the company."

¶ 37 It was the function of the Commission to resolve conflicts in the evidence, assign weight to the evidence, and draw reasonable inferences from the evidence. *ABBF Freight System v. Illinois Workers' Compensation Commission*, 2015 IL App (1st) 141306WC. From the testimony of Simms and Fagan, the Commission could reasonably infer that the claimant had been hired by Phoenix before the union issued the dispatch. That inference is supported by Simms's testimony that the dispatch was the union's "internal memorialization" that the claimant had been hired by Phoenix and was the act which the union took to confirm that the claimant had been hired by Phoenix before removing him from its out-of-work list. Further, Clark testified that she had never seen a dispatch form.

¶ 38 We believe that the evidence of record and the reasonable inferences which could be drawn from that evidence support the Commission's determination as set forth in the arbitrator's adopted decision that the last act necessary to the formation a contract of hire occurred in Indiana when the claimant accepted Phoenix's offer of employment and reported for work at the Harbor West, Indiana facility on May 9, 2018. We conclude, therefore, that the Commission's finding that the claimant's contract of hire occurred in Indiana, not Illinois, is not against the manifest weight of the evidence, and its ultimate determination that the claimant and Phoenix were not operating under and subject to the provisions of the Act at the time of the claimant's injury is not contrary to law. See *Correct Construction Co., Inc.*, 307 Ill. App. 3d at 640-44.

¶ 39 For the reasons stated, we affirm the judgment of the circuit court, which confirmed the Commission's decision dismissing the instant claim for want of jurisdiction.

¶ 40 Affirmed.