COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 042831-06**

Mark Hudnall	Employee
Raytheon Technical Services Co.	Employer
Liberty Mutual Insurance Company	Insurer

REVIEWING BOARD DECISION
(Judges Costigan, Horan and Koziol)

The case was heard by Administrative Judge Solomon.

APPEARANCES
Brian C. Cloherty, Esq., for the employee
Richard N. Curtin, Esq., for the insurer at hearing
Paul M. Moretti, Esq., for the insurer on appeal

COSTIGAN, J. On November 10, 2006, the employee, a resident of Oklahoma, sustained an industrial injury to his back while working for Raytheon at a military installation in California. He was paid workers' compensation benefits under California law by Liberty Mutual Insurance Company (Liberty). He later filed a claim for benefits under the Massachusetts workers' compensation statute, G. L. c. 152.[1] (Dec. 5.) He appeals from the decision in which the administrative judge concluded that Massachusetts had no jurisdiction over his claim. (Dec. 9.) We affirm.

The sole issue addressed by the judge was that of jurisdiction. Crediting the employee's testimony, the judge made the following findings of fact. The employee, age forty-nine, has been a resident of Oklahoma since 2001 when he

[1] It is well-established that receipt of compensation in a foreign state does not bar a supplemental award of compensation in Massachusetts, provided there is a basis for jurisdiction here. Of course, the employee may not receive a double recovery, and the amount already received will be credited against the amount recovered under the Massachusetts act. Nason, Koziol and Wall, Workers' Compensation § 5.8 at 92-93 (3rd ed. 2003); Conant's Case, 33 Mass. App. Ct. 695 (1992)(Massachusetts and Vermont have dual jurisdiction over workers' compensation claim where contract of hire entered into in Massachusetts but employee injured in Vermont).

bought a home there. (Dec. 8, n.2.) He has a bachelor of arts degree as well as advanced avionics training. He became a Peacekeeper II nuclear missile launch officer, and served in the military from January 1984 to May 1989 as an aviation anti-submarine warfare technician. (Dec. 5.) In April 2006, the employee accepted a $145,000 a year position with Mantek, a Virginia company; he was to start that job on April 27, 2006. Prior to accepting that job, the employee had discussions with Raytheon regarding the company's missile shield program, but he had not received a job offer. (Id.) Addressing subsequent events, the judge found:

> After accepting the Mantek position, the employee telephoned Raytheon and informed them that he had accepted employment elsewhere and thanked them for considering him.
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> Representatives of Raytheon advised the employee that they had been planning to come forward with an offer for him and urged him to wait. The employee then had several telephone conversations from his home in Bartlesville, Oklahoma with two representatives of Raytheon who were in Burlington, Massachusetts. These telephone conversations included a discussion of the employee's experience and background; the employee asked about the physical requirements of the job because [he] had suffered a previous work-related back injury. Toward the end of April, *the Raytheon representatives, in the course of these telephone conversations with the employee in Oklahoma, offered the employee a job which he accepted.* The position offered and accepted was that of an operator/ maintainer of a missile shield early warning radar at an hourly rate of $26.50.
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> Having accepted the job and following Raytheon instructions, the employee flew to Texas for processing and then to Massachusetts for training. The temporary training assignment in Massachusetts began in May of 2006 and was to end in September of 2006. Following the employee's completion of his training assignment in Burlington, he was reassigned to Lompoc, California for a temporary assignment commencing on November 8, 2006. The employee's injury occurred 2 days into this new assignment in California.

(Dec. 5-6; emphasis added.)

Addressing the threshold jurisdictional question, the judge found that even though the employee's injury occurred in California, Massachusetts would have

jurisdiction of his compensation claim if the contract of hire had been formed in Massachusetts. Lavoie's Case, 334 Mass. 403, 406 (1956). She determined, however, that the contract of hire was formed in Oklahoma, where the employee was when, over the telephone, he accepted the job offer from the Raytheon employees in Massachusetts. The fact that Raytheon began paying the employee a salary on April 22, 2006, two weeks before he arrived in Massachusetts to begin his training, and that he walked away from a $145,000 job he had previously accepted, were further indications that the contract of hire was formed when the employee accepted the job over the telephone. (Dec. 6-7.)

The judge also found that the documents the employee signed at each of his temporary assignments, entitled "Memorandum of Understanding/Temporary Domestic Offsite Assignment Agreement," (MOU), were not contracts of hire. Unlike a contract of hire, they were signed after the employee had begun each assignment, and they described components of the temporary assignment, such as the start and stop dates, the location of employment, and any monetary benefits to which the employee was entitled. The MOUs did not indicate the position for which the employee was hired, the duties of the position or his "straight salary," information which normally would be included in a contract of hire and which, the employee testified, was transmitted to him by Raytheon over the telephone when he was in Oklahoma. (Dec. 8.) Even if the Massachusetts MOU, which was signed in Massachusetts, were considered an addendum to the contract of hire, it was superseded by the MOU executed in California. (Dec. 8.) The judge concluded that there was,

> no substantial connection between Massachusetts and the employee that would warrant Massachusetts assuming jurisdiction over the employee's workers' compensation claim. Massachusetts was neither the place of injury nor the place of hire. In addition, the employee was not a resident of the Commonwealth and had not acquired a "fixed and non-temporary employment situs" in Massachusetts. [Footnote omitted.] The employee worked in Massachusetts on temporary assignment for five months completing a training program, which by its nature is temporary, and there

> was no testimony or evidence that he maintained significant contacts in Massachusetts thereafter. Hillman v. Consolidated Freightways, Inc., 15 Mass. Workers' Comp. Rep. 67, 73 (2001) citing Carlin v. Kinney Shoes, 3 Mass. Workers' Comp. Rep. 41 (1989).

(Dec. 8.) Accordingly, the judge denied and dismissed the employee's c. 152 claim. (Dec. 9.)

On appeal, the employee does not dispute that the judge correctly stated the applicable law with respect to determining the locus of the contract of hire: "[A]n oral contract consummated over the telephone is deemed made when the offeree utters the words of acceptance." (Employee br. 6, citing Travelers Ins. Co. v. Workmen's Comp. App. Bd., 68 Cal. 2d 7, 14 [1967]). As the insurer notes, "[w]hile there is no Massachusetts case on point, the overwhelming majority of cases considering the issue have found that when a contract is made on the telephone, the transaction takes place where the person utters his acceptance." In re Standard Fin. Mgt. Corp., 94 B.R. 231, 238 (Bankr. D. Mass. [1988]).[2] We adopt that majority position as consistent with the approach taken by the Massachusetts courts. See Conant's Case, supra; see also Nason, Koziol & Wall, Workers' Compensation, § 5.4 (3rd ed. 2003)(employee's acceptance by telephone in Massachusetts of offer of employment should be enough to make Massachusetts the locus of the contract).

With the case law offering no support, the employee instead maintains that the judge misinterpreted the facts by finding that Raytheon offered the job in Massachusetts and he accepted the offer in Oklahoma. The employee argues that *he* "*offered* the Employer his availability for hire, and the *Employer*, in Burlington, Massachusetts, *accepted* the employee's offer," thus creating the contract of hire in Massachusetts and thereby establishing jurisdiction. (Employee br. 6-7;

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[2] See Insurer br. 10-11 and cases and references cited. See also 99 Corpus Juris Secundum § 72 (2000)("In order to establish that an employment contract was entered into within the forum state, the employee must prove that he or she accepted the offer of employment within the forum state.")

emphases added.)

The employee's argument is fanciful and unavailing. It is axiomatic that, " 'the judge's findings, including all rational inferences permitted by the evidence, must stand unless a different finding is required as a matter of law.' " Ford v. O'Connor Constr., Inc., 23 Mass. Workers' Comp. Rep. 145, 154 (2009), quoting Spearman v. Purity Supreme, 13 Mass. Workers' Comp. Rep. 109, 112-113 (1999). Here, the employee's own testimony was replete with the terms "offer" and "acceptance." The commonly understood usage of those terms amply supports the judge's finding that Raytheon representatives in Massachusetts offered the employee the job over the phone, and the employee accepted it in Oklahoma. (Dec. 6.).[3]

The employee cites no legal authority, nor have we found any, for the proposition he advances, which essentially turns the concept of offer and acceptance, in the context of employment contracts of hire, on its head. See Conant's Case, supra at 698-699(contractual relationship created between employer and worker when worker accepts the offer and undertakes to travel to the job site); Camuso v. Westinghouse Elec. Co., 11 Mass. Workers' Comp. Rep. 479, 483 (1997)(employee's acceptance, in Massachusetts, of offer of employment, formed Massachusetts contract of hire); Conte v. P.A.N. Constr. Co.,

[3] The employee acknowledged that he had been "talking with Raytheon" for approximately two years prior to being hired. (Tr. I, 18, 79.) He testified that in April 2006, he called Raytheon from Oklahoma "as a courtesy" to tell them he had accepted a job with Mantek. (Tr. I, 16.) Raytheon employees responded, "If you'll just work with us here real quickly, we're going to come forward with an offer." Id. A Raytheon representative interviewed the employee over the telephone and, after several telephone conversations, Raytheon made "a contingency offer," subject to the employee obtaining security clearance, and passing drug and blood tests. Id. at 18. The employee testified that after a Raytheon employee called and told him he was hired, "because I had a 27th start date, I had to make sure that -- because I wasn't going to turn down 145,000 job with Mantek on a whim." Id. at 19. In other words, he had to make sure the offer from Raytheon was firm before he turned down the job with Mantek. Even the employee's attorney characterized the employee's actions not as an offer of his services, but as "acceptance of the job" with Raytheon. (Tr. I, 21.)

9 Mass. Workers' Comp. Rep. 497, 499 (1995)(basic tenet of contract law that offeree [e.g., an employee] has power to bind offeror [e.g., an employer] by acceptance of offer; contract is formed at time of acceptance); see also Alexander v. Transport Distrib. Co., 954 P.2d 1247 (Okla Civ. App. Div. 4 1997)(it is not final assent of employer that establishes place where employment contract is made, but final assent of Oklahoma resident to offer of employment); and Jantzen v. Workers' Comp. App. Bd., 61 Cal. App. 4th 109, 114, 71 Cal Rptr. 2d 260, 263 (1997)(in absence of contrary evidence, inference is that employer, as party with superior bargaining power, is offeror). The employee's argument that he was the offeror is untenable.

The employee also asserts the judge erred in finding that the MOU he signed in Massachusetts was not a contract of hire. (Employee br. 7-8.) We disagree. The judge correctly found that the contract of hire was made over the telephone in Oklahoma and, at that time, the position, duties and salary of the job for which the employee was hired were communicated to him. The MOU, signed after the employee began his temporary training program in Massachusetts, merely described the start and stop dates for his temporary assignment, the location, and any monetary benefits to which the employee was entitled, such as an offsite allowance, and a per diem to cover lodging, meals and rental car payments. (Dec. 8.) See Hillman, supra (where contract of hire was made in Massachusetts, no new contract of hire was created in New York simply because employee was transferred there, when employee continued to reside in Massachusetts, continued to drive a truck into Massachusetts, and health and welfare benefits were paid to union in Massachusetts). See also A. Larson, Workmen's Compensation § 143.03 [4] at 143-20 - 143-21 (2010)(where contract of hire is made in one state, situs of contract does not change merely because contract is modified in another state, by changing salary or other benefits).[4]

[4] Cf. Hancock's Case, 355 Mass. 523 (1969)(employee, who worked for Massachusetts corporation [Manzi Dodge] as sales manager, entered into new contract of employment

Alternatively, citing the humanitarian nature of our workers' compensation act and proposing that he had both "sufficient minimum contact," (Employee br. 7), and "significant contacts," (Employee br. 8), with Massachusetts, the employee urges us to apply a broad scope for jurisdiction. (Employee br. 7-8.) He points to the five telephone conversations he, in Oklahoma, had with Raytheon representatives in Massachusetts; the fact that Raytheon flew him from Oklahoma to Texas, and then to Massachusetts for training; that Raytheon put him up in a hotel in Massachusetts; and that he bought a motor home in which he lived for three months at Hanscom Air Force Base in Massachusetts. (Employee br. 8.)

There is, indeed, a "broad scope" for Massachusetts jurisdiction. Conant's Case, supra at 697. However, the only factors Massachusetts courts have used to determine whether Massachusetts has jurisdiction over an employee's c. 152 claim are place of injury and place of contract of hire. Lavoie's Case, supra; Conant's Case, supra; Hancock's Case, supra; Murphy's Case, 53 Mass. App. Ct. 424 (2001); see also Nason, Koziol and Wall, supra at § 5.7, 91-92.

This board has cited with approval the alternative jurisdictional test of "place of employment relation." See Hillman, supra at 74, citing National Commission on State Workmen's Compensation Laws. However, even under this test, the employee's argument fails. In Hillman, not only was the contract of hire made in Massachusetts, a factor sufficient by itself to confer jurisdiction, but the employee, a truck driver injured in New York, was a resident of Massachusetts who continued to make runs into Massachusetts and whose employer continued to pay health and welfare benefits to his union in Massachusetts. Id. at 71-72. None of these factors is present here.

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as general manager of New Hampshire corporation [also Manzi Dodge], after driving to New Hampshire with boss, who put him in charge of car dealership there); Conte, supra (new offer for work and distinct contract of hire were made and accepted after employee completed each separate contract as painter).

The decision is affirmed.

So ordered.

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Patricia A. Costigan
Administrative Law Judge

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Mark D. Horan
Administrative Law Judge

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Catherine Watson Koziol
Administrative Law Judge

Filed: **May 31, 2012**