

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TEEDE STIPICH)	
Claimant)	
VS.)	
)	Docket No. 1,026,328
DELVE, INC.)	
Respondent)	
AND)	
)	
HARTFORD ACCIDENT & INDEMNITY COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals the May 23, 2006 Preliminary Decision of Administrative Law Judge Robert H. Foerschler. Claimant was awarded benefits after the Administrative Law Judge (ALJ) found that claimant had suffered an accidental injury arising out of and in the course of her employment with respondent. The ALJ further determined that jurisdiction was proper in Kansas because claimant's employment with respondent began the day claimant appeared at work in Kansas, and not on the day claimant received a telephone call from respondent while claimant was at her home in the Waldo area of Kansas City, Missouri.

ISSUES

The only issue raised by respondent questions whether the ALJ erred in determining that jurisdiction was proper in Kansas. Respondent alleges the employment contract between claimant and respondent was formed when respondent telephoned claimant while she was at her home in Missouri. Claimant contends the contract was not finalized until claimant appeared at work in Kansas on her first day on the job.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Preliminary Decision of the Administrative Law Judge should be reversed, as the Kansas Workers Compensation Division does not have jurisdiction over this matter.

Claimant, a recruiter for respondent, has worked in that capacity for 8 years. She was first hired to work at respondent's offices at Corporate Woods in Kansas. Claimant testified that she applied at the Kansas office, but was contacted by telephone when she was hired while she was at home in Missouri. Claimant alleges the contract for hire was finalized when she arrived at work the first day, and this philosophy was adopted by the ALJ when he awarded benefits. Respondent contends the contract was finalized at the time of the telephone call. Kansas law is clear on this subject.

When that act is the acceptance of an offer during a telephone conversation, the contract is "made" where the acceptor speaks his or her acceptance.¹

In this instance, claimant acknowledged that she found out that she had the job when they called her at home.

"[A] contract is 'made' when and where the last act necessary for its formation is done. [Citation omitted.] When that act is the acceptance of an offer during a telephone conversation, the contract is 'made' where the acceptor speaks his or her acceptance. [Citations omitted.]"²

K.S.A. 44-506 states that when an injury occurs outside the state, the Workers Compensation Act shall apply where (1) the principal place of employment is within the state; or (2) the contract of employment was made within the state.

Claimant argues that respondent's principal place of business was in Kansas. The Board acknowledges that at one time this was true. Had claimant's employment continued in Kansas, there is no doubt the Kansas Workers Compensation Act would apply to this situation. However, claimant only worked in Kansas for this employer for 2 to 3 years. The company then relocated its business to Missouri. Claimant worked for 5 to 6 years for respondent in Missouri, leading up to the date she first sought medical treatment for these conditions.

There is no evidence in this record that claimant suffered accidental injury while working for respondent in Kansas. When asked, claimant stated she first began experiencing symptoms and first sought medical treatment in March 2005. Likewise, Lynn D. Ketchum, M.D.'s report of April 3, 2006, states that claimant's problems began in both hands in March of 2005. The Board cannot find from this record that claimant suffered accidental injury while working for this employer while she was in Kansas and

¹ *Morrison v. Hurst Drilling Co.*, 212 Kan. 706, 512 P.2d 438 (1973).

² *Speer v. Sammons Trucking*, 35 Kan. App. 2d 132, 128 P.3d 984 (2006), citing *Shehane v. Station Casino*, 27 Kan. App. 2d 257, 261, 3 P.3d 551 (2000).

while respondent's principal place of business was also in Kansas. Therefore, claimant's argument in this regard fails.

The Board, therefore, finds that the Kansas Workers Compensation Act does not apply to this circumstance and the Preliminary Decision of the ALJ should be reversed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision of Administrative Law Judge Robert H. Foerschler dated May 23, 2006, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of August, 2006.

BOARD MEMBER

c: Steffanie L. Stracke, Attorney for Claimant
Tracy M. Vetter, Attorney for Respondent and its Insurance Carrier