

VIRGINIA:  
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by CUMMINS  
Deputy Commissioner

**May 24, 2016**

LEE J. CARTER v. THE BELLA ROSE GROUP  
NO RECORD OF INSURANCE  
JCN. VA02000021604 & 010897769  
Docket ID VA02000021604-01 & 010897769-01  
Date of Injury: July 15, 2015

Lee J. Carter  
Claimant is *pro se*.

Jennifer Capocelli, Esquire  
For the Employer.

Justin R. Main, Esquire  
For the Uninsured Employers' Fund.

Hearing before Deputy Commissioner Cummins in Fairfax, Virginia on March 7, 2016.

PRESENT PROCEEDING

This matter comes before the Commission on the Claim for Benefits of Lee Carter, filed on September 14, 2015, alleging an injury by accident to his back and an electrical injury to both hands and his upper body arising out of and in the course of his employment on July 15, 2015. He seeks temporary total disability benefits from July 15 through August 21, 2015.

### PRE-HEARING AND POST-HEARING EVIDENCE

The record was left open for the parties to reach an agreement regarding the pre-injury average weekly wage and for letters from the parties reflecting that the record may then close.

### STIPULATIONS

The parties made the following stipulations: (1) The claimant sustained a compensable injury by accident resulting in injury to the parts of the body claimed by him. (2) The claimant was an employee. (3) The claimant was totally disabled for the period alleged as a result of the accident. (4) Post-hearing, the parties agreed that the claimant earned a pre-injury average weekly wage of \$1,129.37.

### DEFENSES

The defendants defend this claim on the following grounds: (1) The Commission lacks jurisdiction over the claim in that the injury occurred in Illinois, the employer has no place of business in Virginia and lacks the requisite number of employees in Virginia; and the contract of employment was made in Georgia. (2) The back injury is not causally related to the accident.

### SUMMARY OF THE EVIDENCE

The following evidence was introduced, admitted and considered in connection with adjudication of the disputed issues: (1) Hearing testimony of the claimant, Lee Carter; (2) Claimant's Exhibit 1, Claimant's Additional Medical Records; (3) Defendant's Exhibit 1, The Uninsured Employers' Fund's (hereinafter "the Fund") Medical Records Designation; and (4) Transcript of the Deposition of Stephanie Caro.

## ISSUES

1. Whether the Commission lacks jurisdiction over the claim in that the injury occurred in Illinois, the employer has no place of business in Virginia and lacks the requisite number of employees in Virginia; and the contract of employment was made in Georgia.
2. Whether the back injury is causally related to the accident.

## FINDINGS OF FACT AND RULINGS OF LAW

With regard to foreign injuries, Section 65.2-508 provides, in pertinent part, that the Commission retains jurisdiction over foreign injuries if the contract of employment between the injured employee and the employer was made within the Commonwealth of Virginia, the employer's place of business is in the Commonwealth of Virginia, and the contract of employment was not expressly for services exclusively outside the Commonwealth of Virginia. Va. Code Ann. §65.2-508. The Commission has held that where an employee is assigned to perform any work in Virginia, no matter how *de minimus*, the Commission has jurisdiction over the claim. Flores v. DB&A Contractors, Inc., 79 OWC 24 (2000). Here, the claimant states that he did considerable work for the employer in Washington, D.C.; Indiana, Florida, California, Virginia, Maryland and Massachusetts. Moreover, in deposition testimony, Stephanie Caro stated that the company worked 18 man-days in Virginia in 2013; 30 man-days in Virginia in 2014; and; 13 man-days in Virginia in 2015. (Deposition of Stephanie Caro at 11). This establishes sufficient connection with the Commonwealth of Virginia. Even so, the claimant's injury occurred in Illinois. He states that the initial interview process was conducted between him and the Bella Rose Group by telephone and skype while he was at his home in

Virginia and they were in Georgia. However, he admits that training was a condition of his employment and this was done in Georgia. Moreover, he concedes that he admitted in his deposition that the contract of hire was consummated in Georgia. The necessary three elements for establishing jurisdiction over a foreign injury have not been met here.

For the reasons stated, the Claim for Benefits is denied and DISMISSED. The Show Cause Order of the Commission is QUASHED. The case is ordered removed from the hearing docket.

#### REVIEW

Any party may appeal this decision to the Full Commission by filing a Request for Review with the Commission within thirty (30) days of the date of this opinion.

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Additional Parties

HealthSmart Casualty Claims Solutions  
PO Box 1567  
Abingdon, VA 24212-1567

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**PO Box 1567**  
**Abingdon, VA 24212-1567**

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**Interested Parties**

Injured Worker:

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Alexandria, VA 22303-2125

Justin R. Main  
Paperless

Insurance Carrier:

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Employer Attorney:

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Employer:

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