

Memo

Date: April 3, 2012
To: Amy M. Sneirson, Executive Director
From: John P. Gause, Commission Counsel
Re: E10-0618,

Respondent, (“ ”), asserts that it is not covered by the definition of “employer” in the Maine Human Rights Act (“MHRA”). A complaint may be administratively dismissed by the Executive Director for lack of jurisdiction. *See* 94-348 C.M.R. ch. 2, §2.02(H)(1). For the following reasons, the complaint should not be administratively dismissed.

Complainant, , alleges that unlawfully discriminated against him by terminating his employment based on his diagnosis of Attention Deficit Hyperactivity Disorder. is an irregular route, interstate truckload common carrier based on Nashville, Tennessee. Complainant is a truck driver who lives in Poland, Maine. He was hired by as an “Over The Road” driver on September 30, 2010. He was terminated on October 10, 2010 while attending employee orientation at company headquarters in Nashville, Tennessee, after failing a physical with ’ chosen provider. claims that it is not an “employer” within the meaning of the MHRA because it is located outside of Maine and Complainant’s “usual place of employment,” as a long-haul truck driver, was not in Maine.

The MHRA defines “employer,” in relevant part, as follows:

"Employer" includes any person in this State employing any number of employees, whatever the place of employment of the employees, and any person outside this State employing any number of employees whose usual place of employment is in this State; any person acting in the interest of any employer, directly or indirectly; . . .

5 M.R.S. § 4553(4). "Employee" is defined as "an individual employed by an employer. 5 M.R.S.A. §4553(3).

argues that Complainant's "usual place of employment" was not within Maine because he drove throughout the United States. Complainant responds that he is a Maine resident; he lives in Poland, Maine; one of 's customers, , has a bottling plant in Poland Maine; he would have kept his truck at his home; his delivery routes would have begun and ended in Maine; a substantial amount of his work would have been for . (he states Respondent told him this); he would have paid Maine income taxes on his earnings; and that his "base" would have been his own home/driveway.

responds that is a customer that it services on a regular basis but by any of its 2,300 tractors, and the drivers may live in Maryland, Massachusetts, Mississippi or Michigan; its drivers move on loads throughout the country; the miles driven by its drivers in Maine account for only 1.2 % of its total miles driven; and that Complainant's "usual place of employment" would have been "somewhere in the 48 contiguous states, other than Maine."

Complainant replies that when he was hired he was told that he would be doing a substantial amount of work for companies in Maine, and, in particular, for . He therefore estimates that he would have spent more time driving in Maine than any other state. He further states that, if Respondent is correct, he would have no "usual place of employment" and would not be covered by any state antidiscrimination law, which is untenable.

The term "usual place of employment" is not defined in the MHRA. I only found one decision addressing the definition in the context of an out-of-state employer and a Maine resident. In *Ellenwood v. Exxon Shipping Co.*, Civ. No. 90-86-PH, 1993 WL 434080, at *1 (D.Me. October

21,1993), the United States District Court for the District of Maine, Hornby, J., held that that a Maine resident who worked as an engineer on board vessels operating in coastal waters from New Jersey to Louisiana was did not have a “usual place of employment” in Maine. The decision did not further analyze the MHRA definition, however.

The plain meaning of “usual” is “1. accordant with usage, custom or habit [and] 2. commonly or ordinarily used [and] 3. found in ordinary practice or in the ordinary course of events.” Merriam-Webster online dictionary, at <http://www.merriam-webster.com/dictionary/usual>. Here, although the extent to which Complainant would have driven in Maine is unknown, he would have “commonly” or “ordinarily” driven in Maine by virtue of his residence being in Maine and Maine being the location of one of _____’s regular customers. Accordingly, Complainant’s “usual place of employment” would have been in Maine, and _____ is an “employer” within the meaning of the MHRA.