Marsha Currie v. Pennock Sales & Service and Comcast Corporation (January 21, 2009)

STATE OF VERMONT
DEPARTMENT OF LABOR

Marsha Currie	Opinion No. 02-09WC
v.	By: Phyllis G. Phillips, Esq., Hearing Officer
Pennock Sales & Service and Comcast Corporation	For: Patricia Moulton Powden, Commissioner
	State File No. Z-50021

RULING ON DEFENDANT PENNOCK SALES & SERVICE'S MOTION TO DISMISS

APPEARANCES:

Charles Powell, Esq., for Claimant
James O'Sullivan, Esq., for Defendant Pennock Sales & Service
Barbara Cory, Esq., for Defendant Comcast Corporation

BACKGROUND:

This claim raises issues relating to jurisdiction and choice of law under 21 V.S.A. §620. Claimant is a Vermont resident, employed by Defendant Comcast. She claims that on June 22, 2007 she was injured in a fall at her home office. She seeks workers' compensation benefits from Defendant Comcast on the grounds that her injuries arose out of and occurred in the course of her employment for that company.

The cause of the fall is disputed. Claimant argues that the fall was either unexplained or idiopathic, but in any event occurred under circumstances that would render it compensable under Vermont's workers' compensation law. Defendant Comcast argues that the fall was not unexplained, and that if it was idiopathic, it did not occur in such a way as to render it compensable under Vermont law. As an alternative defense, Defendant Comcast hypothesizes that Claimant fell because she was experiencing side effects of medication she was taking for a work-related injury she suffered in New Hampshire in 1993, while she was employed by Defendant Pennock, a New Hampshire employer. Claimant sought and received benefits for that injury under New Hampshire's workers' compensation statute. In accordance with its alternative causation theory, Defendant Comcast argues that Defendant Pennock should be responsible for whatever workers' compensation benefits Claimant is due as a result of her more recent fall.

Defendant Pennock filed the current Motion to Dismiss. It argues that the only possible basis for imposing liability against it is if the evidence establishes that Claimant's fall in fact did result from the medications she was taking for her 1993 injury ("the 1993 medication"), as Defendant Comcast alleges. Defendant Pennock asserts that if this does prove to be the cause of Claimant's fall, then her claim for benefits will have to be adjudicated in New Hampshire and according to New Hampshire law. Therefore, Defendant Pennock argues that it has no place in

the adjudication of Claimant's claim in Vermont, and should be dismissed from the current action.

DISCUSSION:

Defendant Pennock is correct in its assertion that unless the evidence establishes that the side effects of the 1993 medication caused her 2007 fall it bears no responsibility for the workers' compensation benefits she currently is claiming. In order to reach the issues raised by its Motion to Dismiss, therefore, I must assume *arguendo* that in fact the 2007 fall was causally related to the 1993 medication.

It is well accepted that the direct and natural results of a compensable primary injury are themselves compensable. 1 *Larson's Workers' Compensation Law* §10.01. In accordance with this general principle, when medical treatment that is prescribed for a compensable primary injury causes further complications or other medical consequences, these too are compensable as part of the original injury claim. 1 *Larson's Workers' Compensation Law* §10.09[1] and cases cited therein. The Commissioner has indicated her approval of this principle in Vermont, *see Seymour v. Genesis Health Care Corp.*, Opinion No. 53-08WC (December 29, 2008), as has the New Hampshire Supreme Court, *In re CNA Insurance Co.*, 766 A.2d 278 (NH 2001).

Applying this principle to the current claim, if Defendant Comcast is able to establish that the 1993 medications caused Claimant's 2007 fall, Defendant Pennock will be responsible for whatever workers' compensation benefits are determined to be due. This responsibility will flow from the original 1993 injury, however, not from the 2007 incident. And as the original 1993 injury was filed as a New Hampshire claim and adjudicated under New Hampshire law, so too will the current claim for benefits have to be. *Letourneau v. A.N. Deringer/WAUSAU Insurance Co.*, 2008 VT 106.

The fact that Claimant's current claim, if determined to arise from the 1993 injury, must be adjudicated in accordance with New Hampshire law does not necessarily mean that Defendant Pennock should be dismissed from the current action, however. To the contrary, the Commissioner can retain jurisdiction over her claim if it fits within the limited circumstances provided for in 21 V.S.A. §620, which reads:

> If a worker who has been hired outside of this state is injured while engaged in his employer's business and is entitled to compensation for such injury under the law of the state where he was hired, he shall be entitled to enforce against his employer his rights in this state, if his rights are such that they can be reasonably determined and dealt with by the commissioner and the court in this state.

In accordance with §620, therefore, the Commissioner can take jurisdiction over the workers' compensation claim of an employee who, at least insofar as Defendant Pennock's employment is concerned, was neither employed nor hired in Vermont. As the Supreme Court clarified in *Letourneau*, furthermore, the question whether the Commissioner ought to do so is a practical one, not a constitutional one.

The claimant in *Letourneau* was both hired and employed in New York, but lived in Vermont. After suffering a work-related injury in New York, he initially received workers'

compensation benefits under New York's statutory scheme. Later he sought to transfer his claim to Vermont in order to receive benefits under Vermont's workers' compensation statute instead. The Court determined that as a statutory matter §620 did not entitle him to do so. Because the claim involved an employee who was neither employed nor hired here, jurisdiction under §620 was not premised on the application of Vermont's workers' compensation law to a sister state's injured worker, but rather on the application of the sister state's law in Vermont. *Id.* at ¶15. Constitutional full faith and credit issues were not triggered, therefore. Rather, more practical considerations controlled, such as whether the Commissioner was sufficiently familiar with the sister state's workers' compensation law to apply it appropriately to the facts before it, and whether doing so would result in an undue strain on adjudication resources here. *Id.* at ¶¶12-13.

In at least one recent claim, the Commissioner has shied away from exercising the authority granted by §620 to adjudicate a claimant's right to workers' compensation benefits under another state's law, citing exactly those practical considerations. *L.S. v. Dartmouth College*, Opinion No. 45-05WC (August 9, 2005). The circumstances of the current claim merit a different analysis, however. The causation dispute at issue here identifies not one but two potentially liable employers, each from a different state. If the claim's adjudication is split between those two jurisdictions, the potential for inconsistent results exists.

Suppose Defendant Pennock is dismissed from the current action in Vermont. If Defendant Comcast subsequently proves that the 1993 medication caused the 2007 fall, it successfully will have avoided liability for any current workers' compensation benefits. In that event, Claimant's only remaining option will be to pursue a claim in New Hampshire against Defendant Pennock. But if the New Hampshire adjudicators conclude that the 1993 medication did *not* cause the 2007 fall, she will be denied benefits there as well.

Unless all aspects of the claim are adjudicated in the same forum, therefore, there is a significant risk that Claimant will obtain mutually exclusive, contradictory rulings. It is proper to exercise the authority granted by §620 in order to avoid that result. Resources are available to ensure that New Hampshire's workers' compensation law is appropriately interpreted and applied, and it would be wrong to withhold them if the alternative is to deny an otherwise deserving claimant the benefits she may be due.

CONCLUSION:

Because practical considerations merit that jurisdiction be taken under 21 V.S.A. §620, Defendant Pennock's Motion to Dismiss is hereby **DENIED**.

Dated at Montpelier, Vermont this 21st day of January 2009.

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Patricia Moulton Powden
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§670, 672.