

MAR 30 2007

Department of Labor
Workers' Compensation

STATE OF VERMONT
DEPARTMENT OF LABOR

Anita Anderson

Opinion No. 11-07WC

v.

By: Rebecca L. Smith
Staff Attorney

Access Design, Inc.
d/b/a Tri-State Professionals

For: Patricia Moulton Powden
Commissioner

State File No. Y-00107

RULING ON CLAIMANT'S MOTION TO TRANSFER CASE

In the fall of 2005, Claimant, a resident of New Hampshire, was employed by Access Design, Inc. d/b/a Tri-State Professionals, then of Keene, New Hampshire. Access Design is a temporary services company, and Putney Paper Company of Putney, Vermont was a client for its services pursuant to a contract dated June 15, 2005. Access Design sent the Claimant to Putney Paper. The parties dispute whether Claimant's place of hire was in New Hampshire or in Vermont. Specifically, they disagree whether Access Design hired the Claimant in New Hampshire, or whether her meeting at Putney Paper in Vermont was the final act in the hiring process.

In any event, Claimant commenced work at Putney Paper in the fall of 2005. On or about November 21, 2005, after approximately 9 weeks of work, Claimant received an injury, which resulted in the surgical amputation of her right hand. It is undisputed that Access Design has accepted the claim and that its workers' compensation insurance carrier, St. Paul/Travelers, has paid benefits to Claimant under New Hampshire law.

Claimant requests that Vermont assume jurisdiction over this claim on the basis that both the hiring and the injury occurred here. The first question to consider is whether the Vermont Workers' Compensation Act permits the action that Claimant requests.

Several sections of the Act address Vermont jurisdiction over workers' compensation claims, on the basis that either the contract of hire or the employment occurred within Vermont. 21 V.S.A. §§ 623 and 619 apply to situations when the injury occurs outside Vermont and are inapplicable to this case. 21 V.S.A. § 620 applies to situations where the worker has been hired outside Vermont, is entitled to compensation under the law of the state where s/he was hired, and seeks to enforce his/her rights in this state. That section is inapplicable, as—the dispute over place of hire aside—Claimant seeks application of the provisions of Vermont law, not New Hampshire law. Finally, 21 V.S.A. §616 (a) states, “except as otherwise provided...this chapter shall apply to all employment in this state....”

Defendant argues that “employment in this state” equates with “hired in this state.” The Vermont Supreme Court has interpreted Section 616 to the contrary. In *Martin v. Furman Lumber*, 134 Vt. 1 (1975), an out-of-state company that entered into a contract in Massachusetts for work to be performed within Vermont by a single employee was found to be an employer for purposes of the Vermont Workers’ Compensation Act and subject to 21 V.S.A. §616. *Id.* at 4. Although the employee in *Martin* was a Vermont resident, residence of the employee is not in and of itself a basis for jurisdiction under the Vermont Act. Accordingly, as Claimant was injured while performing work within Vermont for which she was hired, 21 V.S.A. §616 permits Vermont to exercise jurisdiction over this claim.

The Defendant argues that New Hampshire’s Workers’ Compensation Act was meant to bar successive award and precludes Vermont from asserting jurisdiction. No citation to case law was provided, but our search suggests that both these assertions are erroneous. In *LeBlanc v. United Engineers & Constructors, Inc.*, 584 A. 2d 675 (Me. 1991), the Supreme Judicial Court of Maine examined the New Hampshire Act to determine whether the Act sought to preclude subsequent workers’ compensation benefits in other states.

We must consider whether this interest of Maine offends any statute or judicial decision of the State of New Hampshire. The New Hampshire Workers’ Compensation Law contains no explicit bar to successive awards of benefits under the laws of other states. We were cited no case, nor do we find one, in which a New Hampshire court has interpreted its Compensation Law as excluding other states’ remedies.

Id. at 678. Our own search, likewise, found no such case.

Having found that the Vermont Workers’ Compensation Act permits Vermont to assume jurisdiction, the second question to consider is whether Vermont should elect to exercise that jurisdiction.

In *Martin*, the Vermont Supreme Court noted that where the contract of hire was made, where the injury took place, the existence of the employment relation and “possibly also the residence of the employee and the localization of the employer’s business” are determinants of jurisdictional interest in a workers’ compensation claim. *Martin v. Furman Lumber* at 7-8. In this instance, where the contract was made is questionable, and residence appears to fall in New Hampshire; however, an employment relation existed in Vermont, as discussed above, and the injury clearly occurred here. Vermont’s interest in the safety and protection of employees employed within this state militate for Vermont assuming jurisdiction over this claim, and for the application of Vermont workers’ compensation law. “Few matters could be deemed more appropriately the concern of the state in which the injury occurs or more completely within its power [than its constitutional authority to legislate for the bodily safety and economic protection of employees injured within it].” *Id.* at 6, (quoting *Pacific Employers Insurance Co. v. Industrial Accident Commission* 306 U.S. 493 (1936).)

The Defendant asserts that the Claimant's acceptance of payments under New Hampshire law eliminates her right to receive successive benefits under Vermont law. Careful examination of the case law shows that the determination hinges on initiation of a claim rather than on whether benefits were accepted. In *DeGray v. Miller Bros. Construction*, 106 Vt. 259, (1934), the Vermont Supreme Court found against the claimant in part because she had applied for and received benefits under Massachusetts law. *Id.* at 564. It is important to note, however, that the conclusion in *DeGray* was based on full faith and credit principles that have since evolved. More recently, in *Reginald La Bombard and Hartford Insurance Company v. Peck Lumber Co.* 141 Vt. 619, 620-622 (1982), the Vermont Supreme Court held that claimant's suit for negligence in Vermont was prohibited because he had chosen to apply for workers' compensation benefits under Connecticut law, which forbade such suit. The court stated that workers' compensation "recognizes the right of a worker employed in one state and injured in another to choose which jurisdiction's compensation laws he will be subject to [however, he may not] pick and choose among their terms and provisions. *Id.* at 623.

Absent any indication that the Claimant elected to initiate a claim under or actively sought application of New Hampshire law, her acceptance of benefits does not bar her right to bring a claim in Vermont. In reaching this conclusion, we are mindful that

Compensation proceedings are often initiated informally, without the advice of counsel, and without special attention to the choice of the most appropriate forum. Often the worker is still hospitalized when benefits are soughtAnd indeed, it is not always the injured worker who institutes the claim. This informality is consistent with the interests of both States. A rule forbidding supplemental recoveries under more favorable workmen's compensation schemes would require a far more formal and careful choice on the part of the injured worker than may be possible or desirable when immediate commencement of benefits may be essential.


Thomas v. Washington Gas Light Co., 448 U.S. 261 at 284-285, 100 S.Ct. 2467 at 2662-2663. Similarly, in *Director, Office of Workers' Compensation Programs, United States Department of Labor v. National Van Lines*, 613 F.2d 972 (1979), the D.C. Circuit Court of Appeals noted that the claimant was "in no position to investigate his rights" at the time of the accident and "merely accepted the lesser payments" arranged for him until consultation with an attorney revealed that additional benefits were available under the law of another state. *Id.* at 984.

Legitimate liability concerns regarding duplicative recovery may be avoided by a set-off of any previous benefits paid under New Hampshire law. Therefore, Access Design and/or its insurance carrier shall provide the commissioner with an accounting of all benefits paid to or on behalf of Claimant.

CONCLUSION and ORDER:

Vermont asserts jurisdiction over this claim. Access Design and its workers' compensation insurance carrier shall, within 30 days, file with the commissioner all forms and notices and shall commence payment of all benefits required by the Vermont Workers' Compensation Act and Rules.

Dated at Montpelier, Vermont this 28 day of March 2007.



Patricia Moulton Powden
Commissioner