

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Michelle Breault

Opinion No. 15-21WC

v.

Helen Porter Nursing Home, Inc.
State File No. HH-58240

By: Beth A. DeBernardi
Administrative Law Judge

Michelle Breault

v.

For: Michael A. Harrington
Commissioner

Montcalm Manor
State File No. PP-59787

**RULING ON DEFENDANT MONTCALM MANOR'S MOTION
FOR SUMMARY JUDGMENT**

APPEARANCES:

J. Justin Sluka, Esq. and Charles L. Powell, Esq., for Claimant
Oliver A. Abbott, Esq., for Defendant Helen Porter Nursing Home, Inc.
Keith J. Kasper, Esq., for Defendant Montcalm Manor

ISSUES PRESENTED:

1. Does the Vermont Department of Labor have personal jurisdiction over Defendant Montcalm Manor relative to the workers' compensation claim designated as state file number PP-59787?
2. If yes, is the claim against Defendant Montcalm Manor barred by the statute of limitations?

EXHIBITS:

Defendant Montcalm Manor's Statement of Undisputed Material Facts filed May 25, 2021

Defendant's Exhibit A:	January 26, 2021 email from Attorney Sluka to the Department concerning Claimant's hiring by Montcalm Manor in New York
Defendant's Exhibit B:	Agreement for Temporary Compensation (Form 32) between Claimant and Defendant Helen Porter Nursing Home, Inc.
Defendant's Exhibit C:	August 29, 2016 Work Capabilities Form
Defendant's Exhibit D:	September 15, 2016 post-operative visit with Dr. Rosenberg
Defendant's Exhibit E:	Denial of Workers' Compensation Benefits (Form 2) filed by Defendant Helen Porter Nursing Home, Inc.
Defendant's Exhibit F:	October 14, 2019 Notice and Application for Hearing (Form 6) in state file number HH-58240 signed by Attorney Sluka

Defendant's Exhibit G: October 27, 2020 letter from the Department specialist acknowledging receipt of Claimant's Notice and Application for Hearing (Form 6) on August 3, 2020

Claimant's Separate Statement of Undisputed Material Facts and Response to Defendant Montcalm Manor's Statement of Undisputed Material Facts filed June 21, 2021

Claimant's Exhibit 1: June 17, 2016 operative report for Claimant's shoulder surgery
Claimant's Exhibit 2: Table of indemnity and medical payments
Claimant's Exhibit 3: July 21, 2016 medical record
Claimant's Exhibit 4: July 26, 2016 physical therapy record
Claimant's Exhibit 5: Obituary of Paul Kenney of Ticonderoga, New York
Claimant's Exhibit 6: August 11, 2016 medical record
Claimant's Exhibit 7: November 4, 2019 independent medical examination report of Mark Bucksbaum, MD

Defendant Helen Porter Nursing Home, Inc.'s Response to Claimant's Separate Statement of Undisputed Material Facts filed July 2, 2021

Defendant's Exhibit:¹ December 6, 2019 independent medical examination report of Verne Backus, MD

FINDINGS OF FACT:

Considering the evidence in the light most favorable to the non-moving parties, *State v. Delaney*, 157 Vt. 247, 252 (1991), and taking judicial notice of all relevant forms and records contained in the Department's claim files, I find the following facts:

1. At all relevant times, Claimant was a resident of New York State. *Defendant Montcalm Manor's Statement of Undisputed Material Facts* ("Defendant's Statement"), ¶ 1. Claimant was a resident of Vermont on January 5, 2016, but she moved to New York prior to her June 17, 2016 shoulder surgery and has resided there ever since. *Claimant's Response to Defendant's Statement* ("Claimant's Response"), ¶ 1.
2. At all relevant times, Defendant Montcalm Manor ("Montcalm") was a New York corporation located at 45 Montcalm Street, Ticonderoga, New York. *Defendant's Statement*, ¶ 2.
3. At no relevant time was Defendant Montcalm registered to do business in the State of Vermont. *Defendant's Statement*, ¶ 3.
4. Although no documentation has yet been discovered as to Claimant's alleged employment with Defendant Montcalm, Claimant alleges that in July or August of 2016, she applied in person for a position with Montcalm in Ticonderoga, New York,

¹ Defendant Helen Porter Nursing Home, Inc. did not label its exhibit, and I have not assigned it a label.

completed all employment paperwork at that location, and was hired in person in Ticonderoga to work at that location.² *Defendant's Statement*, ¶ 4; *Defendant's Exhibit A*; *Claimant's Response*, ¶ 4; *Claimant's Separate Statement of Undisputed Facts* ("Claimant's Separate Statement"), ¶ 6.

5. In 2018, Defendant Montcalm was purchased by W Management Group of Brooklyn, New York. *Defendant's Statement*, ¶ 5.
6. On January 5, 2016, Claimant sustained an injury to her right shoulder arising out of and in the course of her employment with Defendant Helen Porter Nursing Home, Inc. ("Helen Porter"). The Hartford insured Defendant Helen Porter at the time of Claimant's injury and has accepted the injury as compensable. *Defendant's Statement*, ¶ 6; *Defendant's Exhibit B*; *Claimant's Separate Statement*, ¶ 2.
7. On June 17, 2016, Claimant underwent right shoulder surgery performed by Dr. Rosenberg. *Defendant's Statement*, ¶ 7; *Claimant's Response*, ¶ 7; *Claimant's Separate Statement*, ¶ 1; *Claimant's Exhibit 1*. She was released to return to work on July 21 2016, and she was discharged from physical therapy the following week. *Claimant's Separate Statement*, ¶¶ 3-4; *Claimant's Exhibits 3 and 4*.
8. Claimant applied for employment with Defendant Montcalm in July or August 2016. *See* Finding of Fact No. 4 *supra*. She underwent a pre-employment physical examination on August 11, 2016 and alleges that she began work for Defendant Montcalm after that date. *Claimant's Separate Statement*, ¶¶ 7-8; *Claimant's Exhibit 6*.
9. On August 29, 2016, Dr. Rosenberg completed a Work Capabilities Form, taking Claimant out of her kitchen duty work for Defendant Montcalm. *Defendant's Statement*, ¶ 8; *Defendant's Exhibit C*; *Claimant's Separate Statement*, ¶ 10.
10. On September 15, 2016, Claimant returned to Dr. Rosenberg complaining of pain in her right shoulder. *Defendant's Statement*, ¶ 9; *Defendant's Exhibit D*; *Claimant's Separate Statement*, ¶ 9.
11. On October 6, 2016, Defendant Helen Porter filed a Denial of Benefits (Form 2) alleging an aggravation of Claimant's shoulder condition and denying additional indemnity benefits. *Defendant's Statement*, ¶ 10; *Defendant's Exhibit E*. The denial stated: "Doctor is relating disability from 9/10/16 going forward to new employment." *Claimant's Response*, ¶ 10.
12. On October 14, 2019, Claimant filed a Notice and Application for Hearing (Form 6) in state file number HH-58240 on the issue of whether her present treatment and disability were causally related to her accepted work injury and what benefits were

² Defendant Montcalm represents that it has no record of Claimant's employment, nor has Claimant produced any record of employment. For the purposes of this motion only, and taking the facts in the light most favorable to the non-moving parties, I find that Claimant worked for Montcalm Manor, as alleged.

due. *Defendant's Statement*, ¶ 11; *Defendant's Exhibit F*. Claimant addressed her Form 6 to the wrong Department specialist. *Claimant's Response*, ¶ 11.

13. On October 27, 2020, the Department specialist handling state file number HH-58240 wrote to the parties that the Department had not received Claimant's Form 6 as mailed on October 14, 2019 but that it had received the form on August 3, 2020. *See Defendant's Statement*, ¶¶ 11-12; *Defendant's Exhibit G*. Claimant contends that the Department received her filing earlier. *Claimant's Response*, ¶ 12. Taking the facts in the light most favorable to the non-moving parties, for purposes of this motion only, I find that Claimant's Form 6 was received by the Department in due course after having been mailed on October 14, 2019.
14. On October 27, 2020, for the first time, the Department notified Defendant Montcalm and its insurers, Church Mutual Insurance Company and Gallagher Bassett Services, of the existence of a new claim designated as state file number PP-59787. *Defendant's Statement*, ¶ 12; *Defendant's Exhibit G*.
15. Claimant has never alleged sustaining a personal injury arising out of and in the course of her employment with Defendant Montcalm. *Defendant's Statement*, ¶ 13.
16. Some of the statements set forth in Claimant's Separate Statement are relevant to whether she sustained an aggravation or a recurrence of her January 5, 2016 right shoulder injury, but are not relevant to the issues that are before me on summary judgment. Accordingly, I have not included those statements here. *See Claimant's Separate Statement*, ¶¶ 1, 5, 9-12.

CONCLUSIONS OF LAW:

1. This case presents an aggravation-versus-recurrence dispute. Claimant sustained a compensable right shoulder injury while working for Defendant Helen Porter on January 5, 2016. She was released to return to work on July 21, 2016 and allegedly began working for Defendant Montcalm sometime thereafter. After Claimant's treating physician took her off kitchen duty on August 29, 2016, Defendant Helen Porter denied additional indemnity benefits on the grounds that her symptoms were related to her new employment with Defendant Montcalm. The substantive workers' compensation issue presented is whether Claimant's shoulder condition on and after September 10, 2016 is properly characterized as a continuation or recurrence of her compensable January 2016 injury, or as a new injury or aggravation causally related to her employment with Defendant Montcalm.
2. The first issue presented by this summary judgment motion is whether Vermont can assert personal jurisdiction over Defendant Montcalm so as to hold it liable for any workers' compensation benefits that may be due for any injury or aggravation that Claimant might have sustained during her employment there. The second issue for summary judgment is whether any such claim is barred by the statute of limitations.

3. Despite its denial of benefits on the grounds that Claimant's shoulder condition from September 10, 2016 forward is related to her new employment, Defendant Helen Porter has filed no opposition to Defendant Montcalm's summary judgment motion. For her part, Claimant has never alleged any injury related to employment with Defendant Montcalm, and she filed no opposition to this summary judgment motion, either.³

Summary Judgment Standard

4. Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment in its favor as a matter of law. *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996). The non-moving party is entitled to the benefit of all reasonable doubts and inferences. *State v. Delaney*, 157 Vt. 247, 252 (1991); *Toys, Inc. v. F.M. Burlington Co.*, 155 Vt. 44, 48 (1990).
5. In determining whether there is a genuine issue of material fact, the Department will "accept as true all allegations made in opposition to the motion for summary judgment, so long as they are supported by admissible evidence." *Fritzeen v. Gravel*, 2003 VT 54, ¶ 7; *Souigny v. PB&J, Inc.*, Opinion No. 12A-18WC (September 27, 2018).

Personal Jurisdiction over Defendant Montcalm in Vermont

6. At all relevant times, Defendant Montcalm was a New York corporation doing business in Ticonderoga, New York. It was not registered to do business in Vermont. Claimant applied for work with Defendant Montcalm in person at the Ticonderoga facility, completed all hiring paperwork there, and was hired there. Further, she performed all work for Defendant Montcalm in New York and was a New York resident when she worked there. Thus, Defendant Montcalm contends that Vermont lacks personal jurisdiction to consider a workers' compensation claim against it for any injuries Claimant allegedly sustained while working for Montcalm.
7. Vermont's long-arm statute, 12 V.S.A. § 913(b), permits the exercise of jurisdiction over nonresident defendants "to the full extent permitted by the Due Process Clause" of the U.S. Constitution. *Fox v. Fox*, 2014 VT 100, ¶ 9, quoting *Northern Aircraft, Inc. v. Reed*, 154 Vt. 36, 40 (1990); *Dall v. Kaylor*, 163 Vt. 274, 275 (1995).
8. The Due Process Clause operates to limit a state's power to assert personal jurisdiction over a non-resident defendant. *Pennoyer v. Neff*, 95 U.S. 714 (1878). In particular, it "protects 'an individual's liberty interest in not being subject to the binding judgments' of a foreign state with which the individual has no meaningful contacts." *Dall v. Kaylor*, 163 Vt. 274, 275 (1995), quoting *Burger King Corp. v. Rudzewicz*, 471

³ Claimant filed a response to Defendant Montcalm's motion, providing additional facts and legal support for her contention that her shoulder symptoms represent a continuation of her January 5, 2016 compensable injury, and not a new injury or aggravation. *Claimant's Response*, at 2. However, she did not address the jurisdictional or statute of limitations issues raised in the motion.

U.S. 462, 471-72 (1985). To satisfy due process, a state may assert personal jurisdiction over a non-resident corporate defendant who has “certain minimum contacts with [the forum] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984), quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal citations omitted).

9. In 2012, the Commissioner addressed personal jurisdiction as follows:

Personal jurisdiction can be based on either specific or general contacts between the defendant and the forum state. “Specific jurisdiction” is exercised when a state asserts personal jurisdiction over a non-resident defendant in a lawsuit specifically arising out of or related to the defendant’s contacts with the forum. *Helicopteros Nacionales*, *supra* at 414, n. 8; *Brown v. Cal Dykstra Equipment Co.*, 169 Vt. 636 (1999). In contrast, “general jurisdiction” relies instead on a foreign corporation’s “continuous and systematic general business contacts” within the forum state as a basis for asserting personal jurisdiction. *Helicopteros Nacionales*, *supra*, at 414, n. 9 and 415-16. Phrased alternatively, specific jurisdiction is case-linked; general jurisdiction is “all-purpose.” *Goodyear v. Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919, 131 S.Ct. 2846, 2851 (2011).

Touchette v. Vermont Recycled Slate and Roofing, Opinion No. 01-12WC (January 11, 2012), Discussion ¶ 6.

10. Applying this jurisdictional analysis to the claim here, I first find no basis to assert specific jurisdiction over Defendant Montcalm. If Claimant sustained a new injury or aggravation during her employment with Defendant Montcalm, such injury would have arisen out of Defendant Montcalm’s activities in Ticonderoga, New York, and not out of any activity that took place in Vermont. Accordingly, there is no specific connection between Claimant’s alleged injury or aggravation and Defendant Montcalm’s contacts with Vermont. *See, e.g., Vezina v. White Mountain Cable Constr. Corp.*, Opinion No. 16SJ-00WC (June 29, 2000) (no basis for specific jurisdiction where claimant’s injury occurred in Massachusetts and therefore did not arise out of or relate to employer’s contacts with Vermont).
11. The other basis for asserting personal jurisdiction over Defendant Montcalm would be general jurisdiction. This basis requires a non-resident defendant to have maintained “continuous and systematic general business contacts” in Vermont. *See Conclusion of Law No. 9 supra*. A court may assert general jurisdiction over non-residents when their affiliations with the forum state are so continuous and systematic as to render them “essentially at home” there. *Goodyear*, 564 U.S. at 919. For a corporation, the “paradigm bases” for what is fairly regarded as “at home” are place of incorporation and principal place of business. *Touchette, supra*, citing *Goodyear*, 564 U.S. at 924.

12. Whether Vermont has general jurisdiction over Defendant Montcalm is not a close call. Defendant Montcalm operated a facility in Ticonderoga, New York. It was not registered to do business in Vermont, and there is no indication that it ever conducted any business here. Neither its place of incorporation nor its principal place of business was in Vermont. In short, there is no evidence of any continuous or systematic business contact with Vermont. Accordingly, there is no basis for Vermont to assert general jurisdiction over Defendant Montcalm.
13. As there is neither a specific nor a general basis to assert personal jurisdiction, I conclude that Vermont lacks personal jurisdiction over Defendant Montcalm to consider a workers' compensation claim against it for any injuries Claimant allegedly might have sustained while employed by Montcalm.

Statute of Limitations

14. Defendant Montcalm has also moved for summary judgment on the basis that the statute of limitations set forth in the Vermont workers' compensation statute has run on any claim against it for alleged work-related injuries from Claimant's employment. Neither Claimant nor Defendant Helen Porter has contested this motion.
15. Having determined that Vermont does not have personal jurisdiction over Defendant Montcalm, however, I cannot issue a judgment concerning which state's statute of limitations applies, nor as to whether a claim for benefits against Defendant Montcalm would be time barred by whichever statute of limitations applies here.

ORDER:

For the foregoing reasons, the claim for workers' compensation benefits against Defendant Montcalm Manor designated as state file number PP-59787 is hereby **DISMISSED** for lack of personal jurisdiction.

DATED at Montpelier, Vermont this 25th day of August 2021.

Michael A. Harrington
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.