SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

VERA MARTIN,

Claimant,

v.

AMERICAN COLLOID CO.,

Employer,

and

ACE AMERICAN INSURANCE CO.,

Insurer.

HF No. 113, 2007/08

DECISION ON MOTION TO DISMISS FOR LACK OF JURISDICTION

This matter comes before the Department of Labor on a claim for workers' compensation pursuant to SDCL 62-7-12 and ARSD Chapter 47:03:01. Claimant, Vera Martin (Claimant), is represented by Michael Simpson of Julius & Simpson, LLP. The Employer, American Colloid Co. (Employer) and the Insurer, ACE American Insurance Co. (Insurer), are represented by Daniel Ashmore of Gunderson, Palmer, Nelson, & Ashmore, LLP. Employer/Insurer has made a Motion to Dismiss for Lack of Jurisdiction. Claimant has submitted a Response to the Motion. Employer/Insurer submitted a Reply to Claimant's Response. Parties have stipulated to the evidence presented to the Department in regards to Employer/Insurer's Motion to Dismiss for Lack of Jurisdiction.

The Department, being fully advised, hereby makes this Decision granting the Employer/Insurer's Motion to Dismiss for Lack of Jurisdiction.

Claimant was employed by Employer at the plant in Colony, Wyoming from February 2006 until February 7, 2008. Claimant's residence is Nisland, South Dakota. Employer is a Delaware corporation with places of business throughout the United States, including Wyoming and South Dakota. Employer's corporate headquarters are in Illinois. Employer's human resources, payroll, marketing, information technology, and other management functions are conducted in Illinois. Employer has operated a business office in Belle Fourche, South Dakota (SD) since 1935 and in Colony, Wyoming (WY) since 1988.

Employer's business offices throughout the United States are connected by a common computer system.

Each of Employer's plants operates individually in regards to customer service, accounts payable, orders, and receiving. Each plant interviews, hires, and fires employees for that particular plant, with exception being the corporate employees hired by Employer. Wages are determined by the plant's management, and hours worked are verified by the plant management. Employer's payroll is processed in Illinois. Checks are sent from Illinois to the individual plants for signature and dissemination by the plant management. Most employees are paid by direct deposit and this is administered by the office in Illinois. Employer does not have a mailing address in WY, as there is no U.S. Post Office in Colony, WY. All mail is processed through Employer's office in SD. Employer has an interoffice delivery system to deliver and pick-up mail in WY. The administrative assistant in the SD office, Ms. Judy Kling, performs some administrative assistance to the management of Employer's WY plant. Ms. Kling will print documents or checks for the signature of the WY management.

Claimant applied several times for a position with Employer. She made application with Employer by picking up and dropping off a paper application in SD, as that office is nearest her residence. Claimant's application was sent to the office in WY. Employer interviewed Claimant in WY for a job. Claimant completed a pre-employment physical and drug screening at a clinic in Belle Fourche, SD (she was also given the option of going to a clinic in Spearfish, SD). In February 2006, the WY manager notified Claimant that she had a job in WY. Claimant was paid from WY's budget. Claimant remembers seeing Ms. Kling three (3) times prior to the injury. Ms. Kling does not recall any interaction between herself and Claimant prior to Claimant's injury. Claimant attended some training sessions in SD after her injury in September 2006. Employer submitted to the State of Wyoming, Claimant's state income tax as well as workers' compensation and unemployment insurance premiums on Claimant's employment. WY kept Claimant's employment file. The office in Illinois also had a copy of Claimant's full employment file. The SD office kept a "new hire" file on Claimant.

On September 30, 2006, Claimant was injured while at work in WY. Employer, with assistance from Ms. Kling, sent the first report of injury to the State of Wyoming. Ms. Kling also apprised the United States Department of Labor, Mine Safety and Health Administration, of Claimant's lost time and employment status. Claimant sought medical treatment in South Dakota.

Ms. Kling did not conduct any business for Colony management that was not directly ordered by the WY management. WY management drafted letters and sent them via e-mail to Ms. Kling to be typed and printed on WY letterhead. Ms. Kling would then send the letters back to WY management for their signatures. These letters were then mailed from SD only because there is no post office in Colony, WY.

The Department has jurisdiction over the subject matter of this action. The question presented by Employer/Insurer in this Motion to Dismiss, is whether the Department has jurisdiction over the parties in this case, a threshold issue. In *Meyers v. ARA Trailblazers*, HF #93, 1988/89, 1990 WL 506839 (S.D. Dept. Lab.), and *Kruse v. Mercer Transportation*, HF # 292, 1993/94, 1995 WL 798372 (S.D. Dept. Lab.), the Department adopted the three-part test for jurisdiction set out in Larson's Workers' Compensation Law, §143.04 (2008) (previously §87 (1990)). This jurisdictional test is that when the place of injury, the place of hiring, or the place of employment relation is within the state, jurisdiction will apply. This prior ruling will not be disturbed and is applied to this case.

The Larson's three-part test is consistent with the "significant relationship" test the South Dakota Supreme Court has adopted. See generally, *Chambers v. Dakotah Charter, Inc*., 488 NW2d 63, 68 (SD 1992); *Brazones v. Prothe*, 489 NW2d 900 (SD 1992) (significant relationship test applied to determine which state's workers' compensation laws apply); *Rothluebbers v. Obee*, 2003 SD 95, ¶20-21, 668 NW2d 313, 320-21; and *Burhenn v. Dennis Supply Co.*, 2004 SD 91, ¶24, 685 NW2d 778.

The first part of the test is location of the injury. It is not contested that the place of injury was at Employer's plant in WY.

The second part of the test looks at the place of hiring or the place the employment contract was made. The facts show that place of hiring is also in WY. Claimant submitted her application to the office in SD, but the application was processed in WY. The interview was conducted in WY, the offer of employment and contract originated in WY. The SD office kept a copy of the "new hire" file, but the management in WY was responsible for the compilation of that file. The WY office keeps Claimant's full employment file, as does the headquarters in Illinois. Claimant's pre-employment physical and drug screen were conducted in SD as the clinics in SD are closer to the WY plant. After Claimant's injury, the SD office was given the choice whether or not to hire Claimant for light-duty work. The SD office did not have any work for Claimant.

The final part of the test looks at the "place of employment relation." The "place of employment relation" test refers to the concept that where the employee has "rooted his status in the local state by the original creation of the relation there, he does not lose it merely on the strength of the relative amount of time spent in the local state as against foreign states. He loses it only when his regular employment becomes centralized and fixed so clearly in another state that any return to the original state would itself be only casual, incidental, and temporary by comparison." Larson's at §143.04 (2)(c).

The SD office only conducts that WY work which the WY plant instructs them to conduct. Claimant was considered a WY employee for purposes of unemployment insurance, workers' compensation, and state income tax. Claimant's workplace was in WY. Although she resides in SD, Claimant was not considered to be employed in SD. The question is not whether each of the parties has individual connections in SD or WY, but whether the parties' relationship is located in either place. All interactions between Claimant and Employer, prior to her injury, occurred in WY. The place of employment relationship between Claimant and Employer is centralized, fixed, and "rooted" in WY.

As Claimant has already received benefits from WY, her case in SD, if allowed, would be a "successive award" case. Claimant argues that bringing a "successive award" case in South Dakota is legitimate and recognized by the U.S. Supreme Court, in light of *Thomas v. Washington Gas Light Co*., 448 U.W. 261 (1980). The plurality opinion given in the above

"conflict of laws" case, stands for the proposition that when a state has the power to apply its own workers' compensation law in the first instance, that the parties are not precluded from bringing a "successive award" case. Larson's at §141.04.

Claimant has failed to show that any one of the three Larson's factors for the "significant relationship" test is met by the facts in this case: Claimant was hired by Employer in Wyoming; Claimant was injured in Wyoming; and the place of employment relation between Claimant and Employer is in Wyoming. South Dakota does not have jurisdiction in this matter. In light of this finding, the Department does not reach the issue of successive awards.

The South Dakota Department of Labor lacks jurisdiction over Claimant's petition for hearing and, therefore, this matter shall be dismissed.

Employer/Insurer shall submit proposed Findings of Fact and Conclusions of Law, and an Order consistent with this Decision within fifteen (15) days from the receipt of this Decision. The Claimant shall have fifteen (15) days from the date of receipt of the Employer/Insurer's proposed Findings and Conclusions to submit objections thereto or to submit its own proposed Findings and Conclusions. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, the Employer/Insurer shall submit such stipulation along with an Order in accordance with this Decision.

Dated this __20th_____ day of ___January_____, 2010.

SOUTH DAKOTA DEPARTMENT OF LABOR

_____/s/ Catherine Duenwald_____
Catherine Duenwald
Administrative Law Judge