

November 13, 2016

Calvin P. Anderson
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Adam R. Hoier
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LETTER DECISION AND ORDER

Dear Mr. Anderson and Mr. Hoier:

This letter addresses the following submissions by the parties:

September 17, 2018	Employer/Insurer's Motion for Summary Judgment Employer/Insurer's Brief in Support of Motion Affidavit of Adam R. Hoier
October 11, 2018	Claimant's Opposition to Motion for Summary Judgment Affidavit of Calvin P. Anderson
October 25, 2018	Employer/Insurer's Reply Brief

RE: HF No. 22, 2016/17 – Calvin P. Anderson v. Finley Engineering Company, Inc.
and The Hartford

FACTS

The facts of this case are recounted in detail in *Anderson v. Workforce Safety & Ins.*, 2015 ND 205, 868 N.W.2d 508. At the time of Claimant's injury, he was a resident of North Dakota. Employer was also principally located in that state. On January 19, 2005, Claimant was working in South Dakota, when he fell and sustained an injury. Claimant filed for workers compensation benefits in the state of North Dakota. The

North Dakota Workplace Safety and Insurance (WSI) began paying Claimant benefits in 2005 and continued to do so until 2010 when it discontinued payments. WSI first notified Claimant in April of that year that it determined his hip condition was due to a preexisting arthritic condition and not due to his injury. In June 2010, WSI notified Claimant that it was ceasing all payments because his treating physician had released Claimant to return to work in his previous field. Claimant appealed WSI's decision all the way to the North Dakota Supreme Court. That court affirmed WSI's original opinion in an opinion issued August 25, 2015.

Claimant filed a petition for workers compensation benefits with the South Dakota Department of Labor and Regulation in August 2016. Employer/Insurer filed its answer in September 2016. Among its defenses was that Claimant had already litigated the case before North Dakota's WSI and the doctrine of res judicata barred Claimant from filing a petition before the Department. Employer/Insurer filed a motion for summary judgment on September 14, 2017 again arguing that res judicata prevented prelitigation of Claimant's petition.

**DOES RES JUDICATA BAR CLAIMANT'S RECOVERY OF WORKERS
COMPENSATION BENEFITS IN SOUTH DAKOTA WHERE CLAIMANT PREVIOUSLY
FILED FOR BENEFITS IN NORTH DAKOTA?**

ANALYSIS

Employer/Insurer argues that Claimant's petition is barred by res judicata. The United States Supreme Court considered this question in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 100 S. Ct. 2647, 65 L. Ed. 2d 757 (1980). In *Thomas*, the claimant was injured in the state of Virginia while working for employer, which was

based in Washington, D.C. Claimant was awarded benefits in Virginia and subsequently filed for benefits in the District of Columbia. Employer moved to dismiss the petition in the District of Columbia arguing that the District was obligated to grant the Virginia award full faith and credit. It argued that under Virginia law, the claimant was barred from recovering workers compensation benefits in another state. An administrative law judge in the District of Columbia granted the employer's motion to dismiss ruling that the Virginia award was res judicata. Claimant appealed first to the Court of Appeals for the District of Columbia and then the U.S. Supreme Court.

In considering whether res judicata barred claimant's District of Columbia petition, the U.S. Supreme Court examined the interests of both Virginia and the District of Columbia. "Virginia has a valid interest in placing a limit on the potential liability of companies that transact business within its borders. Both jurisdictions have a valid interest in the welfare of the injured employee—Virginia because the injury occurred within that State, and the District because the injured party was employed and resided there. And finally, Virginia has an interest in having the integrity of its formal determinations of contested issues respected by other sovereigns."

Id., at 277. As to the first issue, the Court noted:

The principle that the Full Faith and Credit Clause does not require a State to subordinate its own compensation policies to those of another State has been consistently applied in more recent cases... It is thus perfectly clear that petitioner could have sought a compensation award in the first instance either in Virginia, the State in which the injury occurred, ... or in the District of Columbia, where petitioner resided, his employer was principally located, and the employment relation was formed[.] And as those cases underscore, compensation could have been sought under either compensation scheme even if one statute or the other purported to confer an exclusive remedy on petitioner. Thus, for all practical purposes, respondent and its insurer would have had to measure their potential liability exposure by the more generous of the two workmen's compensation schemes in

any event. It follows that a State's interest in limiting the potential liability of businesses within the State is not of controlling importance.

Id., at 279–80 (Internal citations omitted).

The Court also determined that both jurisdictions' interests in compensating an injured worker were served by allowing claimant to recover in both. It then concluded “[t]he ultimate issue, therefore, is whether Virginia's interest in the integrity of its tribunal's determinations forecloses a second proceeding to obtain a supplemental award in the District of Columbia.” Id., at 280.

To that end, the Court ruled that the administrative agency in Virginia responsible for administering workers compensation could not compel the District of Columbia to apply its limitation on recovery of workers compensation benefits.

Although a Virginia court is free to recognize the perhaps paramount interests of another State by choosing to apply that State's law in a particular case, the Industrial Commission of Virginia does not have that power. Its jurisdiction is limited to questions arising under the Virginia Workmen's Compensation Act. See Va.Code § 65.1–92 (1980). Typically, a workmen's compensation tribunal may only apply its own State's law. In this case, the Virginia Commission could and did establish the full measure of petitioner's rights under Virginia law, but it neither could nor purported to determine his rights under the law of the District of Columbia. Full faith and credit must be given to the determination that the Virginia Commission had the authority to make; but by a parity of reasoning, full faith and credit need not be given to determinations that it had no power to make. Since it was not requested, and had no authority, to pass on petitioner's rights under District of Columbia law, there can be no constitutional objection to a fresh adjudication of those rights.

Id., at 282–83.

In this case, both North Dakota and South Dakota have an interest in ensuring working injured within their respective borders are adequately compensated. This interest can be furthered by Claimant's recovery in either or both jurisdictions. In

addition, North Dakota's interest in limiting the liability of businesses within its borders is likewise lessened by the fact that Employer sought workers compensation coverage for its workers while they were on the job in South Dakota. Finally, full faith and credit does not grant North Dakota the power to limit Claimant's recovery within South Dakota. In keeping with the ruling in *Thomas*, the doctrine of res judicata does not bar the Department from awarding Claimant benefits even though The North Dakota Department of Workforce Safety Insurance previously denied them.

This is not to say that South Dakota could not limit Claimant's ability to recover here where he was denied in North Dakota. South Dakota's Supreme Court examined cases with facts similar to those in *Thomas* in two cases. In *Martin v. Am. Colloid Co.*, 2011 S.D., 804 N.W.2d 65, a claimant who resided in South Dakota suffered an injury while working for an employer in Wyoming. Employer/Insurer reported the injury to the Wyoming Workers' Safety & Compensation Division which paid Claimant benefits. Claimant ultimately received a five percent impairment rating from Wyoming. In 2010, Claimant filed a petition requesting workers compensation benefits. The Department dismissed the petition for lack of jurisdiction, a decision that was upheld by the circuit court. Upon appeal, the South Dakota Supreme Court first acknowledged that under *Thomas*, res judicata did not bar the Department from hearing the petition. "Martin's successive award of workers' compensation benefits would be permissible under constitutional due process analysis if South Dakota has the power to apply its workers' compensation law in the first instance." *Id.*, at ¶ 9. The court reasoned that South Dakota law contemplated jurisdiction where an employer was injured outside of its borders and determined that whether the Department could hear the petition was one of

jurisdiction. In contemplating that issue, the court turned to the Restatement of Conflict of Laws and considered whether:

- (a) the person is injured in the State, or
- (b) the employment is principally located in the State, or
- (c) the employer supervised the employee's activities from a place of business in the State, or
- (d) the State is that of most significant relationship to the contract of employment with respect to the issue of work[ers'] compensation under the rules of §§ 187–188 and 196, or
- (e) the parties have agreed in the contract of employment or otherwise that their rights should be determined under the work[ers'] compensation act of the State, or
- (f) the State has some other reasonable relationship to the occurrence, the parties and the employment.

Id., at ¶ 15. It further elaborated:

Despite the Restatement's use of the term “or” after each subsection, we do not suggest that any one of these factors is necessarily sufficient on its own to create a substantial connection to the employment relationship. Whereas the Restatement provides a broad overview of what is constitutionally permissible, our task is to determine the scope of the Department's authority under South Dakota law. This determination must be made on a case-by-case basis, by evaluating all of the factors surrounding the employment relationship. Still, the factors outlined in the Restatement remain a useful reference for making this determination.

Id.

The Court ultimately upheld denial of jurisdiction reasoning that South Dakota did not have sufficient relationship under the above criteria to exercise jurisdiction over the case. The Court again considered the question of the Department's jurisdiction over an out-of-state injury in *Knapp v. Hamm & Phillips Serv. Co.*, 2012 S.D. 82, 824 N.W.2d 785. The Claimant in *Knapp* resided in South Dakota but was employed as a truck driver by a North Dakota company hauling waste water from oil fields in North Dakota, South Dakota, and Montana. Claimant was injured in North Dakota and filed a claim with WSI. Claimant then filed for benefits in South Dakota. The South Dakota Supreme Court relied on its earlier analysis in *Martin* and found that South Dakota did not have

jurisdiction to hear the petition. “[W]e noted other cases where courts found statutory jurisdiction for workers' compensation claims in the state of the worker's residence, but there were connections between the state and the employment relationship aside from the employee's residence. *Knapp*, at ¶ 15.

It is unclear whether analyzing the facts of this case under *Martin* or *Knapp*, sufficient connections exist which would allow the Department to exercise jurisdiction over this case. Among the factors which may determine jurisdiction are how much of Employer's work was conducted in South Dakota and how frequently Claimant worked there on behalf of Employer.

Also unclear is whether jurisdiction is conferred upon the Department because Claimant's injury occurred in South Dakota. Both *Martin* and *Knapp* involved South Dakota residents who were injured outside of the state. While the South Dakota Supreme Court found that no single factor is sufficient to grant jurisdiction, other states have found that injury within its boards was by itself sufficient to accept jurisdiction. See *Philyaw v. Arthur H. Fulton, Inc.*, 569 So.2d 787 (Fla. Dist. Ct. App. 1990); *Security Ins. Group v. Plank*, 133 Ga. App. 815, 212 S.E.2d 471, 473-74 (1975); *Bryant v. Jericol Mining, Inc.*, 758 S.W.2d 45, 46-47 (Ky. Ct. App. 1988); *Argonaut Ins. Co. v. S.E. Vanatta*, 539 S.W.2d 35, 37 (Tenn. 1976); *Millican v. Liberty Mut. Ins. Co.*, 224 Tenn. 604, 460 S.W.2d 842, 844 (1970). No South Dakota case has dealt with a situation in which an out of state employee was injured in South Dakota. However, Employer/Insurer does not raise the issue of jurisdiction in this motion and, therefore, the Department will not consider it.

CONCLUSION

As res judicata does not preclude Claimant from recovering in another state subsequent to his North Dakota petition, Employer/Insurer's motion for summary judgment is DENIED.

Sincerely,

/s/ Joe Thronson
Joe Thronson
Administrative Law Judge