

**STATE OF VERMONT
DEPARTMENT OF LABOR**

L. S.)	Opinion No. 45-05WC
)	
)	By: Margaret A. Mangan
v.)	Hearing Officer
)	
)	For: Patricia A. McDonald
Dartmouth College)	Commissioner
)	
)	State File No. U-14611

Pretrial conference held February 2, 2005
Submitted on stipulated facts and briefs
Record Closed on June 20, 2005

APPEARANCES:

Stan B. Brinkman, Esq., for the Claimant
Jennifer K. Moore, Esq., for the Defendant

ISSUES:

1. Does the Vermont Department of Labor and Industry have subject matter jurisdiction over this worker’s compensation claim under 21 V.S.A. § 619?
2. If not, does this Department have subject matter jurisdiction over this claim under 21 V.S.A. § 620?
3. If this Department has subject matter jurisdiction, what law applies?

STIPULATED FACTS:

1. At all times relevant to this action, claimant was a resident of the State of Vermont.
2. The defendant, Dartmouth College, is a New Hampshire employer. For the purposes of this claim only, it does not contest that it has sufficient contacts with the State of Vermont such that the Department’s assertion of jurisdiction over it, should subject matter jurisdiction be found, would comport with considerations of Due Process.
3. Claimant alleges an injury in New Hampshire in the course of her employment with Dartmouth College.

4. Claimant applied for a position with Dartmouth on or about December of 2001. She applied by completing a written application and submitting it to Kelly Mosely, the College's then hiring director for Dining Room Services. Claimant hand-delivered the application to Ms. Mosely's office at the College's Thayer Hall in Hanover, New Hampshire.
5. Claimant was aware of the availability of employment positions at Dartmouth by means of a list of available positions that was provided to her by her friend Tylee Burke who was then a College employee. Ms. Burke brought both the job posting and a blank application to claimant at claimant's residence in Vermont.
6. Ms. Mosely called claimant in response to her written application and asked her to come in for an interview. The interview took place in Hanover, New Hampshire that same afternoon.
7. Following the interview, Ms. Mosely called claimant at her home to offer her two available employment positions. Ms. Mosely called claimant a second time the following day, at which time claimant accepted the offer of employment for one of the two positions.
8. Both offer and acceptance were made via telephone.
9. Claimant reported to her first day of work at Dartmouth College in New Hampshire the following afternoon.

CONCLUSIONS OF LAW:

1. The issue before us is whether the claimant was "hired" in the State of Vermont within the meaning of 21 V.S.A §619.¹ If this question is answered in the affirmative then there would be no need to analyze the meaning of 21 V.S.A §620, and Vermont Worker's Compensation laws would apply. If this question is answered in the negative, then there must be further analysis to determine if there is jurisdiction for the department to determine this case under §620 and if so, which state's law applies.
2. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *Goodwin v. Fairbanks, Morse Co.*, 123 Vt. 161 (1963). In this case, the claimant who was employed and injured outside of the state must show that she was hired in Vermont, in order for the Department of Labor to have subject matter jurisdiction per 21 V.S.A §619.

¹ "Injuries outside of state: If a worker who has been hired in this state receives personal injury by accident arising out of and in the course of such employment, he shall be entitled to compensation according to the law of this state even though such injury was received outside of this state." 21 V.S.A §619

3. The claimant argues that the assent to the agreement occurred in Vermont. The defendant called her at her residence in Vermont, and because she was physically present in this state when accepting the offer of employment over the phone, the “hiring” was made in Vermont. Claimant further argues that this hiring is within the meaning of §619, and that the legislature intended for a broad application of this section in order to protect Vermont residents hired within this state.
4. The defendant makes two arguments. First, that interpreting §619 to allow an acceptance to an offer of employment through the phone would lead to absurd results and that such results could not have been intended by the legislatures. Specifically, the defendant argues that there needs to be a greater nexus between the state and the hiring process. Second, the defendant argues that, under a “final act” analysis, the hiring process was not complete until the claimant traveled to New Hampshire and commenced work there.
5. This issue presents a question of first impression for this department as well as within Vermont, since there are no department opinions or any Vermont cases deciding this question. Essentially, the issue concerning §619 is whether we should give the meaning of the word “hired” the interpretation as the claimant requests, holding that the state of hire is where claimant accepted the offer of employment, or the interpretation requiring a nexus with the state, as urged by the defendant.
6. In this case, the logical reading of § 619 is consistent with the defense argument that claimant had to have been hired to work in Vermont for that section to apply. Such an interpretation is consistent with a state interest that there be a nexus between the hiring process and Vermont.
7. Therefore, the claimant is not entitled to bring a claim with the department under 21 V.S.A §619 and have the claim adjudicated under the workers’ compensation laws of Vermont.
8. Next is the applicability of § 620, which reads:

Worker hired outside of state: 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.
9. Given the unfamiliarity of this Department with New Hampshire law and the strain on resources that would result were we to apply that state’s law, this claimant’s rights cannot be reasonably adjudicated in this state.

Accordingly the claimant's request to bring this case in Vermont for the application of Vermont law under § 619 or New Hampshire law under § 620 is hereby denied.

Dated at Montpelier, Vermont this 9th day of August 2005.

Patricia A. McDonald
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.