

N. L. v. A. N. Deringer

(August 10, 2006)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

N. L.

Opinion No. 38-06WC

v.

By: Margaret A. Mangan
Hearing Officer

A.N. Deringer

For: Patricia Moulton Powden
Commissioner

State File No. W-4546

Hearing held in Montpelier on June 6, 2006

Record closed on July 3, 2006

APPEARANCES:

Christopher McVeigh, Esq., for Claimant

Nicole Reuschel-Vincent, Esq., for Defendant

ISSUE:

Whether Claimant can transfer his workers' compensation benefits from New York to Vermont jurisdiction.

EXHIBITS:

Claimant:

1. Employee handbook
2. Potential UI Claim
3. Map-Deringer
4. Acknowledgments
5. (duplicate)
6. 12/21/84 salary increase notice
7. 6/30/88 salary increase notice
8. 7/20/86 salary increase notice
9. 7/1989 salary increase notice
10. 9/28/00 salary adjustment memo
11. 1/21/04 Amy Magnus letter to Claimant re: retention
12. 10/22/04 Lori Pellissier letter to Claimant re: treatment
13. Return to work recommendation
14. 10/97 authorization for use of compaNew York vehicles
15. Request for verification of employment
16. Memo from L. Pellissier re: forklift bumping

Defendant:

1. List of Deringer office locations
2. 2/10/84 Bronson letter to St. Albans re: hiring Claimant part-time
3. 2/27/84 letter from Bronson re: termination of part-time work
4. 7/18/84 letter from Bronson re: hiring Claimant's full time
5. Appraisal sheet \$4.67/hour
6. 7/14/85 salary increase memo
7. 12/4/87 salary memo
8. 12/13/89 salary memo
9. 1/30/91 authorization for Claimant to operate company vehicle
10. 5/18/92 reassignment
11. 2/8/84 Application
12. W-4
13. 7/17/84 Application
14. Position Description Questionnaire
15. Letter re: discipline 9/17/97
16. Memo re: inventory error
17. Internet set-up/ use agreement
18. Print-out re: benefits received
19. Pay stub

FINDINGS OF FACT:

1. Claimant worked full-time for A.N. Deringer in Champlain, New York from July of 1984 until April of 2005.
2. At all relevant times, Claimant was an employee and A.N. Deringer his employer, within the meaning of the Vermont Workers' Compensation Act (Act).
3. A.N. Deringer's corporate office is located in St. Albans, Vermont. It conducts an import/export business in approximately sixteen states with thirty-four locations nationwide, including a warehouse in Champlain, New York.
4. Each office does its own hiring.
5. On February 10, 1984, the manager at the New York warehouse sent a letter to the Vermont office informing that he had hired Claimant as a part-time employee.
6. In July of 1984, the Champlain New York branch manager hired Claimant in New York on a full-time basis. Around this time, Claimant moved from Champlain, New York to Alburg, Vermont. Over the next twenty years, Claimant commuted to the New York job site from his Vermont home.
7. All employee paychecks were mailed from the Vermont office. Claimant's paycheck stubs indicated that New York taxes were deducted from his gross pay.

8. Claimant's work duties as a freight handler included coordinating deliveries and pickups and training new employees.
9. On June 4, 2004, Claimant felt a sharp pain in his back while unloading freight. He notified his supervisor about his lower back injury. Claimant was still living in Vermont at the time of this injury.
10. The employer filed a workers' compensation claim in New York. Claimant received the New York benefits.
11. Claimant worked until April of 2005.
12. The carrier at risk, Wausau, continued to pay for Claimant's medical benefits, still treating it as an accepted New York claim.
13. Then, in April 27, 2005, Claimant requested to transfer his claim for benefits from New York to Vermont.
14. Claimant filed a Form 5 (Notice of Injury and Claim for Compensation) that was received by the Vermont Department of Labor on April 29, 2005.
15. Since his injury, Claimant has undergone most of his medical treatment in Vermont. He continues to reside in Vermont.
16. Claimant still receives benefits under New York law. Although, the carrier has agreed that the acceptance does not constitute a waiver of Claimant's position that he is entitled to Vermont benefits.

CONCLUSIONS OF LAW:

1. The claimant has the burden of establishing all facts essential to the rights asserted in this workers' compensation case. *Goodwin v. Fairbanks*, 123 Vt. 161 (1962). As such, Claimant must prove that he was hired in Vermont or that he is entitled to coverage under Vermont Workers' Compensation Act under another standard.
2. According to 21 V.S.A. § 619, an employee who has been hired in Vermont, "shall be entitled to compensation according to the law of this state even though such injury was received outside of this state."
3. In fact, even if an employee "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." 21 V.S.A. § 620.

4. The first issue before us is whether the claimant was "hired" in the State of Vermont within the meaning of § 619. If this question is answered in the affirmative then there would be no need to determine the applicability of § 620 and Vermont Worker's Compensation laws would apply. On the other hand, if this question is answered in the negative, then there must be further analysis to determine if there is jurisdiction under § 620. *L.S. v. Dartmouth College*, Opinion No. 45-05WC (2005).
5. In order to determine where Claimant was hired, the Department has recognized that the "place of contract is where the last act essential to completion was done." *Young v. Consolidated Delivery*, Opinion No. 06-03WC, (2002).
6. Claimant contends that he was hired in Vermont given that the ultimate authority to approve his position rested with the Vermont office. Thus, according to Claimant, the last essential act was in Vermont. In contrast, Defendant argues that Claimant was hired in New York. The defense relies on the facts that Claimant interviewed in New York; he was offered the job in New York; he accepted the job in New York; and then he showed up to work in New York the following day.
7. The facts support Defendant's position that the last essential act was Claimant's acceptance of his employment offer in New York.
8. The Vermont Supreme Court has held that acceptance is deemed to be the last act in the completion of a contract. *Chase Commercial Corp. v. Barton*, 153 Vt. 457, 461 (1990); *Arthur A. Bishop & Co. v. Thompson*, 99 Vt. 17, 21 (1925). While in New York at the interview, Claimant accepted the job offer to work in New York. His acceptance was the last act that completed his employment contract; hence, Claimant was hired in New York. Accordingly, Claimant is not entitled to bring a claim in Vermont under § 619.
9. The question now is whether § 620 entitles Claimant, a worker hired out of state, to bring a claim in Vermont.
10. I find that § 620 does not permit Claimant to transfer his benefits from New York to Vermont. The factors support that Vermont has only a casual interest in this case and that Claimant's rights cannot be reasonably determined under § 620.

11. The Department applies the legitimate interest test to determine whether Vermont can apply its Act to Claimant's injury. The rule provides:

Among the facts which, if occurring within the state, will give rise to such a legitimate interest are: the making of the contract, the occurrence of the injury, the existence of the employment relation, and *possibly* also the residence of the employee and the localization of the employer's business.

See, A. Larson and L.K. Larson, 9 Larson's Workers' Compensation Law, § 142. See also *Martin v. Furman Lumber Company*, 134 Vt. 1, 7 (1934); *Bahr v. Cal-Ark Trucking*, Opinion No. 14-96WC (1996) (emphasis added).

12. Claimant maintains that he is entitled to transfer his benefits from New York to Vermont, especially since Claimant is a Vermont resident and the employer's principal place of business is located in Vermont. He also argues that he did not elect New York benefits. Instead, it was the employer's unilateral decision. Finally, he has received most of his medical treatment in Vermont. Taking all of these factors into consideration, Claimant requests that his benefits be awarded under Vermont law.
13. Defendant contends that Claimant should not be entitled to Vermont benefits. The defense relies on *DeGray v. Miller*, 106 Vt. 259 (1934). In *DeGray*, the Vermont Supreme Court found that the claimant was estopped from receiving an award in Vermont since the claimant had already accepted Connecticut benefits. *Id.* Similarly in this case, Defendant argues that Claimant's election to receive New York benefits is conclusive. The defense also asserts that Claimant does not meet the legitimate interest test, thus Vermont should not apply its compensation act to Claimant.
14. Even if I accepted Claimant's argument that he did not elect to receive New York benefits, I would still find that his rights could not be determined under Vermont law.
15. Vermont does have an interest in this case since Claimant lives here. Also, the employer's principal place of business is located in Vermont. These two factors alone may pique Vermont's interest, but they are not determinative and should not be equated with jurisdiction. Claimant's residency and the employer's headquarters are insufficient grounds to determine Claimant's rights in this state. Vermont's interest is merely a causal one. Instead, New York has the legitimate interest in Claimant's injury: Claimant was hired in New York; he was injured in New York; and the employment relationship was centered in New York.
16. In sum, these factors support a conclusion that Claimant is not entitled to transfer his workers' compensation benefits from New York to Vermont.

ORDER:

Therefore, based on the foregoing findings of fact and conclusions of law,

Claimant's request to pursue his workers' compensation claim in Vermont is hereby DENIED.

Dated at Montpelier, Vermont this 10th day of August 2006.

Patricia Moulton Powden
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.