

Proceedings Before Workers' Compensation



JURISDICTION.

- The Pennsylvania Workers' Compensation Act (Act) applies to all injuries occurring with the Commonwealth of Pennsylvania. §101, 77 P.S. §1.
- Application to Extraterritorial Injuries.
 - The Act was amended in 1929 to provide extraterritorial coverage to Commonwealth employees "engaged in the duly authorized business of the state."
- Under Section 305.2, the Act currently provides that where an injury occurs outside of Pennsylvania, the Act will apply if:
 - The employment is principally localized in Pennsylvania; or
 - The employee is working under a contract of hire made in Pennsylvania in employment not principally localized in any state; or
 - The employee is working under a contract of hire made in Pennsylvania in employment principally localized in another state whose workers' compensation law is not applicable to his or her employer; or
 - The employee is working under a contract of hire made in Pennsylvania for employment outside the United States and Canada. §305.2, 77 P.S. §411.2.

Principally Localized.

- In any claim where the contract has been made outside of Pennsylvania, the employee must always prove that his employment was principally localized in Pennsylvania.
- Section 305.2(d)(4). A person's employment is principally localized in this or another state when (i) his employer has a place of business in this or such other state and he regularly works at or from such place of business, or (ii) having worked at or from such place of business, his duties have required him to go outside of the State not over one year, or (iii) if clauses (1) and (2) foregoing are not applicable, he is domiciled and spends a substantial part of his working time in the service of his employer in this or such other state.
- Jurisdiction was found to lie in Pennsylvania when a truck driver was injured in New Jersey while on a trip that began in New York because the employer was located in Pennsylvania and claimant regularly worked at or from this location. *Hiller v. WCAB (Deberardinis)*, 569 A.2d 1024 (Pa. Cmwlth. 1990).
- In order for employment to be principally localized in a particular state, the employee must establish that the employer has a place of business in that state and that the employee regularly worked at or from that place of business. *Lambie v. WCAB (Curry Lumber Co.)*, 736 A.2d 67 (Pa. Cmwlth. 1999).
- An employee working in New Jersey with minimal contacts to Pennsylvania by phone and mail, who did not regularly work at or from the employer's Philadelphia, Pennsylvania location, was not principally localized in Pennsylvania. *Root v. WCAB (U.S. Plywood Corn.)*, 636 A.2d 1263 (Pa. Cmwlth. 1994).
- The purpose of these provisions is to provide employers and employees a means of gaining certainty with regard to compensation covering in the event of a work-related injury. The employer has the knowledge that it can safely secure one state's coverage for an appropriate employee without being in possible violation of another state's compensation law and regulations. Moreover, the employee gains the knowledge that he or she has a remedy under the defined state's workers' compensation law.

Contract for hire in Pennsylvania.

- There are certain occupations where employees labor in several states such that their employment is not principally localized in any state. For example, truck drivers and laborers working out of labor union halls may have employment that is not principally localized in any state.
- Where a contract of hire was made in Pennsylvania and employment was not localized in any state, the Pennsylvania Workers' Compensation Act applied. *S.I. Industries v. WCAB (Zon)*, 613 A.2d 170 (Pa.

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Cmwlth. 1992). Claimant was laborer who was injured in Ohio, accepted work at a Pennsylvania site of employer and eventually became disabled from this work. Section 305.2(a)(2) applied because claimant was Pennsylvania resident with significant contact with Pennsylvania.

- If however, the evidence establishes that the contract of hire made in Pennsylvania was for employment principally localized in another state, the Pennsylvania Workers' Compensation Act does not apply. *General Electric Co. v. WCAB (Sporio)*, 615 A.2d 833 (Pa. Cmwlth. 1992).
- Where claimant had worked various sites for employer, but at the time of the injury was at a fixed place for fixed period of work in New Jersey, the worker was not allowed a Pennsylvania claim. *Meyer v. WCAB (Raytheon Co.)*, 776 A.2d 338 (Pa. Cmwlth. 2001).

Another state workers' compensation law is not applicable to employer.

- If a claimant fails to establish that the compensation laws of the other jurisdiction do not apply to the employer, a claim under the Act is not established. *George Liko Co. v. WCAB (Stripay)*, 616 A.2d 197 (Pa. Cmwlth. 1992).
- Since claimant's work was principally localized in New York, and this was the only state that the employee had worked in for the employer, Pennsylvania coverage was denied. *Oliveri v. WCAB (I.T.T.Grinnell)*, 542 A.2d 658 (Pa. Cmwlth. 1988).

Contract of hire made in Pennsylvania for employment outside the United States and Canada.

- A non-Pennsylvania domiciliary sustaining an injury in a foreign country can gain entitlement to Pennsylvania benefits, if the employee accepted his employment while within the state.
- An employee who is working under a contract in Pennsylvania for work exclusively in Canada is entitled to benefits under §305.2(a)(2). The employee would be under a Pennsylvania contract working in employment not principally localized in any state.

Written Agreements.

- Written Agreements that the employment is principally localized in Pennsylvania or such other state will be given valid effect under the Act unless the other state refuses jurisdiction. §305.2(d)(5), 77 P.S. §411.2(d)(5).
- A written agreement that attempts to bind the employee to accept compensation benefits under the provisions of only one particular jurisdiction and thus avoid the payment of benefits under the more liberal provisions of the Act will not be enforced and is in violation of Section 410. §410, 77 P.S. 751.
- These provisions have been held as not authorizing agreements providing that a particular state's workers' compensation law will be the exclusive remedy for any work-related injury claim. *Robert M. Neff v. WCAB (Burr)*, 624 A.2d 727 (Pa. Cmwlth. 1993).
- It is impermissible to have an agreement to avoid Pennsylvania workers' compensation jurisdiction where the injury occurred in Pennsylvania.

Simultaneous receipt of benefits.

- An employee who has recovered benefits under the compensation law of another state but also is entitled to compensation under the Pennsylvania Workers' Compensation Act, is not barred from asserting such a claim.
- Section 322 of the Act prohibits the simultaneous receipt of compensation benefits from Pennsylvania and another jurisdiction. §322, 77 P.S. §677. This Section prohibits the receipt of, as opposed to the petitioning for, benefits under the Act by a claimant who is at the time receiving workers' compensation benefits from the Federal Government or another state.
- Section 322.2(b) does provide the employer with a credit for the benefits paid in the other state. *Robert*

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M. Neff v. WCAB (Burr), 624 A.2d 727 (Pa. Cmwlth. 1993).

CONCLUSION.

- In short, a worker injured outside the Commonwealth has the burden of proof of showing entitlement to coverage under the various provisions of Section 305.2 of the Act.
- There has been some inconsistency in the interpretation of Workers' Compensation Act, specifically, §305.2(d)(4) regarding the definition of "principally localized."
- We suggest considering all of the facts of each case to determine if Pennsylvania jurisdiction is applicable.