

August 29, 2019

Rexford A. Hagg  
Whiting, Hagg, Hagg, Dorsey,  
& Hagg, LLP  
P.O. Box 8008  
Rapid City, SD 57709-8008

**LETTER DECISION**

Laura K. Hensley  
Boyce Law Firm, LLP  
P.O. Box 5015  
Sioux Falls, SD 57117-5015

RE: HF No. 130, 2018/19 – Stella Anderson v. Tri State Construction, LLC and  
Cincinnati Indemnity Company

Dear Mr. Hagg and Ms. Hensley:

This letter addresses the following submissions by the parties:

July 8, 2019	Employer and Insurer's Motion to Dismiss and Brief in Support;
July 18, 2019	Claimant's Brief in Opposition to Employer and Insurer's Motion to Dismiss; Affidavit of Stella Anderson; Affidavit of Rexford A. Hagg;
July 31, 2019	Reply Brief in Support of Employer and Insurer's Motion to Dismiss.

**FACTS**

The facts of this case as reflected by the above submissions are as follows:

1. On and before October 5, 2018, Stella Anderson (Anderson or Claimant) was employed by Tri State Construction, LLC (Employer). Employer is insured by Cincinnati Indemnity Company (Insurer) for workers' compensation purposes. While she was working for Employer, Anderson reported injuries to her neck, back, left shoulder/arm and head in a motor vehicle accident. Anderson's claim

was determined compensable and indemnity and medical benefits were paid under the State of Wyoming's workers' compensation laws.

2. Employer is a construction and trucking company whose headquarters are located in Belle Fourche, South Dakota. Employer conducts business in South Dakota, Montana, and Wyoming.
3. Anderson resides in Spearfish, South Dakota.
4. The injury of October 5, 2018 occurred in Wyoming.
5. On June 3, 2019, Anderson filed a petition for hearing regarding her entitlement to past, present, and future medical bills, disability benefits, permanency benefits, and other benefits she could be entitled to under South Dakota's workers' compensation laws.

Additional facts may be developed in the issue analysis below.

Employer and Insurer have moved the Department of Labor & Regulation (Department) to dismiss Anderson's petition for workers' compensation benefits on the grounds that the Department lacks jurisdiction over Anderson's out-of-state injury. The South Dakota Supreme Court has described administrative agencies' jurisdiction in the following way, "In administrative law the term jurisdiction has three aspects: (1) personal jurisdiction, referring to the agency's authority over the parties and intervenors involved in the proceedings; (2) subject matter jurisdiction, referring to the agency's power to hear and determine the causes of a general class of cases to which a particular case belongs; and (3) the agency's scope of authority under statute." *Martin v. Am. Colloid Co.*, 2011 S.D. 57, ¶10, 804 N.W.2d 65, 68 (citing *O'Toole v. Bd. Of Tr. of S.D. Retirement Sys.*, 2002 S.D. 77, ¶10, 648 N.W.2d at 345). As an administrative agency, the scope of the Department's authority is established by statute.

The Court has further stated that, "[i]f sufficient significant contacts with South Dakota appear so that it can reasonably be said that the employment is located here, then the Department has statutory jurisdiction." *Knapp v. Hamm & Phillips Service Co.*, 2011 S.D. 57 ¶14, 824 N.W.2d at 789 (citations omitted). The Court used the following factors listed in the Restatement (Second) of Conflict of Laws § 181 (1971) to assess whether there are sufficient significant contacts. These factors are as follows:

- (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 if workers' 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 workers' compensation act of the State, or
- (f) the State has some other reasonable relationship to the occurrence, the parties and the employment.

The Court further stated, “[d]espite the Restatement’s use of the term “or” after each subsection, we do not suggest that any 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 out-lined in the Restatement remain a useful reference for making this determination.” Using these factors, the Department must decide whether there have been sufficient significant contacts to grant the Department statutory jurisdiction in this matter.

The injury occurred in Wyoming. Following the injury, Anderson was transported to an emergency room in Spearfish, South Dakota, and then to Rapid City Regional Hospital. Anderson resides in Spearfish and holds a South Dakota driver’s license. All of Anderson’s medical care has been in South Dakota. Anderson was interviewed and hired for her position with Employer in Belle Fourche, South Dakota. Employer contracts for work in South Dakota, Wyoming, and Montana, and its headquarters is located in Belle Fourche. Employer has four office staff members working at the Belle Fourche location and all others are employed to work outside of South Dakota. Anderson’s paychecks were issued from the office in Belle Fourche. Anderson was hired to render services solely in Wyoming. Anderson’s direct supervisor managed her work in Wyoming. There is no employment agreement establishing South Dakota’s jurisdiction over workers’ compensation matters.

At the time of the accident, Employer was insured by Insurer, in compliance with South Dakota workers’ compensation law. Wyoming is a monopolistic state which requires employers to obtain workers’ compensation insurance from a state fund or qualify as a self-insurer. It is from this fund, that Anderson’s initial benefits were paid.

In *Knapp* the Supreme Court analyzed an injury that occurred out of state. Knapp was injured while working in North Dakota which is also a monopolistic state. The Court stated that the factors in that case did not establish a substantial connection with South Dakota. Knapp had been injured in North Dakota and had spent 60 percent of his time in North Dakota and only 35 percent in South Dakota. *Knapp*, 2012 S.D. 82 at ¶16, 824 N.W.2d at 790-91. Knapp’s employer’s office was located in North Dakota and did not have an office or facilities in South Dakota. Knapp’s contract of employment was made in North Dakota. The court concluded that based on all the factors, South Dakota was not the place of Knapp’s employment even though he lived there.

In another Supreme Court case, *Martin v. American Colloid Co.*, 804 N.W.2d 65, 67 (2011), Martin lived in Belle Fourche, South Dakota, and was injured while working in Wyoming for American Colloid. Martin received Wyoming workers’ compensation benefits. American Colloid managed Martin and other Wyoming employees at the plant in Wyoming. American Colloid also operated a business office in Belle Fourche where Martin submitted her application. Martin exclusively worked at the plant in Wyoming. Martin filed a petition for hearing with the Department in 2008, alleging she was entitled to odd-lot disability benefits. American Colloid moved to dismiss for lack of jurisdiction which the Department granted in

2010. Martin appealed to the circuit court, which affirmed the Department's decision. Martin then appealed to the Supreme Court. The Court concluded that "[t]he only connection between South Dakota and the employment relationship at issue...is that Martin was a South Dakota resident throughout her employment with American Colloid." The Court affirmed the dismissal.

In both *Knapp* and *Martin*, the employers were not South Dakota companies. In this matter, Employer is a South Dakota company, and Anderson was hired in South Dakota. Applying the criteria provided by the Restatement (Second), the Department is persuaded that there are insufficient contacts with South Dakota to give the Department statutory jurisdiction in this matter. Anderson was hired in South Dakota. However, she was hired to work exclusively in Wyoming, and Wyoming is where her injury occurred. Employer has a business office in South Dakota, but Anderson's direct supervisor managed her in Wyoming. Employer has workers' compensation insurance through Insurer, in compliance with South Dakota law. However, Anderson was injured in Wyoming and received Wyoming workers' compensation benefits. Due to these aforementioned factors, the Department is persuaded that it lacks jurisdiction over Anderson's out-of-state injury.

***ORDER:***

In accordance with the conclusions above, Employer and Insurer's Motion to Dismiss Petition is Granted.

Stella Anderson's Petition for Hearing is hereby Dismissed with prejudice.

The Parties will consider this letter to be the Order of the Department.

Sincerely,

Michelle M. Faw  
Administrative Law Judge

MMF/pas