

March 28, 2023

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**Letter Decision on Motion  
for Summary Judgment**

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RE: HF No 99, 2021/22- Michael Minard v. United Road Services Topco Corporation and Ace Property and Casualty Insurance Company.

Greetings:

This letter decision addresses United Road Services Topco Corporation and Ace Property (Employer) and Casualty Company's Motion for Summary Judgment (Insurer).

All responsive briefs have been taken into consideration.

The matter arises from a work-related injury sustained by Michael Minard (Minard) on January 12, 2019, while working for Employer. He slipped, fell, and sustained injuries to his left shoulder and left arm. The injury occurred at Employer's Colorado facility. Minard's duties while working for Employer required him to load, unload, and haul motor vehicles from Henderson, Colorado to South Dakota and Nebraska. The majority of his hauls ended in South Dakota, most commonly in the cities of Belle Fourche, Spearfish, and Rapid City. He also picked up the semi-truck belonging to Employer in Rapid City, South Dakota for his hauls. Minard lives in South Dakota where he receives his compensation for his work for Employer. He also was treated for his work-related injury in South Dakota.

Minard made a first report of injury to Employer on January 16, 2019. In 2019, Minard pursued a claim for workers' compensation benefits under Colorado law. Insurer made Colorado medical payment benefits on behalf of Minard. On March 4, 2022, Minard filed a Petition for Hearing with the South Dakota Department of Labor & Regulation (Department).

### **Analysis**

The Department's authority to grant summary judgment is established in ARSD 47:03:01:08:

A claimant or an employer or its insurer may, any time after expiration of 30 days from the filing of a petition, move with supporting affidavits for a summary judgment. The division shall grant the summary judgment immediately if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The party seeking summary judgment bears the burden of demonstrating the lack of any genuine issue of material fact, and all reasonable inferences from the facts are viewed in the light most favorable to the non-moving party. *Stromberger Farms, Inc. v. Johnson*, 2020 S.D. 22, ¶ 31, 942 N.W.2d 249, 258-59 (citations omitted). "A fact is material when it is one that would impact the outcome of the case 'under the governing substantive law' applicable to a claim or defense at issue in the case." *A-G-E Corp. v. State*, 2006 SD 66, ¶ 14, 719 N.W.2d 780, 785. [W]orkers' compensation statutes are to be "liberally construed in favor of injured employees." *Orth v. Stoebner & Permann Const., Inc.*, 2006 S.D. 99, ¶ 43, 724 N.W.2d 586, 596 (Citations omitted).

Employer and Insurer have moved for summary judgment asserting that the Department lacks sufficient authority to apply South Dakota workers' compensation law to Minard's extraterritorial employment and injuries. They assert that neither his employment nor his injuries have a substantial connection to South Dakota. "If 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 Serv. Co.*, 2012 S.D. 82, ¶ 14, 824 N.W.2d 785, 790 "An administrative agency has jurisdiction over a matter when the agency is given power 'by law to hear and decide controversies.'" *Anderson v. Tri State Constr., LLC*, 2021 S.D. 50, ¶ 11, 964 N.W.2d 532, 536 (citing *Knapp*). The determination of jurisdiction is a threshold issue in workers' compensation cases. *Knapp* at ¶ 12. The South Dakota Supreme Court (Court) has held,

The determination of jurisdiction in administrative law involves three components:

(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.

*Anderson* at ¶ 11.

The relevant statute in South Dakota's workers' compensation laws is SDCL 62-3-3, which establishes who is bound by the provisions of Title 62. SDCL 62-3-3 provides:

Every employer and employee shall be presumed to have accepted the provisions of this title, and shall be thereby bound, whether injury or death resulting from such injury occurs within this state or elsewhere, except as provided by §§ 62-3-4 to 62-3-5.1, inclusive.

Additionally, in *Anderson*, the Court stated,

A State of the United States may consistently with the requirements of due process award relief to a person under its workers' compensation statute, if

- (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 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.

*Id* at ¶19 (citing Restatement (Second) of Conflict of Laws § 181 (1971)).

Thus, the question before the Department is whether Minard's employment had a substantial connection to South Dakota. Minard does not meet requirements (a) through (e) of the test applied in *Anderson*. Minard was not injured in South Dakota. He admitted in his Response to Employer and Insurer's Statement of Undisputed Material Facts that his employment with Employer was negotiated, executed, and subsequently supervised entirely in Colorado. Finally, the parties have not agreed that their rights should be determined under the workers' compensation act of South Dakota. Therefore, the only remaining avenue to show a substantial significant connection to South Dakota is element (f), that there is some other reasonable "relationship to the occurrence, the parties and the employment." *Id* at ¶19.

Minard points to the fact that he primarily delivered vehicles to cities in South Dakota and stored the company truck in South Dakota. Employer and Insurer argue that

the loading process for the vehicles took place in Colorado and was more labor intensive than the unloading which took place in South Dakota. They also assert that Minard was hired as a truck driver and nearly 80% of the miles he drove were outside of South Dakota.

Employer and Insurer have offered an Illinois case involving a truck driver for an Indiana company that was injured in Illinois. He carried freight from Indiana to the company's terminal in Chicago. The Illinois Supreme Court held, "[a]lthough his employment required regular travel to Illinois, these trips involved simply the discharge of freight at the Company's terminal in Chicago and the picking up of merchandise for delivery to Indiana." *McClain Dray Lines v. Indus. Comm'n*, 41 Ill. 2d 554, 557, 244 N.E.2d 169, 170 (1969). The Department finds this case helpful because similarly, Minard's work-related connection is that he would deliver vehicles, Employer's freight, in South Dakota. The Illinois Court did not find a substantial connection in the *McClain* case. *Id* at 558.

The Department also finds the *Knapp* case particularly pertinent. In *Knapp*, the claimant was injured in North Dakota. *Knapp* at ¶ 16. He worked 60% of his time in North Dakota and around 35% of his time in South Dakota. *Id*. The Court concluded from those figures that most of his employment was outside of South Dakota. *Id*. The company he worked for did not have a facility or an office located in South Dakota. *Id*. *Knapp* parked his truck near his home in South Dakota, but he did so for convenience. *Id*. The Court did not find sufficient factors to establish an employment relationship with South Dakota. *Id*.

Both the *Knapp* case in South Dakota and the *McClain* case in Illinois offer useful guidance for Minard's situation. Both Courts failed to find sufficient connections when the connection relies on the delivery of goods or storing of vehicles. Minard worked the majority of his time outside of South Dakota and the fact that the semi-truck he used to haul the vehicles was parked in South Dakota is not enough to establish significant contacts.

Minard also asserts that the fact that he resides in South Dakota, was paid in the state, and was treated here is sufficient to establish substantial significant connections. The Department does not agree. The location of his residence, payment, and treatment is also not enough to create significant contacts.

Therefore, the Department lacks jurisdiction over Minard's claim. Hearing File #90, 2021/22 is hereby DISMISSED.

The parties may consider this letter to be the ORDER of the Department.

Sincerely,

A handwritten signature in blue ink that reads "Michelle Faw". The signature is written in a cursive, flowing style.

Michelle M. Faw  
Administrative Law Judge

MMF/das