

NORTH CAROLINA LAW ON MULTI-STATE WORKERS' COMPENSATION ISSUES

**North Carolina Advocates for Justice
Workers' Compensation Section
Wilmington, North Carolina
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By:

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In a previous article, we discussed how various states address the pertinent issues that arise when a workers' compensation claim involves more than one jurisdiction.¹ The purpose of this article is to address how the state of North Carolina statutes and cases have addressed those issues. This may be of some assistance to attorneys practicing in North Carolina or attorneys from other states when their client's claims might potentially also be filed in this state. That is the purpose of this discussion below.

I. What Are The Requirements For North Carolina To Assert Jurisdiction Over A Workers' Compensation Claim?

The North Carolina General Statutes address when the North Carolina Industrial Commission will assert jurisdiction over an accident that happens outside the State. Pursuant to N.C. Gen. Stat. § 97-36:

Where an accident happens while the employee is employed elsewhere than in this State and the accident is one which would entitle him or his dependents or next of kin to compensation if it had happened in this State, then the employee or his dependents or next of kin shall be entitled to compensation (i) if the contract of employment was made in this State, (ii) if the employer's principal place of business is in this State, *or* (iii) if the employee's principal place of employment is within this State[.]

(Emphasis added.) Under the plain language of the statute, the Commission has jurisdiction if any one of the three conditions listed in the statute applies. *See generally Washington v. Traffic Markings, Inc.*, 182 N.C. App. 691, 696, 643 S.E.2d 44, 48 (2007). To determine where a contract for employment was made, North Carolina courts and the Industrial

¹ Andrew Reinhardt, *Conflicts of Law: Maximizing your recovery when handling Workers' Compensation claims involving multiple jurisdictions*, VTLA Journal, Summer 2006.

Commission apply the last act test. *Id.* In *Washington*, the claimant, a North Carolina resident, was injured while performing road work for a Massachusetts employer in South Carolina. The court found that the employment contract was made in North Carolina because the last act, the job offer and the claimant's acceptance, occurred in North Carolina. Although the decision to hire the claimant was made outside North Carolina, the offer was made by an agent of the employer in North Carolina when he telephoned the claimant in North Carolina and told him "There's a crew heading out of town. Be in the shop at six a.m., and pack a bag." The claimant accepted when he reported to work in North Carolina, as instructed. *Id.* at 697, 643 S.E.2d at 48; *see also Murray v. Ahlstrom Indus. Holdings, Inc.*, 131 N.C. App. 294, 296-97, 506 S.E.2d 724, 726-27 (1998) (the last act toward completion of the employment contract occurred when the claimant's former Mississippi employer telephoned the claimant at his home in North Carolina and offered to rehire him for a job in Mississippi, and the claimant accepted; the need to fill out paperwork in Mississippi was mainly administrative and did not affect the binding obligation of the employment contract); *but see Thomas v. Overland Exp., Inc.*, 101 N.C. App. 90, 97, 398 S.E.2d 921, 926 (1990) (last act occurred in Indiana under circumstances in which the claimant responded to an employment ad placed by the employer in a North Carolina newspaper, the claimant submitted an application for a position in North Carolina, the employer contacted the claimant and flew him to Indiana at the employer's expense, the claimant was given a physical and road test in Indiana, the employer informed the claimant that he had been hired

while he was still in Indiana, and the claimant signed employment papers that same day in Indiana), *rev. denied*, 328 N.C. 576, 403 S.E.2d 522 (1991).

In deciding whether North Carolina is the claimant/employee's principal place of employment, the Industrial Commission or a court should consider all the evidence of record to determine whether any other state has the same degree of significant contacts to the claimant's employment as North Carolina. *Perkins v. Ark. Trucking Servs., Inc.*, 351 N.C. 634, 638, 528 S.E.2d 902, 904 (2000). In *Perkins*, the court found that North Carolina was the principal place of the employment of the claimant, an interstate trucker. The facts which the court found important were that the claimant was assigned to operate a tractor-trailer in the employer's southeastern territory, which consisted of 12 to 13 southern states, including North Carolina. The employer employed more than three, but less than 10, truck drivers in North Carolina. Because the employer did not maintain a terminal in North Carolina, the claimant was dispatched from his residence in North Carolina by a dispatcher in Georgia. The claimant's first pick-ups and last deliveries, including stops in various North Carolina cities, were scheduled as close to his residence as possible to prevent him from driving with an empty truck. Approximately 18% to 20% of the claimant's stops were in North Carolina. When he was off the road, the claimant kept the employer's vehicle at his residence. The claimant received his paychecks at his residence.

In contrast, the court found that the claimant in *Davis v. Great Coastal Express*, 169 N.C. App. 607, 610 S.E.2d 276, *disc. rev. denied*, 359 N.C. 630, 616 S.E.2d 231 (2005),

another interstate trucker, did not have his principal place of employment in North Carolina, even though he kept his truck at a truck stop in North Carolina when he was off the road, he began and ended his trips in North Carolina, he was dispatched from a North Carolina truck stop through a computer in his truck, and 10% of his pick-ups and deliveries were in North Carolina. What distinguishes *Davis* from *Perkins* is that in *Davis* another state, Virginia, had more significant contacts with the claimant's employment than North Carolina. The claimant accepted employment in Virginia, he was supervised by a person in Virginia, his paychecks were issued in Virginia, he drove more miles in Virginia than in any other state, and, what the court found most persuasive, 19% of the claimant's pick-ups and deliveries were in Virginia, more than in any other state. *Id.* at 609-10, 610 S.E.2d at 278-79.

There is no particular test for determining whether the employer's principal place of business is in North Carolina, but it has been held that a business which has not been domesticated in North Carolina or which does not maintain any place of business in North Carolina does not have its principal place of business in North Carolina. *Suggs v. Williamson Truck Lines*, 253 N.C. 148, 153, 116 S.E.2d 359, 363 (1960). The term "principal place of business" requires more than the showing of minimum contacts required for the exercise of long-arm jurisdiction over a foreign defendant. Conducting substantial business in North Carolina is insufficient to establish that North Carolina is an employer's principal place of business. *Thomas*, 101 N.C. App. at 98, 398 S.E.2d at 926-27. Perhaps some guidance may be provided by a recent decision of the United States Supreme Court holding that the term

"principal place of business" in the diversity jurisdiction statute "is best read as referring to the place where a corporation's officers direct, control, and coordinate the corporation's activities. . . . And in practice it should normally be the place where the corporation maintains its headquarters[.]" *Hertz Corp. v. Friend*, ___ U.S. ___, 130 S. Ct. 1181, 1192 (2010).

II. Will North Carolina Allow Simultaneous Or Successive Recoveries For The Same Accident And Injury In Multiple States?

Yes. There is no statutory prohibition against filing a claim in more than one jurisdiction, and the United States Supreme Court recognized in *Thomas v. Wash. Gas Light Co.*, 448 U.S. 261, 279 (1980), that absent such a statute, there is no obstacle to prevent a compensation claimant from filing a claim in any state having jurisdiction. In *Perkins*, the court held that it is unlawful to enter into an agreement to relieve an employer of any obligation under the North Carolina Workers' Compensation Act, including an agreement that the employee's right to compensation will be dictated by the workers' compensation law of another state. 351 N.C. at 639, 528 S.E.2d at 905; *see also Betts v. S. Ry. Co.*, 71 F.2d 787, 789 (4th Cir. 1934) (the law of Virginia could not affect the right to compensation under North Carolina workers' compensation law, unless the law of North Carolina so provided).

However, there is a limit to the amount that a claimant may recover for a single accident. N.C. Gen. Stat. § 97-36 provides "that if an employee or his dependents or next of kin shall receive compensation or damages under the laws of any other state nothing herein contained shall be construed so as to permit a total compensation for the same injury greater

than is provided for in this Article." There is no North Carolina case law construing this clause of N.C. Gen. Stat. § 97-36.

III. What Is The Impact In North Carolina Of An Acceptance Of Benefits Or Election In Another State?

No case law could be found discussing whether the election of remedies under another state's workers' compensation law bars a claimant from receiving benefits in North Carolina. Thus, the impact of acceptance of benefits in another state seems to be, as set forth in the answer to Question II, to limit the total compensation for the same injury to an amount no greater than allowed under the North Carolina Workers' Compensation Act. In the exercise of its discretion, the Industrial Commission may reduce a North Carolina compensation award by the amount of payments made pursuant to another state's workers' compensation law. *See* N.C. Gen. Stat. § 97-42 ("Payments made by the employer to the injured employee during the period of his disability, or to his dependents, which by the terms of this Article were not due and payable when made, may, subject to the approval of the Commission be deducted from the amount to be paid as compensation.").

IV. How Will North Carolina Do A Benefit Comparison To Allow A Maximizing Of Recovery Between States?

There is no case discussing how North Carolina conducts a benefits comparison in order to maximize recovery between states. As set forth in the answers to Questions II and III, pursuant to N.C. Gen. Stat. §§ 97-36 and 97-42, a North Carolina compensation award

may be set off by the amount of the award in another jurisdiction, and the total compensation cannot exceed that which is permitted by North Carolina law. Accordingly, if North Carolina benefits are more generous than those in another jurisdiction, then a claimant should consider filing in North Carolina first. On the other hand, there may be circumstances where filing first in another state, or simultaneously, could also be considered. See sample order for use in your multi-state cases at Exhibit 1 hereto.

EXHIBIT 1

VIRGINIA:

IN THE NORTH CAROLINA INDUSTRIAL COMMISSION

_____)
)
 Claimant,)
)
 v.) File No.: _____
)
 _____)
 Employer,)
)
 and)
)
 _____)
 Insurer.)

STIPULATED ORDER

The parties hereto come by counsel and agree to the following matters relating to claims made by Claimant in the above-referenced case.

1. Claimant sustained compensable injuries to her _____ as a result of a work accident on _____.
2. The parties are in agreement and the claimant is hereby awarded temporary total benefits from _____ to the present and continuing but also that the insurer has paid the claimant temporary total disability wage benefits in the amount of _____ per week commencing on _____ through the present and continuing and has paid her medical bills in connection with her injuries resulting from her work accident of _____.
3. The parties further agree that the claimant's right to payments of temporary total disability payments in North Carolina should be and is hereby suspended pending her continued receipt of workers' compensation benefits under an open award order in Maryland.

4. Nonetheless, the parties agree the claimant has a right to pursue a _____ claim in the State of North Carolina in relation to _____
- The merits of such a claim is left to be determined at the time of such a filing and subsequent hearing regarding same.
5. There being no other matters in dispute at this time, this case shall be removed from the hearing docket.

Entered this _____ day of _____, 2009.

Deputy Commissioner
North Carolina Industrial Commission

ATTEST: _____
Iris C. Peace, Clerk

Attorney for Employer and Insurer

Attorney for Claimant