

New Hampshire Association for Justice Focus on Workers' Compensation Law

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By:

**Andrew J. Reinhardt
Reinhardt & Harper, PLC
1809 Staples Mill Road, Suite 300
Richmond, VA 23230
Phone: (804) 359-5500 (888) 501-1499
Email: andy@vainjurylaw.com**

**Roselyn Bonanti
Workers' Injury Law & Advocacy Group
1701 Pennsylvania Ave., NW – Suite 300
Washington, DC 20006
Phone: (202) 349-7150
Email: rbonanti@comcast.net**

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 discuss how the state of New Hampshire statutes and cases have addressed those issues. This may be of some assistance to attorneys practicing in New Hampshire 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 New Hampshire To Assert Jurisdiction Over A Workers' Compensation Claim?

The New Hampshire General Statutes address when the New Hampshire Labor Commission will assert jurisdiction over an accident that happens outside the State.

Pursuant to N.H. Rev. Stat. § 281-A:12:

If an employee is injured while employed elsewhere than in this state, and is injured under circumstances that would have entitled the employee or a dependent to workers' compensation under this chapter had such employee been injured in this state, then such employee or dependents of such employee shall be entitled to workers' compensation as provided in this chapter: (a) If the employee or the employee's dependents release the employer from all liability under any other law; (b) If the employer is engaged in business in this state; (c) If the contract of employment was made in this state; *and* (d) If the contract of employment was

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

not expressly for service exclusively outside of this state. (Emphasis added)

Under the plain language of the statute, the Labor Commission has jurisdiction if all four conditions in the statute applies. In *Ferren v. General Motors Corp.*, 137 N.H. 423, 628 A.2d 265 (1993), New Hampshire resident Dennis Ferren filed suit seeking compensation benefits in New Hampshire for injuries he suffered from exposure to high levels of lead while working in a Kansas battery plant from 1961 through 1974. The court held that the law of Kansas applied because the employment relationship was entered into and carried out in Kansas. The court noted, “[...]the appropriate focus is not on current residence of plaintiffs, but on the fact that employment relationship from which the alleged injuries arose was entered into and carried out in Kansas.” The court explained, further that “the fact that employee now resides in New Hampshire is not enough, standing alone, to warrant application of New Hampshire law to claim for injury alleged to have occurred during employment in Kansas.”

As explained in Larson’s Workers’ Compensation Law explains in many states “the making of the contract within the state is usually deemed to create the relation within the state.” “The relation, having thus achieved a situs, retains that situs until something happens that shows clearly a transference of the relation to another state. This transfer is usually held to occur when either a new contract is made in a foreign state, or the employee acquires in the foreign state a fixed and nontemporary employment situs.”²

² A. Larson, Workmen's Compensation s 143.04 (2010).

Poliquin v. DeSoto Kerns Co., 118 N.H. 371, 386 A.2d 1287 (1978) provides some guidance. In this case, the claimant worked in New Hampshire until he voluntarily transferred to work in his employer's plant in California. The plaintiff testified, a co-worker went to work in defendant's plant in California and he "wanted to go out there." The plaintiff established permanent residency in California and used his California residence address for income tax purposes. The California plant closed down and claimant was relocated in Texas where the injury occurred. The plaintiff received compensation under Texas worker's compensation law. Upon his return to New Hampshire, the plaintiff asserted that he was entitled to compensation because his employment contract was made in New Hampshire. Furthermore, his contract did not contemplate that his services were to be performed exclusively outside New Hampshire and his subsequent transfers to California and to Texas did not affect his status.

The court denied his claim noting that the plaintiff's employment in Texas was unrelated and remote from the employer-employee relationship that arose in New Hampshire. The employment contract was only indicative of the work situs until the claimant established a fixed and nontemporary employment status in California.³

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

No. A provision in New Hampshire's workers' compensation statute prevents the

³ Id., Treatise quoted

recovery of benefits under that statute if the claimant has received compensation under another state's workers' compensation statute. N.H. Rev. Stat. § 281-A:12 provides:

“ recovery of damages in an action at law or recovery of workers' compensation under the law of any other state shall *bar* recovery of workers' compensation under the law of this state.” (Emphasis added)

In re Weaver (2003) 150 N.H. 254, 837 A.2d 294, Stephen V. Weaver, appealed the decision of the New Hampshire Compensation Appeals Board (board) denying him benefits for an in-state injury because he had already received benefits under another state's workers' compensation statutes. Weaver asserted that RSA 281-A:12, which limits benefits for workers who were injured outside of the state and who received compensation under another state's law, did not apply to his case. The Supreme Court reversed the board's order dismissing the appeal, remanding the case for a determination as to whether Weaver is entitled to benefits under New Hampshire law. The Court specifically noted that in his brief, Weaver represents that he does not seek to recover twice for his workers' compensation injury, stating that “[a]t no time has [he] contended that his medical providers should be paid twice for his surgery bills, nor has [he] claimed that he is entitled to payment of disability compensation for weeks that he has already been paid disability compensation.”

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

The impact of acceptance of benefits in another state seems to be, as set forth in answer to Question 2, to bar claimants who was injured outside of the state and who received compensation under another state's law from receiving workers' compensation benefits in New Hampshire. *See* N.H. Rev. Stat. § 281-A:12. No additional case law could be found discussing whether the election of remedies under another state's worker's compensation law bars a claimant from receiving benefits in New Hampshire.

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

There is no case discussing how New Hampshire conducts a benefits comparison in order to maximize recovery between states. Again, as set forth in the answer to Question 2, pursuant to N.H. Rev. Stat. § 281-A:12, recovery of damages or workers' compensation award received in another jurisdiction, completely bars recovery in New Hampshire. Accordingly, if another state's benefits are more generous, than a claimant should consider filing in the other jurisdiction first.