

NEWSLETTER

Duncan A. McMillan, Editor

Worker's Compensation (Jurisdiction) Update

This issue updates evolving law concerning **jurisdiction of out of state injuries.**

The Michigan Supreme Court, in ***Bezeau v Palace Sports & Entertainment, Inc.***, ___ Mich ___ (S. Ct. #137500, rel'd 7/31/10), addressed conditions that give the Michigan Workers Compensation Agency (WCA) jurisdiction over out of state injuries under MCL 418.845.

For many years before the Michigan legislature amended § 845, in 2008 P.A. #499, (effective 1/13/09), § 845 said the WCA had jurisdiction over out of state injuries if:

- the injured employee was a resident of the State of Michigan at the time of the injury, *and*
- the employee's contract of hire was made in the State of Michigan.

However, the Michigan Supreme Court, in *Roberts v IXL Glass Corp.*, 259 Mich 644 (1932) and *Boyd v W G Wade Shows*, 443 Mich 515 (1993), held Michigan Workers' Compensation laws also applied if:

- the injured employee was not a Michigan resident, as long as the employee's contract of hire was made in Michigan with a Michigan employer.

In *Boyd, supra*, at 526, the Court said:

The Bureau of Workers' Disability Compensation shall have jurisdiction over extra-territorial injuries without regard to the employee's residence, provided the contract of employment was entered into in this state with a resident employer.

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Jurisdiction On Or Before
5/23/07

In *Karaczewski v Farbman Stein & Co.*, 478 Mich 28 (2007) (dec'd 5/23/07), the Supreme Court held § 845 must be applied, as written. Therefore, the WCA could not assert jurisdiction over an injury, occurring outside of Michigan, to a non-resident of Michigan even if he had a Michigan contract of hire with a Michigan employer. The Court said:

MCL 418.845 is clear and unambiguous. It grants the bureau "jurisdiction over all controversies arising out of injuries suffered outside the state where the injured employee is a resident of this state at the time of injury and the contract of hire was made in this state." (Emphasis added.) The meaning of this provision is straightforward: where the injury occurs outside Michigan, the bureau has jurisdiction only where (1) the injured employee was a resident of Michigan at the time of the injury and (2) the contract of hire was made in Michigan. Plainly, the use of the conjunctive term "and" reflects that both requirements must be met before the bureau has jurisdiction over an out-of-state injury. (*Karaczewski, supra*, at 32-33)

The Supreme Court held this ruling applied *retroactively*, *id* at 44-45, n 15, and prospectively, to all dates of injury (where there was not a final judicial decision). However, the newest decision, *Bezeau*, overruled that part of *Karaczewski* that said it applied before 5/24/07 (see below).

In Senate Bill #1598, 2008 P.A. #499, effective 1/13/09, the Michigan legislature amended § 845 to say the WCA had jurisdiction over injuries that occurred outside the State of Michigan if the injured employee was employed by an employer subject to the act and the employee was *either*:

- (1) a resident of the State of Michigan at the time of the injury **or**
- (2) the contract of hire was made in Michigan.

On 5/10/2010, the Supreme Court issued *Brewer v A.D. Transport, Express, Inc.*, 486 Mich 50 (2010). The Supreme Court held the 2009 amendment did not apply retroactively, i.e., before the effective date of the amendment. This ruling meant the 2009 amendment only applied from and after 1/13/09. *Brewer* did not change the ruling in *Karaczewski* that an employee injured outside of Michigan (before the latest amendment became effective on 1/13/09) had to meet both requirements (Michigan residency and Michigan contract of hire). However, injuries that occurred outside of Michigan on or after 1/13/09 were subject to the less restrictive 2009 amendment.

Restricted
Jurisdiction After
5/23/07

Expanded
Jurisdiction as of
1/13/09

In *Bezeau v Palace Sports & Entertainment, Inc.*, by a 4 to 3 majority, the Supreme Court overruled that part of *Karaczewski* that said its interpretation of § 845 applied to injuries that occurred on or before the Court issued its decision on 5/23/07. In *Bezeau*, the Court held the WCA had jurisdiction to decide a case involving a non-resident employee injured outside of the State of Michigan in October 2000 under the jurisdiction standard the Court adopted in *Roberts, supra*, and *Boyd, supra*, i.e., the WCA had jurisdiction over such an injury even though the employee was not a resident of Michigan as long as his contract of hire was made in Michigan.

The combination of *Bezeau, Brewer, Karaczewski* and the 2009 amendment illuminated the following evolution of jurisdictional standards for out-of-state injuries:

- On or before 5/23/07, the WCA can assert jurisdiction if the employee has a Michigan contract of hire with a Michigan employer whether or not the employee is a Michigan resident at the time of the injury, *Bezeau, supra*;
- After 5/23/07 (when the Supreme Court decided *Karaczewski*) and until 1/12/09 (just before the legislature amended § 845), the WCA can assert jurisdiction only if the employee has a Michigan contract of hire with a Michigan employer *and* the employee is a Michigan resident, *Karaczewski, supra*;
- As of 1/13/09, the WCA can assert jurisdiction "if the injured employee is employed by an employer subject to this act and if *either* the employee is a resident of" Michigan "at the time of the injury *or* the contract of hire was made in" Michigan, 2008 P.A. # 499 (emphasis added); *Brewer, supra*.

Employers and insurers who previously relied on the Supreme Court's *Karaczewski* ruling to deny benefits under Michigan law in cases involving non-resident employees with out-of-state injuries, should update their files to determine if the change in law *Bezeau* produced may make claimants injured on or before 5/23/07 subject to Michigan law. The Supreme Court said its decision in *Bezeau* did not alter claims that "already reached final resolution in the court system", *id*, sl. op. at 13-14.

Karaczewski is not
Retroactive After all.

Summary and
Application

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