

NEWSLETTER

Duncan A. McMillan, Editor

Workers' Compensation Update

To our friends in the workers compensation community, we provide you with a brief summary/update of developments in Michigan workers' compensation law.

This newsletter summarizes the Michigan Supreme Court's most recent decision concerning out-of-state injuries by employees.

MICHIGAN SUPREME COURT HOLDS THE RECENT AMENDMENT TO MCL 418.845, EXPANDING THE JURISDICTION OF THE MICHIGAN WORKERS' COMPENSATION AGENCY'S JURISDICTION OVER OUT-OF-STATE INJURIES, IS NOT RETROACTIVE.

An amendment to §845 of the Workers' Disability Compensation Act, 2008 PA 499, that went into effect on January 13, 2009, expanded the Michigan Workers' Compensation Agency's (WCA) jurisdiction over injuries that occur outside of Michigan. Under this amendment, the WCA obtained jurisdiction over injuries that occurred outside the state of Michigan:

. . . where the injured employee is employed by an employer subject to this Act and if either the employee is a resident of this State at the time of injury or the contract of hire was made in this State.

Before this amendment, §845 only gave the Bureau of Workers' Compensation jurisdiction over injuries that occurred out of the State of Michigan where the injured employee was both a resident of this

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State at the time of the injury *and* the contract of hire was made in this State. In *Karaczewski v Farbman Stein & Co.*, 478 Mich 28 (2007), the Michigan Supreme Court held the former statute required both employee residency and an employee's contract of hire to be in the State of Michigan to give the Bureau jurisdiction over an out-of-state injury.

In *Brewer v A.D. Transport Express, Inc., et al.*, ___ Mich ___ (Supreme Court No. 139068, rel'd 5/10/10), the Supreme Court held the amendment did not apply retroactively, i.e., before the effective date of the amendment. Therefore, the Court held the result in *Karaczewski* continues to apply to injuries that occurred before January 13, 2009 and the amendment applies to injuries that occur after that date. Therefore, for injuries that occur before January 13, 2009, the WCA does not have jurisdiction over out-of-state injuries unless both requirements of the pre-amended statute exist.

Mr. Brewer, a Michigan resident, was injured in Ohio in 2003 while working for a company headquartered in Michigan. The evidence presented did not show where his contract of hire was made. Therefore, the Commission held the WCA did not have jurisdiction over his out-of-state injury.

The Supreme Court, in *Brewer*, said under the amendment, however, "a claimant injured outside Michigan need only show *either* that he was a Michigan resident at the time of his injury *or* that his contract of hire was made in this State" to give the WCA jurisdiction over an out-of-state injury involving an employer subject to the Act.

The rationale the Court applied was that an amendment that enacts a substantive change in the law is presumed to apply prospectively only unless the legislature clearly manifests an intent that it be applied retroactively. The Court said the recent amendment to §845 did not include language that said the legislature intended to apply the amendment retroactively. The Court said the legislature provided a specific effective date of January 13, 2009.

The Court also noted the amendment expanded Michigan's jurisdiction beyond anything that prior case law, *Boyd v WG Wade Shows*, 443 Mich 515 (1993), allowed. The amendment gave the WCA jurisdiction over out-of-state injuries of Michigan employees whose contracts of hire were not made in Michigan. The expansion of jurisdiction, beyond any that existed before *Karaczewski*, gave the Court further reason to hold the amendment should only be applied prospectively.

The Court also said it did not deem this amendment merely a remedial or procedural amendment since it expanded the jurisdictional authority of the Court and "potentially enlarged existing rights for Michigan residents injured in other states under contracts of hire not made in Michigan."

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