

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

LINDA S. HENRETTY)
 Claimant)
V.)
))
HEALTH CENTER NORTHWEST, LLC)
 Respondent)
AND)
))
MONTANA STATE FUND)
 Insurance Carrier)
AND)
))
KANSAS WORKERS COMPENSATION)
FUND)

AP-00-0468-875
CS-00-0461-209

ORDER

The Kansas Workers Compensation Fund (the Fund), through John Nodgaard, requested review of Administrative Law Judge (ALJ) Ali Marchant's preliminary hearing Order dated July 5, 2022. David Farris appeared for the claimant. The respondent and insurance carrier did not appear. The claimant and the Fund agreed the Montana State Fund does not provide insurance coverage for accidents outside of Montana and was not subject to ALJ Marchant's jurisdiction.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the preliminary hearing transcript, held June 16, 2022, with exhibits, including the claimant's discovery deposition, taken March 24, 2022, and documents of record filed with the Division.

ISSUES

1. Does Kansas have jurisdiction over this claim under the Workers Compensation Act based on where the claimant's contract of employment with the respondent occurred?
2. If so, is the claimant estopped from seeking workers compensation benefits in Kansas because she already pursued her claim in the State of Montana?

FINDINGS OF FACT

The claimant worked as a scrub tech in the eye field for over 40 years. In 2008, she resided in Wichita and worked for Wesley Medical Center. The claimant learned about the respondent, a health provider in Montana, from her son, who was living in Montana. The claimant, who was looking for a new job, contacted the respondent, who asked her to submit a resume.

The claimant faxed her resume to the respondent from Wichita. The respondent flew the claimant to Montana for an interview. The claimant mostly spoke with an administrator named Victoria (Vicki) Johnson and the respondent's human resources department throughout the hiring process.

After returning to Kansas, the claimant received a phone call from Ms. Johnson offering her the position and to expect a faxed document for her signature. On July 25, 2008, the claimant received the faxed document, which was signed by Susan Stevens, Human Resource Director. The document listed her date of hire as August 1, 2008, or shortly thereafter, and stated:

We are excited to have you join the team of great staff here at HCNW. This letter represents our offer of employment as a Senior OR Tech at HealthCenter Northwest. The specifics of this offer include:

...

This letter of position offering does not constitute a contract of employment for any specified period of time. Please sign below, make a copy for yourself, and return this original to me at the address below. Upon receipt of your signed letter, your relocation check will be sent to you.

Please call me . . . or Victoria Johnson . . . with any questions and a final confirmation of your start date. And, welcome to HealthCenter Northwest!¹

The claimant signed the letter under a typed statement prepared by the respondent, "I accept employment as detailed above." The claimant dated the acceptance July 25, 2008. Thereafter, the respondent provided the claimant a relocation check in the amount of \$5,000. She immediately resigned her position at Wesley after nine years, sold her house and relocated to Montana. The claimant testified she would not have sold her house if she did not have employment in Montana.

On August 11, 2008, the claimant's first day on the job with the respondent, she signed documents, including a job application, a W-4 tax document and some training

¹ P.H. Trans., Fund Ex. 2 at 1.

forms. For this litigation, Ms. Stevens completed an affidavit indicating the claimant would not have been allowed to work for respondent absent these documents being completed.

In a Request for Verification of Employment executed September 21, 2017, the respondent listed the claimant's date of employment as August 11, 2008.

On November 7, 2017, the claimant fractured her right ankle in two places after falling on ice in the employee parking lot. She underwent surgery and was hospitalized for several days.

In a letter dated November 20, 2017, the Montana State Fund accepted the claim for benefits for the claimant's right ankle and stated:

Medical benefits are provided for treatment of this right ankle injury only. You may receive reasonable and necessary medical treatment subject to the limitation as provided within the Workers' Compensation Act. These benefits will terminate 60 months from the date of injury or diagnosis of an occupational disease. Your benefits will terminate on November 7, 2022. Once your medical benefits terminate they may not be reopened unless further treatment is the direct result of your injury or occupational disease and that treatment is necessary to allow you to continue working, or return to work. In order for medical benefits to be reopened you must file a petition to reopen your medical benefits with the Department of Labor & Industry within 60 months of the termination of your benefits.²

All of the medical bills were paid by the Montana State Fund. The claimant has not received any medical treatment since September 27, 2019. The Montana State Fund also paid nearly \$18,000 in temporary disability benefits.

In 2020, the claimant decided to retire and move back to Wichita. Shortly thereafter, she took a job at Wesley Medical Center. She continues to experience much discomfort in her right ankle and has a reduced work schedule.

On September 16, 2021, the Montana State Fund offered the claimant a settlement of \$8,000, which considered hardware removal, physical therapy, shoe inserts, shoes and doctor appointments. The claimant declined the offer.

On September 21, 2021, the claimant filed an Application for Benefits in the State of Kansas. She proceeded to a preliminary hearing, seeking an underpayment of temporary total disability benefits of \$297.50, representing the asserted difference between the rate paid in Montana and the applicable pay rate in Kansas.

² P.H. Trans., Fund Ex. 3 at 12-13.

The ALJ found the paperwork the claimant completed for the respondent in Montana, after she was hired, was more a formality than a condition precedent to obtaining the job, and the claimant is not estopped from claiming workers compensation benefits in Kansas after previously receiving benefits in Montana. The ALJ ordered the Fund to pay the claimant a temporary total disability underpayment in the amount of \$288.51.

PRINCIPLES OF LAW AND ANALYSIS

The parties agree the claimant's place of employment was not Kansas, so jurisdiction is contingent on her contract of employment with respondent occurring in Kansas. The Fund argues the last acts to complete the claimant's employment contract occurred in Montana and Kansas lacks jurisdiction. The Fund further argues the claimant should be estopped from pursuing a claim in Kansas because she accepted benefits from the Montana State Fund and she can still seek benefits under Montana law. The claimant maintains the Order should be affirmed.

K.S.A. 44-506 states:

The workmen's compensation act shall not be construed to apply to business or employment which, according to law, is so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged: Provided, That the workmen's compensation act shall apply also to injuries sustained outside the state where: (1) The principal place of employment is within the state; or (2) the contract of employment was made within the state, unless such contract otherwise specifically provides: Provided, however, That the workmen's compensation act shall apply to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of the state of Kansas and to all projects, buildings, constructions, improvements and property belonging to the United States of America within said exterior boundaries as authorized by 40 U.S.C. 290, enacted June 25, 1936.

“Under Kansas law, a contract is formed when and where the last act necessary for its formation is completed. When that act is the acceptance of an offer while in a telephone conversation, the contract is formed where the acceptor voices his or her acceptance.”³ There are instances in which completing a drug test, undergoing orientation and completing paperwork is a condition precedent to obtaining employment.⁴ In other

³ *Lang v. Leggett & Platt, Inc.*, No. 104,243, 2011 WL 1377089, at *2 (Kansas Court of Appeals unpublished opinion filed April 8, 2011, *rev. denied* 293 Kan. 1107 (2012)).

⁴ See *Speer v. Sammons Trucking*, 35 Kan. App. 2d 132, 144-45, 128 P.3d 984 (2006).

situations, paperwork and employee drug testing are considered conditions subsequent to the formation of an employee-employer contract.⁵

1. The claimant accepted the respondent's offer of employment in Kansas. The contract was made in Kansas. Kansas has jurisdiction.

The undersigned concludes the last act necessary to complete the contract of employment was the claimant's signing of the offer of employment when she was in Kansas on July 25, 2008. The respondent's letter was an offer of employment. The claimant signed and dated the letter under the provision "I accept employment as detailed above." There was an offer and an acceptance, i.e., a contract. It is hard to believe the respondent would send the claimant a check for \$5,000 absent a contract. It is further hard to believe the claimant would quit her job, sell her house and move to Montana absent an employment contract. The ALJ's ruling in favor of the claimant on this issue is affirmed.

2. The claimant is not equitably estopped from claiming Kansas benefits.

Equitable estoppel precludes a party from taking inconsistent positions in litigation, such as claiming independent contractor status to obtain contractual benefits, and later alleging employee status to obtain workers compensation benefits.⁶

The Fund cites a recent Board case, *Hipp*,⁷ but it is inapplicable. *Hipp* concerned a Texas employer who opted out of workers compensation and instead offered benefits under a private plan. A single Board Member found the claimant in *Hipp* was equitably estopped from claiming Kansas benefits after accepting the contractual benefits under the private plan. There is no similar contract or private plan in this matter.

Instead, the general rule is a claimant may pursue workers compensation benefits in any forum having jurisdiction.⁸ The claimant's contract of employment was made in Kansas. Accordingly, she may pursue benefits under the Kansas Workers Compensation Act. The claimant has never taken an inconsistent position the respondent or the Fund could reasonably rely upon to equitably estop her from seeking workers compensation

⁵ *Shehane v. Station Casino*, 27 Kan. App. 2d 257, 263, 3 P.3d 551 (2000).

⁶ See *Marley v. M. Bruenger & Co.*, 27 Kan. App. 2d 501, 506, 6 P.3d 421 (2000).

⁷ *Hipp v. Dee King Trucking*, No. AP-00-0461-294, CS-00-0456-534, 2022 WL 625813 (Kan. WCAB Feb. 9, 2022).

⁸ See *Carver v. Delta Innovative Services*, No. 1,042,520, 2015 WL 5918864 (Kan. WCAB Sept. 15, 2015); *Owen v. Markin Group*, No. 1,050,199, 2011 WL 2693258 (Kan. WCAB June 7, 2011); and *Jackson v. Carter Petroleum Products*, No. 234,073, 2008 WL 5484137 (Kan. WCAB Dec. 31, 2008).

benefits in Kansas. Equitable estoppel does not apply. This part of the ALJ's ruling is also affirmed.

WHEREFORE, the undersigned Board Member affirms the July 5, 2022, Order.

IT IS SO ORDERED.

Dated this _____ day of September, 2022.

JOHN F. CARPINELLI
BOARD MEMBER

c: (via OSCAR)

Davis Farris
John Nodgaard
Honorable Ali Marchant

c: (via USPS)

Health Center Northwest, LLC
320 Sunnyview Lane
Kallispell, Montana 59901