

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
THIRD DEPARTMENT

Matter of Deraway v. Bulk Stor., Inc.

51 A.D.3d 1313 (3d Dep't 2008) · Decided May 22, 2008

SUMMARY

The court upheld the New York Workers’ Compensation Board’s jurisdiction over a claim arising from an injury the claimant sustained while working in Pennsylvania. It found sufficient contacts between the claimant’s employment and New York, and concluded that the employer’s workers’ compensation policy covered the claim because the claimant was principally employed in Illinois. The court also excused procedural defects in the carrier’s notice of appeal because they caused no prejudice.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Kavanagh, J.; Mercure, J.P.; Peters, J.; Kane, J.; Stein, J.
JURISDICTION	New York
DECIDED	May 22, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	The carrier appealed from a Workers' Compensation Board decision affirming a Workers' Compensation Law Judge's finding that New York had jurisdiction over the out-of-state workplace injury and that the carrier's policy covered the claim.
STANDARD OF REVIEW	Whether substantial evidence supported the Board's determinations regarding New York jurisdiction and insurance coverage.
PRECEDENTIAL VALUE	Published Appellate Division opinion
PARTIES	Virginia Surety Company and its third-party administrator v. Deraway, Bulk Storage, Inc.

TOPICS

- workers compensation
- insurance coverage
- judicial review of agency action
- appellate procedure
- administrative law

PRACTICE AREAS

workers compensation

insurance

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether sufficient contacts existed between New York and the employer's employment relationship to confer New York Workers' Compensation Board jurisdiction over an injury occurring in Pennsylvania.
2. Whether the carrier's policy covered the claim under its provision covering employees principally employed in Illinois.
3. Whether defects in the carrier's notice of appeal rendered the appeal invalid.

HOLDINGS

1. New York had jurisdiction because substantial evidence supported the determination that the employment was sufficiently and significantly connected with New York.
2. The carrier's policy covered the claim because the claimant was principally employed in Illinois, and the undefined phrase 'principally employed' had to be construed against the carrier.
3. The notice of appeal was not invalidated by the carrier's typographical identification of the employer as the appealing party or by failure to timely serve the employer, because there was no prejudice and the employer was aware of and participated in the appeal.

KEY QUOTATIONS

“For the Board to have jurisdiction over a claim arising from a work-related injury that occurred outside New York, it must determine whether there were sufficient and significant contacts between the state and the employer to support a reasonable conclusion that the employment was to some extent sited in this state”
(1314)

“Based on the foregoing, substantial evidence exists to support the Board’s determination that the employer had significant contacts with New York as to establish the Board’s jurisdiction over this claim” (1315)

FACTUAL BACKGROUND

Deraway was a New York resident and carpenter employed by an Illinois-based corporation. He was hired while working on the employer's New York project at Riker's Island and regularly returned to New York after out-of-state assignments; he also received notice of assignments while in New York. He was injured in Pennsylvania when an 1,800-pound wood panel fell on him. The employer's policy was issued in Illinois, assignments came from the employer's Illinois office, and Deraway routinely returned to Illinois to discuss projects and used an Illinois telephone number supplied by the employer.

PROCEDURAL HISTORY

Deraway, a New York resident employed by an Illinois corporation, was injured while working in Pennsylvania. After Illinois denied his claim for lack of coverage, he sought New York workers' compensation benefits. The WCLJ found a work-related injury, sufficient contacts with New York, and coverage under the carrier's policy.

The Workers' Compensation Board affirmed, and the carrier appealed. The Appellate Division affirmed and corrected technical defects in the notice of appeal under CPLR 5520(c).

DISPOSITION

affirmed

CASES CITED

- Matter of Nashko v. Standard Water Proofing Co., 4 N.Y.2d 199, 201-202 (1958)
- Matter of Sanchez v. Clestra Cleanroom, Inc., 11 A.D.3d 781, 782 (2004)
- Matter of Edick v. Transcontinental Refrigerated Lines, 300 A.D.2d 848, 848-849 (2002)
- Matter of Bugaj v. Great Am. Transp., Inc., 20 A.D.3d 612, 613-614 (2005)
- Matter of Williams v. Roadkill, Inc., 277 A.D.2d 764, 765 (2000), lv. dismissed, 96 N.Y.2d 824 (2001)
- Ace Wire & Cable Co. v. Aetna Cas. & Sur. Co., 60 N.Y.2d 390, 398 (1983)
- Commercial Union Ins. Co. v. Liberty Mut. Ins. Co., 36 A.D.3d 645, 645-646 (2007)
- Barnhardt v. Hudson Val. Dist. Council of Carpenters Benefit Funds, 114 A.D.2d 701, 702-703 (1985)
- Matter of Cabrera v. Two-Three-Nought-Four Assoc., 46 A.D.3d 1255, 1258 (2007)
- Matter of Barker v. Buffalo Color Corp., 32 A.D.3d 1138, 1139 (2006)
- Peck v. Ernst Bros., 81 A.D.2d 940, 941 (1981)