

DISTRICT OF COLUMBIA COURT OF APPEALS

Washington Post v. District of Columbia Department of Employment Services

825 A.2d 296 (D.C. 2003) · No. No. 02-AA-613 · Decided May 29, 2003

SUMMARY

The District of Columbia Court of Appeals affirmed a decision awarding workers' compensation benefits to Steven Malik for injuries sustained while working for The Washington Post. The court held that payments calculated under Virginia law did not constitute compensation received under Virginia workers' compensation law because Malik had not agreed to the payments and no agreement had been filed with or approved by the Virginia Workers' Compensation Commission. The court also upheld the finding that Malik's 1999 and 2000 injuries were recurrences or aggravations of earlier District of Columbia injuries.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | District of Columbia Court of Appeals                                                                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Farrell, Associate Judge; Wagner, Chief Judge; Nebeker, Senior Judge                                                                                                                                                                                                                                                                                                         |
| JURISDICTION          | District of Columbia                                                                                                                                                                                                                                                                                                                                                         |
| DECIDED               | May 29, 2003                                                                                                                                                                                                                                                                                                                                                                 |
| DOCKET                | No. 02-AA-613                                                                                                                                                                                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | Petition for review of a District of Columbia Department of Employment Services decision affirming an administrative law judge's award of workers' compensation benefits to Steven Malik.                                                                                                                                                                                    |
| STANDARD OF REVIEW    | The court ordinarily gives deference to DOES's interpretation of the statute it administers, but reviewed the issue concerning the requirements of Virginia law more nearly de novo because that issue was outside the agency's special expertise. The ALJ's factual finding that the later injuries were recurrences or aggravations was reviewed for substantial evidence. |
| PRECEDENTIAL VALUE    | Published opinion; precedential                                                                                                                                                                                                                                                                                                                                              |
| PARTIES               | The Washington Post, Gallagher Bassett Services v. District of Columbia Department of Employment Services                                                                                                                                                                                                                                                                    |

## TOPICS

workers compensation

administrative law

judicial review of agency action

statutory interpretation

## PRACTICE AREAS

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## QUESTIONS PRESENTED

1. Whether the 1999 and 2000 payments made by The Washington Post under Virginia compensation rates constituted compensation received under Virginia workers' compensation law, thereby barring Malik from receiving District of Columbia benefits under D.C. Code § 32-1503(a-1).
2. Whether Malik's 1999 and 2000 back injuries were new, Virginia injuries or recurrences or aggravations of his earlier District of Columbia injury.
3. Whether Malik's deposit and acceptance of the payments waived his right to claim District of Columbia workers' compensation benefits.

## HOLDINGS

1. Payments made unilaterally by an employer under Virginia compensation rates do not constitute compensation received under Virginia workers' compensation law when the employee did not agree to the compensation and no memorandum of agreement was filed with or approved by the Virginia Workers' Compensation Commission.
2. Malik's deposit and acceptance of the payments did not waive his right to assert that the payments were made under the wrong jurisdiction's law because he disputed the Virginia calculation and the payments were not legally recognized as voluntary Virginia benefits.
3. The ALJ's finding that Malik's 1999 and 2000 injuries were recurrences or aggravations of his 1996 and 1997 injuries was supported by substantial evidence.

## KEY QUOTATIONS

*"The Post's payments to Malik, in a word, were volunteered, but they were not voluntary under Virginia's scheme, lacking the prerequisites of an agreement of the parties memorialized and filed for the Commission's approval."* (300)

*"In these circumstances, Malik's 'acceptance' of the payments was not a waiver of his right to claim that the benefits were being paid under the law of the wrong jurisdiction, and that even Virginia law does not recognize them as voluntary payments."* (301)

## FACTUAL BACKGROUND

Steven Malik suffered a work-related back injury while working for The Washington Post in the District of Columbia in 1996 and received District workers' compensation benefits; he experienced a further recurrence in 1997 and was again compensated. After re-injuring his back or experiencing a recurrence while working at the Post's Virginia plant in 1999 and 2000, The Post paid him benefits calculated under Virginia rates, although

Malik disputed that Virginia law governed and sought additional District benefits. The ALJ found that the later injuries were causally related recurrences or aggravations of the earlier District injury.

#### PROCEDURAL HISTORY

Malik sought additional District of Columbia workers' compensation benefits for injuries sustained in 1999 and 2000 after The Washington Post paid him amounts calculated under Virginia law. The DOES ALJ determined that the payments were not compensation received under Virginia law and that the later injuries were recurrences or aggravations of prior District injuries. The DOES Director affirmed, and the District of Columbia Court of Appeals affirmed the agency decision.

#### DISPOSITION

affirmed

#### CASES CITED

- Mendez v. District of Columbia Department of Employment Services, 819 A.2d 959, 960 (D.C. 2003)
- Springer v. District of Columbia Department of Employment Services, 743 A.2d 1213, 1218 (D.C. 1999)
- Lee v. District of Columbia Department of Employment Services, 509 A.2d 100, 102 (D.C. 1986)
- National Linen Serv. v. McGuinn, 5 Va. App. 265, 362 S.E.2d 187 (1987)
- Henrico Pub. Utils. v. Taylor, 34 Va. App. 233, 540 S.E.2d 501, 504 (2001)
- Washington Metro. Area Transit Auth. v. District of Columbia Department of Employment Services, No. 02-AA-223, 825 A.2d 292 (D.C. May 29, 2003)
- Brown v. District of Columbia Department of Employment Services, 700 A.2d 787, 791-792 (D.C. 1997)
- Harris v. District of Columbia Office of Worker's Compensation, 660 A.2d 404, 407-408 (D.C. 1995)
- Short v. District of Columbia Department of Employment Services, 723 A.2d 845, 851 (D.C. 1998)