Uzzell, Irene

COVERAGE AND EXCLUSIONS

Extraterritorial

Under a collective bargaining agreement that provides a claim would be processed in Illinois but also allows the worker to file in any other state that has jurisdiction, the worker was entitled to an allowed claim under the Washington Industrial Insurance Act because there was a sufficient nexus between the worker and the State of Washington notwithstanding the fact that the worker also filed a valid claim in Illinois. **….*In re Irene Uzzell*, BIIA Dec., 09 18171 (2010)**

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: IRENE M. UZZELL	)	**DOCKET NO. 09 18171**
	)	
CLAIM NO. W-871430	)	**DECISION AND ORDER**

APPEARANCES:

Claimant, Irene M. Uzzell, Pro Se

Self-Insured Employer, United Airlines, Inc., by
The Law Office of Robert M Arim, PLLC, per
Robert M. Arim

Department of Labor and Industries, by
The Office of the Attorney General, per
Richard A. Becker, Assistant

The employer, United Airlines, Inc., filed an appeal with the Board of Industrial Insurance Appeals on July 30, 2009, from an order of the Department of Labor and Industries dated May 28, 2009. In this order, the Department canceled its order dated December 3, 2008, in which it denied the claim for the reason that the claim was not filed within one year after the day upon which the alleged injury had occurred, and ordered that "This injury is allowed." The Department order is **AFFIRMED**.

DECISION

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision. The employer and Department filed timely Petitions for Review of a Proposed Decision and Order issued on August 23, 2010, in which the industrial appeals judge affirmed the Department order dated May 28, 2009. The Department also filed a Response to the Self-Insured Employer's Petition for Review.

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed. The rulings are affirmed.

We have granted review to amplify the discussion, findings, and conclusion necessary to resolve all of the issues raised by this appeal and to correct an error in the description of the result in the first paragraph of the Proposed Decision and Order. Because the Department's order allowed the claim, the self-insured employer's Notice of Appeal raises significant issues in addition to the question of timeliness of filling of the Application for Benefits. These issues involve the application of RCW 51.12.120 to the facts of this appeal in determining extraterritorial coverage.

We must determine whether Ms. Uzzell employment was "principally localized in this state" under RCW 51.12.120(1)(a) and (5)(a), and RCW 51.12.120(6), and the effect of the provisions of the union contract, Exhibits 8, and 9.

We agree with our industrial appeals judge's decision determining that the Application for Benefits was filed in a timely fashion when it was filed with the self-insured employer, and with its third-party administrator, Gallagher Bassett, prior to February of 2005. Our Decision and Order, *In re Marilyn Lucas-Brown,* Dckt. No. 08 15792 (May 18, 2009), determines the issue of timeliness of filing an Application for Benefits in a case with facts that are essentially identical to those presented by this appeal. The claimant's employment was with the same self-insured employer, United Airlines, the job of flight attendant was the same, and the timing and the manner in which the Application for Benefits was filed was the same. The only significant difference is in the terms of the Department orders that are the subject of these appeals, and in the party filling the appeal. The *Lucas-Brown* appeal was filed by the claimant from a Department order that rejected the claim for the reason that the Application for Benefits was not filed within one year after the day on which the industrial injury occurred. Accordingly, in that appeal our scope of review was limited to the issue of timeliness of filing of the Application for Benefits. This appeal was filed by the self-insured employer from a Department order that canceled an order dated December 3, 2008, denying the claim for the reason that the claim was not filed within one day after the day upon which the alleged injury had occurred, and ordered that "This injury is allowed." This appeal raises several issues that were not before us as in *Lucas-Brown*. In *Lucas-Brown,* we noted:

> In arguing the motion before the Board and also in the Employer's Response to the Claimant's Petition for Review, the self-insured employer called the Board's attention to RCW 51.12.120(6), which states:
>
> > A worker whose duties require him or her to travel regularly in the service of his or her employer in this and one or more other states may agree in writing with his or her employer that his or her employment is principally localized in this or another state, and, unless the other state refuses jurisdiction, the agreement shall govern as to any injury occurring after the effective date of the agreement.
>
> The Department has not decided whether this section of the statute applies to Ms. Lucas-Brown's situation, and if it does apply, whether it precludes her from receiving benefits in Washington State. Our jurisdiction is limited to review Department decisions specified in the order on appeal. As we did in the prior claim, we decline to address that issue until the Department first decides it. *Lenk v. Department of Labor & Indus.*, 3 Wn. App. 977 (1970).

Lucas-Brown at 4.

In the order allowing the claim that is the subject of this appeal, the Department determined issues relating to the application of RCW 51.12.120 to the facts of this claim in a manner favorable to the claimant. Accordingly, the self-insured employer's appeal puts the Department's determinations regarding the application of RCW 51.12.120 at issue. United Airlines contends that Ms. Uzzell has failed to meet the provisions of RCW 51.12.120 in claiming extra territorial coverage. United argues that under the union contract the claimant had accepted Illinois coverage and benefits, and that this deprived her of a right to make a claim in Washington. The self-insured employer also argues that the claimant did not meet the standards set forth in RCW 51.12.120(5)(a), regarding the locus of her employment.

The relevant provisions regarding extraterritorial coverage for this worker are RCW 51.120(1)(a) and (5)(i). RCW 51.120(1)(a) supports coverage if a workers "employment is principally localized in this state." RCW 51.120(5)(i) defines employment principally localized in this state as when a worker's "employer has a place of business in this . . . state and . . . she regularly works at or from the place of business. . .." United has a place of business at SeaTac Airport and all of Ms. Uzzell's work activities commenced at that airport. Ms. Uzzell's employment was principally localized in the state of Washington.

The other issue raised relates to the provisions of RCW 51.12.120(6) and the union contract. (Exhibit 9.) RCW 51.12.120(6) provides that "[a] worker whose duties require him or her to travel regularly in the service of his or her employer in this and one or more other states may agree in writing with his or her employer that his or her employment is principally localized in this or another state, and, unless the other state refuses jurisdiction, the agreement shall govern as to any injury occurring after the effective date of the agreement." Section 29 A 1 of the union contract does not identify where the worker's employment is principally localized; it simply states that the contract of hire "is made within the state of Illinois" and that "The state of Illinois Workers Compensation Act…have jurisdiction and process including . . . all injuries . . . arising out of the course of . . . employment." Section 29 A 2 of the union contract provides that "[n]otwithstanding the above paragraph, Flight Attendants shall retain the rights to pursue these benefits in any other state . . . which also has jurisdiction."

The union contract provisions do not identify where Ms. Uzzell's employment was principally localized. Where Ms. Uzzell's employment was principally localized must be determined using the

provision of RCW 51.120(1)(a) and (5)(i). Those provisions clearly identify the state of Washington as the place where Ms. Uzzell's employment was principally localized.

Regarding concerns of possible duplication of benefits due to prior administration of this claim in Illinois, we note RCW 51.12.120(2) provides that:

> The payment or award of compensation or other recoveries, including settlement proceeds, under the workers' compensation law of another state, territory, province, or foreign nation to a worker or his or her beneficiaries otherwise entitled on account of such injury to compensation under this title shall not be a bar to a claim for compensation under this title if that claim under this title is timely filed. If compensation is paid or awarded under this title, the total amount of compensation or other recoveries, including settlement proceeds, paid or awarded the worker or beneficiary under such other workers' compensation law shall be credited against the compensation due the worker or beneficiary under this title.

This provision protects the self-insured employer from having to pay amounts that have already been paid while the claim was being administered in the state of Illinois, while providing the worker the option of seeking benefits under the Washington Industrial Insurance Act.

Ms. Uzzell has established that she timely filed an Application for Benefits; that she was acting in the course of her employment with United Airlines when she suffered an industrial injury in Denver, Colorado; and that she was entitled to extraterritorial coverage as her employment was principally localized in the state of Washington. The Department order dated May 28, 2009, is correct and is affirmed.

FINDINGS OF FACT

1. On May 2, 2008, the claimant, Irene M. Uzzell, filed an Application for Benefits with the Department of Labor and Industries, in which she alleged that on December 16, 2004, while in the course of her employment with United Airlines, Inc., she sustained an injury to her right knee. On December 3, 2008, the Department issued an order in which it denied the claim for failure to file within one year of injury. On January 21, 2009, the claimant filed a protest and on May 28, 2009, the Department canceled the December 3, 2008 order and allowed the claim.

   On July 27, 2009, the employer filed a protest with the Department to the May 28, 2009 order. On July 30, 2009, the Department forwarded the protest to the Board of Industrial Insurance Appeals as a direct appeal. On August 4, 2009, the Board issued an Order Granting Appeal under Docket No. 09 18171, and agreed to hear the appeal.

2. On December 16, 2004, Irene M. Uzzell, sustained an industrial injury to her right knee when she slipped and fell on ice during the course of her employment with United Airlines, Inc., in Denver Colorado. Her condition required medical treatment.

3. During all times relevant to this appeal, United Airlines had a place of business at SeaTac Airport, and all of Ms. Uzzell's work activities commenced at that location.

4. Ms. Uzzell's employment with United Airlines during all times relevant to this appeal was principally localized in the state of Washington.

5. On December 23, 2004, Ms. Uzzell filed a Worker's Compensation First Report of Injury to her supervisor at SeaTac Airport. United Airlines, Inc. is a self-insured employer.

6. On December 23, 2004, Ms. Uzzell's supervisor forwarded the report of injury to the third-party administrator as contained in the Notification of Occupational Injury/Illness Form.

7. On February 1, 2005, the third-party administrator for United Airlines, Inc., sent an Acceptance Letter to Ms. Uzzell of her claim and notified Ms. Uzzell that the claim would be processed under the Illinois Worker's Compensation Act pursuant to Section 29 of the Flight Attendant's Collective Bargaining Agreement.

6. Section 29 of the Flight Attendant's Collective Bargaining Agreement provides in part that Flight Attendants retain the rights to pursue worker's compensation benefits in any other state which also has jurisdiction, and does not contain a provision identifying where Flight Attendants employment was principally localized.

7. Ms. Uzzell has been receiving benefits under Illinois Claim No. 016777-172234-WC-01.

8. On March 12, 2008, Ms. Uzzell completed and submitted Washington form, SIF-2, to the self-insured employer which was forwarded to the Department of Labor and Industries on May 2, 2008 and was assigned Claim No. W-871430 for the industrial injury of December 16, 2004.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties to and the subject matter of this appeal.

2. Ms. Uzzell's employment with United Airlines, during all times relevant to this appeal, was principally localized in the state of Washington, within the meaning of RCW 51.120(1)(a) and RCW 51.120 (5)(i).

3. Ms. Uzzell's industrial injury occurred during the course of employment with United Airlines, while she was entitled to extraterritorial coverage under the Washington Industrial Insurance Act, under the provisions of RCW 51.120.

2. Irene M. Uzzell filed an Application for Benefits with United Airlines, Inc., her self-insured employer, on December 23, 2004, within one year of the day on which she sustained an injury, within the meaning of RCW 51.28.020 and RCW 51.28.050.

3. The Department of Labor and Industries order dated May 28, 2009, is correct and is affirmed.

DATED: December 13, 2010.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
DAVID E. THREEDY Chairperson

/s/_____
FRANK E. FENNERTY, JR. Member

/s/_____
LARRY DITTMAN Member