

State of New Jersey
Department of Labor
Division of Workers' Compensation

<p>JOHN WOTTRICH (by NEW HORIZON SURICAL CENTER, LLC), Petitioner,</p> <p>vs.</p> <p>JOA LYN ENTERPRISE, INC., Respondent</p>	<p>Claim Petition No.: 2020-2096 Vicinage: FREEHOLD</p> <p>DECISION</p>
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APPEARANCES:

Ioana L. Enescu Esq., Callagy Law, PC,
for petitioner, New Horizon Surgical Center, LLC.

Gregory Lois, Esq. Lois Law Firm, LLC.
for respondent, Joa Lyn Enterprise, Inc.

This matter comes before the court on respondent's motion to dismiss for lack of jurisdiction. The court requested the parties brief additional issues, including an apparent conflict between Spiros v. Atlantic Ambulatory Anesthesia Associates, 2013 WL 10724319 (N.J. Adm.), Docket No. CP 2012-22032, 2013-1069 (Hon. Leslie A Berich) and Anesthesia Assocs. of Morristown v. Weinstein Supply Corp., No. A-5033-18T4, 2020 WL 5944009 (N.J. Super. Ct. App. Div. Oct. 7, 2020), cert. den. 245 N.J. 587, 247 A.3d 400 (2021), and cert. den. 245 N.J. 591, 247 A.3d 403 (2021). As Spiros was decided in this vicinage, and both cases are persuasive, but not binding, on this court, I requested the parties to brief the issue of jurisdiction. Additionally, I requested the parties brief whether New Jersey law or New York law, and specifically New York's fee schedule, apply to this case if jurisdiction were found. The parties' arguments were particularly well researched, comprehensive and persuasive.

For the reasons below, under the facts as presented, the court dismisses the claim petition with prejudice for failure to sustain the burden of proof.

The facts of this case are essentially undisputed. John Wootrich, the petitioner, suffered a work-related injury to his shoulders and neck on May 20th, 2016. Respondent, Joa-Lyn Enterprises, employed Mr. Wootrich, and the parties do not dispute that respondent's main place of business was in Montville, New Jersey. The accident occurred in Manhattan, NY, alternately described as "Brookfield Properties, 9th Avenue" and the "Manhattan West Project, NYC." There is no evidence presented as to where the contract of hire was formed. At the time of the injury, petitioner resided in Freehold, New Jersey. Mr. Woolrich filed a claim petition for workers compensation benefits in the State of New York, and received benefits. Mr. Woolrich did not file in New Jersey.

Our courts have long recognized that "the Workers' Compensation Court is statutory, with limited jurisdiction." Young v. Western Electric Co., Inc., 96 N.J. 220, 225 (1984); see also, Williams v. Raymours Furniture Co., 449 N.J. Super. 559, 562 (App. Div. 2017), Connolly v. Port Auth. of N.Y. & N.J., 317 N.J. Super. 315, 318 (App. Div. 1998). In 2012, the Legislature amended the Workers' Compensation Act to grant the Division "[e]xclusive jurisdiction for any disputed medical charge arising from any claim for compensation for a work-related injury or illness." N.J.S.A. 34:15-15.

Whether the Division has jurisdiction over a claim arising from compensable work-related injury depends upon the particular factors of each case. Marconi v. United Airlines, 460 N.J. Super. 330, 337 (App. Div. 2019) (addressing a New Jersey resident's claim arising from an out of state work-related injury). The "particular factors" that a court of compensation must determine and consider include the following six factors:

- (1) where the injured occurred;
- (2) the place of making the contract;
- (3) where the employment relation exists or is carried out;
- (4) where the industry is localized;
- (5) where the employee resides; and/or
- (6) whose statute the parties expressly adopted by contract."

Williams, 449 N.J. Super., quoting 13 Lex K. Larson et al., *Larson's Workers' Compensation Law*, § 142.01 (Matthew Bender, rev. ed. 2016)). See also Marconi, 460 N.J. Super. 330, 335 (App. Div. 2019); Connolly, 317 N.J. Super. 315, 319 (App. Div. 1998).

In addition to, and even apart from these factors, even if New Jersey is not the "location of the injury, location of the employment contract or hiring, or residency of the employee . . . jurisdiction may still arise where the 'composite employment incidents present a[n] . . . identification of the employment relationship with [New Jersey].'" Marconi, 460 N.J. Super. at 341-42 (quoting Connolly, 317 N.J. Super. at 320-21). New Jersey may exercise jurisdiction if it is the site of the injury, the place of the employment contract or hiring, or the employee's residence, when there were also some employment contacts in the state. Marconi 460 N.J. Super. at 341.

Our courts have determined that multiple states may assert jurisdiction over a claim, and award benefits, as a matter of fairness. Cramer v. State Concrete Corp., 39 N.J. 507, 511 (1963). In essence, where dual or concurrent jurisdiction exists, in order to avoid a windfall, the employee should receive compensation from both, so long as the respondent receives credit for payments received from the state with lower payments. Id. citing Boyle v. G. & K. Trucking Co., 37 N.J. 104, 112 (1962). However, a Workers' Compensation Court may apply only its own state law to award a compensation benefit. Connolly, 317 N.J. Super at 319. Further, "[a]ny state having a more-than-casual interest in a compensable injury may apply its compensation act to that injury without violating its constitutional duty to give full faith and credit to the compensation statutes of other states also having an interest in the injury." Williams, 449 N.J.

Super. At 562; Connolly, 317 N.J. Super. at 319 (quoting 9 Larson's Workers' Compensation Law § 86:00 at 16-55 (1997)).

Here, Mr. Wottrich's accident undeniably happened in New York, giving New York clear jurisdiction (which, incidentally, New York asserted). However, it is also evident that the petitioner resides in New Jersey, and that Joa-Lyn's main place of business in New Jersey. While we know this particular accident occurred in New York, the parties have submitted no evidence that the employment relationship was carried out anywhere other than in New York. Similarly, we have no evidence as to where the contract of hire was perfected. Thus, we only have the fourth and fifth "Larson" factors implicating New Jersey jurisdiction.

The Marconi court addressed whether a petitioner's residence (the fifth factor), when coupled with the localized presence of the employer (the fourth factor), constitute a sufficient basis to find jurisdiction. The court in Marconi set forth the principle that a petitioner's duties, to a substantial extent, must implement the localized business in the State of New Jersey. Marconi, 460 N.J. Super. at 345. In that case, Mr. Marconi was hired in San Francisco, but then transferred to Philadelphia, at which time he established and maintained residence in New Jersey. Id. at 335. Although never stationed in New Jersey, his supervisor reported to United Airlines personnel at Newark Liberty International airport, and petitioner "frequently depended" on the technical advice of United's Newark staff. Id. The Marconi court, under this scenario, determined there was not sufficient evidence of duties localized in New Jersey to establish jurisdiction in New Jersey. Id.

There is no evidence presented here to suggest that Mr. Wottrich performed his duties anywhere other in New York, nor that he was stationed anywhere other than New York. While one can assume orders and support came from Joa-Lyn's headquarters in New Jersey, under Marconi, such is not enough to establish localization of the duties in New Jersey. Given that New Horizon Surgical Center has been unable to establish any other factors, I must find that they failed to establish jurisdiction under this analysis.

Turning to the analysis in Spiros, it is intellectually tempting to adopt the reasoning that New Jersey has a substantial interest in claims medical care provided within the state. However, when the legislature conferred jurisdiction of medical provider claims related to workers'

compensation injuries to the Division of Workers' Compensation, it neither expanded nor contracted this court's jurisdiction. Even if the legislature intended the Workers' Compensation court to have the same jurisdiction as had previously existed in Superior Court, no cases have been cited, nor has the court uncovered, any case that would provide any New Jersey court with jurisdiction under the facts presented. Parenthetically, the law on reimbursement differs in New Jersey and New York. New York utilizes a discrete payment schedule for medical care, while New Jersey analysis requires determining the usual, customary and reasonable charges for the care provided. In this instance, New Horizon certainly knew this was a New York case, as they accepted payment under the New York fees schedule. Thus, even if New Jersey did have jurisdiction, it appears that, under this factual scenario, it is likely that New Jersey would find New York's fee schedule to be the usual, customary and reasonable payment, and no additional relief would be provided in any event.

Thus, this court is constrained to find that New Horizon Surgical Center has failed to sustain the burden of proof as to jurisdiction in New Jersey. The court dismisses the claim petition with prejudice.

So ordered,

 2/1/2023
Christopher B. Leitner, JWC