2004 ACO #133

STATE OF MICHIGAN
WORKER'S COMPENSATION APPELLATE COMMISSION

KENNETH KARACZEWSKI,
PLAINTIFF,

V DOCKET #02-0480

FARBMAN STEIN & COMPANY AND
NATIONWIDE MUTUAL INSURANCE COMPANY,
DEFENDANTS.

APPEAL FROM MAGISTRATE OLDSTROM.

BARBARA F. GROSSMAN FOR PLAINTIFF,
MARTIN L. CRITCHELL FOR DEFENDANTS.

OPINION

LESLIE, COMMISSIONER

Defendants appeal and plaintiff cross-appeals the decision of Magistrate Stephen C. Oldstrom, mailed November 4, 2003, finding the Michigan worker's compensation bureau[1] had jurisdiction over plaintiff's work-related injury in Florida. Defendants claim the magistrate erred as a matter of law based on the express language of MCL 418.845 requiring a contract of hire in Michigan and the employee's residency in Michigan at the time of injury. Plaintiff claims the magistrate erred in failing to award benefits, having found Michigan had jurisdiction over plaintiff's claim. We affirm.

At the hearing the parties stipulated to the following facts:

> Plaintiff was hired by defendant on October 4, 1984 to work in Michigan as a maintenance engineer. As of the date of hire, plaintiff was a resident of Detroit, Michigan and defendant employer was a resident employer in Michigan. The Contract of hire was made in Michigan. The Farbman Group continues to be a resident employer and is currently located at 28400 Northwestern Hwy, Southfield, Michigan.
>
> Plaintiff worked for defendant in Michigan from the date of hire until September 1, 1986, when defendant transferred him to Fort Lauderdale, Florida to assume the position of building superintendent. On January 12, 1995, Plaintiff fell from a ladder in the course of his employment for defendant in Florida, breaking his left wrist and injuring his left knee. At the time of the injury, he was a resident of Florida. On September 27,

[1] Executive Order No. 2003-18 O. 2. transferred the duties and functions of the Bureau of Worker's Compensation to the Worker's Compensation Agency.

1996, plaintiff reinjured his knee while still working for defendant in Florida. He underwent surgery on November 6, 1996 for ACL [anterior cruciate ligament] reconstruction and microfracture arthroplasty. Plaintiff returned to work for defendant with restrictions on December 2, 1996.

He received certain benefits pursuant to Florida's worker's compensation law.

Plaintiff continued to work for defendant until September 15, 1997. Since that time, he has worked as a project manager for Rotella, Toroyan, Clinton Group, a Florida corporation.

Plaintiff continues to have problems with his left knee. There is no wage loss at this time. He has, however, incurred further expenses for treatment and anticipates the need for additional surgery(ies) and future closed period(s) of disability. These claims are not covered under Florida law.

Plaintiff has filed an application for mediation or hearing, claiming medical and wage loss benefits under Michigan law. Defendant disputes jurisdiction. It does not dispute the existence of a work related knee injury.[2]

The magistrate ruled Michigan had jurisdiction over plaintiff's injury with the following analysis:

THE BRIEFS

The plaintiff argued that *Boyd v W G Wade Shows*, 443 Mich 515 (1993), controls the matter of jurisdiction. The plaintiff argued that the facts of his case precisely matched those in *Boyd* and, therefore, Michigan has jurisdiction over his entitlement to benefits. He also argued that his receipt of benefits in Florida does not foreclose his receipt of benefits in Michigan. He does not seek benefits in Michigan for which he has already received benefits under Florida's worker's compensation act.

The defendants argued that the Board of Magistrates does not have jurisdiction over the plaintiff's injuries because *Boyd* was hopelessly wrong and should be ignored. The defendants argue that MCL 418.845; MSA 17.237(845) requires the employee to be a Michigan resident at the time of the injury **and** the employee must have been hired in Michigan. The plaintiff was not a Michigan resident when he was injured; therefore, Michigan has no jurisdiction in this case. (A logician would certainly enjoy reading the defendants' brief.)

FINDINGS OF FACT

[2] Magistrate's opinion at 1-2

> I find that the plaintiff is correct. Based on *Boyd*, Michigan has jurisdiction over the plaintiff's injuries. Right or wrong, *Boyd* controls. The Supreme Court, not the Board of Magistrates, must correct *Boyd*, assuming correction is warranted.
>
> The defendants' appeal to principles of logic, compelling as these principles may be, means nothing because the iron-bound rule of *stare decisis* controls the result in this case – right or wrong.
>
> I find, based upon the stipulated facts, and *Boyd*, that the Board of Magistrates has subject-matter jurisdiction and it may hear and decide the merits of the plaintiff's claim.[3]

Defendants, as they did before the magistrate, make a frontal assault on the Michigan Supreme Court decision in *Boyd v W G Wade Shows,* 443 Mich 515 (1993). They do so by recitation of the express language of MCL 418.845 which establishes jurisdiction in Michigan for injuries occurring outside of our boundaries. It reads:

> The bureau shall have jurisdiction over all controversies arising out of injuries suffered outside this state where the injured employee is a resident of this state at the time of injury and the contract of hire was made in this state. Such employee or his dependents shall be entitled to the compensation and other benefits provided by this act.

Defendants contend the conjunctive word "and" requires that both conditions be met, not only one. Having established what they contend is the plain meaning of the statute, defendants urge rejection of the *Boyd* holding on the ground that a binding decision of the Supreme Court may be overruled when it is clearly erroneous and there has been no substantial reliance interest afterwards, citing *Robertson v DaimlerChrysler,* 465 Mich 732 (2002) and *Sington v Chrysler Corp,* 467 Mich 144 (2002). Plaintiff responds that whatever the correctness of interpretation in *Roberts v IXL Glass Corp*, 259 Mich 644 (1932), the doctrine of legislative acquiescence binds us to that rule of law. In addition, plaintiff underscores the reasoning of the court in *Boyd*, that application of the letter of the law of §845 would "create a 'significant gap in coverage' in Michigan's worker's compensation scheme."[4]

Given the seriousness with which the parties approach this issue and defendants contention we should reject *Boyd*, we will provide our analysis of the question, knowing full well that we are powerless to overturn what the Supreme Court chose to do in *Boyd*.

We begin with a history of Michigan jurisdiction over out of state injuries, as well as discussion of the decisions leading up to *Boyd*.

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[3] *Id*. at 2.

[4] Plaintiff's brief at 6.

Just before the enactment of this what is now §845,[5] the Michigan Supreme Court determined that an out of state injury was compensable where the injured employee was hired by an out of state employer that was authorized to do business in Michigan.[6] The court based its decision on the voluntary and contractual nature of Michigan worker's compensation at the time. The court stated:

> The authorities, and particularly the later ones, lead irresistibly to the conclusion that where the act is an optional one, as is ours, the relations are contractual and the provisions of the act become a part of the contract of employment, the employer agreeing to pay and the employee agreeing to accept compensation in case of accident in accordance with the provisions of the act.[7]

One year later, the court applied the identical reasoning to an employee hired in Michigan but whose contract of hire contemplated only work outside of the state.[8] The court found no significant difference between the two cases. The fact of legal significance continued to be the employer's voluntary submission to Michigan worker's compensation law.[9] Both *Crane* and *Hulswit* involved employees whose injuries occurred prior to the enactment of what is now MCL 418.845.

The Supreme Court continued to apply the rationale of *Crane* despite the addition of §845 to the Act. In *Roberts v IXL Glass Corp*, 259 Mich 644 (1932) the court effectively read the residency at the time of injury requirement out of the statute. The court rejected the amendment as a substantive change in the law, because the text of the change was placed in the procedural part of the compensation law, and also because, in the court's view, this provision was in hopeless conflict with substantive

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[5] This section was added to the compensation law by 1921 PA 173, effective August 18, 1921. *Crane* was decided June 6.

[6] *Crane v Leonard, Crossette & Riley*, 214 Mich 218 (1921). This interpretation disposed of the original administrative interpretation found in *Keyes-Davis Co v Alderdyce*, Industrial Accident Board, Bull. No. 3 (1913) [p.19]. There the Board looked not to contract law, but to the general presumption that statutes operate only in the locus of their enactment. The board drew further support for its denial of benefits in the provisions of Part III section 8 which required the Board to hold the hearing at the site of the injury. Because nothing in the act pointed to giving the act extraterritorial effect, out of state injuries were not compensable. This was true even though both parties were Michigan residents. This interpretation was consistent with the rule applied in Great Britain that limited coverage to locations within the British Empire. There was no uniformity on this issue in early decisions in the various states. See, I Honnold, A Treatise on the American and English Workmen's Compensation Laws (1917), § 8, p. 32-43.

[7] *Crane* at 228.

[8] *Hulswit v Escanaba Manufacturing Co*, 218 Mich 331 (1922).

[9] *Id*. at 333. The Court stated:

> In *Crane v Leonard, Crossette & Riley*, it was held that as our compensation act was voluntary the relation was one of contract, and that the provisions of the act must be read into the contract between the employer and employee. This being the ground upon which our conclusions were reached in that case it must follow that the relations of the parties in this case must rest upon contract. If they do, the act would cover a case where none of the services were performed within this State, as well as a case where they were partially performed within the State.

provisions of the act covering all employees without regard to residency.[10] The court reiterated the concept first espoused in *Crane* that a resident employer who elects to come under the provisions of the compensation law has incorporated the provisions of that act into the contract of employment. Thus, having hired an employee under Michigan law by entering into a contract in Michigan, any injury, no matter where it occurs, comes within the purview of the Michigan compensation law.[11] It is instructive that the court clearly relied on the voluntary nature of the law and the fact of an employer's election to come under the law as the key elements in their decision.[12]

After the passage of much time[13] the Supreme Court revisited *Roberts* in response to Court of Appeals decisions that had rejected that case's applicability to the modern compensation law because of its compulsory nature.[14] In *Boyd*, the Supreme Court rejected the Court of Appeals' interpretation, ruling that the voluntary nature of the compensation law would not have anything to do with its interpretation.[15] In reaffirming the rule of law from *Roberts*, the Supreme Court stated:

> We conclude that pursuant to §845 of the workers' compensation act and *Roberts v IXL Glass Corp*, *supra*, the Bureau of Workers' Disability Compensation shall have jurisdiction over extraterritorial injuries without regard to the employee's residence, provided the contract of employment was entered into in this state with a resident employer.[16]

In the initial enactment of what is now §845 we discern a legislative purpose to ensure that the claimant for Michigan worker's compensation benefits has a minimum connection with the state at the time of injury. Plaintiff relies on the case of *Wallace v Consolidated Freightways,* 199 Mich App 141 (1993) for the proposition that the Michigan legislature has made a broad grant of jurisdiction under §111. We find *Wallace* inapposite because Mr. Wallace, a non-resident, sustained an injury within Michigan.

Certainly the state has a significant interest in providing compensation for persons injured within its borders. Injuries outside the boundaries of the state, on the other hand, do not in and of themselves

[10] *Roberts* at 647.

[11] *Id*. at 649.

[12] *Id*. at 645, 647, 649.

[13] *Roberts* was followed by the Supreme Court two years later in *Wearner v Seventh Day Adventists*, 260 Mich 540 (1932) and by the Court of Appeals in *Austin v Walker Co*, 11 Mich App 311 (1968). No further appellate court cases were decided until the *Jensen* case, *infra*.

[14] The Court of Appeals cases included four decisions rendered over a six year period: *Jensen v Prudential Ins*, 118 Mich App 501 (1982); *Wolf v Ethyl Corp*, 124 Mich App 368 (1983); *Bell v Boutell Co*, 141 Mich App 802 (1985); *Hall v Chrysler Corp*, 172 Mich App 670 (1988). Each of these decision correctly recognized that the legal principle animating *Roberts* was the voluntary nature of the compensation law as it existed at the time.

[15] *Boyd* at 523.

[16] *Id*. at 526.

concern Michigan. Enter section 845 which defines Michigan's interest in extraterritorial injuries. The twin requirements of this provision establish the minimum elements of that concern. The first requirement ensures the parties have sufficient initial contacts with the state to justify imposition of our compensation laws on an out of state injury. The second requirement ensures that there is sufficient continuing contact with Michigan to justify payment of compensation under our laws.

Based on this analysis, we agree with defendants that the decision in *Roberts* was erroneous, and contravenes the express language of a legislative enactment. However, the Supreme Court revisited this issue in *Boyd* and reaffirmed *Roberts* as the appropriate governing law. As the magistrate correctly noted, it is the Supreme Court and not lower tribunals which have the authority to correct the court's decision in *Boyd* should that be desirable. As a result, we are bound to affirm the magistrate.

We find plaintiff's cross-appeal to be premature. Although the stipulated facts recite a work-related injury, they further recite plaintiff is not suffering wage loss. The facts recite plaintiff's need for further medical treatment and the fact he has incurred medical expenses, however, there are no facts upon which to determine the reasonableness and necessity of any medical benefits. Clearly, the magistrate did not adjudicate entitlement to any specific compensation benefits, leaving this to a later proceeding. He wrote: "I find, based upon the stipulated facts, and Boyd, that the Board of Magistrates has subject-matter jurisdiction and it may hear and decide the merits of plaintiff's claim."[17] As a result, it was not error to omit an award of benefits. We affirm the magistrate.

Commissioner Kent concurs.

Commissioner Glaser concurs in result.

Richard B. Leslie

James J. Kent Commissioners

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[17] Magistrate's opinion at 2.

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FARBMAN STEIN & COMPANY AND
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DEFENDANTS.

This cause came before the Appellate Commission on defendants' appeal and plaintiff cross-appeals from Magistrate Stephen C. Oldstrom's decision, mailed November 4, 2002, finding the Michigan worker's compensation bureau had jurisdiction over plaintiff's work-related injury in Florida. The Commission has considered the record and counsel's briefs, and believes that the magistrate's decision should be affirmed. Therefore,

IT IS ORDERED that the magistrate's decision is affirmed.

Richard B. Leslie

James J. Kent

Martha M. Glaser Commissioners