

**JURISDICTION ISSUES INVOLVING PENNSYLVANIA  
WORKERS' COMPENSATION LAW**

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The very nature of the trucking industry leads to the potential for multi-state jurisdictional issues being raised whenever a work related accident occurs. Jurisdiction can become a very thorny issue for both Claimant and Employer alike. For illustration purposes this seminar will focus on two sister states, Pennsylvania and New Jersey, and how their workers' compensation statutes interact. Notably, Pennsylvania and New Jersey, although sister states in terms of geography, have radically different workers compensation statutes. A shrewd claimant or claimant's attorney will attempt to use the two state's systems to his/her utmost advantage. However, an equally shrewd employer/carrier may also utilize their own method in directing an injured worker to a particular state for workers' compensation purposes.

Let's say you are a Pennsylvania company; you do all of your business in Pennsylvania; you hire your employees in Pennsylvania; you only have offices in Pennsylvania; your employees routinely report, in person, to the office in Pennsylvania; your employees live in the tri-state (PA, NJ, DE) area. One of your drivers, Dave Claimente, who routinely runs routes to New Jersey, gets into a bad accident while on the New Jersey Turnpike. It happens that Dave also lives in New Jersey. Which state would have jurisdiction?

- a. Pennsylvania only
- b. New Jersey only
- c. Either a) or b), but if you pick one, you are excluded from pursuing an action in the other

- d. Both a) and b), but you cannot collect benefits simultaneously from both states
- e. Florida, where Dave goes to recuperate and eventually establishes residency.

Before answering the question, one needs to evaluate the New Jersey and Pennsylvania statutes and case law involving jurisdiction. (Hint: you can pretty much rule out (e) as an answer). The Pennsylvania Workers Compensation Act is applicable to all injuries occurring within Pennsylvania, no matter where the contract of hire was made. Section 101; 77 P.S. Section 1. Thus, if the situation were reversed, where Dave worked in New Jersey but was injured in Pennsylvania, then Pennsylvania would have jurisdiction. Since, however, Dave worked in Pennsylvania, but was injured in New Jersey, we need to look at Pennsylvania's extraterritorial provisions (not to mention New Jersey law, which we will get to later), to determine if Dave can make a Pennsylvania claim.

These provisions are controlled by Section 305.2; 77 P.S. Section 411.2. If any of the following apply, then jurisdiction rests in Pennsylvania:

1. the employment is principally localized in Pennsylvania; or
2. the employee is working under a contract of hire made in Pennsylvania in employment not principally localized in any state; or
3. the employee is working under a contract of hire made in Pennsylvania in employment principally localized in another state whose workers' compensation law is not applicable to his or her employer; or
4. the employee is working under a contract of hire made in Pennsylvania for employment outside the United States and Canada.

Since the term “principally localized” appears in three of the four provisions, and because of its inherent vagueness, the statute defines, and the courts have refined, its meaning. Section 305.2(d)(4), 77 P.S. Section 411.2(d)(4) defines “principally localized” as (i) his employer has a place of business in this or such other state and he regularly works at or from such place of business, or (ii) having worked at or from such place of business, his duties have required him to go outside of the State not over one year, or (iii) if clauses (1) and (2) foregoing are not applicable, he is domiciled and spends a substantial part of his working time in the service of his employer in this or such other state.

The Pennsylvania Courts, however, have continued to refine this meaning depending on the fact pattern of a particular case and the claimant’s circumstances. For instance, the Commonwealth Court has held that in order for employment to be principally localized in a particular state, the employee must establish that the employer has a place of business in that state and that the employee regularly worked at or from that place of business. *Goldberg v. WCAB (Star Enters.)*, 696 A.2d 263 (1997). Other cases have held that where the contract of hire was made in Pennsylvania but employment was not localized in any state, then the act applies. *S.I. Industries v. WCAB (Zon)*, 613 A.2d 170 (Pa.Cmwlth. 1992). However, if the contract of hire was made in Pennsylvania for employment principally localized in another state, then Pennsylvania does not have jurisdiction (assuming the accident did not occur in Pennsylvania). *General Electric Company v. WCAB (Sporio)*, 615 A.2d 833 (Pa.Cmwlth. 1992).

As for Mr. Claimente, the burning question is, does jurisdiction lie in Pennsylvania, if he so desires? The answer is yes, since he satisfies the first prong of 305.2(d)(4) - his employment is principally localized in Pennsylvania. However, since this may be a situation where concurrent

jurisdiction exists, it is worthwhile to examine the possibility that New Jersey law applies and that the claimant may pursue same.

The New Jersey Courts will adopt New Jersey law as long as the site of the injury is in New Jersey, *Williams v. A & L Packing and Storage*, 314 N.J.Super. 460, 715 A.2d 344 (App.Div.1998); or the site of the employment relationship or contract of hire was within the state of New Jersey; see *Hudson v. Kingston Contracting Company*, 58 N.J.Super. 455, 156 A.2d 491 (Co.1959). Since Mr. Claimente was injured in the State of New Jersey, jurisdiction vests there as a matter of law.

Accordingly, there is a choice of jurisdiction in the Claimente matter. The question becomes, then, which one to choose? Does the choice of one forever bar Claimente from asserting a claim in the other jurisdiction? In this case, where there is apparently an ongoing disability, which jurisdiction is more favorable to the claimant or the employer in the short run? In the long run?

As we all know, Pennsylvania is a “wage loss” state. Disability is predicated on the claimant’s inability, due to injury, to earn his pre-injury wages. Under the 2016 Workers’ Compensation Rate Schedule, he could receive anything from 90% of his wages, if his AWW is \$ or lower, to a maximum of \$ per week if his weekly wages exceed \$. There is little or no concept of permanency except in specific loss/disfigurement cases. The claimant can receive total disability benefits for up to 604 weeks if his injury renders him less than 50% permanently disabled (which is determined by an Impairment Rating Evaluation, once two years of disability have passed and Claimant is then at MMI); or he can receive partial disability benefits for a total of 500 weeks, should he return to work at less than pre-injury earnings.

New Jersey, on the other hand, utilizes a “medical impairment” theory to establish disability. TTD benefits are paid at 70% of the AWW, which is based upon 26 weeks of wages, not 52 weeks. In New Jersey, you simply take the wages accrued and divide - there are no complicated formulas or income averaging. New Jersey also has a “floor” and a “ceiling” for comp. benefits. For the year 2016, the minimum is \$.00/wk. and the maximum is \$.00/wk. The maximum is based upon 75% of the Statewide Average Weekly Wage which is determined by the Commissioner of Labor on a yearly basis.

TTD benefits in New Jersey are paid up until the point that the claimant returns to work and remains permanently thereat, or reaches maximum medical improvement, whichever occurs first. Once this occurs, TTD benefits are cut off. The claimant (or petitioner, as he is referred to) then seeks permanency benefits, which is established yearly and is published by New Jersey Manufacturers in a chart form. In addition there is a computer program known as “OSCAR” which can be downloaded from the State of New Jersey Department of Labor website. OSCAR is updated every year, and when there is a discrepancy between the NJM chart and OSCAR, most, if not all, Judges rely on the OSCAR calculation (ironically, so does NJM). The petitioner will receive an award based upon the nature and extent of injury, as determined by the Court or by amicable resolution amongst the parties. Each party has an opportunity to have the petitioner examined by a permanency evaluator of their choice and there is usually an agreement that the case can be resolved for a specific percentage without taking the case to trial. New Jersey permanency cases tend to settle for much less money than Pennsylvania cases, even where the injured worker never returns to the pre-injury job.

Let's assume that Mr. Claimente makes less than the maximum rate in Pennsylvania and decides that he is better off accepting New Jersey benefits, especially since it's a hassle that all the panel physicians are in Philadelphia. Never mind that the insurance company has complete and total control of medical treatment throughout the life of the claim under New Jersey law. He begins collecting his weekly benefits. A few months go by and he suddenly gets a letter from the insurance company advising him that he has reached maximum medical improvement and he is no longer entitled to temporary total disability benefits. He subsequently learns that any permanency award will be relatively meager (an additional \$25K to 30K, at best - certainly not enough to afford that South Beach condo) and panics. He calls you, the adjuster, and demands that his benefits be switched over to Pennsylvania, having learned that he can collect benefits for quite a while longer and may even be able to resolve his case for six figures given his compensation rate, based upon 52 weeks, not 26 weeks, of wages. Is the claimant/petitioner precluded from asserting Pennsylvania jurisdiction having elected New Jersey at the beginning of the claim?

Section 322 of the Pennsylvania Workers Compensation Act, 77 P.S. Section 677 states:

“It shall be unlawful for any employee to receive compensation under this act if he is **at the same time** receiving workers' compensation under the laws of the Federal Government **or any other state** for the same injury.” (Emphasis supplied).

The Commonwealth Court of Pennsylvania weighed in on this very issue in the case of *Robert Merchant v. WCAB(TSL, Inc.)*, 758 A.2d 762 (Pa.Cmwlt 2000). The court held that a claimant who was receiving benefits from another state (in this case, West Virginia), was ineligible to receive Pennsylvania Workers Compensation benefits during the time the out of state benefits were being paid. However, the court ruled that there was nothing in the

Pennsylvania Act which prevented the claimant from collecting Pennsylvania benefits once the benefits in West Virginia had run its course. The court additionally found that, even though West Virginia did not pay as much as Pennsylvania, the claimant could not collect Pennsylvania benefits over and above what he received under the West Virginia statute. The court interpreted Section 322 to mean that a claimant is completely and totally ineligible for Pennsylvania benefits during the time he is collecting from another jurisdiction. Thus, in our scenario, had Mr. Claimente gone forward with his permanency claim in New Jersey, and began receiving permanency benefits, he would be completely ineligible to receive Pennsylvania benefits during that time, even though Pennsylvania benefits would be paid at a much higher rate. There is nothing in Pennsylvania law, however, which completely precludes the claimant from applying for and receiving benefits, once the New Jersey benefits were to expire. Similarly, there is nothing in New Jersey Law which prevents a claimant from seeking New Jersey benefits after applying for or receiving benefits from another jurisdiction. See, *Williams*, above. In fact, New Jersey follows the rule that a claimant should receive “the highest available amount of compensation” to which he is entitled so long as credit is given for payments received. *Cramer v. State Concrete Corp.*, 39 N.J. 507, 189 A.2d 213 (1963).

Finally, who gets to choose what jurisdiction to invoke - the claimant or the employer? Suppose the employer realized that, in the long run, it would be better off paying New Jersey benefits for the life of the claim and voluntarily institutes payment? Mr. Claimente comes to them at some point during the time he is receiving benefits and insists that his benefits be switched over to Pennsylvania. Can the employer insist that claimant continue to receive New Jersey benefits until they run out? If claimant files a claim petition in Pennsylvania and requests unreasonable contest fees and penalties, will the claimant be successful in obtaining same?

The answer is that Claimant gets to choose which jurisdiction to pursue benefits, assuming that state has jurisdiction. In this case, if Mr. Claimante wished to change his benefits from New Jersey to Pennsylvania, it would be up to the Employer to decide whether to litigate a Claim Petition in Pennsylvania, and risk unreasonable contest fees and penalties for failure to voluntarily accept this claim, or agree to begin paying under Pennsylvania law and filing the proper form (Notice of Compensation Payable) with the Bureau (Note: Pennsylvania has become a very “form driven” state).

Despite the fact that, generally, Pennsylvania is more “Claimant friendly” than New Jersey, there is at least one scenario where the Employer is better off in Pennsylvania than New Jersey. If Claimant has a relatively minor injury and returns to work at equal to or greater than his pre-injury wages, then the Employer/Carrier would be entitled to a Suspension of benefits in Pennsylvania, meaning he would no longer be entitled to TTD benefits but would be entitled to ongoing reasonable, necessary and related medical treatment. Since there is no concept of “permanency” in Pennsylvania, his case is essentially over. Moreso if, in addition to returning to work, he is declared fully recovered from his work injury, the Employer may be entitled to Terminate benefits and nothing, neither indemnity nor medical, is owed. Claimant has no recourse, as he does in New Jersey, to file a petition in the hopes of getting some type of permanency award or Section 20 settlement.

As you can see from the above, the answer to the Jurisdictional question is (d), either Pennsylvania or New Jersey but not simultaneously. These scenarios offer you the unique opportunity to attempt to control which jurisdiction is most friendly to your client.