

CASE STUDY- 2011

Inter-Jurisdictional case where a worker filed for compensation benefits in Yukon and the claim was denied and then filed in BC where the claim was accepted. BC subsequently requested reimbursement from the Yukon under the Inter-Jurisdictional Agreement.

Issue: Should the Yukon Board reimburse Worksafe BC in this situation?

Facts

The worker worked in the Yukon for an employer that was registered in the Yukon and also registered with Worksafe BC. The worker was injured in the Yukon. The worker was a resident of BC. The worker was eligible to apply for compensation either in the Yukon or BC. The worker initially chose to claim for compensation in the Yukon and his claim was adjudicated and denied on the basis that the injury did not arise out of and in the course of employment. The worker then filed in BC for the same injury and Worksafe BC accepted the claim. Worksafe BC then requested reimbursement from the Yukon Board under the Inter-jurisdictional Agreement (IJA) and the Yukon Board refused indicating that they had already denied the claim to compensation.

The following sections of the Inter-Jurisdictional Agreement are relevant:

4.1 Election by Beneficiary Where there may be entitlement to benefits in more than one jurisdiction, the beneficiary shall be required by the Adjudicating Board to elect not to claim from other jurisdictions if the claim is accepted, and the Adjudicating Board shall advise the other jurisdictions where the claim could be made, of the election, adjudication and disposition of the claim. The election shall be made on a form similar to Appendix B.

9.1 Accident Board Responsible Where benefits are provided by an Adjudicating Board to a beneficiary, and the injury, or a fatality resulting from the injury, occurred in another jurisdiction where the beneficiary is eligible to claim benefits, the cost of the benefits provided by the

Adjudicating Board shall be borne by the Board in the jurisdiction in which the injury occurred.

The Form of Election states in the final paragraph:

Should my claim be accepted, I waive and forego any rights to compensation in any other jurisdiction, and will not apply for or accept any benefits from such other jurisdiction unless authorized to do so by _____ compensation board.

The Yukon takes the position that since the worker is not eligible to claim benefits under the workers' compensation legislation in the Yukon because the initial adjudication denied the claim, the worker was no longer eligible as set out in section 9.1 and therefore section 9.1 of the IJA does not apply and the Yukon is not liable to reimburse B.C.

BC takes the position that if the worker has not received compensation from the Yukon, then he is free to elect to claim for compensation again in BC. They point out that had the worker gone to BC first and the Yukon had not adjudicated the matter, the Yukon would have had to reimburse the claim, absent a statutory bar to the claim, as they would not have re-adjudicated the claim. They state that it is not a desirable outcome that reimbursement would be based on the order of the applications and decisions in both jurisdictions. They state that Yukon should be liable to reimburse BC and not re-adjudicate the matter. However, they suggest that an alternative approach would be to say that if the first Board rejects the claim the worker is entitled to apply to the second board but the IJA is not triggered because there is no entitlement in the other jurisdiction. This approach does not cause conflict between boards, however it would mean that reimbursement may at times be dependent on the order in which the injured person applied.

PEI commented that under the PEI legislation, where a person makes an application for, or claims or elects to claim compensation under the law of another country or province, he is no longer entitled to claim or receive compensation under their legislation. PEI had a claim where the worker was resident in PEI, working for an employer from a different jurisdiction. He filed in the other jurisdiction first, the other jurisdiction denied the claim. He then filed in

PEI. PEI held that they would not adjudicate the matter as he had already made an application for benefits in another jurisdiction. PEI commented that in regards to section 9.1 if the worker's claim was denied in one jurisdiction then this would make the worker ineligible to claim benefits in that jurisdiction and that section only pertains to the accident Board being responsible if there is 'another jurisdiction where the beneficiary is eligible to claim benefits'.

Manitoba had a case where the accident occurred in another jurisdiction, the worker applied for compensation in the other jurisdiction, his claim was denied on the basis that the worker was not in the course of employment. The worker then applied in Manitoba for compensation. Manitoba's WCA has a specific provision that states that a person is no longer entitled to claim or receive compensation in Manitoba where the person "makes an application for, or claims, or elects to claim" in another jurisdiction. It was determined that since the worker's claim was not accepted in the other jurisdiction, he was not entitled to compensation from the other jurisdiction so the worker's claim was NOT barred in Manitoba. A broad and remedial interpretation was given.

Saskatchewan commented that section 4.1 of the IJA requires the worker to elect not to claim from other jurisdictions if the claims IS ACCEPTED. Therefore, when a claim is denied, the worker would not be asked to elect and would therefore have the right to file in the other jurisdiction. There would be no reimbursement from the injury jurisdiction if the "injury type" was statute barred but a matter of interpretation of "arising out of and in the course of employment" re-adjudication is not allowed and reimbursement should be paid.

Northwest Territories commented that their legislation states that no person may receive compensation under their legislation and another jurisdiction in respect of the same injury but that rule does not apply if the worker makes a claim for compensation in another place and the claim is rejected.

Ontario and New Brunswick both stated that workers must make an election prior to adjudication of the claim but there is no preclusion for a worker to make a claim in Ontario if he was denied by another jurisdiction.

Quebec commented that in Quebec under section 452 an election must be made prior to adjudication but nothing precludes the worker from claiming in Quebec if he was denied by another jurisdiction.

Alberta commented that their legislation permitted workers to claim compensation from their own jurisdiction if they had been denied compensation from another jurisdiction (section 28(8)).

Conclusion

In conclusion, it is important to look at the legislation in the relevant jurisdictions as well as the inter-jurisdictional agreement when examining these situations. There seems to be a consensus that if a worker is denied benefits in one jurisdiction, he can still apply for benefits in another jurisdiction. (absent a statutory provision that prevents this, such as PEI) However, this does not necessarily mean that reimbursement under the IJA will follow.

For the purposes of reimbursement under the IJA, there are two differing opinions. The first interpretation is that if a worker is denied benefits from jurisdiction A then applies to jurisdiction B and is awarded benefits, then jurisdiction B cannot request reimbursement from jurisdiction A because the worker is no longer “eligible to claim benefits” in jurisdiction A. The second interpretation is that in this same scenario jurisdiction B is not entitled to re-adjudicate the matter and must reimburse jurisdiction B, subject to any valid statutory bars in jurisdiction A. The 2011 committee meeting minutes indicate that the majority of jurisdictions agreed with this interpretation and that it was not appropriate for jurisdiction A to re-adjudicate and therefore they are subject to reimbursing jurisdiction B. The notes state however, that there was no consensus reached on this issue. In this case, the Yukon did not reimburse BC and BC did not pursue the matter any further.