

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

DANIEL SMALL

Appellant

v.

RED SIMPSON, INC.

Respondent

DOCKET NUMBER WD78289

DATE: November 17, 2015

Appeal From:

LABOR AND INDUSTRIAL RELATIONS COMMISSION

Appellate Judges:

Division Four

Alok Ahuja, C.J. Presiding, Thomas H. Newton, J., and Charles H. McKenzie, Sp. J.

Attorneys:

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Co-Counsel for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

DANIEL SMALL, Appellant, v. RED SIMPSON, INC., Respondent

WD78289

Labor and Industrial Relations Commission

Before Division Four Judges: Ahuja, C.J., Newton, J., and McKenzie, Sp.J.

Small, a Missouri resident, filed a claim for Missouri workers' compensation benefits in September 2009. He sought coverage for ongoing physical problems resulting from a significant electrical trauma sustained in September 1995 while working in Texas for Red Simpson, Inc., a Louisiana-based company. Small stated that the two-year claim-filing limitation period was tolled (extended) by Red Simpson's continual provision of medical treatment since 1995 and its failure to file a Missouri report of injury.

An administrative law judge ruled that the latest date on which Small had received benefits under any compensation law was when he reached a settlement agreement with Red Simpson in 2000. Therefore, his claim for Missouri benefits, filed nine years later, was untimely. On appeal, the Labor and Industrial Relations Commission (Commission) affirmed for a different reason. According to the Commission, Red Simpson does not have a place of business or office in Missouri, so it was not "in this state" and did not have to file a report of injury. Therefore, Small cannot benefit from the extended claim-filing period. Because Red Simpson paid benefits until 2003 and resumed payments more than two years (but less than three years) thereafter, and because Small did not file his claim for benefits within two years of the October 2003 payment, his claim was not timely. Small has asked us to find that the Commission erred by applying a two-year claim-filing limitation period.

REVERSED.

Division Four holds:

Small argues that Missouri Workers' Compensation Law section 287.380, which requires employers and insurers "in this state" to file a report of injury for injuries compensable under the law, applies to Red Simpson. Section 287.430 requires employees to file claims for compensation within two years of the date of injury unless the employer required by section 287.380 to file a report of injury fails to do so. Then the compensation claim must be filed within three years of the date of injury or of the last day a payment is made "under this chapter." Because Red Simpson did not file a report of injury in Missouri, Small argues that he had three years from the date of the final payment to file his claim for compensation.

The workers' compensation law in effect when Small was injured contained a provision requiring that it be "liberally construed," that is, interpreted broadly to extend benefits to the largest possible class of employees, with any doubt as to the right of compensation resolved in the employee's favor. Analyzing the case on this basis, we find that Small, who accepted Red Simpson's job offer over the telephone while residing in Missouri, entered into an employment

contract in this state and may, under *Liberty v. Treasurer for State—Custodian of Second Injury Fund*, 218 S.W.3d 7 (Mo. App. W.D. 2007), recover for an injury sustained out of state. We also find, based on *Brown v. Ozark Christian Schools of Neosho*, 847 S.W.2d 888 (Mo. App. S.D. 1993), that the benefits Red Simpson and its insurer paid to Small after he filed a claim for compensation in Texas were payments made under Missouri law, because Missouri law requires employers to pay injured Missouri employees for medical treatment arising from workplace injuries. Payments of any obligation under our workers’ compensation law are made “under this chapter” and can extend the claim-filing limitation period.

Because the limitation-period section of the law does not qualify the word “employer” with the phrase “in this state,” we believe that the Legislature did not intend to exclude out-of-state employers from the extended claim-filing limitation period. Liberally interpreting the workers’ compensation law, we find that it does not matter whether the employer is physically present in the state for the limitation period to be extended for an additional year. Section 287.430 applies its claim-filing limitation to all employers and all workers’ compensation claims, even when the employer is located out of state. Red Simpson did not file a report of injury in Missouri, therefore, the three-year filing deadline applied. Red Simpson paid benefits continuously to Small from the date he was injured, with the exception of a less-than three-year period between 2003 and 2006, including the months in 2009 immediately preceding his filing in Missouri. Small’s claim was timely.

Therefore, we reverse and return the matter to the Commission which, in calculating Small’s award must take into consideration the payments already made and the possible effect, if any, of the compromise settlement reached in Texas.

Opinion by Thomas H. Newton, Judge

November 17, 2015

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