Gomez, Maria

JOINDER

Single claim, multiple possible employers/insurers

It is not necessary to join all potential responsible insurers to determine allowance of an occupational disease claim. Evidence that distinctive conditions of employment within Washington caused an occupational disease is sufficient to allow the claim and remand to the Department to determine the responsible insurer. **….*In re Maria Gomez,* BIIA Dec., 16 23157 (2018)**

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: MARIA M. GARCIA GOMEZ	**)**	**DOCKET NO. 16 23157**
	)	
CLAIM NO. SH-29967	**)**	**DECISION AND ORDER**

The claimant, Maria M. Garcia Gomez, worked most of her adult life as an agricultural laborer. In 2005, she began to develop painful symptoms in her right arm. In 2009, she filed a claim for an occupational disease. The claim was allowed and she received treatment for multiple conditions in her right arm and shoulder. Her claim was closed in 2012 without any award for permanent impairment. She continued working as an agricultural laborer and in 2015 applied to reopen her claim. Her reopening application was denied.

In 2016, Ms. Garcia filed a new claim for an occupational disease due to the ongoing symptoms in her right arm and shoulder. The Department denied Ms. Garcia's claim. Ms. Garcia argued that her ongoing problems in her right arm and shoulder arose naturally and proximately out of the distinctive conditions of her employment as an agricultural laborer. The industrial appeals judge allowed the claim as an occupational disease for a number of conditions, which he referred to collectively as "worsened right upper extremity conditions." The industrial appeals judge declined to reach the issue of whether the employer, Borton & Sons, was the responsible employer for the claim and instead remanded the matter to the Department to make such a determination.

The employer argues that the evidence did not support allowance of the claim or, in the alternative, that the appeal should be remanded for further hearings in order to determine employer responsibility. We agree with the industrial appeals judge's decision to allow the claim. We further agree that it would not be appropriate for us to determine whether Borton & Sons or another employer should be the responsible insurer for this claim because the question has not been first addressed by the Department. However, we find that allowance of the claim for "worsened right upper extremity conditions" is vague and have granted review to amend the findings of fact and conclusions of law to include the specific conditions that should be allowed under the claim. The Department order is **REVERSED AND REMANDED** to allow the claim as an occupational disease and to take such further action as the facts and law require.

DISCUSSION

In its Petition for Review, the employer requested that determine whether Borton & Sons is the responsible employer for the occupational disease alleged. If necessary, the employer asked to have the matter remanded to the hearings process to present additional evidence on the matter and/or to join other possible insurers under CR 19.[1]

While we have in the past remanded to the hearings process such an appeal to address the question of who the responsible insurer on an occupational disease claim would be, we decline to do so here. As an appellate body tasked with reviewing decisions made by the Department of Labor and Industries, the questions we may consider are fixed by the order from which the appeal was taken and limited by the issues raised in the Notice of Appeal.[2] On review of the record, including the order on appeal, the Notice of Appeal, as well as the issues raised in the litigation order and throughout the presentation of evidence, we believe limiting the scope of our review to the issue of whether Ms. Garcia sustained a compensable occupational disease is correct. We need not join all possible responsible employers in this appeal in order to determine this is a compensable claim. We allow the claim because the record established that the agricultural labor performed by Ms. Garcia included distinctive conditions that caused her right arm and shoulder conditions. Proof that her agricultural labor included distinctive conditions and her employment occurred within Washington is sufficient to establish she has a compensable claim without determining the responsible employer or insurer. We need not determine whether Borton & Sons or any other Washington employer is responsible for this claim because we are able to establish that her exposure to distinctive conditions of agricultural labor occurred while she was employed in Washington. We further find that remanding the appeal to the Department so that it may first determine the question of insurer responsibility and the date of manifestation is appropriate given the Department's statutorily prescribed role of exercising original jurisdiction in matters of workers' compensation.

Next, the employer objected to the Proposed Decision and Order's allowance of "worsened right upper extremity conditions" in the findings of fact and conclusions of law as being too vague. On this point we agree with the employer. After reviewing the record, we find that a preponderance of the evidence supports allowance of the following conditions as part of this occupational disease

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[1] *In re Juan Muñoz,* BIIA Dec., 05 11698 (2007); *In re Steve Crookshanks,* BIIA Dec., 16 10351 (2016).
[2] *Lenk v. Department of Labor & Indus.*, 3 Wn. App. 977 (1970).

claim: right shoulder sprain/strain, chronic bursitis, chronic tendonitis, carpel tunnel syndrome, tenosynovitis, and chronic tendinopathy.

DECISION

In Docket No. 16 23157, the claimant, Maria M. Garcia Gomez, filed an appeal with the Board of Industrial Insurance Appeals on November 22, 2016, from an order of the Department of Labor and Industries dated October 28, 2016. In this order, the Department affirmed a prior order dated June 29, 2016, denying Ms. Garcia's claim as neither an industrial injury nor an occupational disease. This order is incorrect and is reversed and remanded.

FINDINGS OF FACT

1. On January 10, 2017, an industrial appeals judge certified that the parties agreed to include the Jurisdictional History in the Board record solely for jurisdictional purposes.

2. Maria M. Garcia Gomez worked as an agricultural laborer for approximately 18 different employers between 2012 and February 2, 2016, the date she filed her claim for benefits. Her job duties varied somewhat depending on her employer and on the season, but generally included picking and thinning fruit; pruning, tying, and training tree limbs; pinching and shearing blossoms; placing and sorting vegetables on conveyor belts; pulling onions from the ground and cutting their tops off; and stapling labels onto wooden crates. These tasks would be repeated throughout the course of the workday, which was between 8 to 12 hours a day, 5 days a week. These repetitive duties constitute distinctive conditions of employment.

3. Ms. Garcia's conditions diagnosed as right shoulder sprain/strain, chronic bursitis, chronic tendonitis, carpel tunnel syndrome, tenosynovitis, and chronic tendinopathy arose naturally and proximately out of distinctive conditions of her employment.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in this appeal.

2. Maria M. Garcia Gomez's conditions diagnosed as right shoulder sprain/strain, chronic bursitis, chronic tendonitis, carpel tunnel syndrome, tenosynovitis, and chronic tendinopathy constitute an occupational disease within the meaning of RCW 51.08.140.

3. The Department order dated October 28, 2016, is incorrect and is reversed. The claim is remanded to the Department to issue an order allowing the claim and taking such further action as is indicated under the facts and the law.

Dated: January 31, 2018.

BOARD OF INDUSTRIAL INSURANCE APPEALS

LINDA L. WILLIAMS, Chairperson

FRANK E. FENNERTY, JR., Member

Addendum to Decision and Order
In re Maria M. Garcia Gomez
Docket No. 16 23157
Claim No. SH-29967

Appearances

Claimant, Maria M. Garcia Gomez, by Calbom & Schwab, P.S.C., per G. Joe Schwab

Self-Insured Employer, Borton & Sons Inc., by Eims Graham, P.S., per Michael P. Graham

Petition for Review

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision. The employer filed a timely Petition for Review of a Proposed Decision and Order issued on September 25, 2017, in which the industrial appeals judge reversed and remanded the Department order dated October 28, 2016. The claimant filed a response to the Petition for Review.

Evidentiary Rulings

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed. The rulings are affirmed.