

FEB 26 2016

WORKERS'
COMPENSATION COMMISSION

JONNIE YVONNE VASQUEZ,)
)
 Plaintiff/Appellant,)
)
 vs.)
)
 DILLARD'S, INC.,)
 QUALIFIED EMPLOYER,)
)
 Defendant/Appellee.)

COMMISSION FILE NO.:
CM- 2014-11060L

Claimant's Social Security
Number: xxx-xx-9715

COMMISSION ORDER

Introduction.

The case before the Commission is an appeal brought under the provisions of the Oklahoma Employee Injury Benefit Act, (Opt-Out Act) 85A O.S. §§ 201 through 213, commenced by Claimant Jonnie Yvonne Vasquez, who is an employee of Dillard's, Inc. Dillard's chose to take advantage of the benefits of the Opt-Out Act to become a "Qualified Employer" by "opting-out" of the provisions of the Administrative Workers' Compensation Act, by establishing an Employee Benefit Plan (Plan) governed under the provisions of Federal law, the Employee Retirement Income Security Act (ERISA).

Claimant Vasquez claims to have been injured while working in the shoe department of a Dillard's store in September, 2014, when her left shoulder and upper neck popped as she was lifting various shoe boxes. After the incident she received medical treatment and was diagnosed with an "aggravation [of] a pre-existing . . . spine injury with . . . radiculopathy." Ms. Vasquez submitted claims for benefits including additional medical treatment—which included requests for an MRI.

The request for MRI was denied and after review of her claims under the Plan, Ms. Vasquez was denied benefits in an Adverse Benefit Determination Letter on the basis that the medical condition for which she was requesting additional benefits was a pre-existing condition and not an "injury" as defined by the Plan. This denial of benefits based on pre-existing condition was upheld by the Plan's Appeals Committee.

Jurisdiction.

1. As the Oklahoma Supreme Court recognized in *Coates v. Fallin*, 316 P.3d 924 (Okla. 2013), in enacting Senate Bill 1062 (2013 Okla. Sess. Laws, Ch. 208), the Oklahoma Legislature replaced the Workers' Compensation Code with the Administrative Workers' Compensation Act and also passed the Oklahoma Employee Injury Benefit Act, 85 O.S.Supp.2015, §§ 201 through 213, which allowed employers to adopt and administer **benefit plans** consistent with the Act. *Id.* Under Section 202 of Title 85A "an Employer otherwise subject to the Administrative Workers' Compensation Act that voluntarily elects to be exempt from such Act **by satisfying the requirements under this Act,**" can become a "Qualified Employer." *Id.* and 85A O.S.Supp.2015, § 201(8)(emphasis added).

2. This is the first appeal from a denial of benefits under an employee's Benefit Plan pursuant to the Oklahoma Employee Injury Benefit Act. The first issue to be addressed by the Commission is its jurisdictional power over such an appeal.

3. The employer here, Dillard's, Inc., asserts that its Employee Benefit Plan is governed by the Federal Employee Retirement Income Security Act (ERISA). Because the Dillard's Plan includes non-occupational death benefits, in addition to the benefits required under Section 203 of the Opt-Out Act, it does not fall within the ERISA exemption for plans "maintained solely for the purpose of complying with applicable... workmen's compensation laws..." 29 U.S.C. § 1003(b)(3). Accordingly, the Commission finds that the Dillard's Plan is governed by ERISA. *Id.* However, Dillard's election to provide the benefits required under the Opt-Out Act by including them in an ERISA Plan does not automatically leave Dillard's "completely free to circumvent" Oklahoma law. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 108 (1983); *Contract Servs. Employee Trust v. Davis*, 55 F.3d 533, 536 (10th Cir. 1995).