

Louisiana Supreme Court Workers' Compensation Developments

Johnson v. AECOM Amentum Gov't Services

Court:	Louisiana Supreme Court
Writing for the Court:	McCALLUM, J.
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2025-00171 (La. 12/18/25)

Lealon JOHNSON

v.AECOM AMENTUM GOVERNMENT SERVICES

No. 2025-CC-00171

Supreme Court of Louisiana.

December 18, 2025[*716]

On Supervisory Writ to the Office of Workers' Compensation, District 2

Meghan Trahan Gomez, Michael Edward Parker, Lafayette, for Applicant - Defendant.

John K. (Mike) Anderson, Leesville, for Respondent - Plaintiff.

McCALLUM, J.

¹This workers' compensation case presents purely legal issues concerning the timeliness of an injured worker's claim for benefits. We first consider when the prescriptive period for filing a disputed claim for workers' compensation begins where an employer accommodates an injured employee with continued full-time employment at his full salary and the employee suffers no initial loss of wages. The resolution of this issue is determined by the provisions of the Louisiana Workers' Compensation Law ("LWCL"), and more specifically, by La. R.S. 23:1209. Under this statute, an injured employee is required to file a disputed claim for compensation within one year from the date of an accident, provided the injury manifests immediately. In its current form, the LWCL provides no exception to this prescriptive period for an employee who does not initially suffer a loss of wages following a work-related accident.

[1] Second, we examine the effect of an employer's starting and continuing workers'[*717] compensation payments after the one-year prescriptive period has tolled. We find our answer to this *res nova* issue by examining the language of the LWCL, the desired goal of protecting injured workers, and the application of other civil law concepts. These considerations lead us to conclude that an employer who engages in such conduct tacitly renounces the accrued prescription and thereby waives the ²right to assert prescription as a defense. This conclusion is consistent with the principle that, while prescription statutes are to be strictly construed,¹ prescription may nevertheless be renounced either expressly or tacitly, by conduct clearly indicating an intent to forgo the right to plead it.

Applying these principles to the instant matter, we agree with the Office of Workers' Compensation ("OWC") judge that the claims of the plaintiff, Lealon Johnson, are not prescribed. Although Mr. Johnson filed his disputed claim for compensation more than a year after his work-related injury occurred, his employer began making payments of workers' compensation benefits long after the prescriptive period tolled and continued to

make payments for two years. Under these circumstances, we find that his employer renounced prescription. Accordingly, and as discussed more fully below, the OWC judge properly denied the exception of prescription in this case. We affirm that ruling and remand this matter to the OWC for further proceedings.

FACTS AND PROCEDURAL HISTORY

The facts of this matter are largely undisputed. Lealon Johnson was employed as a mechanic by AECOM Amentum Government Services (“Amentum”) at Fort Polk, Louisiana. On June 12, 2020, Mr. Johnson was injured during the course and scope of his employment when he tripped over the hose of a pressure washer he was using. As a result of the accident, Mr. Johnson suffered injuries to his back. He began receiving medical treatment for his injuries and Amentum paid his medical bills. Mr. Johnson did not initially lose any time from work as Amentum placed him on light-duty work in the facility’s tool room. He continued to work in the tool room and receive his regular salary until Amentum eliminated his light-duty position on June 22, 2022 and ceased paying his salary.

3 Thereafter, Amentum began paying Mr. Johnson temporary total disability benefits 2 on a weekly basis. It continued these payments until March 28, 2024, when Amentum filed a notice of controversion of compensation form with the OWC, disputing Mr. Johnson’s continued right to indemnity benefits. Its position was that Mr. Johnson had abandoned medical treatment.

On July 29, 2024, Mr. Johnson filed—for the first time—a Disputed Claim for Compensation. Amentum responded with several exceptions, including an exception of prescription. Amentum maintained that the claim, filed more than four years after the work-related accident took place, had prescribed under Louisiana law. The OWC judge disagreed, reasoning:

... [T]he indemnity benefits paid by Amentum for 21 months after prescription[*718] had run without any evidence that same were paid in error or revoked, along with their change in policy to accommodate work restrictions requiring light-duty work after over two years of accommodating Mr. Johnson’s physical restrictions, were a clear and direct absolute renunciation of the accrual of prescription that occurred. While said payments were not an admission of liability in and of themselves, the extensive period of time for which they were regularly paid to Mr. Johnson indicated a new promise by Amentum that indemnity benefits were owed under the facts of this claim.

Amentum sought supervisory review of the OWC’s ruling with the court of appeal, which denied relief. Amentum then filed a writ application with this Court, which we granted. *Johnson v. Aecom Amentum Gov’t Servs.*, 25-00171 (La. 5/6/25), 408 So. 3d 198.

LAW AND DISCUSSION

[2, 3] Under Louisiana law, the party pleading the peremptory exception of prescription bears the burden of proving the prescriptive period has elapsed. 4 *Talley v. Baum*, 22-1329, p. 6 (La. App. 1 Cir. 9/7/23), 371 So. 3d 1114, 1118. This rule applies to workers’ compensation matters as well. *See Duplechain v. Dep’t of Transp. & Dev.*, 02-356, p. 2 (La. App. 3 Cir. 10/2/02), 827 So. 2d 567, 568 (“Generally, the party pleading prescription on a workers’ compensation claim bears the burden of proof on the issue.”). Where prescription is evident from the face of the pleadings, the burden shifts to the claimant to show that the action has not prescribed. *Feyerabend v. Boomtown Casino*, 08-807, p. 5 (La. App. 5 Cir. 2/25/09), 9 So. 3d 228, 231. He may do so by proving prescription was interrupted, suspended or renounced. *Id.*

[4] As previously noted, the OWC judge found that Mr. Johnson’s claim was not prescribed. We review this finding *de novo*. *Talley*, 22-1329, p. 6, 371 So. 3d at 1118. *See also, Smith v. Acadian Ambulance Serv., Inc.*, 22-626, p. 3 (La. App. 3 Cir. 3/22/23), 363 So. 3d 564, 567 (“When the pertinent facts are not in dispute and the decision involves purely legal issues, the matter is reviewed *de novo*, and the trial court’s legal conclusions are not entitled to any deference.”).

[5] Louisiana’s workers’ compensation laws, La. R.S. 23:1020.1, *et seq.*, were enacted for the express purpose of providing timely payment of benefits, including medical benefits, to a worker injured during the course and scope of his employment, and returning him back to the workforce. La. R.S. 23:1020.1 B. As this Court observed in *WalMart Stores, Inc. v. Keel*, 01-3013, p. 9 (La. 4/3/02), 817 So. 2d 1, 7, workers’ compensation benefits are designed “to compensate employees for loss of income resulting from work-related injuries in exchange for their employees’ forbearance from suing the employers in tort.” We made clear in *Keel* that “[t]emporary total disability benefits replace a portion of the salary an injured employee could have earned had he not been injured.” *Id.* (citing La. R.S. 23:1221 (1)(a)). Necessarily, for an injured employee to be eligible for temporary total 5 disability benefits, he must be unable “to engage in any self-employment or occupation for wages.” *See La. R.S. 23:1221 (1)(a).*

When an employee continues to work and earn wages after an injury, however, the LWCL explicitly provides that he is not entitled to benefits. Louisiana Revised Statute 23:1221 (1)(b) states that “compensation for

temporary disability *shall not be awarded* if the employee is engaged in any employment or self-employment regardless of the nature or character of the employment[*719] or self-employment including but not limited to any and all odd-lot employment, sheltered employment, or employment while working in any pain.”³ (Emphasis added).

The LWCL is silent with respect to circumstances in which an injured employee continues to be employed and receive wages—albeit for work of a different nature—until such time as the employee’s position is eliminated or the employee becomes incapable of performing his duties as a result of the otherwise compensable injury. Logically, however, in this situation, as long as the employee timely asserts a claim, he may be entitled to receive workers’ compensation benefits. The problem arises when the employee does not timely file a claim for benefits because he continues to receive wages beyond the prescriptive periods established by the LWCL. This is particularly problematic given that, as long as the employee is earning wages, La. R.S. 23:1221 (1)(b) precludes his receipt of any temporary total disability benefits.

⁶The LWCL provides three definitive timelines within which an employee must file a claim to recover workers’ compensation benefits. First, as set forth in La. R.S. 23:1209 A (1), an employee has one year from the date of an accident to file a “formal claim,” unless the parties have agreed upon payments to be made. Second, where “payments have been made ..., the limitation shall not take effect until the expiration of one year from the time of making the last payment.” La. R.S. 23:1209 A (2). That is, under subpart A (2), where an injured employee has received benefits under the LWCL, the prescriptive period for filing a workers’ compensation claim accrues one year after the last compensation payment rather than one year after the injury occurred.

The third period for filing a workers’ compensation claim is provided in La. R.S. 23:1209 A (3). Where an injury does not manifest immediately after an accident, the employee must file a claim within a year “from the time the injury develops,” but no more than “three years from the date of the accident.” *Id.*

These prescriptive periods do not contemplate the situation presented by this case—where an employee receives his regular salary for more than a year after sustaining a work-related injury and his employment is then terminated. As he suffered no loss of wages during the relevant prescriptive period, the employee is statutorily barred from receiving benefits under the LWCL. *See* La. R.S. 23:1221 (1)(b), *supra*; *see also, Branch v. New Orleans Saints*, 09-910, p. 8 n.5 (La. App. 5 Cir. 2/23/10), 31 So. 3d 627, 632 (employee, an NFL player, was not entitled to workers’ compensation benefits because he “did not miss any work or compensation that he would otherwise have received.”)[*720]

Furthermore, any attempt by an employee to file a claim for workers’ compensation benefits while the employee is still receiving wages would be met with an exception of prematurity. Under La. R.S. 23:1314, a petition for workers’ compensation benefits, is premature and subject to dismissal unless the employee ⁷asserts a basis for a workers’ compensation claim, including the employer’s failure to pay an employee LWCL benefits it owes.⁴ None of the bases set forth under this statute apply to this case.

This Court has previously recognized that:

... an injured employee who continues to work, despite a work-related medical condition which is painful but not then disabling, should not be penalized for attempting to remain in the work force in order to support his or her family or in the hope that the condition will improve. *Wex A. Malone & H. Alston Johnson III*, 14 Louisiana Civil Law Treatise—Workers’ Compensation § 384 (3d ed. 1994). Requiring any injured employee, who is not yet disabled, to assert his or her claim within one year of the accident (or one year of the last payment of benefits) in order to preserve the cause of action would encourage needless litigation.

Sevin v. Schwegmann Giant Supermarkets, Inc., 94-1859, p. 5 (La. 4/10/95), 652 So. 2d 1323, 1326.

At issue in *Sevin* was the “developing injury” rule (and a claim for total and permanent disability, which has identical prescriptive periods as a claim for temporary total disability). In *Sevin*, this Court found a workers’ compensation claim ⁸was timely despite being filed twenty months after an accident. The Court noted the plaintiff was initially treated for a strain. It was not until she discovered her injury was more serious and required surgery (at which time her doctor ordered her not to work) that the injury “developed” as contemplated by the LWCL. Her claim was thus timely filed within the “developing injury” prescriptive period.⁵[*721]

[6, 7] We recognize the quandary presented by the circumstances of this case—an injured employee who returns to work and suffers no loss of wages during the one-year prescriptive period is without recourse when he later becomes eligible for workers’ compensation benefits. Despite the *Sevin* Court’s recognition of this very problem in 1995, there have been no responsive amendments to the LWCL to date. And, this Court is unable to fashion a remedy, as “[c]ourts are not free to rewrite laws to effect a purpose that is not otherwise expressed.” *Luv N’ Care, Ltd. v. Jackel Int’l Ltd.*, 19-0749, p. 10 (La. 1/29/20), 347 So. 3d 572, 579. Our jurisprudence makes clear that “the role of the judiciary [is] to interpret the law, not to make law.... Likewise, ‘it is not the judiciary’s role

to fill in gaps left by the legislature.’” *In re Dennis*, 55,851, p. 3 (La. App. 2 Cir. 7/17/24), 400 So. 3d 954, 960 (emphasis supplied; citations omitted).

[8] We are therefore constrained to find that Mr. Johnson’s claim, on its face, is prescribed. Mr. Johnson’s injury occurred on June 12, 2020. His disputed claim for compensation was filed on July 29, 2024, more than four years after his injury and well after the expiration of any prescriptive period set forth in the LWCL. As a result, it became Mr. Johnson’s burden to prove that prescription was either interrupted, suspended or renounced. Although there is no dispute that Amentum paid for all of Mr. Johnson’s medical expenses, La. R.S. 23:1204 clearly states that “[n]either the furnishing of medical services nor payments by the employer ... constitute an admission of liability,” and our jurisprudence reflects that these payments do not interrupt the prescriptive period. *See, e.g., Winford v. Conerly Corp.*, 04-1278, p. 15 (La. 3/11/05), 897 So. 2d 560, 569; *Gilbert v. Willis-Knighton Work Kare Clinic*, 43,320, p. 4 (La. App. 2 Cir. 6/4/08), 986 So. 2d 211, 213.

[9, 10] Mr. Johnson does not contend that prescription was interrupted or suspended, and we agree that nothing occurred that would have interrupted or suspended the one-year prescriptive period after Mr. Johnson’s accident.⁶ Mr. Johnson^[*722] focuses, instead, on the doctrine of renunciation. He contends that Amentum renounced prescription when it initiated and continued to make payments of indemnity benefits after prescription accrued. Based on the record before us, we agree.

[11] “ ‘Renunciation of prescription’ is the technical term designating the abandonment of rights derived from an accrual of prescription.” La. C.C. art. 3449, cmt (c). (Emphasis supplied). It is distinguishable from “an acknowledgment of a right or obligation, which is made prior to the accrual of prescription and which ¹⁰wipes out the time that has run prior to the acknowledgment.” *Id.* (Emphasis supplied). Renunciation, on the other hand, takes place “only after [prescription] has accrued,” as specifically provide by La. C.C. art. 3449. While an acknowledgment interrupts prescription and erases the time accrued, causing prescription to begin anew from the date of the interruption, “renunciation obliterates the effect of prescription that has run.” *Lima v. Schmidt*, 595 So. 2d 624, 631 (La. 1992); *see also, Coleman v. Ace Prop. & Cas. Ins. Co.*, 19-305, p. 10 (La. App. 5 Cir. 11/27/19), 284 So. 3d 1262, 1270.

[12] Our jurisprudence is well-settled that renunciation of prescription must be “clear, direct, and absolute, and it must be manifested by words or actions of the party in whose favor prescription has run.” *Ruffins v. HAZA Foods of Louisiana, LLC*, 21-619, p. 5 (La. App. 5 Cir. 5/25/22), 341 So. 3d 1259, 1263-64 (citing *Geiger v. State ex rel. Dep’t of Health & Hosp.*, 01-2206, p. 10 (La. 4/12/02), 815 So. 2d 80, 86. According to La. C.C. art. 3450, “[r]enunciation may be tacit or express.” Tacit renunciation “results from circumstances that give rise to a presumption that the advantages of prescription have been abandoned.” *Id.* Renunciation, however, “does not require any formality.” La. C.C. art. 3449, cmt (d).

[13] A party’s acknowledgement of an obligation after prescription has tolled is insufficient to constitute the renunciation of prescription; renunciation requires a new promise to pay the debt. *Slaughter v. Arco Chem. Co.*, 05-0657, pp. 6-7 (La. App. 4 Cir. 4/26/06), 931 So. 2d 387, 393 (citation omitted). In support of this principle, the *Slaughter* court reasoned: “[a] new obligation binding on the debtor is created when a promise to pay is made after prescription has accrued.” *Id.* (quoting *Lima*, 595 So. 2d at 631 (La. 1992)). This Court further explained that renunciation “must result from a fact which gives a presumption of the relinquishment of the right acquired by prescription ... and such fact must be necessarily and strongly ¹¹connected with the debt which the party intended to revive.” *Geiger*, 01-2206, p. 10 815 So. 2d at 86 (quoting *Courtebray v. Rils*, 9 Rob. 511 (La. 1845)).

[14] Case law indicates that, after a claim has prescribed, a defendant may acknowledge a debt and even make partial payment of it without renouncing prescription. *See In re Benjamin*, 14-192, p. 8 (La. App. 5 Cir. 11/25/14), 165 So. 3d 161, 165; *Bordelon’s, Inc. v. Littell*, 490 So. 2d 779, 781 (La. App. 3 Cir. 1986). In *Benjamin*, the court rejected the plaintiff’s contention that the defendants renounced prescription by initiating settlement discussions, finding that settlement negotiations do not constitute a “new promise to pay [a] debt” sufficient to renounce prescription. *Id.*, 14-192, p. 8, 165 So. 3d at 166. Likewise, in *Bordelon’s*, the court found that a signed notarized receipt, which made several acknowledgements of the debt, was not a renunciation of prescription. While the acknowledgment^[*723] was valid, interrupting prescription on the unprescribed portion of the debt, it did not renounce prescription of the debt that had prescribed, as it contained no new promise to pay that portion of the debt.

Similarly, in *Slaughter*, the court found a taxpayer’s acceptance of a check from the Department of Revenue and Taxation more than three years after the Department’s lawsuit to collect taxes was abandoned for non-prosecution was not a renunciation of the previously-acrued abandonment. The court observed that neither the cover letter nor the check contained any language that could be construed as a new “promise to pay by [the tax payor] or a new promise to litigate.” *Slaughter*, 05-0657, p. 9, 931 So. 2d at 393.

Conversely, tacit renunciation was found in *Weeks v. Louisiana Patient’s Comp. Fund*, 03-469 (La. App. 3 Cir. 11/5/03), 858 So. 2d 851, a medical malpractice case. In *Weeks*, the Third Circuit found payment of a physician’s malpractice insurance policy limits resulted in the renunciation of prescription as to the Louisiana

Patient's Compensation Fund ("LPCF"). The court reasoned that this ¹²payment stipulated the physician's liability under La. R.S. 40:1299.44 (C)(5)(e),⁷ and operated "as a declaration or promise" that the LPCF would pay any damages proved by the plaintiff." *Id.*, 03-469, p. 4, 858 So. 2d at 854, citing *Lima*, 595 So. 2d at 631, for the principle that a "'promise' means a declaration which gives to the person to whom it is made the right to expect or claim the performance of a specified act." The *Lima*, Court also defined "promise" as a "pledge to another to do or not to do something specified...." *Id.*, 595 So. 2d at 632 (citation omitted).

There are few cases involving the renunciation of prescription in the context of a workers' compensation claim. In *Neese v. Papa John's Pizza*, 10-15 (La. App. 5 Cir. 6/29/10), 44 So. 3d 321, a case on which Amentum relies, a workers' compensation insurer issued a check to an injured employee more than a year after its last payment of temporary total disability benefits (its position was that the check was sent in error). The claimant maintained that this payment amounted to a renunciation of prescription. In rejecting that argument and finding the employee ineligible for temporary total disability benefits, the court observed:

There is no evidence in the record that [the workers' compensation insurer] or [employer] intended the January 2008 check to be a new promise to pay [temporary total disability] benefits or that [either] clearly and directly intended to renounce prescription. There is no language in the check that could be construed as a new promise to pay Mr. Neese on [the insurer's or employer's] part.

Id., 10-15, p. 12, 44 So. 3d at 329.

In the later case of *Coleman v. Ace Prop. & Cas. Ins. Co.*, 19-305, p. 8 (La. App. 5 Cir. 11/27/19), 284 So. 3d 1262, 1269, three years after the claimant settled ¹³his workers' compensation claim and his last medical benefit was paid, the insurer issued a new prescription card. The court rejected the claimant's argument that this[*724] constituted the renunciation of prescription, finding it was not "a 'clear, direct, absolute renunciation of prescription.'" *Id.*, 19-305, p. 10, 284 So. 3d at 1270. The evidence reflected the insurer sent the card in error, as it had been provided incorrect legal information as to the onset of the prescriptive period, and the card was canceled before the claimant was able to use it (notably, the claimant's prior prescription card had been rejected when he tried to use it shortly after the settlement). *See also*, *Queen v. W & W Clarklift, Inc.*, 537 So. 2d 1214, 1216 (La. App. 4 Cir. 1989) ("Defendant could not form the intent to renounce prescription when it was not only unaware that prescription had accrued but was specifically led to believe that it had not by plaintiff's attorney... defendant's conduct can hardly be considered a new promise to pay the prescribed debt.").

[15] The instant matter, however, presents a compelling case for concluding that prescription was renounced. This case does not involve an isolated payment of workers' compensation benefits after prescription accrued. Instead, more than *two years* after Mr. Johnson's work-related accident and injury occurred (and more than sixteen months after the prescriptive period tolled),⁸ Amentum initiated payments of temporary total disability benefits and continued to pay Mr. Johnson benefits on a weekly basis for approximately *two years*. We find these weekly payments clearly and directly evidence a promise to pay Mr. Johnson. Undoubtedly, these circumstances invoke the "presumption that the advantages of prescription have been abandoned," per Article 3450.

¹⁴We are not persuaded by Amentum's argument that our decision in *Gary v. Camden Fire Ins. Co.*, 96-0055 (La. 7/2/96), 676 So. 2d 553, supports its position that the "voluntary payment of workers' compensation benefits" does not interrupt prescription. As we have already found, there is no question that Mr. Johnson's claim for benefits prescribed and no facts suggest that prescription was interrupted. While the *Gary* Court acknowledged that voluntary payments of benefits neither constitute an admission of liability (consistent with La. R.S. 23:1204) nor interrupt prescription under La. C.C. art. 3464,⁹ the issue in *Gary* was whether these payments interrupted prescription *as to a third party tortfeasor* who injured the plaintiff in a car accident. The Court held that they did not. Notably, the plaintiff in *Gary* began receiving workers' compensation benefits well within the one-year prescription period, and, in a proper construction of the LWCL, the Court observed that, where benefits have been paid to an employee, "Section 1209A further provides that the time limit for filing a claim for benefits does not expire until one year after the last payment." *Id.*, 96-0055, p. 6, 676 So. 2d at 557.

Unlike the instant case, *Gary* did not involve an employer initiating voluntary payment of benefits *after* a workers' compensation claim prescribed. And, unlike *Gary*, the present issue concerns the renunciation, rather than the interruption, of prescription.¹⁰[*725]

Nor do we agree with Amentum that the language of La. R.S. 23:1209 A (1), indicating a claim for workers' compensation is "forever barred" unless either a formal claim is (timely) filed or the parties agree to future payments to be made ¹⁵precludes the application of principles of renunciation, or that the legislature intended "to preclude renunciation in the context of workers' compensation."

[16-19] First, generally, any claim not timely filed is prescribed and "forever barred." More importantly, our jurisprudence indicates that the periods set forth in the LWCL are prescriptive and not peremptive. *See, Smith v. Fruehauf Trailer Operations*, 27,864, p. 5 (La. App. 2 Cir. 1/24/96), 666 So. 2d 1246, 1250; *see also, Krieg v. Krieg Bros. Terrazzo Co., Inc.*, 93-1065, p. 3 (La. App. 3 Cir. 9/28/94), 645 So. 2d 661, 663 (citing *Lester v. Rebel*

Crane & Servs. Co., 393 So. 2d 674 (La.1981)) (“The time period established by [La. R.S. 23:]1209(A) is prescriptive, rather than peremptive.”). Our case law makes clear that, unlike peremptive periods, prescriptive periods can be suspended and interrupted. *Scott v. Walmart Stores, Inc.*, 03-0104, p. 6 (La. App. 4 Cir. 7/2/03), 851 So. 2d 1210, 1214 (“As with any prescriptive period, prescription on workers’ compensation claims may be interrupted or suspended.”); *see also, Krieg*, 93-1065, p. 3, 645 So. 2d at 664; *Smith*, 27,864, p. 5, 666 So. 2d at 1250. Likewise, whereas peremption cannot be renounced (*See Borel v. Young*, 07-0419, p. 8 (La. 11/27/07), 989 So. 2d 42, 48), the Civil Code expressly permits the renunciation of prescriptive periods under La. C.C. art. 3449.¹¹ It follows, therefore, that the prescriptive periods set forth in the LWCL may be renounced.

Second, the LWCL does not expressly state that the principle of renunciation is inapplicable in workers’ compensation matters. Indeed, as noted herein, several cases have addressed renunciation generally (even those cited by Amentum). Other cases have also applied civil code concepts to workers’ compensation matters. *See, e.g.*, ¹⁶*Trahan v. Coca Cola Bottling Co. United, Inc.*, 04-0100, p. 12 (La. 3/2/05), 894 So. 2d 1096, 1104 (“there is no ... prohibition from applying the provisions of La. C.C. art. 3071 (defining a ‘transaction or compromise’) to the instant [workers’ compensation] case” to determine whether an agreement was a valid compromise/settlement agreement); *cf.*, *Bracken v. Payne & Keller Co., Inc.*, 15-1760, pp. 6-8 (La. App. 1 Cir. 8/10/16), 199 So. 3d 1164, 1168-69 and *Duncan v. Pesnell*, 219 So. 2d 846, 848 (La. App. 2 Cir. 1969) (applying Louisiana Code of Civil Procedure articles on nullity of actions in workers’ compensation cases; the LWCL contains no provisions for nullifying judgments).¹² [*726]

[20] Last, we find no merit in Amentum’s argument that, because the LWCL in La. R.S. 23:1204 states the payment of benefits is not an admission of liability, payments of benefits after a claim has prescribed cannot constitute the tacit renunciation of the accrued prescription. This statutory provision simply ensures employers and workers’ compensation insurers can voluntarily pay benefits without waiving any defenses or admitting liability. One may renounce prescription yet still deny liability.

In *Snelling Pers.Servs. v. Duhon*, 00-661, p. 4 (La. App. 3 Cir. 11/2/00), 772 So. 2d 350, 352, the court of appeal recognized that La. R.S. 23:1204 “encourages voluntary payments by reassuring the employer that voluntary payments do not constitute an admission of liability” and “fosters the humane policies underlying the workers’ compensation statutory framework by encouraging voluntarily payments to a legitimately injured employee.” This interpretation supports both public policy ¹⁷and judicial efficiency, ensuring employers are not discouraged from making voluntary workers’ compensation payments for fear of legal consequences.

[21] Based on the foregoing, we hold that an employer or insurer’s initiation of regular and consistent workers’ compensation payments to an injured employee after the prescriptive period has tolled indicates an abandonment of the defense of prescription and constitutes a tacit renunciation of prescription. The OWC judge in this case properly denied Amentum’s exception of prescription.¹³

DECREE

The ruling of the Office of Worker’ Compensation denying the exception of prescription is affirmed. We remand this matter for further proceedings.

AFFIRMED AND REMANDED.

Crain, J., concurs.

Guidry, J., concurs in the result.

1. *See Arrant v. Wayne Acree PLS, Inc.*, 15-0905, pp. 5-6 (La. 1/27/16), 187 So. 3d 417, 421 (“Because prescription triggers the extinction of a claim, prescription statutes are strictly construed against prescription and in favor of the claim sought to be extinguished by it.”).

2. Under the LWCL, “[c]ompensation shall be paid ... (a) [f]or any injury producing temporary total disability of an employee to engage in any self-employment or occupation for wages, ... [at] sixty-six and two-thirds percent of wages during the period of such disability.” La. R.S. 23:1221 (1)(a).

3. The requirement that an injured employee may not earn any wages in order to qualify for temporary total disability benefits is further evidenced by La. R.S. 23:1221 (1)(c), which provides:

... whenever the employee is not engaged in any employment or self-employment as described in Subparagraph (1)(b) of this Paragraph, compensation for temporary total disability shall be awarded only if the employee proves by clear and convincing evidence, unaided by any presumption of disability, that the employee is physically unable to engage in any employment or self-employment, regardless of the nature or character of the employment or self-employment, including but not limited to any and all odd-lot employment, sheltered employment, or employment while working in any pain, notwithstanding the location or availability of any such

employment or self-employment.

4. La. R.S. 23:1314 provides, in pertinent part, as follows:

A. The presentation and filing of the petition under R.S. 23:1310.3 shall be premature unless it is alleged in the petition that:

(1) The employee or dependent is not being or has not been paid, and the employer has refused to pay, the maximum percentage of wages to which the petitioner is entitled under this Chapter; or

(2) The employee has not been furnished the proper medical attention, or the employer or insurer has not paid for medical attention furnished; or

(3) The employee has not been furnished copies of the reports of examination made by the employer's medical practitioners after written request therefor has been made under this Chapter; or

(4) The employer or insurer has not paid penalties or attorney's fees to which the employee or his dependent is entitled.

B. *The petition shall be dismissed* when the allegations in Subsection (A) of this Section are denied by the employer and are shown at a time fixed by the workers' compensation judge to be without reasonable cause or foundation in fact.

C. The workers' compensation judge shall determine whether the petition is premature and must be dismissed before proceeding with the hearing of the other issues involved with the claim.

(Emphasis added).

5. *See also, Bolden v. Georgia Cas. & Sur. Co.*, 363 So. 2d 419, 422 (La. 1978) ("an employee who becomes disabled after the prescriptive year (but within two years after the accident) will not be penalized by the loss of his compensation rights, unless he fails to bring suit to enforce them within one year after it is manifest, rather than conjectural, that he has a compensable claim."). *Cf., Iverstine v. Albemarle Corp.*, 02-2555, p. 10 (La. App. 1 Cir. 7/2/03), 852 So. 2d 492, 499 (although the claimant's injuries worsened to the point he underwent surgery, his claim had prescribed. The appellate court found that the plaintiff knew he suffered a work-related injury and knew that he could not continue to perform his customary work; thus, his claim, filed more than a year after a work-related accident, had prescribed.).

Here, even if the "developing injury" rule applied, and Mr. Johnson's claim was triggered at the time he was no longer able to work (*i.e.*, when his light-duty job was eliminated), Mr. Johnson's claim still would have prescribed. Louisiana Revised Statute 23:1209 A(3) provides that, where an injury does not manifest immediately, an employee has one year from the time the injury develops to file a claim, "but in all such cases the claim for payment shall be forever barred unless the proceedings have been begun *within three years from the date of the accident.*" (Emphasis added). Mr. Johnson's claim was filed more than four years after his accident.

6. We recognize that "payment in lieu of wages" interrupts prescription and a claim may be filed within a year of the final wage payment. *See Ortis v. Ortco Contractors, Inc.*, 00-1460, p. 3 (La. App. 1 Cir. 9/28/01), 809 So. 2d 300, 301. " 'Wages in lieu of compensation' are defined as unearned wages paid to an employee after an injury; if the employee actually earns the wages paid to him, they are not 'wages in lieu of compensation' and do not interrupt prescription for workers' compensation claims." *O'Quinn v. Trinidad Drilling, LP*, 49,372, p. 8 (La. App. 2 Cir. 10/1/14), 150 So. 3d 486, 491. As explained in *O'Quinn*, "[i]f the employee after his injury continues to receive wages or checks unspecified as to their purpose and he is not fully earning these wages, they will be treated as gratuitous payments in lieu of compensation and will interrupt prescription." *Id.* (quoting Wex S. Malone and H. Alston Johnson, 14 Louisiana Civil Law Treatise, *Workers' Compensation Law and Practice*, § 384, pp. 371-2 (4th ed. 2010)).

This principle does not apply to this case as the wages Mr. Johnson received following his injury were earned, even though Mr. Johnson worked in a different capacity than his usual employment.

7. At the time, La. R.S. 40:1299.44(C)(5)(e) provided:

In approving a settlement or determining the amount, if any, to be paid from the patient's compensation fund, *the trier of fact shall consider the liability of the health care provider as admitted* and established where the insurer has paid its policy limits of one hundred thousand dollars, or where the self-insured health care provider has paid one hundred thousand dollars.

(Emphasis added).

8. Prior to that time, Mr. Johnson could not have filed a disputed claim for workers' compensation benefits as he

continued to receive his salary in full for two years after the accident, suffering no loss of wages.

9. Article 3464 states: "Prescription is interrupted when one acknowledges the right of the person against whom he had commenced to prescribe."

10. Amentum's reliance on *Migliori v. Willows Apartments*, 99-2784 (La. App. 4 Cir. 5/31/00), 765 So. 2d 435, is misplaced. The issue there, too, concerned whether the payments of workers' compensation benefits and medical expenses interrupted prescription against third parties. The court found *Gary* to be indistinguishable and followed *Gary* to find that the payments did not interrupt prescription against third-party tortfeasors.

11. See La. C.C. art. 3461 ("Except as otherwise provided by law, peremption may not be renounced, interrupted, or suspended."); *Ebinger v. Venus Const. Corp.*, 10-2516, p. 9 (La. 7/1/11), 65 So. 3d 1279, 1286 ("Peremption differs from prescription in two respects: (1) the expiration of the peremptive time period destroys the cause of action itself; and (2) nothing may interfere with the running of a peremptive time period.").

12. We further find no merit to Amentum's argument that it "cannot be said to have renounced the rights obtained through the accrued prescription," as "[t]here is no evidence in the record that Amentum (1) knew Mr. Johnson's claims were already prescribed and (2) despite this made declaration and new promise to pay - clearly and directly intending to renounce prescription."

We have already determined that Amentum's actions constituted the renunciation of prescription. Although Amentum asserts it was unaware that Mr. Johnson's claims were prescribed, given that Amentum was Mr. Johnson's employer and paid his salary, it unquestionably knew, or should have known, that no claim was filed by Mr. Johnson during the relevant time period—one year from the date of Mr. Johnson's accident—and thus, that his claim had prescribed.

13. Of course, Amentum may still pursue in the OWC other defenses available to it, including those raised in its March 28, 2024 notice of controversion of compensation form.

Cousain v. Smitty's Supply, Inc.

Court:	Louisiana Supreme Court
Writing for the Court:	WEIMER, CHIEF JUSTICE
Docket Number:	2025-C-01318
Decision Date:	29 June 2026
Citation:	Cousain v. Smitty's Supply, Inc., 2025-C-01318 (La. Jun 29, 2026)
Parties:	JOHNNY COUSAIN v. SMITTY'S SUPPLY, INC. AND NATIONAL UNION FIRE INSURANCE COMPANY

Id. vLex Fastcase: VLEX-1126974051

Link: <https://fastcase.vlex.com/vid/cousain-v-smitty-s-1126974051>

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JOHNNY COUSAIN v. SMITTY'S SUPPLY, INC. AND NATIONAL UNION FIRE INSURANCE COMPANY

No. 2025-C-01318

Supreme Court of Louisiana

June 29, 2026

On Writ of Certiorari to the Court of Appeal, First Circuit, Office of Workers Compensation, District 6

WEIMER, CHIEF JUSTICE ^[*]

A writ was granted in this matter to determine whether the forfeiture of workers' compensation benefits, for making a willful misrepresentation in violation of La. R.S. 23:1208, applies prospectively from the date of the misrepresentation or requires the loss of all benefits from the date of the accident. After the work-related injury, the employer initially paid no benefits to the employee. Subsequently, the employer claimed the employee intentionally made false statements in his deposition for the purpose of obtaining benefits. At trial, the workers' compensation judge ("WCJ") found the employee was temporarily totally disabled from the accident, but that the employee forfeited his entitlement to benefits from the date of the deposition forward. The court of appeal affirmed that portion of the WCJ's ruling, following its own First Circuit precedent in *Leonard v. James Indus. Constructors*, 03-0040 (La.App. 1 Cir. 5/14/04), 879 So.2d 724, and rejecting the employer's argument that the forfeiture of benefits applies retroactively to the date of the accident-the approach later followed in the Fifth Circuit in *Moran v. Rouse's Enters., LLC*, 19239 (La.App. 5 Cir. 12/26/19), 286 So.3d 1245.

This court granted certiorari to resolve a circuit split in the appellate courts regarding whether a forfeiture of benefits applies prospectively from the date of the false statement or retroactively to the date of the accident. Finding the forfeiture of benefits is prospective only, we affirm the decision of the court of appeal in this matter.

FACTS AND PROCEDURAL HISTORY

On June 30, 2021, Johnny Cousain was involved in a work-related motor vehicle accident, which he reported to his employer, Smitty's Supply, Inc., on the same day, but reported no injuries at that time. He was terminated from his employment two days later. Mr. Cousain then reported neck and back injuries to Smitty's by letter, through counsel, demanding authorization of an initial evaluation by his choice of orthopedic surgeon. Thereafter, he filed a disputed claim for compensation with the Office of Workers' Compensation ("OWC"), alleging that Smitty's had not paid any wage benefits or authorized any medical treatment.

The misrepresentation at issue arose from Mr. Cousain's March 3, 2022 deposition, where Mr. Cousain testified that, two days after the accident, he sought emergency room care at North Oaks Medical Center for his injuries. He further testified that he underwent an x-ray and was placed off work for two days. The medical records, however, showed that Mr. Cousain did not receive emergency room care two days after his accident. Smitty's filed an amended answer in the OWC, asserting that Mr. Cousain made an intentional misrepresentation for the

purpose of obtaining workers' compensation benefits and, thus, had forfeited his right to benefits.

At trial, Mr. Cousain testified that he had received care at North Oaks on many other occasions for other reasons and was merely confused about the dates of his care. The WCJ, however, did not find this claim of confusion credible, stating:

Mr. Cousain was asked in his March 3, 2022, deposition about his medical care related to his workplace injuries. Mr. Cousain reported that he had care at North Oaks emergency room within two days of the accident. Mr. Cousain went into detail about this care. However, the medical records introduced at trial show that Mr. Cousain did not get care at North Oaks for injuries from the June 30, 2021, accident. Mr. Cousain alleges that because he had so many visits to North Oaks for other matters that he was confused and mistaken. Mr. Cousain's testimony was clear and resolute. Mr. Cousain was not receiving benefits at the time of the deposition, and emphasizing medical care shortly after the accident would help to prove a contested injury. Mr. Cousain was seeking benefits, and he seemed to be aware that whether he was injured was a contested matter. In observing Mr. Cousain's testimony and demeanor during the trial, the court did not believe that Mr. Cousain accidentally confused receiving care at North Oaks for this accident. The court finds that Mr. Cousain willfully made false statements in his deposition for the purpose of obtaining workers' compensation benefits.

The WCJ found that Mr. Cousain violated La. R.S. 23:1208 when he willfully made false statements in his deposition for the purpose of obtaining workers' compensation benefits. Accordingly, under La. R.S. 23:1208(E), he forfeited any right to workers' compensation benefits commencing on March 3, 2022, the date of the deposition in which the WCJ found the falsehood occurred. He was also assessed a \$1,000 civil penalty payable to the Kids Chance Scholarship Fund, Louisiana Bar Foundation, pursuant to La. R.S. 23:1208(D), but Smitty's was not awarded any restitution, as it had not proved it paid any benefits for which restitution could be granted. The WCJ further found that, before the misrepresentation occurred, Mr. Cousain was temporarily totally disabled for a period of 12 weeks and awarded him indemnity benefits in the amount of \$6,437.40 and medical expenses of \$1,251.00. Smitty's was ordered to pay \$5,000.00 in attorney's fees for failing to pay indemnity benefits, \$5,000.00 in attorney's fees for failing to pay or authorize necessary and related medical care, and \$2,000.00 in attorney's fees for failing to authorize Mr. Cousain's choice of physician. The WCJ imposed three separate penalties against Smitty's in the amount of \$2,000.00 for each of the three violations, pursuant to La. R.S. 23:1201(F).

Smitty's appealed this judgment to the appellate court, seeking a retroactive forfeiture of all benefits and arguing that all penalties and attorney's fees should be overturned. Mr. Cousain answered the appeal, arguing that his false statements were inadvertent and inconsequential, not willful misrepresentations. The appellate court^[1] vacated the attorney fee award, in part,^[2] and otherwise affirmed the lower court's ruling. *Cousain v. Smitty's Supply, Inc.*, 25-0107 (La.App. 1 Cir. 9/19/25), *unpub.*, 2025 WL 2735436. Undertaking review under the manifest error standard, the court of appeal found record support for the WCJ's finding that Smitty's satisfied its burden of proving the three requirements under La. R.S. 23:1208 for forfeiture of workers' compensation benefits: (1) there is a false statement or representation; (2) it is willfully made; and (3) it is made for the purpose of obtaining compensation benefits. *Id.*, 25-0107 at 5-7, 2025 WL 2735436 at *2-4. The court of appeal deferred to the WCJ's finding that Mr. Cousain's testimony was not credible and upheld the WCJ's finding that Mr. Cousain's false statements were willfully made for the purpose of obtaining workers' compensation benefits. *Id.*, 25-0107 at 7-8, 2025 WL 2735436 at *4. Following *Leonard*, the court of appeal found that where the misrepresentation was not made at the time of the accident but sometime later, the forfeiture was effective at the time of the misrepresentation. *Id.*, 25-0107 at 10, 2025 WL 2735436 at *5. In *Leonard*, the court reasoned that the word "any" in the statute is quantitative, not temporal, and noted the statute is quasi-penal, and such statutes are to be strictly construed. *Id.*, 25-0107 at 9, 2025 WL 2735436 at *4. The court observed that earlier decisions of this court neither addressed when the forfeiture was effective nor mandated forfeiture of benefits from the date of the accident. *Id.*, 25-0107 at 9-10, 2025 WL 2735436 at *4-5 (citing *Resweber v. Haroil Const. Co.*, 94-2708, 94-3138 (La. 9/5/95), 660 So.2d 7; *St. Bernard Parish Police Jury v. Duplessis*, 02-0632 (La. 12/4/02), 831 So.2d 955). The court of appeal, therefore, affirmed the judgment in this respect, and denied Mr. Cousain's answer to the appeal. *Id.*, 25-0107 at 12, 2025 WL 2735436 at *6. While the opinion rejected Smitty's argument that forfeiture applies retroactively, it did not discuss the Fifth Circuit's decision in *Moran*.

Smitty's filed a writ application in this court, which was granted. *Cousain v. Smitty's Supply, Inc.*, 25-01318 (La. 1/28/26), 427 So.3d 692. Mr. Cousain has not separately filed a writ in this court to challenge the lower courts' finding that he willfully made a false statement for the purpose of obtaining benefits.^[3] Accordingly, the sole issue before this court is whether the ensuing forfeiture of benefits is prospective only or retroactive to the date of the accident.

DISCUSSION

The Louisiana Workers' Compensation Act contains two separate anti-fraud forfeiture provisions by which employers may defend against paying a claim. Louisiana Revised Statute 23:1208.1 applies when a falsity was made on an employer's medical questionnaire, before the accident or injury. See *Wise v. J.E. Merit Constructors*,

Inc., 97-0684, p. 6 (La.1/21/98), 707 So.2d 1214, 1217. A separate provision under La. R.S. 23:1208 applies to situations where, as here, during a pending claim, a claimant has made a false statement or misrepresentation for the specific purpose of obtaining workers' compensation benefits. *Id.* Louisiana Revised Statute 23:1208 provides, in relevant part:

A. It shall be unlawful for any person, for the purpose of obtaining or defeating any benefit or payment under the provisions of this Chapter, either for himself or for any other person, to willfully make a false statement or representation.

....

E. Any employee violating this Section shall, upon determination by workers' compensation judge, forfeit any right to compensation benefits under this Chapter.

This court has found La. R.S. 23:1208 "clear and unambiguous" in prior cases, which have addressed the nature of the employee's misrepresentation and the extent of the benefits subject to forfeiture.

In *Resweber*, 94-2708 at 7, 660 So.2d at 12, this court held that Section 1208 clearly applies to any willful false statements or representations made "for the purpose of obtaining or defeating any benefit or payment" and has no language limiting it to only certain types of false statements, i.e., statements other than those relating to prior injuries. In examining the legislative history of La. R.S. 23:1208, this court explained:

The history of Section 1208 indicates a clear legislative intent to prevent and discourage fraud in relation to workers' compensation claims, and Section 1208 should not be subjected to a strained interpretation which would undercut that legislative intent. ... The legislature has determined workers' compensation fraud is a severe and growing problem and has continually amended Section 1208 to make it easier to enforce and to make the penalties stiffer. It is clear from the history of the statute that the legislature intended that any false statements or representations willfully made for the purpose of obtaining benefits would result in forfeiture of those benefits, and this legislative intent cannot be ignored.

Id., 94-2708 at 7-8, 660 So.2d at 12-13.

In *Duplessis*, 02-0632 at 2, 831 So.2d at 956, the employee, who had been receiving benefits for nine years, falsified mileage reports seeking more mileage reimbursement than owed. While the WCJ found that the employee had willfully submitted false mileage reports in violation of La. R.S. 23:1208, the only benefit ordered forfeited was the mileage benefit, not other benefits. *Id.*, 02-0632 at 3-4, 831 So.2d at 957. The judgment was affirmed on appeal. *Id.*, 02-0632 at 4, 831 So.2d at 957.

This court reversed, finding that although the willfully false statement related only to the claim for mileage reimbursement, the statute required that any employee found in violation of La. R.S. 23:1208 would "forfeit any right to compensation benefits." *Id.*, 02-0632 at 9, 831 So.2d at 960. This court, therefore, determined that the statute mandated forfeiture of all workers' compensation benefits, not just the mileage benefits associated with the false statement. *Id.* The court's decision, however, based on the question before it at that time, addressed the type of benefits forfeited, not the timing at which the forfeiture became effective.

Soon after, the First Circuit, sitting en banc, considered the timing of the forfeiture in *Leonard*. There, the WCJ and the court of appeal found the forfeiture of benefits effective from the date of the misrepresentation forward. *Leonard*, 03-0040 at 9, 879 So.2d at 730. The employee admitted in his trial testimony that he lied about back pain to medical providers at a hospital emergency room to obtain medication due to drug addiction. *Id.*, 03-0040 at 5, 879 So.2d at 728. The appellate court majority reasoned that *Duplessis* did not address when the forfeiture was to be effective and did not require forfeiture of benefits dating back to the time of the injury. *Id.*, 03-0040 at 8, 879 So.2d at 730. Looking to this court's opinion in *Resweber*, the majority acknowledged this court's statement that La. R.S. 23:1208 applies to any false statement made specifically for the purpose of obtaining benefits and "therefore generally becomes applicable at the time of an employee's accident or claim." *Id.* (quoting *Resweber*, 94-2708 at 1, 660 So.2d at 9 (emphasis added)). Finding this language suggests no inflexible rule on when the forfeiture is effective, the majority determined that where the misrepresentation is not made at the time of the accident, but occurs at some later time, the forfeiture is effective at the time of the misrepresentation, rather than the time of the accident. *Leonard*, 03-0040 at 9, 879 So.2d at 730.

Interpreting the statutory language, the majority found the word "any" in the statute is quantitative, not temporal. The court of appeal noted that statutory forfeiture of workers' compensation benefits is a harsh remedy, which must be strictly construed, and that Section 1208, as a quasi-penal statute, must be strictly construed. *Id.* The court reasoned that a retroactive application would not result in a "forfeiture" of benefits, but, in effect, a "denial" of benefits, if it included benefits to which the employee was undisputedly entitled. *Id.* In reaching its decision, the court of appeal overruled its earlier decision in *LeBlanc v. Grand Isle Shipyard, Inc.*, 95-2452 (La.App. 1 Cir. 6/28/96), 676 So.2d 1157, which held that La. R.S. 23:1208 does not limit the forfeiture of benefits to the time period after the claimant makes the false statements or misrepresentations. *Id.*, 03-0040

at 7, 879 So.2d at 729.

Three judges authored separate concurrences agreeing with the majority's conclusion and further focusing on the statute as a whole, particularly the interplay between Subsections D and E. Subsection D provides:

In addition to the criminal penalties provided for in Subsection C of this Section, any person violating the provisions of this Section may be assessed civil penalties by the workers' compensation judge of not less than five hundred dollars nor more than five thousand dollars payable to the Kids Chance Scholarship Fund, Louisiana Bar Foundation, and may be ordered to make restitution. Restitution may only be ordered for benefits claimed or payments obtained through fraud and only up to the time the employer became aware of the fraudulent conduct.

La. R.S. 23:1208(D).

Judge Whipple's concurrence noted that, under Subsection D, an employee who violates this statute may be ordered to pay restitution only for "benefits claimed or payments obtained through fraud"-not all benefits ever paid. *Leonard*, 03-0040 at 1, 879 So.2d at 731 (Whipple, J., concurring). If Subsection E were read to provide that forfeiture of all benefits is retroactive to the date of the accident, regardless of when the misrepresentation occurs, then presumably, the employee should owe reimbursement of all benefits to which he had ever been entitled. *Id.* However, La. R.S. 23:1208(D) does not provide for such reimbursement. *Id.*⁴¹

Judge McClendon's concurrence likewise considered Subsections D and E in light of one another. *Id.*, 03-0040 at 1, 879 So.2d at 733 (McClendon, J., concurring). The concurrence emphasized that statutory provisions should be construed as a whole with the remainder of the statute, and all statutes on the same subject matter should be read together and interpreted as a whole to effect the legislative intent and should be construed in such a way as to reconcile, if possible, apparent inconsistencies or ambiguities so that each part is given effect. *Id.* It is presumed that the intention of the legislative branch is to achieve a consistent body of law. *Id.*

Judge Kuhn further concurred to recognize the underlying principle that workers' compensation claims are in derogation of the general rights of tort victims and that forfeiture is an infliction of "a draconian penalty that deprives workers' compensation claimants of their rights to compensation not reasonably related to ... the misrepresentation." *Id.*, 03-0040 at 1, 879 So.2d at 732 (Kuhn, J., concurring).

In dissent, Chief Judge Carter criticized the majority's reading of *Duplessis* as having not addressed the point in time at which the forfeiture of benefits is to be effective. *Leonard*, 03-0040 at 1, 879 So.2d at 734 (Carter, C.J., dissenting). Rather, Chief Judge Carter was "convinced" that the clear and unambiguous language of Section 1208, this court's decisions in *Resweber* and *Duplessis*, and the First Circuit's decision in *LeBlanc*, "lead to the inescapable conclusion" that a violation of Section 1208 results in the forfeiture of all benefits the employee would otherwise be entitled to receive, regardless of when the misrepresentation occurred. *Id.*, 03-0040 at 1-2, 879 So.2d at 733-34. The dissent noted no limiting language for the effective date applicable to forfeiture of benefits in *Duplessis*, *Resweber*, or the statute. If the legislature had seen fit to limit the forfeiture of benefits to the time period after the fraudulent conduct had occurred, it could have done so. *Id.*, 03-0040 at 2-3, 879 So.2d at 734. In contrast, the dissent noted, Subsection D of Section 1208 limited the time period for restitution. *Id.*, 03-0040 at 3, 879 So.2d at 734. In the dissent's reading of La. R.S. 23:1208, the legislature intended to punish fraudulent conduct by mandating forfeiture of all benefits. *Id.*

The Third Circuit similarly rejected an employer's argument that benefits must be forfeited retroactively to the date of the accident where the employee was otherwise entitled to benefits prior to the misrepresentation. In *Jim Walter Homes, Inc. v. Guilbeau*, 05-1473, p. 11 (La.App. 3 Cir. 6/21/06), 934 So.2d 239, 246-47, the court reasoned that if La. R.S. 23:1208(E) were applied retroactively to the date when benefits first accrued, a claimant would lose all benefits, not just those for which there is actual proof that benefits are being obtained or continued via a false, willful statement. Further, the court stated, if the legislature meant to provide for retroactive application, the words "retroactive to the date when benefits accrued" would have to have been included in La. R.S. 23:1208(E). *Id.*, 05-1473 at 11, 934 So.2d at 247. The court found that to provide otherwise would strictly construe the penalty provision in favor of the employer and not the claimant. *Id.* The court looked to its recent decision in *Apeck Const., Inc. v. Bowers*, 03-486 (La.App. 3 Cir. 12/10/03), 862 So.2d 1087, which analyzed this court's decision in *Duplessis*, but found this court never addressed the issue of when forfeiture begins. *Apeck* considered Subsection D in the context of the Act as a whole, writing as follows:

As indicated by Subsection D, it is clear that the intent of the legislature was to punish claimants who make false statements or representations to obtain benefits. Otherwise, the legislature would have provided restitution for any workers' compensation benefits that the employer paid before it became aware of the fraudulent conduct.

The reason for this is simple. Before the misrepresentation, there has been no punishable conduct. The triggering mechanism is the fraudulent conduct. Once the misrepresentation occurs, the provisions of La. R.S. 23:1208 apply, and from that point the claimant's right to benefits is forfeited.

Any other interpretation would have the effect of promoting a system whereby the employers would fail to commence the payment of workers' compensation benefits in the hope of a future false statement which would relieve it completely of the obligation of paying workers' compensation benefits, including its own actions which would be punishable under the Workers' Compensation Act. This would thwart the purpose of the Workers' Compensation Act which was passed for the joint benefit of labor and management in order to insure that employees who became disabled as a result of their labors in hazardous industries would have, during the period of their disability, a weekly income for the upkeep of themselves and their families.

Apeck, 03-486 at 6, 862 So.2d at 1093 (internal quotations and citations omitted).^[5] Smitty's urges this court to adopt the diverging view of another circuit court.

In *Moran v. Rouse's Enters., LLC*, 19-239 (La.App. 5 Cir. 12/26/19), 286 So.3d 1245, the Fifth Circuit upheld the retroactive forfeiture of benefits from the date of the accident for an intentional false statement, which the employee made in her deposition mid-claim. Before the deposition, the employer had contested the employee's entitlement to any benefits based on an intoxication defense. *Id.*, 19239 at 2, 286 So.3d at 1247. The court of appeal held that the statutory language "shall ... forfeit any right to compensation benefits" requires the forfeiture of all benefits, regardless of when the fraudulent conduct or misrepresentation occurs. *Id.*, 19-239 at 11, 286 So.3d at 1252-53. The court found its holding was consistent with this court's analysis in *Duplessis* and agreed with Chief Judge Carter's dissent in *Leonard*, that if the legislature had intended to limit the application of time, as it did in La. R.S. 23:1208(D), it would have clearly expressed that in the statute. *Id.*, 19-239 at 11, 286 So.3d at 1253.

Recognizing the contrary holdings of the *Leonard* majority and *Jim Walter Homes*, the Fifth Circuit nevertheless determined that its statutory construction prevails. *Id.*, 19-239 at 9-11, 286 So.3d at 1251-53.

The split in the circuits regarding the interpretation of La. R.S. 23:1208 warrants resolution in this court. *See* La.S.Ct.R. X, § 1(A)(1). The starting point in the interpretation of any statute is the language of the statute itself. *Benjamin v. Zeichner*, 12-1763, pp. 5-6 (La. 4/5/13), 113 So.3d 197, 202. When a law is clear and unambiguous and the application of the law does not lead to absurd consequences, the law must be applied as written without further interpretation of the intent of the legislature. La. C.C. art. 9; *see also* La. R.S. 1:4. Further, the words of a law must be given their generally prevailing meaning. La. C.C. art. 11; *see also* La. R.S. 1:3. The word "shall" is mandatory and the word "may" is permissive." *Id.*

It is presumed that every word, sentence, or provision was intended to serve some useful purpose, that some effect is to be given to each such provision, and that no unnecessary words or provisions were employed. *McGlothlin v. Christus St. Patrick Hosp.*, 10-2775, p. 11 (La. 7/1/11), 65 So.3d 1218, 1228. Courts are bound, if possible, to give effect to all parts of a statute and to construe no sentence, clause, or word as meaningless and surplusage if a construction giving force to, and preserving, all words can legitimately be found. *Id.*

Furthermore, a statute should be construed in such way as to reconcile, if possible, apparent inconsistencies so that each part is given effect. *Luv N' Care, Ltd. v. Jackel Int'l Ltd.*, 19-0749, p. 8 (La. 1/29/20), 347 So.3d 572, 578. Since the meaning is to be determined from a general consideration of the act as a whole, all parts, provisions, or sections must be read together; each must be considered with respect to, or in the light of, all the other provisions, and construed in harmony with the whole. *Id.* The intent as deduced from the whole will prevail over that of a particular part considered separately. *Arrant v. Graphic Packaging Int'l, Inc.*, 132878, p. 7 (La. 5/5/15), 169 So.3d 296, 301. Meaning should be given, if possible, to each and every section, and the construction placed on one portion should not be such as to obliterate another; so, in determining the meaning of a word, phrase, or clause, the entire statute is to be considered. *Id.*

This court previously declared La. R.S. 23:1208 clear and unambiguous. *Resweber*, 94-2708 at 7, 660 So.2d at 12; *Duplessis*, 02-0632 at 9, 831 So.2d at 960. Subsection E provides that an employee violating Section 1208 "shall, upon determination by workers' compensation judge, forfeit any right to compensation benefits." While Subsection E lacks language whether the forfeiture of "any right to compensation benefits" is prospective or retroactive, when read in the context of La. R.S. 23:1208 and the Act as a whole, its meaning is clear. The preceding paragraph, Subsection D, provides the employer a limited remedy of restitution. Restitution "may" be ordered by the WCJ and is permissive, not mandatory. *See* La. R.S. 1:3. Restitution is explicitly linked to a particular time frame: benefits obtained through the fraud and only until the time the employer became aware of the fraud. Section 1208 does not afford employers restitution of benefits the employer paid before the fraud. As Judge Whipple pointed out, "If in fact section (E) of LSA-R.S. 23:1208 were read to provide that, regardless of when the misrepresentation occurs, forfeiture of all benefits is retroactive to the date of the accident, then presumably, the employee should owe reimbursement of all benefits to which he had ever been entitled. However, LSA-R.S. 23:1208(D) clearly does not provide for such reimbursement." *Leonard*, 03-0040 at 1, 879 So.2d at 731 (Whipple, J., concurring).

Comparing Subsections D and E and recognizing that Subsection D specifies a time limited remedy while Subsection E does not, this court does not find, as Smitty's suggests, that the legislature's omission in

Subsection E signals an intentional choice to establish a retroactive and claim-wide forfeiture remedy to the employer. Instead, as principles of statutory construction compel, the subsections must be read together and in light of one another to afford meaning to each. Mindful that the legislature presumptively endeavors to create a uniform and consistent body of law, it would be inconsistent to allow a blanket denial of benefits under one subsection with only a time-limited restitution remedy under another subsection. Applying Subsection E retroactively would render the time-limited restitution under Subsection D meaningless, or even render these Subsections in conflict with each other. A retroactive interpretation would provide a more favorable remedy to the employer who denies benefits from the inception of the claim, while failing to afford a restitution remedy to the employer who pays benefits in good faith. The *Moran* decision and the *Leonard* dissent do not express a compelling rationale under which the legislature would choose to draft the employer's remedy in this way. Thus, we are not persuaded that the absence of a time limitation in Subsection E evidences legislative intent for broader forfeiture than restitution, or that reading the provisions together negates applying the text as written.

Reading Section 1208 as a whole, the phrase "any right to compensation benefits" is "quantitative, not temporal" and applies to benefits accruing after the misrepresentation only. See *Leonard*, 03-0040 at 9, 879 So.2d at 730. Stated another way, the quoted phrase addresses the amount of the benefits forfeited but not the timeframe covered by the forfeiture. Where the employer successfully proves a violation of Section 1208, the WCJ may order restitution for benefits obtained through the fraud under Subsection D and shall order forfeiture of benefits accruing after the fraud under Subsection E. Reading these subsections together and in light of one another to afford meaning to each, we find that the forfeiture is effective at the time of the misrepresentation, rather than at the time of the accident.

Moreover, this prospective interpretation is bolstered by the surrounding legislation within the Act. In the 2012 amendments to the Act, the legislature statutorily declared that the Act's purpose is provide for timely payment of disability benefits to injured workers who suffered a compensable work-related accident, to pay their medical expenses, and return workers who have received benefits to the workforce. La. R.S. 23:1020.1(B). The Act expressly states the legislative intent "[t]hat the Louisiana Workers' Compensation Law is to be interpreted so as to assure the delivery of benefits to an injured employee in accordance with this Chapter" and "[t]o facilitate injured workers' return to employment at a reasonable cost to the employer." La. R.S. 23:1020.1(C).^[6]

Louisiana Revised Statute 23:1031(A) defines an employee's eligibility for receipt of workers' compensation benefits: [i]f an employee not otherwise eliminated from the benefits of this Chapter receives personal injury by accident arising out of and in the course of his employment, his employer shall pay compensation in the amounts, on the conditions, and to the person or persons hereinafter designated. To that end, La. R.S. 23:1201 requires that "[p]ayments of compensation under this Chapter shall be paid as near as may be possible, at the same time and place as wages were payable to the employee before the accident" and provides for payment of indemnity benefits and medical expenses, along with corresponding penalties and attorney's fees for an employer or insurer's failure to timely furnish the employee with benefits when due.

This court has commented on the balancing of interests and tradeoffs inherent within the application of the Act. We described the "quid pro quo" underlying the Act as "that of a compromise in which the employer surrenders immunity from liability, which he would otherwise be entitled to in cases wherein he was without fault, and, in return, the employee foregoes his right to full damages for his injury in exchange for limited but certain compensation." *Austin v. Abney Mills, Inc.*, 011598, p. 10 (La. 9/4/02), 824 So.2d 1137, 1144-45. This court expounded on the Act's purpose as a compromise between employer's and employee's interests at its inception:

The [A]ct, which is social legislation, was passed for the joint benefit of labor and management in order to insure that employees who became disabled as a result of their labors in hazardous industries would have, during the period of their disability, a weekly income for the upkeep of themselves and their families. It was also deemed advisable to provide for compensation, in cases of death, to the persons dependent upon the employee for support so that these persons would not be entirely bereft of funds during the period of time following the employee's death when they, of necessity, were compelled to reconstruct their lives and seek a means of support,-thus avoiding the possibility that these persons would become public charges. In order that this end might be accomplished, the Legislature provided for sacrifices to be made by both the employer and the employee. The employee was required to waive the right granted him under the general law, Article 2315 of the Civil Code, in consideration of receiving a fixed percentage of his wages during the period of his disability. The employer, on the other hand, was deprived of the defenses afforded to him by the general law and he was assured that, in case any of his employees were injured, they would be entitled to no more than the amount stipulated in the statute as compensation during the period of disability.

O'Regan v. Preferred Enters., Inc., 98-1602, p. 5 (La. 3/17/00), 758 So.2d 124, 128-29 (quoting *Atchison v. May*, 201 La. 1003, 10 So.2d 785, 788 (1942)).

Having recognized that the Act supplies benefits in exchange for forgoing a tort remedy, this court also observes in the Act a tradeoff between penalties and forfeiture. The balance between penalties and forfeiture, and the need for the Act to function as a fair trade, is particularly salient where, as here, no party has clean

hands. The employer failed to institute benefits or pay medical bills when due and was assessed with penalties and attorneys' fees as the Act provides under La. R.S. 23:1201. The employee lied about his medical care to obtain the benefits the employer had failed to pay him, and he forfeited his right to benefits under La. R.S. 23:1208. Applying that forfeiture retroactively does not deter misrepresentation any further than it would prospectively. Instead, a retroactive forfeiture erodes the Act's purpose as a compromise, undermines the predictability and stability that the workers' compensation framework was designed to provide, and potentially transfers the obligation to the general public to support the injured employee despite the fact that he was hurt at work. See *O'Regan*, 98-1602 at 5, 758 So.2d at 128-29.

The Act supplies penalties and attorney's fees, which are "imposed to discourage indifference and undesirable conduct by employers and insurers" that have failed to timely comply with their obligations to pay benefits to employees who have sustained compensable injuries. See *Williams v. Rush Masonry, Inc.*, 982271 (La. 6/29/99), 737 So.2d 41, 46. A finding that Section 1208 applies retroactively to the date of the accident would alleviate the employer's obligation under La. R.S. 23:1201, which is to pay the injured worker indemnity benefits and to pay his medical bills. Rather than eliminating those penalties and attorney's fees against an employer who has not fulfilled those obligations, a prospective forfeiture harmonizes Section 1201 with 1208 by penalizing the employer that has failed to pay benefits during the period owed and ordering the employee's benefits forfeited beginning with the time the employee makes a misrepresentation for the purpose of obtaining benefits. As one court cautioned:

Any other interpretation would have the effect of promoting a system whereby the employers would fail to commence the payment of workers' compensation benefits in the hope of a future false statement which would relieve it completely of the obligation of paying workers' compensation benefits, including its own actions which would be punishable under the Workers' Compensation Act.

Apeck, 03-486 at 6, 862 So.2d at 1093.

While Mr. Cousain's misrepresentation resulted in the forfeiture of his benefits as of the date of the lie, he was due benefits before that time for a period of temporary total disability, and the WCJ found Smitty's liable for penalties and attorney's fees for failing to pay the benefits due. We find this ruling consistent with the purpose and legislative intent underlying the Act and properly harmonizes its provisions.

CONCLUSION

Reading the statute as a whole and in the broader context of the Act, we hold that an employee found in violation of La. R.S. 23:1208 forfeits the right to obtain workers' compensation benefits from the time the willful misrepresentation occurs. The forfeiture is prospective from the date of the misrepresentation forward and is not a retroactive loss of benefits to which the employee was entitled before the misrepresentation was made. To the extent that *Moran v. Rouse's Enters., LLC*, 19-239 (La.App. 5 Cir. 12/26/19), 286 So.3d 1245, held that La. R.S. 23:1208(E) requires a loss of all benefits from the date of the accident, that decision is overruled. For the above reasons, the ruling of the court of appeal is affirmed.

DECREE

AFFIRMED.

[*] Judge Allison H. Penzato of the Court of Appeal, First Circuit, heard this case as Justice pro tempore, sitting for the vacancy in the First District. She is now appearing as an ad hoc for Justice William Burris.

[1] The court of appeal rendered an opinion with two judges concurring without reasons.

[2] The court of appeal found merit in Smitty's argument that the award of multiple attorney's fees was erroneous and rendered judgment to combine the awards into a single attorney fee award in accordance with La. R.S. 23:1201(J).

[3] While Mr. Cousain argues in his brief that the lower courts manifestly erred in finding he committed fraud under La. R.S. 23:1208, the argument is not properly before this court. If a party seeks to raise issues that call for a change in the judgment below, the party must file an appeal or petition, but if one merely makes alternative arguments in support of the judgment, the party need not do so. *City of Baton Rouge/Par. of E. Baton Rouge v. Myers*, 13-2011, p. 5 (La. 5/7/14), 145 So.3d 320, 330 n. 5 (citing *Roger v. Estate of Moulton*, 513 So.2d 1126, 1136 (La. 1987) (on reh'g)). We note the WCJ's findings are subject to the manifest error standard of review, which is very difficult to breach.

[4] See also *Our Lady of the Lake Reg'l Med. Ctr. v. Helms*, 98-1931 p. 1 (La.App. 1 Cir. 9/24/99), 754 So.2d

1049, 1056 (Weimer, J., concurring) (writing that while all compensation would be forfeited when a fraudulent statement is made at an initial stage of the claim, where an employee sustained a work-related injury, but makes a misrepresentation at a later stage of a claim, the employee should only owe reimbursement of benefits received after the false statement was made).

[5] Contrast *White v. WIS Int'l*, 19-747, pp. 24-25 (La.App. 3 Cir. 5/20/20), 298 So.3d 237, 255 (upholding denial of all benefits and distinguishing *Jim Walter Homes* and *Apeck* where "there was no dispute that the employee was otherwise entitled to benefits prior to the employees' fraudulent misrepresentations" whereas "all of Ms. White's claims for indemnity and medical benefits are disputed, and the intentional misrepresentations noted by both WIS and the WCJ are directly related to the those claims").

[6] The Act does not provide presumptions or strict construction. Rather, "it is the specific intent of the legislature that workers' compensation cases shall be decided on their merits. Disputes concerning the facts in workers' compensation cases shall not be given a broad, liberal construction in favor of either employees or employers; the laws pertaining to workers' compensation shall be construed in accordance with the basic principles of statutory construction and not in favor of either employer or employee." La. R.S. 23:1020.1(D)(1)-(2).

Luba Workers Comp. v. Sears

Court:	Louisiana Supreme Court
Writing for the Court:	GRIFFIN, J.
Docket Number:	2025-C-01379, 2026-C-0057
Decision Date:	29 June 2026
Citation:	Luba Workers Comp. v. Sears, 2025-C-01379, 2026-C-0057 (La. Jun 29, 2026)
Parties:	LUBA WORKERS COMP AND TRUCARE HOME HEALTH, LLC v. REBECCA SEARS

Id. vLex Fastcase: VLEX-1126977455

Link: <https://fastcase.vlex.com/vid/luba-workers-comp-v-1126977455>

1

LUBA WORKERS COMP AND TRUCARE HOME HEALTH, LLC v. REBECCA SEARS

Nos. 2025-C-01379, 2026-C-0057

Supreme Court of Louisiana

June 29, 2026

On Writ of Certiorari to the Court of Appeal, Second Circuit, Office of Workers' Compensation, District 1 E

GRIFFIN, J. [*]

We granted this writ to consider whether dismissal of a case due to a plaintiff's failure to amend a petition, when ordered to do so by a court, is self-executing. Adhering to the plain language of the Louisiana Code of Civil Procedure, we answer in the affirmative.

FACTS AND PROCEDURAL HISTORY

Rebecca Sears was injured in 2014 in the course and scope of her employment with TruCare Home Health and later received workers' compensation benefits relating to the incident. In 2023, TruCare and its insurer, LUBA Workers' Compensation (collectively "LUBA"), filed a 1008 Petition alleging that Ms. Sears fraudulently misrepresented her injuries to obtain additional benefits. Ms. Sears answered, denying the allegations, and filed an exception of no cause of action, claiming that LUBA failed to plead fraud with particularity as required by La. C.C.P. art. 856.

The Workers' Compensation Judge ("WCJ") granted the exception of no cause of action in favor of Ms. Sears and ordered LUBA "to amend [its] 1008 Petition within 15 days of the Notice of the Signing of [the] Judgment and in default of such amendment, [LUBA's] claims are dismissed with prejudice." [the "Exception Judgment"]. The notice of signing of the Exception Judgment was issued on June 28, 2024. LUBA sought supervisory review but did not request a stay of the Exception Judgment with either the WCJ or the court of appeal. The fifteen day period for amendment lapsed on July 12, 2024. The court of appeal denied writs on August 23, 2024. LUBA did not seek further review with this Court. It was not until September 23, 2024, that LUBA filed an amended petition.

Ms. Sears moved to strike the amended petition, arguing that LUBA failed to timely amend or to seek a stay. The WCJ agreed and granted the motion to strike, observing that "a writ application does not stay the proceedings unless the trial or appellate court expressly orders otherwise." Accordingly, the WCJ determined the Exception Judgment "already dismissed the suit with prejudice." The CA reversed relying on jurisprudence which held that even if the time to amend had passed, a plaintiff may still amend unless the defendant has moved for dismissal. *LUBA Workers Comp. v. Sears* 56, 489, p.6 (La.App. 2 Cir. 10/1/25) 420 So.3d 1234,1238.

While the aforementioned appeal was pending, LUBA filed a second 1008 Petition averring fraudulent misrepresentation on the part of Ms. Sears, this time buttressed with deposition testimony conducted in the interim. Ms. Sears filed an exception of res judicata contending this successive petition asserted the same action

between the same parties, in the same capacities, which was previously dismissed in the Exception Judgment. The WCJ granted the exception observing the additional assertions were known to LUBA prior to the rendition of the Exception Judgment. A different panel of the court of appeal reversed reasoning the judgment on the motion to strike was the predicate judgment upon which the exception of res judicata was based and was not a valid final judgment given its status as pending on appeal (and the subsequent writ application to this Court) when the WCJ granted the exception of res judicata. *See LUBA Workers Comp v. Sears*, 56,663, p.8 (La.App. 2 Cir. 12/17/25), 426 So.3d 727, 787-88. Ms. Sears' timely writ applications to this Court followed, which we granted. *LUBA Workers Comp. v. Sears*, 25-1379 (La. 2/3/26). 427 So.3d 708; 26-0057 (La. 2/3/26), 427 So.3d 705.

DISCUSSION

The primary issue before this Court is whether the court of appeal erred in interpreting La. C.C.P. art. 934 to allow LUBA to amend its petition despite the lapse of the court ordered delay period within which to do so. Statutory interpretation is a question of law subject to *de novo* review. *Berkley Assurance Co v. Willis*, 211554, p. 3 (La. 12/9/22), 355 So.3d 591, 593.

Article 934 provides:

When the grounds of the objection pleaded by the peremptory exemption may be removed by amendment of the petition, the judgment sustaining the exception shall order such amendment within the delay allowed by the court. If the grounds of the objection raised through the exception cannot be removed, *or if the plaintiff fails to comply with the order to amend, the action, claim, demand, issue, or theory shall be dismissed.* [Emphasis added]

Ms. Sears argued the Exception Judgment is self-executing under the unambiguous language of La. C.C.P. art. 934, thus the WCJ correctly dismissed the matter due to LUBA's failure to amend or seek a stay of the proceedings. LUBA counters that prior jurisprudence, consistent with the policy that amendment of pleadings should be literally allowed, requires action on the part of the plaintiff before dismissal is granted.^[1] We disagree.

The plain language of Article 934 dictates the provision is self-executing. *See* La. C.C. art. 9. When the grounds of the objection pleaded by the peremptory exemption may be removed by amendment of the petition, the judgment sustaining the exception *shall* order such amendment within the delay allowed by the court. La. C.C.P. art. 934. If the grounds of the objection raised through the exception cannot be removed, or if the plaintiff fails to comply, it *shall* be dismissed. *Id.* The word "shall" is mandatory." La. R.S. 1:3. Resort to jurisprudence is unnecessary when an issue may be decided by the positive law. *Bergeron v. Richardson*, 20-1409, p. 9 (La. 6/30/21), 320 So.3d 1109, 1116. Once the WCJ sustained the exception of no cause of action and granted LUBA fifteen days to amend its petition, LUBA was required to comply with the order or seek a stay to preserve the time delay pending supervisory review.^[2] LUBA did neither.

As to the issue of res judicata, the court of appeal erred when it assumed the predicate judgment in its res judicata analysis to be the judgment on the motion to strike rather than the Exception Judgment. The court of appeal therefore erroneously concluded the finality element was not met. *See* La. R.S. 13:4231; *Burguières v. Pollingue*, 02-1385, p.8 (La. 2/25/03), 843 So.2d 1049, 1053. LUBA did not seek review of the Exception Judgment beyond the August 23, 2024, denial of its supervisory writ, and thus the Exception Judgment was final September 23, 2024. *See* La. C.C.P art. 2166(A).

DECREE

For the foregoing reasons, the rulings of the court of appeal are reversed and the judgments of the WCJ are reinstated.

COURT OF APPEAL RULINGS REVERSED; TRIAL COURT JUDGMENTS REINSTATED

PENZATO, J., concurs in the result in part and dissents in part.

In these consolidated matters, three judgments of the Workers' Compensation Judge ("WCJ") are subject to this Court's review: 1) the June 27, 2024 judgment granting an exception of no cause of action, allowing leave to amend; 2) the June 11, 2025 amended judgment granting a motion to strike LUBA's^[1] amended petition, dismissing the suit with prejudice;^[2] and 3) the March 31, 2025 judgment granting an exception of res judicata as to LUBA's second amended petition.

I concur in the result reached by the majority opinion, which reversed the judgment of the court of appeal and reinstated the June 27, 2024 and June 11, 2025 judgments of the WCJ, resulting in the formal dismissal of the suit with prejudice. However, I respectfully dissent from that portion of the majority opinion, which interpreted

La. Code Civ. P. art. 934 to be self-executing once the time delays to amend expired. I further dissent from that portion of the majority opinion that reversed the judgment of the court of appeal and reinstated the WCJ's March 31, 2025 judgment sustaining the exception of *res judicata*.

As to the June 27, 2024 and June 11, 2025 judgments of the WCJ, I agree that pursuant to La. Code Civ. P. art. 934, once LUBA failed to amend the petition within fifteen-days as ordered by the WCJ, a subsequent formal dismissal was required, and LUBA was precluded from filing an amended petition. Article 934 states "if the plaintiff fails to comply with the order to amend, the action, claim, demand, issue, or theory shall be dismissed." (Emphasis supplied). "When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature." La. Civ. Code art. 9; La. R.S. 1:4. However, "[w]hen the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law." La. Civ. Code art. 10.

The language of Article 934 is clear and unambiguous and is not susceptible to different meanings. Absent in Article 934 is any language that, after the expiration of the delay to amend, the dismissal is self-executing.^[3] The article clearly contemplates a subsequent order.

Once the fifteen days elapsed, plaintiff had no authority to file, nor did the WCJ have discretion to allow the filing of an amended petition. *See Franklin v. City of Bossier*, 56,192 (La.App. 2 Cir. 4/9/25), 409 So.3d 1052, 1059, *writ denied*, 2025-00606 (La. 9/16/25), 416 So.3d 476 (where the plaintiff failed to comply with the trial order to amend the petition, dismissal was required under Article 934).

However, the plain language of the article, as written, contemplates and mandates a future dismissal in the event of non-compliance, not a dismissal by operation of law. As such, Article 934 requires some action to effectuate the dismissal of the case as recognized by the appellate court.

Similarly, the WCJ's June 27, 2024 judgment on the exception, which purported to dismiss the case with prejudice upon the expiration of the delay for amendment, cannot operate to retroactively dismiss the case. Rather, this judgment merely presents the possibility of dismissal conditioned on future non-compliance and does not contain the proper decretal language required for a final judgment of dismissal.

A dismissal with prejudice has the effect of a final judgment on the merits. *Dupre v. Floyd*, 2002-0153, p. 3 (La.App. 1 Cir. 12/20/02), 845 So.2d 370, 371. However, a valid judgment must be "precise, definite, and certain." *Laird v. St. Tammany Parish Safe Harbor*, 2002-0045 (La.App. 1 Cir. 12/20/02), 836 So.2d 364, 365. *See also Russo v. Fid. & Deposit Co.*, 129 La. 554, 561, 56 So. 506, 508 (1911). A judgment that is contingent on the occurrence of a future event is indeterminate and not a valid, final, appealable judgment. *Hosp. Serv. Dist. No. 1 of Par. of Terrebonne, State v. Hosp. Serv. Dist. No. 3 of Par. of Lafourche, State*, 2024-0999, p. 5 (La.App. 1 Cir. 8/4/25), 421 So.3d 977, 981, *reh'g denied*, (La.App. 1 Cir. 11/20/25), *writ denied sub nom.*, *Hosp. Serv. Dist. No. 1 of Par. of Terrebonne v. Hosp. Serv. Dist. No. 3 of Par. of Lafourche*, 2025-01617 (La. 3/25/26), 428 So.3d 266, *on reconsideration*, 2025-01617 (La. 5/27/26), *and writ denied sub nom.*, *Hosp. Serv. Dist. No. 1 of Par. of Terrebonne v. Hosp. Serv. Dist. No. 3 of Par. of Lafourche*, 2025-01609 (La. 3/25/26), 428 So.3d 678, *on reconsideration*, 2025-01609 (La. 5/27/26).

The WCJ's June 27, 2024 judgment on the exception does not contain dismissal language within the judgment that is "precise, definite, and certain;" rather, dismissal is contingent on the failure to amend. Thus, the June 27, 2024 judgment on the exception, on its face, is indeterminate. As a result, the judgment on the exception cannot operate on its own as a final dismissal.

In my view, however, final dismissal was accomplished, and the requirements of Article 934 were met, through the amended judgment granting the motion to strike,^[4] which dismissed the case with prejudice after LUBA failed to comply with the WCJ's order to amend. As a result, I agree the WCJ's June 27, 2024 and June 11, 2025 judgments were legally sound, and concur in the result of the majority which reinstated those judgments.

However, as to the March 31, 2025 judgment, I disagree with the majority's finding that the June 27, 2024 judgment on the exception of no cause of action was final for purposes of granting the exception *res judicata*. For purposes of *res judicata*, a valid, final judgment must be rendered by a court with jurisdiction over both the subject matter and the parties after proper notice is given. *Burguières v. Pollingue*, 2002-1385, p. 8 (La. 2/25/03), 843 So.2d 1049, 1053 (citing La. R.S. 13:4231).

Louisiana Code of Civil Procedure article 2083(A) provides that a final judgment is appealable. A final judgment is one that determines the merits in whole or in part. In contrast, an interlocutory judgment does not determine the merits but only preliminary matters in the course of an action. La. Code Civ. P. art. 1841.

As discussed, a valid judgment must be "precise, definite, and certain." *Laird*, 836 So.2d at 365. For a judgment to be a final judgment, it must contain appropriate decretal language - it must name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted or denied.

Matter of Succession of Weber, 2018-1337, p. 9 (La.App. 1 Cir. 4/29/19), 276 So.3d 1021, 1026-27. "These determinations should be evident from the language of the judgment without reference to other documents in the record." *Advanced Leveling & Concrete Solutions v. Lathan Co., Inc.*, 2017-1250, p. 4 (La.App. 1 Cir. 12/20/18), 268 So.3d 1044, 1046 (en banc) (citation omitted).

In this case, although the WCJ granted the exception of no cause of action, its June 27, 2024 judgment permitted amendment. Therefore, it did not dispose of the merits, and the judgment on the exception of no cause of action was a non-appealable, interlocutory judgment. In addition, the notice of judgment specifically designated the judgment as interlocutory. The fact that LUBA sought supervisory writs, which were denied without converting the filing to an appeal, further demonstrates the interlocutory nature of the judgment. Neither the expiration of the delay to amend nor the expiration of appeal delays serve to convert the interlocutory judgment into a final judgment.

Recently, in *Neville v. LCMC Health Holdings, Inc.*, 25-0417 (La. 6/17/25), 411 So.3d 627 (per curiam), this court held that a judgment granting an exception of no cause of action but allowing leave to amend the petition is not a final judgment; therefore, the judgment on the exception was reviewable on appeal of a subsequent final judgment. Specifically, this court stated:

In the context of the plaintiff's unrestricted appeal of the July 2, 2024 judgment, which was a final and appealable judgment, she was entitled to seek review of the trial court's adverse ruling sustaining the defendants' peremptory exception raising the objection of no cause of action, which was an interlocutory judgment as the court allowed the plaintiff an opportunity to amend her petition and did not dismiss her medical malpractice action in the ruling. *See Stanley v. Housing Authority of New Orleans*, 23-0192, p. 19 (La.App. 4th Cir. 11/8/23), 377 So.3d 389, 403 ("A judgment granting an exception of no cause of action but providing leave to amend the petition is not a final judgment or an interlocutory judgment subject to appeal. Rather, such a judgment merely permits an amendment within the delay allowed by the trial court as provided by La. C.C.P. art. 934."). [Emphasis added].

In *Neville*, the trial court's judgment sustained the exception of no cause of action and allowed plaintiff leave to amend the petition, in "default of which plaintiff's action shall be dismissed with prejudice." *Id.* The *Neville* court specifically noted that the judgment did not dismiss the action.

Similarly, here, the WCJ's judgment on the exception of no cause of action in this case did not dismiss the suit at the time it was signed. Rather, the judgment ordered an amendment to the petition, and "in default of such amendment Plaintiffs' claims are dismissed with prejudice."^[5]

As in *Neville*, the dismissal in this case was conditioned upon the occurrence of a future event, in accordance with the mandatory language of La Code Civ. P. art. 934.^[6] Without some further action by the WCJ or the parties, the judgment was not final. *See Universal Servs. & Assocs., LLC v. Grundmeyer*, 2023-0196, p. 3 (La.App. 4 Cir. 9/12/23), 372 So.3d 821, 824 (where the appellate court held that a judgment ordering an amendment is not final or appealable, even where it provides for the dismissal in the event of a default, noting: "The language of La. [Code Civ. P.] art. 934 and Louisiana jurisprudence reflect that the lapse of the time to amend does not automatically result in dismissal of the plaintiff's [here, the plaintiff-in-reconvention's] claims; rather, some action on behalf of the trial court or defendants [here, the defendant-in-reconvention] is required.") (internal quotation and citations omitted).^[7] Extending and applying *Neville*, I find the judgment on the exception of no cause of action was not a final judgment, thus it did not have a preclusive effect.

Further, while the June 11, 2025 judgment granting the motion to strike, which disposed of all the issues, was a final judgment, it is undisputed the appeal of that judgment was still pending at the time the WCJ granted the exception of res judicata. Thus, as the appellate court correctly held, it was not a valid, final judgment for purposes of res judicata. As such, in my view, the appellate court's judgment reversing the WCJ's March 31, 2025 judgment granting the exception of res judicata was correct, and I would affirm that portion of the judgment.

For these reasons, I concur in the result to reverse the appellate court's rulings on the exception of no cause of action, the motion to strike and dismissal with prejudice, thereby reinstating the WCJ's June 27, 2024 and June 11, 2025 judgments. However, I would affirm the judgment of the appellate court reversing the WCJ's erroneous grant of the exception of res judicata.

[*] Judge Allison H. Penzato of the Court of Appeal, First Circuit, heard this case as Justice pro tempore, sitting for the vacancy in the First District. She is now appearing as an ad hoc for Justice William Burris.

[1] LUBA also argues the merits of the Exception Judgment; however, as will be discussed later in this opinion, such arguments are moot.

[2] While it is doubtless the mechanism for supervisory review exists, the clear language of La. C.C.P. art. 934 presents the obvious and preferable remedy: amendment of the petition. Should attempt at amendment prove unsuccessful and an exception of no cause of action be granted resulting in dismissal, a plaintiff has the ability to file an appeal from the judgment therefrom. To encourage supervisory review in light of the availability of the foregoing procedure would be to encourage inefficiency and a waste of judicial resources.

[1] "LUBA" collectively refers to plaintiffs, TruCare and LUBA Workers' Compensation.

[2] After a suspensive appeal was filed, the WCJ amended its initial November 13, 2024 judgment on the motion to strike to include a formal dismissal with prejudice pursuant to a May 14, 2025 order of the appellate court stating the judgment was not a final, appealable judgment because it did not contain a formal dismissal. The language of the November 13, 2024 judgment stated that the June 27, 2024 judgment on the exception "already dismissed the suit with prejudice." Thus, it did not include a formal dismissal.

[3] Had the legislature intended such a result, it could have included specific language like that in La. Code Civ. P. art. 561, which provides that abandonment of a case "is operative without formal order." Notably, however, Article 561 provides a procedure to obtain a formal dismissal as well as a procedure to have the dismissal set aside.

[4] Generally, a motion to strike is not an authorized or proper way to procure the dismissal of a complaint or a cause of action. *Pitre v. Opelousas Gen. Hosp.*, 530 So.2d 1151, 1162 (La. 1988). However, our Code of Civil Procedure requires that every pleading be so construed as to do substantial justice. La. Code Civ. P. art. 865. Under normal circumstances, a motion to dismiss the amended petition would be the proper pleading; however, in this case, defendant, and the WCJ, took the position that the case was already dismissed after LUBA failed to timely file an amended petition.

Moreover, La. Code Civ. P. art. 964 provides that the court may strike from "any pleading any insufficient demand[.]" Here, the entire pleading was insufficient because it was untimely. Therefore, the WCJ did not abuse its discretion in granting the motion to strike the amended petition under these unusual circumstances. *See e.g. Gaumnitz v. Orangio*, 2026-0020, p. 2 (La.App. 4 Cir. 1/30/26), 430 So.3d 1227 (where the appellate court held the trial court's judgment granting physician's motion to strike plaintiff's first supplemental and amending petition, the only remaining pleading, constituted a final appealable judgment).

While a motion to dismiss may have been more procedurally appropriate, the WCJ was required to dismiss the case pursuant to the mandate in Article 934.

[5] The WCJ's judgment provided: "Plaintiffs ... are ordered to amend their 1008/Petition within 15 days of the Notice of the signing of this Judgment to set forth dates and names of persons to whom they allege Defendant made false statements and the substance of such statements and in default of such amendment Plaintiffs' claims are dismissed with prejudice." [Emphasis supplied].

[6] As already discussed, to the extent, the WCJ attempted to effectuate in its judgment a selfexecuting dismissal upon the expiration of the delay to amend the petition, Article 934 does not authorize such a procedure.

[7] *Grundmeyer* is cited, here, solely in support of its holding that a judgment ordering an amendment is not final or appealable, even where it provides for the dismissal in the event of a default. Notably, *Grundmeyer* also held that unless the defendant has moved for procedural dismissal, a plaintiff may still amend a pleading even if the delay period within which to amend has passed. *Id.*, 2023-0196 at p. 3, 372 So.3d at 824. Insofar as allowing a leave to amend after the expiration of the delay does not comply with the plain statutory mandates under Article 934, *Grundmeyer* must be overruled.

Lacy v. Ibarra

Court:	Louisiana Supreme Court
Writing for the Court:	PER CURIAM
Citation:	431 So.3d 1176
Docket Number:	2025-C-01599
Decision Date:	21 April 2026
Parties:	Vonetta LACY, Individually and on Behalf of Her Minor Child, Brelyn Keys v. Carlos IBARRA, Liberty County Mutual Insurance Company, Exxon Mobil Corporation, XYZ Insurance Company and State Farm Mutual Automobile Insurance Company (as Uninsured/Underinsured Motorist Carrier of Brelyn Keys) and State Farm Mutual Automobile Insurance Carrier (as Medical Payments Carrier of Brelyn Keys)

Id. vLex Fastcase: VLEX-1132950579
Link: <https://fastcase.vlex.com/vid/lacy-v-ibarra-1132950579>

431 So.3d 1176
2025-01599 (La. 4/21/26)

Vonetta LACY, Individually and on Behalf of Her Minor Child, Brelyn Keys
v.
Carlos IBARRA, Liberty County Mutual Insurance Company, Exxon Mobil Corporation, XYZ Insurance Company and State Farm Mutual Automobile Insurance Company (as Uninsured/Underinsured Motorist Carrier of Brelyn Keys) and State Farm Mutual Automobile Insurance Carrier (as Medical Payments Carrier of Brelyn Keys)

No. 2025-C-01599
Supreme Court of Louisiana.
April 21, 2026

431 So.3d 1178
Applying For Writ Of Certiorari, Parish of East Baton Rouge, 19th Judicial District Court Number(s) C714861, Court of Appeal, First Circuit, Number(s) 2024 CA 0680.

¹Writ application granted. See per curiam.
Hughes, J., dissents.
Penzato, J., recused.
PER CURIAM

¹We ordered briefing in this matter pursuant to La. C.C.P. art. 966 H¹ to consider whether ExxonMobil Corporation (“Exxon”) is entitled to summary judgment based on its contention that it’s employee was not in the course and scope of his employment at the time of the automobile accident made subject of this lawsuit.² For the reasons that follow, we find summary judgment in Exxon’s favor is appropriate and we enter judgment in its favor, dismissing it from this suit.

UNDERLYING FACTS AND PROCEDURAL HISTORY

This lawsuit concerns an automobile accident that occurred on October 7, 2021 between plaintiff, Vonetta Lacy, and defendant, Carlos Ibarra, an Exxon employee who had recently moved to Baton Rouge and who was driving his personal vehicle on his way to work at the time. Ms. Lacy brought this lawsuit individually and on behalf of her minor daughter, Brelyn Keys, who had been a passenger in Ms. Lacy's vehicle.³ Included among the defendants is Exxon, sued in its capacity as Mr. Ibarra's employer, for purposes of imposing vicarious liability based on Mr. Ibarra's conduct. Exxon and plaintiffs each filed summary judgment motions on the same issue; namely, whether Mr. Ibarra was in the course and scope of his employment at the time of the accident, rendering Exxon vicariously liable.

The trial court found that Exxon was not entitled to summary judgment, but granted partial summary judgment in plaintiff's favor, finding that the accident occurred while Mr. Ibarra was in the course and scope of his employment. On appeal, the court of appeal affirmed the

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denial of Exxon's summary judgment motion, but reversed the trial court's judgment in plaintiff's favor, finding that genuine issues of material fact remained. Exxon then sought review in this Court. Having received the briefs of both parties, we now review the court of appeal's ruling.

DISCUSSION

This Court recently reaffirmed the well-settled principles applicable to summary judgment motions:

As with all appeals of summary judgments, we review this matter de novo, using the same criteria that govern the trial court's determination of whether summary judgment is appropriate, i.e., whether there are genuine issues of material fact, and whether the mover is entitled to judgment as a matter of law. *Diaz-Molina v. Flower*, 23-01135, p. 3 (La. 12/19/23), 374 So. 3d 950, 952; see also, La. C.C.P. art. 966(A)(3). A fact is considered material if its existence or nonexistence may be essential to a plaintiff's cause of action under the applicable theory of recovery. *Evans v. Abubaker, Inc.*, 23-00955, p. 6 (La. 5/10/24), 384 So. 3d 853, 858. "Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material for summary judgment purposes can be seen only in light of the substantive law applicable to the case." *Id.*, 23-00955, p. 7, 384 So. 3d at 858. While the burden of proof rests with the party moving for summary judgment, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, "the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense." La. C.C.P. art. 966 D(1). When a motion for summary judgment is made and supported, the adverse party may not rest on the mere allegations or denials of his pleadings; he must, by affidavits or otherwise, "set forth specific facts showing that there is a genuine issue for trial." La. C.C.P. art. 967(B); *Corbajal v. Chris Owens French Quarter Parade, LLC*, 24-00191, p. 4 (La. 5/21/24), 385 So. 3d 236, 238. (Citation omitted). "Once a motion for summary judgment has been properly supported by the moving party, the failure of the non-moving party to produce evidence of a material factual dispute mandates the granting of the motion." *Id.*

Campbell v. Orient-Express Hotels Louisiana, Inc., 24-00840, pp. 5-6 (La. 3/21/25), 403 So. 3d 573, 579.

The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action, except those disallowed by La. C.C.P. art. 969. La. C.C.P. art. 966(A)(2). The summary judgment procedure is favored and shall be construed to accomplish these ends. *Id.* Our review of this matter reflects it is properly resolved by summary judgment.

[1] The source of an employer's vicarious liability is La. C.C. art. 2320, which imposes liability when an employee's tortious conduct occurs in the exercise of the functions for which he is employed.⁴ The issue of whether an employee is acting within the course and scope of employment while commuting to or from work has generated substantial litigation. As a general rule, as recently reiterated in *Awanbor v. Williams*, 25-0054, p. 7 (La. App. 1 Cir.

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8/4/25), 418 So. 3d 1043, 1050, writ denied, 25-01124 (La. 11/12/25), 420 So. 3d 708, an "employee's commute to and from work is usually considered outside the course and scope of employment." ⁴(citation omitted).⁵ See also, *Fasullo v. Finley*, 00-2659, p. 5 (La. App. 4 Cir. 2/21/01), 782 So. 2d 76 (Unless an employee "has a duty to perform a service or task en route [to work], the employee's commute to and from work is usually considered outside the course and scope of employment."). This Court explained the rationale of this principle in *Orgeron v. McDonald*, 93-1353, p. 5 (La. 7/5/94), 639 So. 2d 224, 227:

[A]n employee who is traveling from home to work or returning from work to home is generally not within the course and scope of his employment. Because an employee usually does not begin work until he reaches his employer's premises, his going to and coming from work is generally considered outside the course of his employment unless he has a duty to perform en route. Moreover, an employee's place of residence is a personal decision not directly controlled by the employer, and treating commuting time as part of the determination of course and scope of employment would remove manageable boundaries from the determination.

We recognized in *Orgeron* that "treating commuting time as part of the determination of course and scope of employment would remove manageable boundaries from the determination." *Id.*⁶

[2] ⁵Our jurisprudence acknowledges exceptions to the general "coming and going" rule. Under these exceptions, an employee may be in the course and scope of employment when traveling to or from work under certain circumstances, where: the employer provides the transportation to commute to work; the employer provides wages or expenses for the time the employee spends traveling; or the operation of the vehicle is incidental to the performance of some employment responsibility. *Lowe v. Old Am. Indem. Co.*, 54-656, p. 8 (La. App. 2 Cir. 8/10/22), 345 So. 3d 1171, 1177. Plaintiffs also cite this Court's decision in *McLin v. Indus. Specialty Contractors, Inc.*, 02-1539 (La. 7/2/03), 851 So.2d 1135, which identified several exceptions to the "coming and going" rule in the context of workers' compensation cases.⁷ Of those exceptions,

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plaintiffs maintain that Mr. Ibarra was on a special mission for Exxon at the time of the accident and that Exxon "interested [itself] in [Mr. Ibarra's transportation ... as an incident to the employment agreement."

Courts have recognized that the "course and scope of employment" standard for employer vicarious liability to third parties is closely related to but distinct from the workers' compensation standard of "arising out of and in the course of employment." See *Mitchell v. AT & T*, 27,290, p. 7 n.5 (La. App. 2 Cir. 8/28/95), 660 So. 2d 204, 209; see also, *LeBrane v. Lewis*, 292 So.2d 216, 218, n.4 (La. 1974) ("The increasing trend is to test the employer's liability in tort by criteria similar to those used in applying the 'arising out of and in the course of employment' test in ⁶workmen's compensation cases."). In this regard, courts have found it the workers' compensation jurisprudence to be instructive in resolving the "course and scope" issue. See *Johnson v. Transit Mgmt. of Se. Louisiana, Inc.*, 17-0793, p. 11 n.6 (La. App. 4 Cir. 2/28/18), 239 So. 3d 973, 981.

For the instant matter, regardless of whether we analyze the facts under tort law or workers' compensation principles, we find no exception applies.

[3] There is no dispute that Exxon did not provide transportation to Mr. Ibarra in connection with his employment. Nor is there any contention that Mr. Ibarra's use of his personal vehicle was "incidental to the performance of some employment responsibility." The only potentially applicable exceptions are that Exxon provided wages or reimbursed expenses for the Mr. Ibarra's travel time, or that Mr. Ibarra was engaged in a special mission for Exxon at the time of the accident. While plaintiffs also argue that Exxon "interested [itself] in [Mr. Ibarra's] transportation," as *McLin* indicated, the exception does not merely require an employer to be "interested" in an employee's transportation. It requires the employer to either "contractually provid[e] transportation or reimburs[e] the employee for his travel expenses." See *McLin*, 02-1539, p. 5n.6, 851 So. 2d at 1141. In this regard, the exception is akin to the exception in the tort context, where the employer provides wages or expenses for the employee's travel time.

We first consider the "special mission" exception. In *McLin*, this Court observed that it had not previously addressed this exception and looked to its "most often cited" definition:

When an employee, having identifiable time and space limits on his employment, makes an off-premises journey which would normally not be covered under the usual going and coming rule, the journey may be brought within the course and scope of employment by the fact that the trouble and time of making the journey, or special inconvenience, hazard, or urgency of making it in the particular circumstances, is itself sufficiently

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substantial ⁷to be viewed as an integral part of the service itself.

McLin, 02-1539, p. 6, 851 So. 2d at 1141. Other cases have explained that "[f]or a mission to qualify as a special mission and thus be considered as employment-related rather than personal, an employee is deemed to be in the course of employment when he is engaged in the direct performance of duties assigned (i.e., requested, directed, instructed or required) by his employer." *Ruiz v. City of New Orleans*, 12-405, p.

6 (La. App. 5 Cir. 1/16/13), 109 So. 3d 52; See also, *Miller v. Shamsnia*, 24-100, p. 10 n.9 (La. App. 5 Cir. 12/23/24), 410 So. 3d 897, 905, reh'g denied (Jan. 24, 2025), writ denied, 25-00243 (La. 4/29/25), 407 So. 3d 621.

As explained in *Johnson*, *supra*:

Virtually all special mission exception cases “involve an element of unusualness in the trip: in terms of time, destination (job site), or duties to be performed....” “The very name of the exception suggests that the injury is compensated because the travel was pursuant to some special work...” “These three factors—[i] unusual time, [ii] unusual destination (place of work), and [iii] unusual work—combine and recombine in the cases. Sometimes all three are present, always at least one of them.”

Johnson, 17-0793, p. 21, 239 So. 3d at 986-87 (internal citations omitted). In *McLin*, for example, we found the “special mission” exception applied where an employee was traveling to a mandated meeting as “travel was an indispensable part of attending the meeting.” *McLin*, 02-1539, p. 8, 851 So. 2d at 1142).

[4] In this matter, we find the special mission exception inapplicable. At the time of the accident, Mr. Ibarra was simply going to work. He was not engaged in any special assignment for Exxon, nor did Exxon request, direct, or instruct him to perform any task outside the scope of his regular duties. “Requiring an employee to show up for work does not make the employee’s transportation incidental to the employment contract.” *Phipps v. Bruno Const.*, 00-0480, p. 3 (La. App. 3 Cir. 11/2/00), 773 So. 2d 826, 828-29. We are not persuaded by plaintiffs’ argument that, because Mr. Ibarra’s accident took place during the “interim period of time” after Mr. Ibarra moved to Baton Rouge (a 90-day period of time from when the employee left the prior location until the employee obtained permanent residence in the new work location), he was on a “special mission.” The fact that Mr. Ibarra, who had relocated to Baton Rouge (and was not there on a temporary basis) had not obtained a permanent residence at the time of the accident does not transform his regular commute to work into a special mission for Exxon.

[5] Turning to the exception for employer-provided travel compensation or expense reimbursement, we likewise conclude that it is inapplicable here. Plaintiffs’ argument for this exception centers on payments Exxon made to Mr. Ibarra prior to his move to Baton Rouge and in connection with his relocation. Those payments were made in lump sums and included a “Miscellaneous Expense Allowance” and a Lump Sum Payment, which is the focus of plaintiffs’ argument. As reflected in Exxon’s relocation guidelines, the latter payment was identified as a “Lump Sum Payment **to Assist with Relocation Expenses**.” (Emphasis added). The guidelines explain that the employee would “receive a non-accountable lump sum which is intended to offset expenses such as home selection trip, related dependent care expenses, en route travel, final trip, and interim living at the new location.” The lump sum was calculated based on “New location” and “Number of

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eligible dependents.” (Emphasis supplied). It outlined certain expenses it was designed to cover and, for the interim living (new location) period, it listed the following expenses:

- Transportation (e.g., airfare or mileage, car rental, parking, taxi, train fare, tolls. etc.)
- Lodging, meals, laundry
- Other incidentals
- Return trips to old work location by employee

Plaintiffs argue that this “plain language ... shows that Exxon voluntarily took an interest in [Mr.] Ibarra’s transportation” during his interim living period. They maintain this exception “is not pigeonholed and limited to situations where mileage logs are submitted, and the person is reimbursed.” They further urge that “the interpretation of the terms ‘mileage,’ ‘transportation,’ and ‘interim living expenses’ in the related documents are a genuine issue of material fact to be determined by the trier of fact.” We disagree and find no issue of fact that, under the circumstances presented, Exxon did not contractually provide transportation or reimburse Mr. Ibarra for his actual travel expenses.

[6, 7] Our jurisprudence reflects that for vicarious liability to be imposed on an employer for an employee’s tortious conduct while commuting to or from work in this context, the payments of the employer require some connection to the employee’s actual commute or travel. In *Potier v. Acadian Ambulance Serv., Inc.*, 13-914, p. 3 (La. App. 3 Cir. 2/12/14), 153 So. 3d 1082, 1086, an employee of an ambulance service received mileage payments which were calculated “based upon the predetermined distance between the ... substation and whatever station he was scheduled to work out of rather than the actual mileage [he]

actually traveled on any particular date.” When he was involved in a single car accident and sought worker’s compensation benefits, the court rejected his claim that his employer “involved itself in his transportation to work.” The court found:

[T]he mileage payments made to [the employee] bore ‘no relation to the actual travel expenses’ that he incurred in getting to work each day.... Rather, the facts indicate that the mileage payments were an inducement used by Acadian to attract qualified EMTs to work as swing medics.

Id., 13-914, p. 7, 153 So. 3d at 1086 (quoting *Mitchell v. Pleasant Hill Gen. Hosp., Inc.*, (La. App. 3 Cir. 6/26/1986), 491 So. 2d 183, 185). The *Mitchell* court, too, observed that the receipt of a daily travel allowance was given “irrespective of the various distances [the employees] lived from the place of employment” and thus “injuries sustained while traveling to and from work should not be construed to be in the course and scope of employment.” *Mitchell*, 491 So. 2d at 184-5. It further observed:

¹⁰The mere payments of travel expenses, without an expressed or implied agreement to furnish transportation, does not place the employee within the course and scope of his employment while traveling to and from work if such payments bear no relation to the actual travel expenses involved in the specific case.

Id., 491 So. 2d at 185. Numerous decisions have reaffirmed this principle. See, e.g. *Lowe v. Old Am. Indem. Co.*, 54,656, pp. 8-9 (La. App. 2 Cir. 8/10/22), 345 So. 3d 1171, 1177 (“It is well settled that the mere payment of travel expenses without an express or implied agreement to furnish transportation, does not place the employee within the course of his employment while going to and returning from work when such payment bears no relation to actual travel expenses.”); See *Winzer v. Richards*, 50,330 (La. App. 2 Cir. 1/13/16),

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185 So. 3d 876 (same). It is only “[w]hen an employer pays expenses and the trip in question is employment-connected, an employee is in the course and scope of employment while away from his workplace.” *Lowe*, 54,656, p. 9, 345 So. 3d at 1177.

Similarly, in *Woolard v. Atkinson*, 43,322, p. 5 (La. App. 2 Cir. 7/16/08), 988 So. 2d 836, 840, the court found that, even though an employer issued reimbursement checks for “all of his work-related expenses,” an employee was not acting within the course/scope of employment while commuting, because he “did not submit any documentation of his travel expenses, was not specifically reimbursed for mileage driven, and, at time of accident, which occurred before normal work hours, employee was not responding to call, traveling to meeting, obtaining supplies, or performing any service for benefit of employer.” The *Woolard* Court observed that, although the employer paid the employee “a monthly allowance for work expenses, his primary purpose in driving the vehicle on the morning of the accident was to transport himself from home to work.” Id., 43,322, 988 So. 2d 841.

¹¹That the payment of actual mileage is necessary to impose vicarious liability is reflected in a number of cases. In the recent case of *Miller v. Shamsnia*, 24-100, (La. App. 5 Cir. 12/23/24); 410 So. 3d 897, reh’g denied (Jan. 24, 2025), writ denied, 25-00243 (La. 4/29/25), 407 So. 3d 621, a physician’s employer was held liable for an auto accident which occurred while he was on his way from one facility to another. Notably, the court’s finding was based on the fact that the physician, like other physicians working under a third-party contract with a hospital:

were compensated through reimbursement of mileage for use of their personal vehicles. The physicians would be paid the Internal Revenue Service’s rates for mileage. Thus, [the employer] Tulane[,] involved itself in Dr. Shamsnia’s transportation to Lakeview Hospital as an incident to the employment agreement.

Id., 24-100, p. 9, 410 So. 3d at 905. Although the physician in *Miller* did not actually request or receive reimbursement, “he was eligible to receive compensation.... [Thus, he] was acting within the course and scope of his employment while traveling to Lakeview Hospital on the night the accident because Tulane had a policy for providing travel reimbursement to physicians commuting to Lakeview Hospital, and his trip to the hospital was employment related.” Id., 24-100, p. 9, 410 So. 3d at 905-06. See also, *Watson v. Ben*, 459 So.2d 230 (La. App. 3 Cir. 1984), where an employee was found to be in the course and scope of his employment. Although the employee had “clocked out of work,” he was on call for a 6-day period (24 hours a day) and was required to report to the workplace or job site when he got a call for work. Additionally, his employer provided him with credit cards for gas for his personal vehicle (the employee had a choice of using his own car or one furnished by the employer), and it paid for oil and filters. The employer further required the employee to maintain a minimum level of insurance, and to have routine inspections and maintenance of his vehicle.

¹²Likewise, in [Bova v. Butler, 14-0765 \(La. App. 1 Cir. 12/23/14\)](#), 168 So. 3d 551, an employee was found to not be in the course and scope of his employment while driving home from work. Although the employee received a per diem, the evidence reflected it was for meals and lodging. The court acknowledged there were “certain limited circumstances” where the employer would reimburse an employee for travel time; however, it found no evidence the employee was being reimbursed for his travel at the time of the accident. Thus, because the employee “failed to show that

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[his employer] reimbursed [him] for his travel time or mileage ... [he] was not in the course and scope of his employment ... while driving from home to work.” [Id.](#), 14-0765, p. 7, 168 So. 3d at 555.

In the instant matter, there is no dispute that Mr. Ibarra is a salaried employee of Exxon, who was driving his own car on the way to work when the accident occurred. He neither submitted requests for nor receive reimbursement for actual mileage to and from work, and all of his work was performed at Exxon’s facility. Nor did Exxon pay for any expenses related to Mr. Ibarra’s car. At the time of the accident, Mr. Ibarra had not performed any work for Exxon and was not engaged in any work-related activity.

[8] It is clear that Exxon’s payment of relocation expenses—including the term “mileage”—was not tied to any actual mileage or expenses Mr. Ibarra incurred in going to and from work. The mere fact that an employee has recently relocated, even at his employer’s request, does not render an employer liable for an employee’s otherwise non-work-related commute to work, particularly when the employer does not impose or control the travel.

We find plaintiffs’ reliance on [Quatroy v. Thornton, 22-01520 \(La. 1/25/23\)](#), 353 So. 3d 718, to be misplaced. In Quatroy, this court granted a writ application because we found issues of material fact as to whether an employee was in the course and scope of his employment. Unlike the present matter, the employer in Quatroy ¹³provided the employee (a sales representative who worked from home) with a gas card to use when calling on customers.

Nor does Orgeron, *supra*, support plaintiffs’ position in this case. In Orgeron, the employee served a 14-day shift and was to return to his home in Alabama. However, he received special orders from his employer to report to work for another 7-day shift. We recognized that, “in most cases, [the employee’s] infrequent traveling from home to work (or at least to the port where he came under [his employer’s] supervision and control) and from work to home arguably fell under the going and coming rule.” Orgeron, 93-1353, p. 6, 639 So. 2d at 228. However, we noted the case was not a “simple commuter case,” and we found the employee was in the course and scope of his employment at the time of the accident:

[A]lthough the employee was not paid wages or expenses for his trip from Houma to Fourchon, his employer was in the business of dispatching workers to ports all over South Louisiana; the employer diverted him from his trip home after his fourteen-day work shift and took substantial control over his activities between the diverting and the time for [his] reporting to Fourchon, all for the benefit of the [employer’s] business interest; the time, place and purpose of the travel under the emergency conditions was closely related to [its] business; the travel under the circumstances was primarily for the benefit of the employer; the motivation of the employee for the travel, although including wages for the additional work hours, was to promote his employer’s interest because of the special need; and the employer reasonably expected that he would make the special trip. Under the overall circumstances, the risk of harm for any casualty caused by the employee during the special travel was fairly attributable to the employer.

Id., 93-1353, p. 8, 639 So. 2d at 228.

[9-11] Based on the foregoing, we recognize that narrow exceptions exist to the “going and coming” rule. However, for the “interest in transportation” or “mileage” exclusion to apply, there must be more than incidental benefits—such as actual compensation or reimbursement for routine

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commuting expenses—to warrant the imposition of vicarious liability. The mere provision of relocation payments that ¹⁴generally include “mileage” does not transform an ordinary commute into conduct within the course and scope of employment. Thus, where, as here, an employee is simply commuting to or from work, is driving his own vehicle, and is not reimbursed for actual mileage, his employer will not be vicariously liable for his actions. See *Bell v. Hurstell* 99-1333, p. 5 (La. App. 4 Cir. 6/16/99), 743 So. 2d 720, 722.⁸

We further note this is not a case involving Mr. Ibarra’s temporary assignment to Baton Rouge for work purposes. Although he had not secured a permanent residence and his family was still in Houston, Mr.

Ibarra had relocated to Baton Rouge. He was not on any special mission for Exxon and was simply driving to his regular job at the time of the accident. We agree with Judge Stromberg's dissenting opinion in this matter that the payments Mr. Ibarra received "had no relation to actual travel expenses he incurred traveling to work the day of the accident." *Lacy v. Ibarra*, 24-0680, p. 3 (La. App. 1 Cir. 10/22/25), 424 So. 3d 729, 737.

Accordingly, we find that Exxon met its burden on summary judgment by demonstrating that no genuine issue of material fact exists as to whether Mr. Ibarra was acting within the course and scope of his employment at the time of the accident. The lower courts erred in denying Exxon's motion for summary judgment. We reverse the lower court judgments and enter summary judgment in Exxon's favor, dismissing it from this suit.

DECREE

For the reasons set forth herein, we grant ExxonMobil Corporation's writ application and reverse the judgments of the lower courts. We enter summary judgment in favor of ExxonMobile Corporation, dismissing the claims of plaintiffs, Vonetta Lacy and Brelyn Keys, against it with prejudice.

Notes:

¹ Article 966 H provides: "On review, an appellate court shall not reverse a trial court's denial of a motion for summary judgment and grant a summary judgment dismissing a case or a party without assigning the case for briefing and permitting the parties an opportunity to request oral argument."

² Exxon and plaintiff each filed motions for summary judgment on the same issue.

³ Brelyn Keys attained the age of majority after the lawsuit was filed, and was substituted as a plaintiff on her own behalf.

⁴ Article 2320 provides, in relevant part: "Masters and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed."

⁵ The Awanbor court found that the employee was not in the course and scope of her employment as she was "traveling to work at the time the accident occurred." *Id.*, 25-0054, p. 13, 418 So. 3d at 1055.

⁶ See also H. Alston Johnson III, § 168. Accidents while proceeding to and from work—In general, 13 La. Civ. L. Treatise, Workers' Compensation Law and Practice § 168 (5th ed.):
The courts have consistently stated that an accident that befalls an employee while he is going to or returning from work does not occur in the course of his employment. At first glance, this rule seems somewhat illogical, since it is the employment itself and the employer's call to duty which brings the worker from his home and causes his return trip at the end of the day. Were he not employed, he would not have to make that particular trip along that route at that time. If one considered only the abstract question of causal relationship, it would have to be said that the employment caused that trip to and from the employment premises as surely as it caused presence on the premises. But the hesitancy to extend coverage to such trips is not based on logic. Rather it is fear of serious administrative difficulties in such an extension. If we were to admit that the trip to and from employment might be covered, when should we say that trip begins? When the employee leaves his house to begin his trip? When he comes downstairs for breakfast? When he gets up to shave and shower, so that he can come downstairs for breakfast, so that he can leave his house to begin his trip? The administrative problems here are substantial.

⁷ The exceptions listed by the McLin Court include: "(1) If the accident happened on the employer's premises; (2) If the employee was deemed to be on a specific mission for the employer, such as making a trip in the interest of his employer's business or pursuant to his employer's order; (3) If the employer had interested himself in the transportation of the employee as an incident to the employment agreement either by contractually providing transportation or reimbursing the employee for his travel expenses; (4) If the employee was doing work for his employer under the circumstances where the employer's consent could be fairly implied; (5) If the employee was hurt while traveling to and from one work site to another; (6) If the employee was injured in an area immediately adjacent to his place of employment and that area contained a distinct travel risk to the employee (the 'threshold doctrine'); and (7) If the operation of a motor vehicle was the performance of one of the duties of the employment of the employee." *Id.*, 02-1539, p. 5n.6, 851 So. 2d at 1141.

⁸ Notably, the Bell court observed that when the employee "was involved in this accident on her way home from work she was in no way furthering the objectives of her employment." *Id.*, p. 5, 743 So. 2d at 723

Circuit Cases on
Intentional Act/Tort
Exception to Workers'
Compensation
Exclusive Remedy

Bernier v. St. Tammany Parish Sch. Bd.

Court:	Court of Appeal of Louisiana
Writing for the Court:	BALFOUR, J.
Citation:	424 So.3d 837
Docket Number:	2025 CA 0260
Decision Date:	07 November 2025
Parties:	Lori BERNIER v. ST. TAMMANY PARISH SCHOOL BOARD, Melissa Schoegel, Individually and on Behalf of Minor Child, E.L. and ABC Insurance Company

Id. vLex Fastcase: VLEX-1118215160

Link: <https://fastcase.vlex.com/vid/bernier-v-st-tammany-1118215160>

424 So.3d 837

2025-0260 (La.App. 1 Cir. 11/7/25)

Lori BERNIER

v.ST. TAMMANY PARISH SCHOOL BOARD, Melissa Schoegel, Individually and on Behalf of Minor Child, E.L. and ABC Insurance Company

NO. 2025 CA 0260

Court of Appeal of Louisiana, First Circuit.

Judgment Rendered: November 7, 2025[*838]

On Appeal from the 22nd Judicial District Court, In and for the Parish of St. Tammany, State of Louisiana, Docket No. 2023-15998, Division F, Honorable Vincent J. Lobello, Judge Presiding[*839] Laura L. Catlett, Metairie, LA, Counsel for Plaintiff-Appellant, Lori Bernier

Paul E. Harrison, Mandeville, LA, Counsel for Defendant-Appellee, Melanie Schloegel

Ronald K. Lospennato, New Orleans, LA, Counsel for Defendant-Appellee, St. Tammany Parish School Board

BEFORE: THERIOT, PENZATO, AND BALFOUR, JJ.

BALFOUR, J.

²In this tort action, the plaintiff, Lori Bernier, appeals a judgment granting an exception of no cause of action and dismissing her claims against the defendant, St. Tammany Parish School Board. For the following reasons, we reverse and remand.

FACTS AND PROCEDURAL HISTORY

In October 2023, Lori Bernier filed a tort action against her employer, St. Tammany Parish School Board (the “Board”) and Melanie Schloegel¹, individually and as the parent of the minor child, E.L. Bernier’s petition sets forth the following pertinent allegations:

3.

On October 4, 2022, while performing her duties as a paraprofessional at Covington Elementary, Petitioner, Lori Bernier, was suddenly and violently attacked by minor child, E.L., who was a third grade student at the school.

4.

Earlier that same day, E.L. had caused another student injury when he hit the student while eating, which caused the student's cheek to be punctured with a fork.

5.

Despite having recently caused physical injury to another student, E.L. was allowed to remain at school, where he would later attack Lori Bernier and another employee who tried to help stop the attack.

6.

On many other occasions prior to the attack (s) [sic] described herein, E.L. had made violent outbursts, terrorized other students and staff members and caused extensive property damage.

7.

[The Board] knew in advance of the occurrence of the first physical attack on a student on October 4, 2022 and that E.L. was prone to sudden, unprovoked, angry, violent outbursts. [The Board] failed to adequately address the issues with E.L., which should have warranted removal from the school, particularly on a day where a student was injured.

³Bernier further alleged in her petition that the physical assault she suffered was "foreseeable and preventable" and the Board "failed to exercise reasonable care for the safety of its employees" and exposed its employees to "unreasonable risks of injury or harm." Bernier alleged that the Board's administrators and employees "intentionally ignored E.L.'s problem behavior, failed to implement discipline and/or follow educational plans, failed to properly record reports of E.L.'s behavior and focused on keeping E.L.'s parent satisfied." Bernier alleged that the Board was vicariously liable for the acts and/or omissions of its administrators and employees. **[*840]**

Bernier also alleged that the Board's administrators and employees' "flagrant disregard for the risks posed by E.L. were intentional and within the ambit of their assigned duties[.]" Bernier alleged that Schloegel failed to address her child's behavioral issues and was liable for his actions.²

On March 25, 2024, the Board filed a peremptory exception of no cause of action arguing Bernier's exclusive remedy for her alleged injuries arises under the Louisiana Workers' Compensation Act, La. R.S. 23:1021, *et seq.* The Board pointed out that Bernier alleged in her petition that she was in the course and scope of her employment at the time of the incident. The Board argued that Bernier's allegations against it sounded in negligence because she alleged that it failed to take action to prevent E.L.'s attack. Therefore, the Board argued under La. R.S. 23:1032, Bernier's exclusive remedy is workers' compensation.³

On July 24, 2024, a hearing was held on the Board's exception of no cause of action.⁴ Following argument, the trial court granted the Board's exception, finding ⁴Bernier's claims against the Board are barred by La. R.S. 23:1032, and Bernier "has not alleged sufficient facts to make these claims fall under an exception and will not be able to do so." On August 29, 2024, the trial court signed a written judgment granting the Board's exception of no cause of action and dismissing, with prejudice, Bernier's claims against the Board. Bernier appeals, arguing the trial court erred by granting the Board's exception because her petition contains sufficient allegations to assert a cause of action against the Board for intentional tort.

LAW AND DISCUSSION

[1-4] The objection that a petition fails to state a cause of action is properly raised by the peremptory exception. La. C.C.P. art. 927(A)(5). The burden of demonstrating that the petition states no cause of action is upon the mover. *Ramey v. De-Caire*, 2003-1299 (La. 3/19/04), 869 So. 2d 114, 119. A trial court's judgment granting the peremptory exception raising the objection of no cause of action is subject to de novo review by an appellate court, employing the same principles applicable to the trial court's determination of the exception. *Cador v. Deep South Equipment Co.*, 2014-1371 (La. App. 1 Cir. 3/6/15), 166 So. 3d 344, 347. Generally, the exception is triable on the face of the pleadings, and for purposes of resolving the issues raised by the exception, the well-pleaded facts in the petition are accepted as true in order to determine whether the law affords a remedy to anyone under the facts alleged in the petition. *Id.* The pertinent question is whether, in the light most favorable to plaintiff and with every doubt resolved in plaintiff's behalf, the petition states any valid cause of action for relief. *Ramey*, 869 So. 2d at 119.

Generally, an employee's exclusive remedy for injuries suffered during the course and scope of employment is through the Workers' Compensation Act; however, an exception is made for intentional acts. *See* La. R.S. 23:1032(B). The Louisiana Supreme**[*841]** Court has held that in order to meet the intentional act exception of

the Workers' Compensation Act, an employee must establish that the employer either (1) consciously desired the physical result of his act, whatever the likelihood of the result happening from his conduct; or (2) knows that that result is substantially certain to follow from his conduct, whatever his desire may be as to that result. *Bazley v. Tortorich*, 397 So. 2d 475, 481 (La. 1981).

[5] The Louisiana Supreme Court has explained that when considering whether an employee's petition states a cause of action against his employer based on the intentional act exclusion, La. C.C.P. art. 856 is "controlling." *Mayer v. Valentine Sugars, Inc.*, 444 So. 2d 618, 620 (La. 1984). Louisiana Code of Civil Procedure article 856 provides, in pertinent part, that "[m]alice, intent, knowledge, and other condition of mind of a person may be alleged generally." Therefore, an employee may generally plead the element of intent for purposes of the intentional act exclusion. See *Mayer*, 444 So. 2d at 620. See also *Carey v. UMC (United Mechanical Contractors)*, 553 So. 2d 472 (La. 1989) (explaining that where the plaintiff's petition alleged the defendants intended to injure him or should have known his injury was substantially certain to follow, the merit of his claim was a factual determination to be considered upon a motion for summary judgment or a trial on the merits).

[6] As discussed, Bernier alleged in her petition that the Board is vicariously liable for its employees because their "flagrant disregard for the risks posed by E.L. [was] intentional[.]" Although Bernier did not specifically allege the Board knew that E.L.'s attack on her was "substantially certain" to follow from its acts and/or omissions, she alleged that the Board knew of E.L.'s behavioral issues and prior violent conduct, and was aware he had physically attacked another student on the same day he attacked Bernier. Accepting all of the allegations in Bernier's petition as true and applying the legal principles set forth above, we find Bernier stated a cause of action against the Board for an intentional tort. Accordingly, the trial court erred by granting the Board's exception of no cause of action and dismissing Bernier's claims against the Board.

CONCLUSION

For the aforementioned reasons, the trial court's August 29, 2024 judgment granting the peremptory exception of no cause of action and dismissing Lori Bernier's claims against St. Tammany Parish School Board is reversed. We remand this matter for further proceedings. Costs of this appeal in the amount of \$1,336.80 are assessed to St. Tammany Parish School Board.

REVERSED AND REMANDED.

1. Melanie Schloegel was incorrectly named as "*Melissa* Schoegel" in Bernier's original petition. On January 2, 2024, Bernier filed an amended petition to correctly state Schloegel's first name. In pleadings filed by Schloegel, she spells her last name "Schloegel." Accordingly, we use "Schloegel."
2. Bernier also named Schloegel's unknown insurer as a party defendant.
3. Bernier apparently filed an opposition to the Board's exception of no cause of action, since the Board filed a reply to that opposition. However, the record before us does not contain Bernier's opposition.
4. The trial court also heard exceptions raised by Schloegel at the July 24, 2024 hearing. Those exceptions are not at issue in this appeal.

Saizon v. The Dow Chem. Co.

Court:	Court of Appeal of Louisiana
Writing for the Court:	LANIER, J.
Docket Number:	2025 CA 1139
Decision Date:	24 April 2026
Citation:	Saizon v. The Dow Chem. Co., 2025 CA 1139 (La. App. Apr 24, 2026)
Parties:	JONTRELL SAIZON v. THE DOW CHEMICAL COMPANY, JOHN THIBODEAUX, CHAZ MORENO, AND MCKENZIE GRIMES

Id. vLex Fastcase: VLEX-1117763470

Link: <https://fastcase.vlex.com/vid/saizon-v-the-dow-1117763470>

1

JONTRELL SAIZON v. THE DOW CHEMICAL COMPANY, JOHN THIBODEAUX, CHAZ MORENO, AND MCKENZIE GRIMES

No. 2025 CA 1139

Court of Appeals of Louisiana, First Circuit

April 24, 2026

On Appeal from the 18th Judicial District Parish of Iberville State of Louisiana Case No. 80368 Honorable J. Kevin Kimball, Judge Presiding

Andy Dupre Ilijana Todorovic New Orleans, Louisiana Counsel for Plaintiff/Appellant Jontrell Saizon

Michael P. Fruge Port Allen, Louisiana

J. Kyle Findley Kala Sellers Houston, Texas Leigh Ann Schell Sara C. Valentine New Orleans, Louisiana Counsel for Defendants/Appellees The Dow Chemical Company, Chaz Moreno, and McKenzie Grimes

Kevin Jordan Walter Lynch Michael Cancienne Houston, Texas J. Lane Ewing, Jr. Baton Rouge, Louisiana Counsel for Defendant/Appellee John Thibodeaux

BEFORE: LANIER, WOLFE, AND HESTER, JJ.

LANIER, J.

In this action seeking damages for personal injuries, plaintiff, Jontrell Saizon, appeals from a judgment of the trial court granting summary judgment in favor of defendants, The Dow Chemical Company ("Dow"), Chaz Moreno, McKenzie Grimes, and John Thibodeaux, and dismissing his claims against them with prejudice. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On April 25, 2020, an explosion and fire occurred in the Light Hydrocarbon 3 Unit ("LHC-3 Unit") of the Dow chemical plant located in Plaquemine, Louisiana, causing severe injuries to Mr. Saizon. At the time of the incident, the LHC-3 Unit was undergoing maintenance work related to the C-25C dryer's regeneration piping system ("the C-25C"). On April 15, 2019, Dow entered into an "On And Off Site Services Agreement" ("the contract") with Turner Industrial Group, L.L.C. ("Turner") to bring in employees, subcontractors, and equipment to assist with this work. Mr. Saizon was working at Dow on the day in question as an employee of Turner.

As a result of the fire and explosion, Mr. Saizon sustained serious injuries, including severe burns. He filed suit

naming Dow and three of Dow's employees, Mr. Moreno, Mr. Grimes, and Mr. Thibodeaux, as defendants. Defendants answered the suit, generally denying the allegations therein and asserting that Mr. Saizon's exclusive remedy was in workers' compensation. Mr. Saizon alleged claims of general and gross negligence, premises liability, and intentional tort against defendants. In response, defendants filed motions for summary judgment^[1] arguing that no genuine issues of material fact remained for trial and that they were entitled to judgment as a matter of law. Defendants argued that at the time of this incident, Mr. Saizon was Dow's statutory employee whose injuries were not caused by an intentional act, thereby making workers' compensation benefits Mr. Saizon's exclusive remedy as against Dow. Defendants further noted that there was no evidence of either actual intent to injure or knowledge that injury was substantially certain to occur.

In support of their motions for summary judgment, defendants submitted, without objection, the deposition and affidavit of Jonathan Brandt, the Production and Facilities leader at Dow's Plaquemine plant at the time of this incident, along with a copy of the contract between Dow and Turner and a copy of Dow's Process Safety Containment Event Review ("PSCE Review"); the deposition of Mr. Thibodeaux; the deposition of Matthew Fellows, the operations leader at Dow's Plaquemine plant at the time of this incident; the affidavit of Mr. Moreno; the affidavit of Mr. Grimes; Mr. Saizon's Acadian Ambulance Service invoice from the day of this incident;^[2] a copy of Mr. Saizon's answers to Dow's interrogatories; and a copy of Mr. Saizon's petition for damages.

Mr. Saizon opposed both motions arguing that genuine factual issues remained as to whether the contract between Turner and Dow was applicable and whether defendants' actions and/or failure to act "exceed[ed] the substantial certainty standard, thus defeating any workers' compensation bar." In opposition to the motions for summary judgment, Mr. Saizon relied on the deposition of Mr. Thibodeaux; the deposition of Mr. Fellows; the deposition of Mr. Brandt; the PSCE Review; a copy of the contract between Dow and Turner; a copy of the Safe Work Permit issued relative to the job Mr. Saizon was working at the time of this incident; a document entitled "Hydrocarbons Process Safety Cardinal Rules"; a Dow document entitled "Learning experience from unplanned events referencing the incident in question; a Dow document entitled "LCS - Hot Work Results of Poor Standard Execution" dated July 2020; several internal Dow email communications regarding this incident as well as prior incidents at the facility resulting in injuries to other employees; and the declarations and reports of several expert witnesses retained by Mr. Saizon to investigate the incident.^[3]

Following a hearing on the motions for summary judgment, the trial court signed a judgment on January 27, 2025, granting summary judgment in favor of Dow, Mr. Moreno, Mr. Grimes, and Mr. Thibodeaux, and dismissing, with prejudice, all claims filed by Mr. Saizon against defendants. The sole issue for our review is whether the trial court erred in granting summary judgment in favor of defendants.^[4]

DISCUSSION

Summary Judgment

A motion for summary judgment is a procedural device used to avoid a full scale trial when there is no genuine issue of material fact. *M/V Resources LLC v. Louisiana Hardwood Products LLC*, 2016-0758 (La.App. 1 Cir. 7/26/17), 225 So.3d 1104, 1109, writ denied, 2017-1748 (La. 12/5/17), 231 So.3d 624. After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. Code Civ. P. art. 966(A)(3).

On a motion for summary judgment, the initial burden of proof is on the mover. La. Code Civ. P. art. 966(D)(1). The mover's supporting documentary evidence must prove the essential facts necessary to carry his burden. *Hooper v. Lopez*, 2021-1442 (La.App. 1 Cir. 6/22/22), 344 So.3d 656, 660, as clarified on reh'g (9/1/22), writ denied, 2022-01421 (La. 11/22/22), 350 So.3d 501. If the mover fails to carry this burden, summary judgment must be denied in favor of a trial on the merits. *Crockerham v. Louisiana Medical Mutual Insurance Co.*, 2017-1590 (La.App. 1 Cir. 6/21/18), 255 So.3d 604, 608. It is only when the moving party has established both that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law, that it is incumbent upon the adverse party to establish that there is a genuine issue for trial. *Neighbors Federal Credit Union v. Anderson*, 2015-1020 (La.App. 1 Cir. 6/3/16), 196 So.3d 727, 734-735.

When a motion is made and properly supported, an adverse party may not rest on the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided by law, must set forth specific facts showing there is a genuine issue for trial. La. Code Civ. P. art. 967(B). The burden is then on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. La. Code Civ. P. art. 966(D)(1). If he does not so respond, summary judgment, if appropriate, shall be rendered against him. La. Code Civ. P. art. 967(B).

It is not the function of the trial court on a motion for summary judgment to determine, or even inquire into, the merits of the issues raised, or to weigh conflicting evidence of material fact. Rather, the court must view the record and all reasonable inferences to be drawn from it in the light most favorable to the nonmoving party.

King v. Town of Clarks, 2021-01897 (La. 2/22/22), 345 So.3d 422, 423 (*per curiam*).

In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. *M/V Resources LLC*, 225 So.3d at 1109. Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material must be viewed in light of the substantive law applicable to the case. *Gentry v. Spillers*, 2020-1077 (La.App. 1 Cir. 5/10/21), 325 So.3d 398, 402, *writ denied*, 2021-00809 (La. 10/5/21), 325 So.3d 373.

Louisiana Workers' Compensation Act

Under the Louisiana Workers' Compensation Act, La. R.S. 23:1020.1, *et seq.*, an employee injured in an accident while in the course and scope of his employment is generally limited to the recovery of workers' compensation benefits as his exclusive remedy against his employer and, thus, may not sue his employer in tort. *Stonetrust Commercial Insurance Company v. TBT Contracting, Inc. of Louisiana*, 2022-0972 (La.App. 1 Cir. 6/20/23), 370 So.3d 494, 499-500. Pursuant to La. R.S. 23:1032(A)(1)(a), the provisions of the Act are the exclusive remedy for employees suffering from work-related injury or illness, unless the injury/illness results from an intentional act. The Act applies both to a direct employer/employee relationship, as well as to a statutory employer/employee relationship. *Labranche v. Fatty's, LLC*, 2010-0475 (La.App. 1 Cir. 10/29/10), 48 So.3d 1270, 1272. An employer seeking to avail itself of tort immunity bears the burden of proving its entitlement to immunity. Furthermore, immunity statutes must be strictly construed against the party claiming the immunity. *Fleming v. JE Merit Constructors, Inc.*, 2007-0926 (La.App. 1 Cir. 3/19/08), 985 So.2d 141, 145-146.

Statutory Employer

Statutory employer immunity is governed by La. R.S. 23:1061(A)(1), which provides that when a principal undertakes to execute any work that is a part of his trade, business, or occupation and contracts with a contractor for the execution of the whole or any part of the work undertaken by the principal, the principal, as a statutory employer, is entitled to "the exclusive remedy protections of R.S. 23:1032." Louisiana adopted a broad version of the statutory employer doctrine; thus, the Act expressly extends the employer's compensation obligation and its corresponding tort immunity to a "principal," which is also referred to as a "statutory employer." See *Allen v. State ex rel. Ernest N. Morial-New Orleans Exhibition Hall Authority*, 2002-1072 (La. 4/9/03), 842 So.2d 373, 378. The ultimate determination of whether a principal is a statutory employer is a question of law for the court to decide. *Maddox v. Superior Steel*, 2000-1539 (La.App. 1 Cir. 9/28/01), 814 So.2d 569, 572.

A statutory employer relationship shall exist in two instances: (1) when a party undertakes to carry out any work that is a part of its trade, business, or occupation by means of a contract with another party; or (2) when a party contracts to perform work and sub-lets any portion of the work to another party (the "two-contract" theory). See La. R.S. 23:1032(A)(1) and (2) and La. R.S. 23:1061(A)(1) and (2); *Allen*, 842 So.2d at 378.

Under the first basis, which focuses on the principal's trade, business, or occupation, a written contract recognizing the principal as a statutory employer is necessary. Louisiana Revised Statute 23:1061(A)(3) provides, in part:

[A] statutory employer relationship shall not exist between the principal and the contractor's employees, whether they are direct employees or statutory employees, unless there is a written contract between the principal and a contractor which is the employee's immediate employer or his statutory employer, which recognizes the principal as a statutory employer. When the contract recognizes a statutory employer relationship, there shall be a rebuttable presumption of a statutory employer relationship between the principal and the contractor's employees, whether direct or statutory employees. This presumption may be overcome only by showing that the work is not an integral part of or essential to the ability of the principal to generate that individual principal's goods, products, or services.

Louisiana jurisprudence demonstrates that rebutting the presumption of a statutory employer relationship is difficult because the words "integral" and "essential" are liberally interpreted, in keeping with the Louisiana Legislature's intent. See *Jackson v. St. Paul Ins. Co.*, 2004-0026 (La.App. 1 Cir. 12/17/04), 897 So.2d 684, 688-689, *writ denied*, 2005-0156 (La. 3/24/05), 896 So.2d 1042 (finding that construction of a new plant for a principal whose business is processing chemicals for transportation and sale is essential to the principal's ability to generate its goods, products, and services); see also *Applegarth v. Transamerican Refining Corp.*, 781 So.2d 804, 807 (La.App. 5 Cir. 2/28/01), *writ denied*, 2001-0834 (La. 5/11/01), 792 So.2d 738 (holding that refurbishment of a refinery was essential to the ability of the refinery to generate its goods, products, or services).

In the instant case, defendants argue that the contract between Dow and Turner creates a rebuttable presumption that Dow was Mr. Saizon's statutory employer at the time of this incident. Defendants point

specifically to §5.12 of the contract, which provides as follows:

5-12 Statutory Employer

For Suppliers providing Services in Louisiana, Buyer (as principal employer at Buyer's sites in Louisiana) and Supplier (as the direct employer of Supplier's employees at Buyer sites in Louisiana) mutually agree that, with respect to the Work or Services provided to Buyer in Louisiana in connection with this Agreement, or under any purchase order to which this Agreement applies, it is their intention to recognize Buyer as the statutory employer of (a) Supplier's direct employees and (b) employees which would otherwise be by [sic] recognized as Supplier's statutory employees.

Regarding the alleged statutory employer relationship, Mr. Saizon argues on appeal that there is nothing in the contract to identify or describe the nature and scope of the work to be performed by the Turner employees. Moreover, he notes the absence of any purchase orders in this case, arguing that the contract is not applicable unless the work is performed pursuant to a purchase order. We find no merit to Mr. Saizon's arguments in this regard.

Pursuant to Section 5.12 of the contract, it is evident Dow and Turner were in agreement that for any "Work or Services provided ... in Louisiana in connection with [the contract], *or* under any purchase order to which [the contract] applies," Dow would be the statutory employer of Turner's employees. (Emphasis added.) "Services" is defined in "Exhibit A - Scope of Work" to include "General Mechanical Maintenance Services," including the "[l]abor, supervision, and such equipment as may be specified to execute" these services, and "Small Construction Projects." The record is clear that at the time of the incident, Mr. Saizon was performing general maintenance on the C-25C. Moreover, Mr. Brandt, who was a part of the Root Cause Investigation in this matter and familiar with the contract between Dow and Turner, attested that the work performed by Turner and Mr. Saizon at the time of the incident was an integral part of or essential to the ability of Dow to generate its goods, products or services.

Accordingly, it is clear from the evidence that there is a rebuttable presumption of a statutory relationship between Dow and Mr. Saizon. *See* La. R.S. 23:1061(A)(3). This presumption can be overcome only by a showing that the work being performed by Mr. Saizon was "not an integral part of or essential to the ability of [Dow] to generate ... goods, product, or services." La. R.S. 23:1061(A)(3). From our review of the record, Mr. Saizon has failed to present any evidence to rebut this presumption, *i.e.*, evidence demonstrating that maintenance work related to the C-25C is not essential to the ability of Dow to generate its goods, products or services. Thus, Dow is the statutory employer of Mr. Saizon and entitled to statutory immunity.

Intentional Act

Louisiana Revised Statutes 23:1032 carves out an exception to an employer's immunity from tort actions under the Act: "Nothing in this Chapter shall affect the liability of the employer ... resulting from an intentional act." La. R.S. 23:1032(B).

The question of whether an employer's conduct falls under the intentional act exception to the Act was considered by the Louisiana Supreme Court in *Reeves v. Structural Preservation Systems*, 98-1795 (La. 3/12/99), 731 So.2d 208. In *Reeves*, the employer directed an employee to move a sandblasting pot manually, a procedure that was prohibited by Occupational Safety and Health Administration (OSHA) guidelines and that the employee's supervisor feared would eventually lead to injury. Nonetheless, the court held that the conduct complained of did not amount to an intentional act and that plaintiffs' remedy was limited to workers' compensation benefits. *Id.* at 212-213.

The *Reeves* court outlined the history of workers' compensation in Louisiana. From 1914 until 1976, employees were free to pursue tort remedies for work-related injuries against executive officers and co-employees. However, by Act 147 of 1976, the legislature amended the Act in two important respects. It provided that workers' compensation shall be the exclusive remedy against not only the employer, but also against any principal, officer, director, stockholder, partner or employee of the employer, or principal who was engaged at the time of the injury in the normal course and scope of his employment. La. R.S. 23:1032(A)(1)(a). It also provided that the employee is not limited to workers' compensation and may pursue any other remedy where his compensable injury results from an intentional act. La. R.S. 23:1032(B); *Reeves*, 731 So.2d at 209-210.

As noted by the *Reeves* court, the legislature, in considering the 1976 amendment, used the words "intentional act" and rejected the following terminology offered for inclusion in the proposed legislation: "violation of a recognized safety rule or regulation, ... failure to provide a safety device required by a recognized safety rule or regulation or by a statute, or by gross negligence on the part of a supervisory employee" and "gross negligence" (meaning "such disregard of the interest of others that the tortfeasor's conduct amounts to a gross deviation below the standard of care expected to be maintained by a reasonable careful man under like circumstances"). Zdat210.

The Louisiana Supreme Court has concluded that the words "intentional act" mean the same as "intentional

tort" in reference to civil liability. "Intent" is found when the person who acts either (1) consciously desires the physical result of his act, whatever the likelihood of that result happening from his conduct; or (2) knows that the result is substantially certain to follow from his conduct, whatever his desire may be as to that result. *Bazley v. Tortorich*, 397 So.2d 475, 480-481 (La. 1981).

"Substantially certain to follow" requires more than a reasonable probability that an injury will occur. The injury must be inevitable. The injury causing event must be incapable of failing. A distinguishing feature in determining whether the conduct complained of meets the "substantial certainty" test is whether the event has occurred before or whether the injury has manifested itself before. *Abney v. Exxon Corp.*, 98-0911 (La.App. 1 Cir. 9/24/99), 755 So.2d 283, 288, writ denied, 99-3053 (La. 1/14/00), 753 So.2d 216. Citing *Bazley* and a long list of subsequent cases, the Louisiana Supreme Court noted in *Reeves* that it and the appellate courts have narrowly construed the intentional act exception according to the legislative intent and have almost universally held that employers are not liable under the intentional act exception for violations of safety standards. See *Reeves*, 731 So.2d at 211-212 and cases cited therein. Moreover, this court has noted that based on the narrow construction of La. R.S. 23:1032, "cases holding the employer's acts do not amount to intentional acts far outnumber the cases holding the employer's act is intentional so as to trigger the application of the intentional act exception." *Abney*, 755 So.2d at 288.

On appeal, Mr. Saizon argues that viewing the evidence in the light most favorable to him, there remains a genuine issue of material fact as to the question of substantial certainty that should proceed to trial. Mr. Saizon's draws our attention to the "fire triangle," *i.e.*, when three elements, oxygen, fuel, and an ignition source, come together causing a fire or explosion. Mr. Saizon argues that defendants knew that the equipment that Turner's crew was scheduled to work on contained fuel gas that was extremely flammable and had a low ignition point. Nonetheless, Mr. Saizon asserts, Dow employees failed to ensure that the line was free of hydrocarbons before Mr. Saizon began his work. Mr. Saizon contends that Dow's failures and the actions/inactions of Dow employees in failing to follow Dow's safety policies as well as OSHA guidelines and industry standards allowed for the completion of the fire triangle on the day in question and caused this incident.

Mr. Saizon also points to a number of prior incidents at the LHC-3 Unit, arguing that "despite being fully aware of the causes of these incidents as well as of the ways to prevent them ... Dow continued to act with impunity, callously subjecting its contractors to knowingly fatal risks, time and time again." He maintains there is more than enough evidence in the record to support a finding that defendants knew that this incident was substantially certain to follow from their conduct.^[5]

According to the record, Dow employee John Thibodeaux was involved with isolating and preparing the C-25C for the valve work to be done by the Turner employees. Mr. Thibodeaux explained, in detail, Dow's normal process for a project such as this. Mr. Thibodeaux indicated that the first step was to isolate the valve by closing or blocking off all the valves and "depressure to the flare," which he did.

Mr. Thibodeaux noted that after isolation, the next step was "pad and depad with nitrogen" three times, followed by a "Lower Explosive Limit" ("LEL") test to check for the presence of hydrocarbons. Although Mr. Thibodeaux acknowledged that it was Dow's policy that lines be cleared with nitrogen, he decided it was not a necessary step in this case. Mr. Thibodeaux noted, "It was gas form, open to atmosphere. We did it in other areas of the plant, same process in the line where we didn't have to do it." However, believing the nitrogen purging process was unnecessary in this instance, Mr. Thibodeaux testified that he opened three bleeder valves and used a sniffer to check for LEL, which revealed no hydrocarbons present in the line. Mr. Thibodeaux then represented to Mr. Moreno, the Dow employee coming on shift after him, that the system was "ready to go." As a result of the incident, Mr. Thibodeaux was terminated by Dow.

In his affidavit, Mr. Moreno indicates he was approached by Mr. Saizon who requested that Mr. Moreno modify the safe work permit to allow the use of a reciprocating saw for the removal of two butterfly valves on the C-25C. Mr. Moreno believed that Mr. Thibodeaux had properly "nitrogen purged the line." Nonetheless, Mr. Moreno "attempted to double check the line by taking metered readings with a LEL meter, which showed there were no hydrocarbons." Based on these readings and his belief that Mr. Thibodeaux had properly purged the line, Mr. Moreno had no reason to believe there were any remaining hydrocarbons in the line where Mr. Saizon and the other Turner employees were working, nor did he have any intention of hurting Mr. Saizon or any other person when he issued the modified safe work permit.

In his deposition, Mr. Brandt testified that Dow had a basic rule of removing flammables before performing "hot work." The procedure Dow employed for the removal of flammables was to pad and de-pad with nitrogen. Mr. Brandt denied any knowledge of a cultural issue across the organization of operators not following the procedure of padding and de-padding with nitrogen as was required by Dow's rules. Rather, he noted that it was an "isolated problem with Mr. Thibodeaux" who was in a "comfort zone of doing that because [he had] done it in the past and nothing had gone wrong." Mr. Brandt further testified regarding conversations he had with Mr. Thibodeaux after the incident:

In my discussions with [Mr. Thibodeaux] after the incident, he was dumbfounded that there was a fire because he - he stated multiple times, ["I] prepped the line, I cleared the line,["] and he stated it multiple times in the preliminary investigation immediately after the incident that the line was clear.

....

I asked him what went wrong and he told me, ["I] don't know because I prepped the line, I - I prepared the line, I cleared the line and I depressured the line and I sniffed the line and I don't know why this happened - ["]

....

[Mr. Thibodeaux] believed he did the job correctly and successfully.

Mr. Brandt was also asked about the "Hydrocarbons Process Safety Cardinal Rules," specifically the following portion of the rules: "Any draining or venting of hydrocarbons to the atmosphere will create a flammable mixture. If this mixture ignites, the operator and other personnel in the area can be exposed to a flash fire or significant explosion. IMPORTANT! Even a small amount of material can cause a flash fire." Mr. Brandt explained that "cardinal rules" are a "general set of training rules to give people historical evidence of bad things that have happened when you violate certain policies or ... create certain situations that... could lead to bad things happening." While Mr. Brandt agreed with this statement, he added that just because there is a flammable mixture, it does not always result in an explosion; it depends on the situation. He indicated that if all three hazards are present, *i.e.*, oxygen, fuel, and an ignition source, that "could lead to a fire."

Concerning Mr. Moreno's involvement, Mr. Brandt testified that even when issuing a modified permit, Mr. Moreno was still required to use diligence in ensuring the area was free and clear of hydrocarbons. Mr. Moreno was responsible for verifying the contents of the permit and signing off on it. According to Mr. Brandt, Mr. Moreno opened the valve and checked to verify there were no flammables. Mr. Brandt noted further that although there was a "zero reading" on this verification, Mr. Moreno failed to use the correct meter during this process. In connection with this incident, Mr. Moreno was disciplined for his poor execution of "combustible gas detector checks and balances."

Defendants counter that "an employer's generalized knowledge of risk does not meet the intentional act test without proof of specific knowledge of risk to this plaintiff and moving ahead with operations anyway." We agree. Following our exhaustive review of the record before us, we conclude that none of the evidence presented herein meets the requirement of substantial certainty. See [Reeves, 731 So.2d at 213](#) ("[M]ere knowledge and appreciation of a risk does not constitute intent, nor does reckless or wanton conduct by an employer constitute intentional wrongdoing.")

There is no dispute herein that Mr. Thibodeaux failed to follow Dow's safety rules regarding the draining/venting of hydrocarbons on the day in question. However, Mr. Thibodeaux did check for LEL using a sniffer, which revealed no hydrocarbons in the line. Moreover, although Mr. Moreno had been advised by Mr. Thibodeaux that the line was "ready to go," Mr. Moreno also performed an LEL check of the line, which, again, showed no hydrocarbons present. Although Mr. Thibodeaux and Mr. Moreno failed to follow Dow's safety rules while attempting to clear hydrocarbons from the line, we note that these actions, while perhaps negligent or even reckless, do not rise to the level of an intentional tort by defendants. See [Id. at 211-213](#).

We are mindful of *Higgins v. Williams Energy Partner, L.P.*, 2017-1662 (La.App. 1 Cir. 12/12/18), 267 So.3d 1133, writ granted, judgment rev'd, 2019-0049 (La. 3/6/19), 266 So.3d 897. In that case, plaintiff was injured in an explosion at his job and alleged that his employer committed an intentional tort by failing to properly maintain a pipeline at the facility. The explosion resulted from the overpressurization of an out-of-service reboiler. *Id.* at 1135-1136. Plaintiff introduced several pieces of evidence pointing to the knowledge of various employees that the reboilers posed a danger, including multiple warnings made to the defendant regarding conditions at that facility. This court reviewed a summary judgment granted in favor of the employer, affirming the trial court's summary dismissal, noting "it is clear that the defendant's management was aware that the blocked reboiler was a hazard, but it is not evident that they were substantially certain that the chemical explosion was to occur from that hazard." *Id.* at 1137-1142. However, the Louisiana Supreme Court, granted plaintiffs writ application and reversed the judgment in an unpublished one-paragraph decision, stating generally that "there remain genuine issues of material fact as to whether the defendant is liable to this plaintiff as the result of an intentional act pursuant to La. R.S. 23:1032(B). See La. Code Civ. Proc. art. 966(D)(1). The matter is remanded to the district court for further proceedings." *Higgins*, 266 So.3d at 897.

We note that the facts in *Higgins* are not analogous to the evidence presented in this matter. In *Higgins*, the plaintiff presented evidence of the management team's awareness of specific dangers at the facility where he was injured and decisions regarding the reboiler that exploded. *Id.* at 1140-1141. In contrast, in this case, there is no evidence in the record that anyone at Dow knew of the failure of Mr. Thibodeaux and Mr. Moreno to take appropriate action in clearing the line of hydrocarbons. Moreover, the record is devoid of evidence that anyone,

including Mr. Thibodeaux and Mr. Moreno, knew of the specific dangers that Mr. Saizon faced at the time of the incident that caused his injuries. As noted, Mr. Brandt testified that Mr. Thibodeaux's failure to properly purge the line on the day of Mr. Saizon's injuries was an isolated incident. This evidences a lack of knowledge on the part of anyone at Dow of any alleged broader issue in the LHC-3 Unit concerning Dow employees failing to follow the proper procedure of padding and de-padding with nitrogen to clear lines of hydrocarbons and the resulting hazards that followed.

The Louisiana Supreme Court has made it clear that, "[e]ven if the alleged conduct goes beyond aggravated negligence, and includes such elements as knowingly permitting a hazardous work condition to exist, knowingly ordering claimant to perform an extremely dangerous job, or willfully failing to furnish a safe place to work, this still falls short of the kind of actual intention to injure that robs the injury of accidental character." [Reeves, 731 So.2d at 211](#) (quoting Larson, 2A Workmen's Compensation Law, §68.13 (1989)). Defendants have shown that, to the extent a root cause of the explosion can be determined, there is no evidence that it was the result of any intentional act by a Dow employee. There is no testimony or documentary evidence presented herein that can be interpreted to show defendants ever intended to cause Mr. Saizon harm or were substantially certain that harm to Mr. Saizon would inevitably follow their actions. Without such evidence, defendants cannot be held liable for an intentional tort. While we recognize the tragic nature of this situation, the jurisprudential parameters of an intentional tort are simply not met in this case. Accordingly, summary judgment was warranted and Mr. Saizon's claim against defendants must be dismissed due to his failure to submit any evidence that the explosion resulted due to anything more than negligence of individuals for whom Dow is answerable.

DECREE

For the above and foregoing reasons, we affirm the trial court's January 27, 2025 judgment. We assess all costs associated with this appeal against plaintiff/appellant, Jontrell Saizon.

AFFIRMED.

[1] Although defendants filed separate motions for summary judgment, we consider the motions together as have the parties in this appeal. We note the overlap concerning the merits of the motions filed by defendants, as well as the evidence submitted by the parties in support of each motion.

[2] Although the Acadian Ambulance record does not appear to be properly authenticated summary judgment evidence, no objection was made to its introduction, and we will consider same. *See* La. Code Civ. P. art. 966(D) (2).

[3] We note that prior to the hearing on the motions for summary judgment, counsel for Dow, Mr. Moreno, and Mr. Grimes objected to the admissibility of Mr. Saizon's expert declarations and accompanying reports, arguing that Mr. Saizon failed to comply with the trial court's requirement to designate said experts or to respond to interrogatories relating to requests for information related to experts. They further argued that the declarations were not proper summary judgment evidence pursuant to La. Code Civ. P. art. 966(A)(4)(a), which lists affidavits, not declarations, as documents that may be filed in support of or in opposition to a motion for summary judgment. After hearing argument of counsel on this issue, the trial court allowed the declarations and reports into evidence over the objection. Accordingly, the reports are properly before us in this *de novo* review.

[4] According to the record, Mr. Grimes was working the night of April 24, 2020, but had no role in the issuance of the safe work permit or the work performed by Mr. Saizon. During the hearing on the motion for summary judgment, counsel for Mr. Saizon acknowledged there was no evidence of any wrongdoing by Mr. Grimes and that summary judgment as to Mr. Grimes was appropriate. Moreover, on appeal, Mr. Saizon does not challenge the summary judgment granted in favor of Mr. Grimes. Thus, that portion of the trial court's January 27, 2025 judgment granting summary judgment in favor of Mr. Grimes and dismissing Mr. Saizon's claims against Mr. Grimes is final.

[5] Even assuming for sake of argument that the prior incidents at the LHC-3 Unit were factually similar, this court has held the mere fact an employer is aware of prior similar accidents is insufficient to establish an intentional act. *See Carrier v. Grey Wolf Drilling Co.*, 2000-1335 (La. 1/17/01), 776 So.2d 439, 441-442. Moreover, as the Louisiana Supreme Court explained in *Reeves*, "[b]elieving that someone may, or even probably will, eventually get hurt if a workplace practice is continued does not rise to the level of an intentional act, but instead falls within the range of negligent acts that are covered by workers' compensation." *Reeves, 731 So.2d at 212.*

Fabre v. M.A. Patout & Son

Court:	Court of Appeal of Louisiana
Writing for the Court:	STILES, JUDGE.
Docket Number:	25-556
Decision Date:	27 May 2026
Citation:	Fabre v. M.A. Patout & Son, 25-556 (La. App. May 27, 2026)
Parties:	JUSTIN FABRE, ET AL. v. M.A. PATOUT & SON LIMITED, ET AL.

Id. vLex Fastcase: VLEX-1120276056

Link: <https://fastcase.vlex.com/vid/fabre-v-m-patout-1120276056>

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JUSTIN FABRE, ET AL. v. M.A. PATOUT & SON LIMITED, ET AL.

No. 25-556

Court of Appeals of Louisiana, Third Circuit

May 27, 2026

APPEAL FROM THE SIXTEENTH JUDICIAL DISTRICT COURT PARISH OF IBERIA, NO. 138544 HONORABLE VINCENT J. BORNE, DISTRICT JUDGE

Andy Dupre Ilijana Todorovic The Dupre Law Firm, LLC COUNSEL FOR PLAINTIFFS/APPELLANTS: Justin Fabre Paula Fabre Bill Scully

Patrick Daniel Patrick Daniel Law COUNSEL FOR PLAINTIFFS/APPELLANTS: Justin Fabre Paula Fabre Bill Scully

Todd A. Delcambre LeBas Law Offices, COUNSEL FOR INTERVENOR/APPELLEE: American Interstate Insurance Company

James T. Rivera Jessica W. Marchand Scofield & Rivera, L.L.C. COUNSEL FOR DEFENDANTS/APPELLEES: M.A. Patout & Son Limited, LLC John Landry

Jeffrey E. McDonald Treadaway Bollinger, LLC COUNSEL FOR DEFENDANT/APPELLEE: Louisiana Safety Consultants, Inc.

Court composed of Elizabeth A. Pickett, Jonathan W. Perry, and Wilbur L. Stiles, Judges.

STILES, JUDGE.

Justin Fabre sustained serious physical injury while performing construction work at a sugar processing facility. Mr. Fabre and his family members pursued a tort claim against the facility's owner as well as its project manager. The trial court, however, granted Defendants' motion for summary judgment upon a finding that no genuine issues of material fact remained as to the facility owner's status as statutory employer under the requirements of La.R.S. 23:1061. Plaintiffs appeal. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

M.A. Patout & Son Limited, LLC (Patout) operates a number of entities involved in the harvesting and processing of sugar cane, including the Jeanerette mill where the October 29, 2021 accident at issue occurred. On that date, Mr. Fabre was working on the site as an employee of Cleveland J. Billiot, III General Contracting, Inc. (Billiot), when he was called to perform work on the metal roof over the facility's fabrication area. Mr. Fabre maintained that, while performing the work, "[t]he roof gave way due to its improper maintenance, improper repair, disrepair and lack of safe means of entry and exit[.]" Mr. Fabre fell through the roof and onto the floor of

the facility. He sustained injuries causing permanent paralysis.

Mr. Fabre filed this suit in February 2022 against Patout and its project manager John Landry,^[1] alleging, among other things, that Defendants failed to properly maintain the premises and failed to warn of the roof's substandard condition, which led to his injury. Paula Fabre, Mr. Fabre's spouse, sought damages for loss of consortium. Billy Scully, Mr. Fabre's brother and coworker, also joined in the petition, alleging that he witnessed the accident and now suffers psychological damage.

Patout and Mr. Landry denied liability in their answer to the petition and alternatively alleged that Mr. Fabre was a statutory employee of Patout. Defendants maintained they were therefore "immune from suit pursuant to Louisiana Workers' Compensation laws."

Defendants later filed a motion for summary judgment, asserting that Patout "is the statutory employer of Plaintiff, Justin Fabre" and, therefore, seeking dismissal of the plaintiffs' claims. Defendants maintained that it is undisputed that Billiot was Mr. Fabre's direct employer at the time of the accident and that Billiot, as the contractor, entered into an "Indemnification Agreement and Insurance Requirements" for work and services at the facility. Defendants noted that the contract specifically identified Patout as the statutory employer of Billiot and its employees. Referencing both La.R.S. 23:1061 and the Indemnification Agreement, Defendants maintained that Patout must be recognized as Mr. Fabre's statutory employer and, as such, must be further recognized as immune from liability.

Defendants supported the motion with the Indemnification Agreement signed by Billiot's president. Defendants also attached the affidavit of Patout's Chief Financial Officer wherein she stated that, on behalf of Patout, she executed the Indemnification Agreement between Patout and Billiot.

In their opposition, Plaintiffs denied that there was a statutory employment contract due to a lack of specificity therein. Moreover, even in the presence of a contract, Plaintiffs maintained that Patout would not be entitled to workers' compensation protection. Rather, Plaintiffs maintained that Mr. Fabre was instructed to perform roofing work that was outside the scope of Patout's trade, occupation, or business as a sugar processor. Further, Plaintiffs maintain that genuine issues of material fact remain as to the availability of the intentional act exception to the statutory employer rule as provided by La.R.S. 23:1032(A). In part, Plaintiffs asserted that Patout sent Mr. Fabre onto the roof despite knowing of its poor condition and, moreover, Mr. Landry informed Mr. Fabre that the roof was safe and could support his weight.

Following a hearing, the trial court granted the motion for summary judgment, dismissing Plaintiffs' claims against Defendants. The trial court commemorated its ruling in an April 22, 2026 judgment by which it determined that Patout is the statutory employer of Mr. Fabre pursuant to La.R.S. 23:1061 and that Plaintiffs, in turn, failed to provide sufficient evidence to rebut the presumption of statutory employment. The trial court also determined that "no material issues of fact were raised by Plaintiff to warrant imposition of the intentional act exclusion to workers' compensation immunity." The trial court thus dismissed Plaintiffs' claims for personal injuries against Patout and Mr. Landry.^[2]

Plaintiffs appeal, questioning the granting of summary judgment and the dismissal of their claims.

DISCUSSION

Summary Judgment

Louisiana Code of Civil Procedure Article 966(A)(3) provides that "[a]fter an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law." While the burden rests with the party moving for summary judgment, La.Code Civ.P. art. 966(D)(1) further provides that:

Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law.

An appellate court considers a ruling on a motion for summary judgment de novo, with the reviewing court "using the same criteria that govern the trial court's determination of whether summary judgment is appropriate -- i.e., whether there is any genuine issue of material fact, and whether the movant is entitled to summary judgment as a matter of law." *Davis v. A Bar and Grill with a Bite, Inc.*, 19-1928, p. 2 (La. 3/16/20), 294 So.3d 1051, 1052.

Statutory Employment

In general, the Louisiana Workers' Compensation Act provides that workers' compensation is an employee's exclusive remedy against his employer or any principal^[3] for work-related injury or illness. See La.R.S. 23:1031; La.R.S. 23:1032. That exclusive remedy is specifically extended to statutory employers by La.R.S. 23:1061, which provides in pertinent part:

A. (1) Subject to the provisions of Paragraphs (2) and (3) of this Subsection, when any "principal" as defined in R.S. 23:1032(A)(2), undertakes to execute any work, which is a part of his trade, business, or occupation and contracts with any person, in this Section referred to as the "contractor", for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal, as a statutory employer, shall be granted the exclusive remedy protections of R.S. 23:1032 and shall be liable to pay to any employee employed in the execution of the work or to his dependent, any compensation under this Chapter which he would have been liable to pay if the employee had been immediately employed by him; and where compensation is claimed from, or proceedings are taken against, the principal, then, in the application of this Chapter reference to the principal shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the employee under the employer by whom he is immediately employed. For purposes of this Section, work shall be considered part of the principal's trade, business, or occupation if it is an integral part or essential to the ability of the principal to generate the individual principal's goods, products, or services.

(2) A statutory employer relationship shall exist whenever the services or work provided by the immediate employer is contemplated by or included in a contract between the principal and any person or entity other than the employee's immediate employer.

(3) Except in those instances covered by Paragraph (2) of this Subsection, a statutory employer relationship shall not exist between the principal and the contractor's employees, whether they are direct employees or statutory employees, unless there is a written contract between the principal and a contractor which is the employee's immediate employer or his statutory employer, which recognizes the principal as a statutory employer. *When the contract recognizes a statutory employer relationship, there shall be a rebuttable presumption of a statutory employer relationship between the principal and the contractor's employees, whether direct or statutory employees. This presumption may be overcome only by showing that the work is not an integral part of or essential to the ability of the principal to generate that individual principal's goods, products, or services.*

(Emphasis added.)

An employer "bears the burden of proving entitlement to immunity." *Preston v. Southern Univ. ex rel. Bd. of Supervisors*, 20-35, p. 6 (La.App. 1 Cir. 7/13/21), 328 So.3d 1194, 1199. Further, an immunity statute, such as La.R.S. 23:1061, "must be strictly construed against the party claiming the immunity." See *Fleming v. JE Merit Constructors, Inc.*, 07-926, p. 8 (La.App. 1 Cir. 3/19/08), 985 So.2d 141, 146 (citing *Weber v. State*, 93-62 (La. 4/11/94), 635 So.2d 188).

Defendants supported their motion with Patout's October 2020 contract with Billiot, arguing that the contract established a rebuttable presumption of its statutory employer relationship with Mr. Fabre, Billiot's employee. Titled Indemnification Agreement and Insurance Requirements, the contract provides an indemnity clause for the contractor's "work/services" and includes an explicit statutory employer clause, reading:

NAME OF INDEPENDENT CONTRACTOR: *Cleveland J. Billiot III General Contracting, Inc.* (hereinafter sometimes referred to as "**Contractor**").

INDEMNITY

IN CONSIDERATION for the use of **Contractor**'s services or work provided from time to time, *Contractor agrees to indemnify, defend, and hold harmless Owner for Contractor's own negligence, fault, or other liability, whether strict liability or otherwise.* Specifically, **Contractor** agrees to indemnify, defend, and hold harmless **Owner**, its employee(s), servant(s), representative(s), agent(s), manager(s) or member(s), officer(s) or director(s), subcontractor(s), insurer(s), or invitees to **Owner's** premises, from and against any and all claims, demands, suits, causes of action and rights of action whatsoever, known or unknown, anticipated and unanticipated, which **Contractor**, its employee(s), servant(s), agent(s), representative(s), manager(s) or member(s), officer(s) or director(s), or subcontractor(s), or any person, third party, or entity may or might have, or that may accrue which are related in any way to the providing of work/services to **Owner** by **Contractor**, or to **Contractor's** presence on **Owner's** premises, and which were caused, or alleged to be caused by, *through, or on account of the negligence, fault or liability (strict or otherwise) of Owner, its employee(s), servant(s), representative(s), agent(s), manager(s) or member(s), officer(s) or director(s), subcontractor(s), other*

contractors or their employees, including related to the condition or maintenance of **Owner's** premises or property, or any claimed breach of a statutory or contractual duty or obligation.

Owner agrees to indemnify, defend, and hold harmless **Contractor** for **Owner's** own negligence, fault, or other liability, whether strict liability or otherwise. Specifically, Owner agrees to indemnify, defend, and hold harmless **Contractor**, its employee(s), servant(s), representative(s), agent(s), manager(s) or member(s), officer(s) or director(s), subcontractor(s) and insurer(s) from and against any and all claims, demands, suits, causes of action and rights of action whatsoever, known or unknown, anticipated and unanticipated, which **Owner**, its employee(s), servant(s), agent(s), representative(s), manager(s) or member(s), officer(s) or director(s), subcontractor(s) or other contractors or their employees which are related in any way to the providing of work/services to **Owner** by **Contractor** and which were caused, or alleged to be caused, by, through, or on account of the negligence, fault, or liability (strict or otherwise) of **Owner**, its employee(s), servant(s), representative(s), agent(s), manager(s) or member(s), officer(s) or director(s), subcontractor(s), other contractors or their employees, including related to the condition or maintenance of Owner's premises or property, or any claimed breach of a statutory or contractual duty or obligation.

OWNER IS STATUTORY EMPLOYER

Contractor acknowledges and agrees that the work performed or services provided by **Contractor** pursuant to this agreement is part of **Owner's** trade, business or occupation. As such, **Contractor's** work is an integral part of and essential to Owner's business and ability to generate **Owner's** goods, products and services. It is expressly understood and agreed that **Owner** is the statutory employer of **Contractor** and its employees, and that **Owner's** legal status as the statutory employer of **Contractor's** and its employees in no way effects [sic] the **Contractor's** status as an independent contractor, nor does it give **Owner** the right to direct or control the operations of **Contractor** or its employees, agents, or representatives, except as to the results to be obtained under this agreement, or consistent with the work/services.

The **Contractor** agrees to *immediately* inform **Owner** of any accident involving the **Contractor's** employees occurring on Owner's premises, or which is, in any way, related to the providing of work/services to **Owner**.

Cleveland J. Billiot, III entered into the agreement on behalf of "Contractor," Cleveland J. Billiot III General Contracting, Inc. Ashlee C. Gary signed as Chief Financial Officer for the "Owner."

Opposing the motion, Plaintiffs rejected Defendants' argument that the Indemnity Agreement establishes a prima facie showing of Patout's statutory employer status. Plaintiffs maintain that argument in this court, arguing that the Indemnification Agreement does not designate Patout as the contracting party to whom statutory employer status is conveyed, does not identify the work and services that Billiot is contracted to perform, and was signed a year before Mr. Fabre's accident. Given the strict construction afforded immunity statutes, Plaintiffs argue, the Indemnity Agreement is insufficient to establish a prima facie case of statutory employer status. We find no merit in Plaintiffs' position.

While the Indemnification Agreement does not identify Patout by name, it references the parties as "owner" and "contractor." Ashlee C. Gary in her capacity as Chief Financial Officer accepted the agreement "for owner." To the extent the Agreement lacks precision as to the "owner's" corporate identity, Defendants submitted Ms. Gary's affidavit, wherein she stated:

On October 30, 2020, Ashlee C. Gary, as the Chief Financial Officer for M.A. Patout & Son, Limited, LLC and on behalf of M.A. Patout & Son, Limited, LLC, executed a contract between M.A. Patout & Son Limited, LLC and Cleveland J. Billiot III General Contracting, Inc. entitled Indemnification Agreement and Insurance Requirements, which is attached hereto at Exhibit 1.

Thus, even assuming ambiguity as to the identity of the "owner," Ms. Gary's affidavit addresses that concern. *See Trent v. PPG Indus., Inc.*, 03-1068 (La.App. 3 Cir. 2/4/04), 865 So.2d 1041 (wherein this court considered affidavit(s) in clarifying an ambiguity within the context of a statutory employer agreement).

Further, while Plaintiffs challenge Patout's designation in the contract, they presented no evidence placing Patout's identity as the "owner" at issue. Nor did they present evidence of any confusion regarding the parties' identities. Rather, Plaintiffs' submission in opposition to the motion for summary judgment only confirms Patout's status as "owner." For instance, when Patout's CEO, Randall Romero, was presented with the October 30, 2020 Indemnity Agreement, he stated that it was executed by Ms. Gary on behalf of Patout. He explained that she had authority to enter into "these types of agreements" in her capacity as Patout's CFO. Billiot's status as the "contractor" named in the Indemnification Agreement is likewise clear as the face of the agreement identifies "Cleveland J. Billiot III General Contracting Inc." as the subject "Independent Contractor." The Agreement repeats that corporate title as the "Name of the Contractor" on the signature page. Mr. Billiot

accepted the agreement on behalf of the "contractor" in his capacity as "Owner/President."

Neither do we find merit in Plaintiffs' contention that the contract is unenforceable as it does not delineate the work and services that Billiot was contracted to perform. Plaintiffs' argument stems from their contention that Billiot was engaged specifically for concrete work and that the roofing work was outside of the contracted services. Plaintiffs, however, presented no evidence that Billiot's engagement was limited to the concrete work that Mr. Fabre had been engaged in before Mr. Landry directed him to repair the roof. While Mr. Fabre and Mr. Scully stated in their affidavits that Billiot was hired "to do concrete work" at Patout and that it "typically only did concrete work," they otherwise stated that Billiot "is a general contractor that specializes in limestone and concrete work."

This is in contrast to Defendants' characterization of its Indemnification Agreement as a master service agreement used for engaging general work and services. The contract's wording corroborates that broad usage, reflecting that it was extended in anticipation of "the use of Contractor's services and work provided *from time to time*["] (Emphasis added.) The contract subsequently refers to "the providing of work/services" as well as the commencing of "work or services["]

This court has recently determined that a contractor's use of a master service agreement constituted a "contract" within the context of a statutory employer defense. *Charles v. Transcon. Gas Pipeline, LLC*, 24-405 (La.App. 3 Cir. 3/12/25), 408 So.3d 491. Albeit within a case involving a two-contract theory of statutory employment,^[4] the panel rejected the plaintiff's contention that a master service agreement failed to satisfy the contractual element of La.R.S. 23:1061 as the agreement did not define the particular work that a contractor, Tucker, hired its subcontractor, Blue Fin, to perform. *Id.* The plaintiff also argued that the MSA did not bind Blue Fin to actually perform work. *Id.* The panel explained Tucker and Blue Fin executed the MSA "to be a standing agreement between Tucker and Blue Fin governing work to be performed in the future by Blue Fin for Tucker." *Id.* at 497. The panel specifically rejected the plaintiff's contention that additional documentation was required to identify "who, what, when, and price" as the master service agreement broadly provided the contractor "*regularly and customarily* enters into contracts with companies and individuals to perform *work and/or provide services*, equipment, machinery, materials or supplies, all of which is defined to be the Work[.]" *Id.* at 498. (Emphasis added.) This anticipatory, but non-specific language, echoes the Indemnification Agreement's reference to the use of Billiot's "services or work *provided from time to time*["] as consideration for Billiot's indemnification of Patout.

While Plaintiffs argue that genuine issues of material fact remain regarding whether the October 2020 Indemnification Agreement could have "even applied" to the October 2021 accident, the reasoning of *Charles* undermines that position. In that case, the master service agreement was executed well over one year before the plaintiff was injured. The panel explained that the subject "standing agreement" was similar to one discussed in *Allen v. State ex rel. Ernest N. Morial-New Orleans Exhibition Hall Authority*, 02-1072, p. 13 (La. 4/9/03), 842 So.2d 373, 382, wherein the supreme court reasoned that:

[N]o reason has been advanced, nor can we fathom one, to support a finding that a principal who has a long-standing agreement with a supplier to provide labor and/or services in connection with jobs for which the principal contracts should be treated differently, for the purposes of the compensation obligation, than one who enters separate contracts with the supplier after first contracting with a third party to perform certain work.

Charles, 408 So.3d at 498.

While the panels in both *Charles* and *Allen* considered the subject master service agreements within the context of defendants seeking a two-contract statutory employer defense, we find the reasoning applicable in this case where Patout and Billiot anticipated non-specific work that could arise from time to time.

And, far from rebutting Patout's prima facie showing, Plaintiffs' opposition to the motion for summary judgment again indicates that the Indemnification Agreement encompasses Billiot's provision of various trades. CEO Romero, for instance, explained that the Indemnity Agreement is used for all companies that work on Patout's premises. He denied that it was related to a specific project and testified that it applies to all projects that the contractor may do at the facility. Mr. Romero explained that, with regard to Billiot, the contractor was asked to perform various services on an as-needed basis. In this particular instance, the "job was on time and materials," and not based on a specific bid.

Finally, we find no merit in Plaintiffs' alternative argument that their submission demonstrated the existence of genuine issues of material fact as to whether Mr. Fabre's work at the Patout facility was an "integral part" of Patout's ability to manufacture raw sugar products. Louisiana Revised Statutes 23:1061(A)(1) states that "work shall be considered part of the principal's trade, business, or occupation if it is an integral part *or essential to the ability of the principal to generate the individual principal's goods, products, or services*." (Emphasis added.) As seen by reference above, the Indemnification Agreement signed by Billiot tracks this language of the statute.

Importantly, the legislature revised La.R.S. 23:1061 in 1997 to include the latter scope of work as well, i.e., whether it is essential to the ability of the principal to generate its goods, products, or services. Specific to the type of work at issue in this case, jurisprudence reflects a finding that construction or repair of a business's facility is essential to its ability to produce its products. For instance, the fourth circuit remarked that "[w]ithout a building or facility, it would be virtually impossible for Gulf Liquids to process the chemicals and produce its products for transportation and sale" *See Lopez v. U.S. Sprint Commc'ns Co.*, 07-52, p. 10 (La.App. 4 Cir. 12/5/07), 973 So.2d 819, 826 (quoting *Jackson v. St. Paul Ins. Co.*, 04-26, p. 8 (La.App. 1 Cir. 12/17/04), 897 So.2d 684, 689, writ denied, 05-156 (La. 3/24/05), 896 So.2d 1042). Therefore, "the construction of the new fractionation plant was part of Gulf Liquids' 'trade, business, or occupation,' and qualified Gulf Liquids as a statutory employer entitled to the exclusive remedy protections of La.R.S. 23:1032" *Id.* at 826-27 (quoting *Jackson*, 897 So.2d at 689). *See also Duncan v. Dow Pipeline Co.*, 06-1455 (La.App. 3 Cir. 3/7/07), 952 So.2d 884 (a contractor's repairs to the flooring of a pipeline company's platform constituted an integral part of the company's business as it allowed the company to operate and maintain safe pipelines essential to its smooth and continued business of manufacturing oil products); *Trent*, 865 So.2d 1041 (the installation of a foundation and structural steel for a pipeline was essential to a refinery's ability to generate its goods, products, or services); and *Applegarth v. Transamerican Ref. Corp.*, 00-1547 (La.App. 5 Cir. 2/28/01), 781 So.2d 804 (construction of a retaining wall and pipe racks for a pipeline was essential for the project owner's ability to generate its goods, products, or services), writ denied, 01-834 (La. 5/11/01), 792 So.2d 738.

The reasoning of those cases negates Plaintiffs' contention that it established genuine issues of material fact regarding whether Billiot's repair work was an integral part of or essential to Patout's business. Excerpting Mr. Romero's deposition, Plaintiffs point out the CEO denied that the roof had been repaired or replaced for decades, denied that its operations were shut down while the roofing repairs were underway, and denied that roofing repair was part of its business. Those statements, however, are immaterial to whether Billiot's work, and in turn Fabre's work, was "*essential to the ability of [Patout] to generate [Patout's] goods, products, or services*" as required by La.R.S. 23:1061(A)(1). (Emphasis added.) Just as it would be "virtually impossible" for a principal to process and produce its products "[w]ithout a building or facility," it would be similarly impossible for Patout to maintain its sugar cane processing without a roof overhead. *See Lopez*, 973 So.2d at 826 (quoting *Jackson*, 897 So.2d at 689). Mr. Romero confirmed in his deposition that the roofing under repair covered the fabrication area and that a leak from the roof was of concern due to the installation of new equipment. Under Plaintiffs' reasoning, Patout's statutory employer defense would require its facilities to have degraded to the point that it would have to cease operations in order to seek the needed renovation. Neither La.R.S. 23:1061 nor jurisprudence requires that point of neglect.

This assignment of error lacks merit.

Intentional Act

Finally, Plaintiffs alternatively argue that the circumstances of Patout sending Mr. Fabre onto the faulty roof raise genuine issues of material fact as to whether Mr. Fabre's fall was substantially certain to occur. Plaintiffs contend that their claim falls under the intentional act exception to the exclusive remedy for a work-related injury. *See* La.R.S. 23:1032(B) ("Nothing in this Chapter shall affect the liability of the employer, or any officer, director, stockholder, partner, or employee of such employer or principal to a fine or penalty under any other statute or the liability, civil or criminal, resulting from an intentional act.").

In particular, Plaintiffs reference Mr. Fabre's affidavit where he explained, among other things, that he was employed by Billiot, that Billiot was a general contractor, that Billiot specialized in limestone and concrete work, and that he only performed concrete work for Billiot. When Mr. Landry told him that he was "going up to the roof to fix it," Mr. Fabre responded that they did not have roofing experience and that he had not worked in roofing or roofing safety. When he challenged Mr. Landry regarding the safety of the assignment, Mr. Landry told him to "go up there, and pointed to the roof, or go home." Mr. Landry assured the men that it was safe. Mr. Fabre explained that, once on the roof, he did not see any areas immediately near him with holes and that, as he had been assured that walking on the roof was safe, he "took a step on what [he] believed was a solid area that was safe . . . and fell through." Mr. Scully stated similarly in his affidavit.

Plaintiffs also presented the affidavit of Leonard Quick, a licensed professional engineer who stated that roofing work in Louisiana requires a license, specialized training, and OSHA training specific to roofing work. Mr. Quick opined that Patout lacked these qualifications, had a history of disregard for its facility, and that the facility was in a state of disrepair. Mr. Quick concluded that Mr. Fabre was "placed in a position where he was expected to fail," was informed that he was subject to the termination of his employment if "he did not do something he knew to be dangerous[.]" and "that his superior knew to be dangerous and life threatening." Mr. Quick opined that that it was "substantially certain" that the roof could not hold Mr. Fabre's weight, that he could not walk safely on the roof, and that he would fall and be injured or die. Mr. Quick surmised in conclusion that "[i]t was substantially certain that Justin Fabre would not go to this roof and ever return safely without accident or injury given his lack of training, experience, expertise, fear o[f] heights, licensing and the roof's vast deterioration beyond its useful life which was all known" by Patout.

Plaintiffs also presented a report from Michael Wright, a professional engineering consultant, who offered his opinion that Patout failed to adhere to various safety responsibilities. He concluded that Patout's failure to exercise reasonable care was a direct cause of Mr. Fabre's accident and injuries. Given his conclusion that Patout had knowledge of the substandard "roof decking conditions," Mr. Wright stated that it was certain that the condition would cause injury, and that Patout "willfully disregarded the risk of harm which was a direct and proximate cause of Plaintiff Justin Fabre's injury and nearly dying." Plaintiffs suggest that Mr. Fabre's affidavit, along with the experts' opinions, "at the very least creates a genuine factual issue on the question of substantial certainty that should proceed to the jury."

Even construing Plaintiffs' factual allegations in their favor, however, the Plaintiffs have not met the substantial certainty standard. Notably, in *Reeves v. Structural Preservation Systems*, 98-1795, p. 9 (La. 3/12/99), 731 So.2d 208, 212, the supreme court explained that: "Believing that someone may, or even probably will, eventually get hurt if a workplace practice is continued does not rise to the level of an intentional act, but instead falls within the range of negligent acts that are covered by workers' compensation." The court further stated,

The traditional definition is simply a way of relieving the claimant of the difficulty of trying to establish subjective state of mind (desiring the consequences) if he can show *substantial certainty* that the consequences will follow the act. The latter takes the case out of the realm of possibility or risk (which are negligence terms), and expresses the concept that an actor with such certainty cannot be believed if he knew the consequences would follow. In human experience, we know that specific consequences are substantially certain to follow some acts. If the actor throws a bomb into an office occupied by two persons, but swears that he only "intended" to hurt one of them, we must conclude that he is nonetheless guilty of an intentional tort as to the other, since he knows to a virtual certainty that harmful consequences will follow his conduct, regardless of his subjective desire.

Malone & Johnson, *Civil Law Treatise, Volume 14, Workers' Compensation Law & Practice*, § 365, p. 208.

"'Substantially certain to follow' requires more than a reasonable probability that an injury will occur and 'certain' has been defined to mean 'inevitable' or 'incapable of failing.'" *Jasmin v. HNV Cent. Riverfront Corp.*, *supra* at 312. "[A]n employer's mere knowledge that a machine is dangerous and that its use creates a high probability that someone will eventually be injured is not sufficient to meet the 'substantial certainty' requirement." *Armstead v. Schwegmann Giant Super Markets, Inc.*, 618 So.2d 1140, 1142 (La.App. 4 Cir. 1993), *writ denied*, 629 So.2d 347 (La.1993). "Further, mere knowledge and appreciation of a risk does not constitute intent, nor does reckless or wanton conduct by an employer constitute intentional wrongdoing." *Id.* (citing *Tapia v. Schwegmann Giant Supermarkets, Inc.*, 590 So.2d 806, 807-808 (La.App. 4 Cir. 1991)).

Id. at 212-13. See also *White v. Monsanto Co.*, 585 So.2d 1205 (La.1991); *Bazley v. Tortorich*, 397 So.2d 475 (La.1981).

While Plaintiffs argue that Defendants were required to "show a complete absence of any factual dispute regarding whether they knew that this incident was substantially certain to follow from their conducts," it is the plaintiff who bears the burden of proving that the work-related injury resulted from an intentional act. See *Hoffman v. Target Corp. of Minnesota*, 06-1067 (La.App. 3 Cir. 2/14/07), 951 So.2d 1290, *writ denied*, 07-550 (La. 5/4/07), 956 So.2d 614. See also *Marino v. Boh Bros. Constr. Co., L.L.C.*, 07-1090 (La.App. 4 Cir. 4/2/08), 982 So.2d 887, *writ denied*, 08-934 (La. 6/20/08), 983 So.2d 1283. Therefore, in this summary judgment proceeding, Defendants were required only to point out the absence of factual support for one or more elements essential to Plaintiffs' claim. See La.Code Civ.P. art. 966(D)(1). In turn, Plaintiffs were required to produce *factual* support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. *Id.* In this case, Plaintiffs have not done so.

Plainly, Patout knew of the roof's aged condition, hence the need for repair due to leaking. Plaintiffs also demonstrated that Mr. Fabre denied having any roofing expertise and that Patout, through Mr. Landry, sent Mr. Fabre onto the roof for the repair over Mr. Fabre's protestations. Further, Mr. Quick and Mr. Wright identified various safety breaches associated with Mr. Fabre's assignment. And finally, Mr. Fabre did in fact sustain serious injury. However, those facts, individually or collectively, do not indicate that Mr. Fabre's injuries were substantially certain to occur. Recall that a high probability of injury is insufficient under the standard. See *Bazley*, 397 So.2d 475. Even violation of safety standards and disregard of known safety risks that may constitute gross negligence do not constitute an intentional act or meet the substantial certainty test. *Reeves*, 731 So.2d 208. Thus, even assuming that Patout knowingly sent an untrained worker onto the roof, such negligent or grossly negligent conduct as alleged did not rise to the level of an intentional act.

Finally, Mr. Quick and Mr. Wright opined on the issue of whether Mr. Fabre's injuries were substantially certain. While La.Code Civ.P. art. 967 does not preclude the use of affidavits of qualified expert witnesses in support of or in opposition to a motion for summary judgment, the provision instructs that the affidavits "may

set forth such experts' opinions *on the facts* as would be admissible in evidence" *See also* La.Code Civ.P. art. 966(D)(1) (requiring Plaintiffs to come forward with *factual support*). As stated above, Plaintiffs did not come forward with sufficient facts to meet the substantial certainty test. Those same circumstances, accompanied by allegations of negligent and grossly negligent performance of safety regulations, underpin the experts' conclusory opinions on the ultimate issue of substantial certainty. Those underlying facts simply do not rise to the level of an intentional act. Accordingly, we find that the trial court appropriately entered summary judgment in favor of Defendants.

This assignment of error lacks merit.

DECREE

For the foregoing reasons, the judgment of the trial court is affirmed. Costs of this proceeding are assessed to Plaintiffs/Appellants Justin Fabre, Paula Fabre, and Bill Scully.

AFFIRMED.

[1] Mr. Landry is alternatively referred to as "John Laundry." We maintain the spelling used in the trial court's judgment for consistency.

[2] The trial court explained that Plaintiffs' claim in tort for spoliation of the evidence was not the subject of the proceeding.

[3] Louisiana Revised Statutes 23:1032(A)(2) defines "'principal' . . . as any person who undertakes to execute any work which is a part of his trade, business, or occupation in which he was engaged at the time of the injury, or which he had contracted to perform and contracts with any person for the execution thereof."

[4] The two-contract theory of statutory employment "applies when (1) the principal enters into a contract with a third party; (2) pursuant to that contract, work must be performed; and (3) in order for the principal to fulfill its contractual obligation to perform the work, the principal enters into a subcontract for all or part of the work performed." *McBride v. Old Republic Ins. Co.*, 241519, p. 9 (La. 6/27/25), 413 So.3d 452, 463 n. 12.

Georges on Behalf of Georges v. Southeast Rest. Group-TB, LLC

Court:	Court of Appeal of Louisiana
Writing for the Court:	GRAVOIS, J.
Citation:	428 So.3d 699
Docket Number:	25-CA-290
Decision Date:	03 December 2025
Parties:	Messilien GEORGES ON BEHALF OF His Minor Child Mersendy GEORGES v. SOUTHEAST RESTAURANT GROUP-TB, LLC, d/b/a Taco Bell and XYZ Insurance Company

Id. vLex Fastcase: VLEX-1122131946

Link: <https://fastcase.vlex.com/vid/georges-on-behalf-of-1122131946>

428 So.3d 699

25-290 (La.App. 5 Cir. 12/3/25)

Messilien GEORGES ON BEHALF OF His Minor Child Mersendy GEORGES

v.SOUTHEAST RESTAURANT GROUP-TB, LLC, d/b/a Taco Bell and XYZ Insurance Company

No. 25-CA-290

Court of Appeal of Louisiana, Fifth Circuit.

December 3, 2025[*700]

ON APPEAL FROM THE TWENTYFOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, NO. 842-965, DIVISION “A”, HONORABLE RAYMOND[*701]

S. STEIB, JR., JUDGE PRESIDING

COUNSEL FOR PLAINTIFF/APPELLANT, MERSENDY MARFRANC GEORGES, Pius A. Obioha, Mari T. Bartholomew, Travis L. Hull

COUNSEL FOR DEFENDANT/APPELLEE, SOUTHEAST RESTAURANT GROUP-TB, LLC, D/B/A TACO BELL, Joseph G. Glass, Metairie, Linda H. Adams, Alexandra J. Serpas

Panel composed of Judges Susan M. Chehardy, Jude G. Gravois, and John J. Molaison, Jr.

GRAVOIS, J.

¹Plaintifi/appellant, Messilien Georges, on behalf of his minor child, Mersendy Marfranc Georges, appeals a judgment granting summary judgment in favor of Southeast Restaurant Group-TB, LLC, d/b/a Taco Bell (“Taco Bell”), dismissing plaintiff’s claims with prejudice.¹ The trial court found that Mersendy’s exclusive remedy is workers’ compensation because plaintiff did not establish that the workplace injury resulted from an intentional act. We affirm.

FACTS AND PROCEDURAL HISTORY

On July 14, 2022, sixteen-year-old Mersendy Marfranc Georges was working as a “food champion” at a Taco Bell in Gretna, Louisiana. His duties included food preparation. The shift manager, Janae Tedford, instructed Mersendy to retrieve food from a “rethermalizer,” an appliance that uses hot water (approximately 195 degrees Fahrenheit) to heat proteins. Mersendy wore leather gloves instead of using tongs, as was allegedly customary, and sustained serious burns to his hand when water entered his glove.

The petition, filed July 14, 2023, alleged that Ms. Tedford's conduct amounted to gross negligence and was tantamount to an "intentional act" because a minor was instructed to perform a dangerous task. Taco Bell moved for summary judgment, contending that there was no evidence of an intentional act causing injury. The hearing occurred on April 23, 2025. The court, finding no evidence of an intentional act, granted the motion and dismissed plaintiff's claims with prejudice. A written judgment was issued on May 2, 2025. Plaintiff appealed.

LAW AND ANALYSIS

A motion for summary judgment is proper if there is no genuine issue of material fact and the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). The moving party must point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The nonmoving party who bears the burden of proof at trial on the issue that is before the court on the motion for summary judgment must then produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. La. C.C.P. art. 966(D)(1). Appellate courts review summary judgments *de novo*. *Migliore v. Ambassador P'ship, LLC*, 22-599 (La. App. 5 Cir. 12/1/23), 376 So.3d 1178, 1182.

[1, 2] The decision as to the propriety of a grant of a motion for summary judgment must be made with reference to the **[*702]** substantive law applicable to the case. *Bach v. Bd. of River Port Pilot Comm'rs*, 15-765 (La. App. 5 Cir. 5/12/16), 193 So.3d 355, 362. The substantive law applicable to this case is the Louisiana Workers' Compensation Law, La. R.S. 23:1020.1, *et seq.* The motion for summary judgment is a proper procedural device to penetrate the plaintiff's allegations that the injuries resulted from an intentional tort. *Zamora v. Equilon Enters., LLC*, 24-507 (La. App. 5 Cir. 5/14/25), 415 So.3d 365, 368, *writ denied*, 25-00731 (La. 10/1/25), 417 So.3d 567, citing *Snow v. Lenox Int'l*, 27,533 (La. App. 2 Cir. 11/1/95), 662 So.2d 818, 820.

[3] The Louisiana Workers' Compensation Law provides for compensation if an employee "receives personal injury by accident arising out of and in the course of his employment." La. R.S. 23:1031. As a general rule, the rights and remedies granted to an employee under the Louisiana Workers' Compensation Law are "exclusive of all other rights, remedies, and claims for damages ... against his employer, or any principal or any officer, director, stockholder, partner, or employee of such employer or principal, for said injury, or compensable sickness or disease." La. R.S. 23:1032(A)(1)(a). Employees who are minors are included in the exclusivity provision. *Griggs v. Bounce N' Around Inflatables, L.L.C.*, 18-0726 (La. 1/30/19), 281 So.3d 628, 632.2

3However, an exception to the exclusivity rule provides that nothing in the Louisiana Workers' Compensation Law "shall affect the liability of the employer, or any officer, director, stockholder, partner, or employee of such employer or principal to a fine or penalty under any other statute or the liability, civil or criminal, resulting from an intentional act." La. R.S. 23:1032(B). (Emphasis added.) In interpreting this statute, the Louisiana Supreme Court has held that workers' compensation shall be an employee's exclusive remedy against his employer for an unintentional injury covered by the act, but that nothing shall prevent an employee from recovering from his employer under general negligence law for an intentional tort. *Young v. Doe*, 11-49 (La. App. 5 Cir. 5/24/11), 67 So.3d 632, 634, citing *Bazley v. Tortorich*, 397 So.2d 475 (La. 1981), and *Caudle v. Betts*, 512 So.2d 389, 390 (La. 1987).

In the seminal case of *Reeves v. Structural Pres. Sys.*, 98-1795 (La. 3/12/99), 731 So.2d 208, the Louisiana Supreme Court provided guidance as to the meaning of terms involved in the analysis of claims of this type, stating at 213:

"Substantially certain to follow" requires more than a reasonable probability that an injury will occur and "certain" has been defined to mean "inevitable" or "incapable of failing." [A]n employer's mere knowledge that a machine is dangerous and that its use creates a high probability that someone will eventually be injured is not sufficient to meet the "substantial certainty" requirement. Further, mere knowledge and appreciation of a risk does not constitute intent, nor does reckless or wanton conduct by an employer constitute intentional wrongdoing.

(Internal citations omitted.) The court further stated that the intentional act exclusion has been narrowly construed according to its legislative intent. *Id.* at 211.

In its discussions regarding the scope of the "substantial certainty" element, the Supreme Court has explained that "[b]elieving **[*703]** that someone may, or even probably will, eventually get hurt if a workplace practice is continued does not rise to the level of an intentional act, but instead falls within the range of negligent acts that 4are covered by workers' compensation." *Reeves*, 731 So.2d at 212. The court also cited to the following example as an explanation of the "substantial certainty" element:

... In human experience, we know that specific consequences are substantially certain to follow some acts. If the actor throws a bomb into an office occupied by two persons, but swears that he only "intended" to hurt one of them, we must conclude that he is nonetheless guilty of an intentional tort as to the other, since he knows to a virtual certainty that harmful consequences will follow his conduct,

regardless of his subjective desire.

Id. at 212-13, citing Malone & Johnson, *Louisiana Civil Law Treatise, Volume 14, Workers' Compensation Law & Practice*, § 365, p. 208.

Subsequent to *Reeves*, the Supreme Court held that “[t]o recover in tort against [his employer] under La. R.S. 23:1032(B), [a plaintiff] must prove the employer (1) *consciously desired* the physical result of its act, whatever the likelihood of that result happening from its conduct, or (2) knew that the result is *substantially certain* to follow from its conduct, whatever its desire may be as to that result.” (Emphasis added.) *Miller v. Sattler Supply Co., Inc.*, 13-2558 (La. 1/27/14), 132 So.3d 386, 387, citing *Moreau v. Moreau's Material Yard*, 12-1096 (La. 9/21/12), 98 So.3d 297.

[4, 5] An employer's mere knowledge that a machine is dangerous and that its use creates a high probability that someone will eventually be injured is not sufficient to meet the substantial certainty requirement. Further, mere knowledge and appreciation of a risk does not constitute intent, nor does reckless or wanton conduct by an employer constitute intentional wrongdoing. *Perret v. Cytec Indus., Inc.*, 04-745 (La. App. 5 Cir. 11/30/04), 889 So.2d 1121, 1124, writ denied, 04-3004 (La. 2/18/05), 896 So.2d 34.

[6] Here, plaintiff contends that summary judgment was inappropriate due to genuine issues of material fact concerning training, instructions, personal protective equipment, glove use, and supervision. However, the record contains no evidence that Taco Bell, Ms. Tedford, or Ms. Lydia Felix, the store manager, consciously desired or knew that injury to Mersendy was substantially certain. Mersendy testified he did not believe Ms. Tedford intended harm; after the accident, she demonstrated concern and took prompt action. Ms. Tedford likewise denied any intent or expectation that injury would occur and stated that employees could opt out of unsafe tasks.

Conflicting testimony existed regarding details of training and equipment, but these issues relate to negligence, not intentional wrongdoing. No evidence demonstrated previous similar accidents or that Ms. Tedford believed injury was inevitable.

The cases cited by plaintiff, *Wainwright v. Moreno's, Inc.*, 602 So.2d 734 (La. App. 3 Cir. 1992), and *Chaisson v. Cajun Bag & Supply Co.*, 97-1225 (La. App. 3 Cir. 3/4/98), 708 So.2d 375, are distinguishable.³**[*704]**

Those cases involved facts establishing virtual certainty of injury, which are not present here.

CONCLUSION AND DECREE

Upon *de novo* review, we find no genuine issues of material fact remain and that Taco Bell is entitled to judgment as a matter of law. The judgment granting Taco Bell's motion for summary judgment and dismissing plaintiff's suit with prejudice is affirmed.

AFFIRMED

1. Mersendy was born on April 5, 2007. As a minor, he lacked procedural capacity to sue. La. C.C.P. art. 683. For ease of reading, we use “plaintiff” to refer to Mersendy's father who filed the suit on Mersendy's behalf.

2. Furthermore, Mersendy was not engaged in an employment activity prohibited by La. R.S. 23:161, entitled “Minors; prohibited employments.” Thus, plaintiff's allegations in the petition that child labor laws may have been violated is without merit.

3. In *Wainwright*, the employer ordered the employee into a ditch that had previously caved in the day before, making injury virtually inevitable. In *Chaisson*, the employer removed machine safety devices, *knew of prior injuries*, and still required employees to operate the equipment. In both cases, the courts held the injuries were substantially certain to follow the employer's conduct.

Monroe v. Ammari of La., LLC

Court:	Court of Appeal of Louisiana
Docket Number:	25-C-235
Decision Date:	30 April 2026
Citation:	Monroe v. Ammari of La., LLC, 25-C-235 (La. App. Apr 30, 2026)
Parties:	JOSHUA MONROE v. AMMARI OF LOUISIANA, L.L.C. D/B/A BOULEVARD AMERICAN BISTRO

Id. vLex Fastcase: VLEX-1118219845

Link: <https://fastcase.vlex.com/vid/monroe-v-ammari-of-1118219845>

1

JOSHUA MONROE v. AMMARI OF LOUISIANA, L.L.C. D/B/A BOULEVARD AMERICAN BISTRO

No. 25-C-235

Court of Appeals of Louisiana, Fifth Circuit

April 30, 2026

AMMARI OF LOUISIANA, L.L.C D/B/A BOULEVARD AMERICAN BISTRO APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE FRANK A. BRINDISI, DIVISION "E", No. 849-577

Panel composed of Judges Fredericka Homberg Wicker, John J. Molaison, Jr., and Timothy S. Marcel.

WRIT GRANTED; JUDGMENT REVERSED; JUDGMENT RENDERED

Relator-Defendant, Ammari of Louisiana, LLC d/b/a Boulevard American Bistro, seeks supervisory review of the trial court's denial of its motion for summary judgment. For the following reasons, we grant the writ application, reverse the trial court's judgment, and, after a *de novo* review, grant summary judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Joshua Monroe filed suit against Boulevard seeking damages for injuries he allegedly incurred arising from a workplace altercation. On December 8, 2022, Plaintiff was working a Thursday-night shift as a bartender at Boulevard in Elmwood when he became concerned that a co-employee, Mike, was not sharing tips in accordance with the restaurant's tip-pooling policy. Plaintiff raised the issue directly with Mike during the shift, allegedly in the presence of Boulevard's general manager. A few hours later, Plaintiff went outside for a break, and Mike followed. After a brief verbal exchange, Mike pushed Plaintiff, causing him to fall and hit his head. Boulevard immediately terminated Mike and helped Plaintiff to the hospital for medical treatment. At the hospital, Plaintiff was asked to submit to post-incident drug testing pursuant to company policy. Plaintiff refused. Boulevard subsequently terminated Plaintiff. Plaintiff claims he was fired in retaliation for reporting his concerns about Mike. Boulevard, however, maintains he was terminated for refusing required drug testing under company policy. In his petition, Plaintiff alleges that Boulevard is vicariously liable for Mike's intentional acts and further asserts claims for intentional and negligent infliction of emotional distress, negligent hiring, and whistleblower retaliation.

On August 28, 2024, Boulevard filed a motion for summary judgment seeking dismissal of all of Plaintiff's claims. In support of its motion, Boulevard submitted a statement of uncontested facts, asserting that (1) Plaintiff was a Boulevard employee; (2) Plaintiff confronted his co-employee, Mike, regarding alleged tip stealing; (3) Mike pushed Plaintiff, causing him to hit his head; (4) Plaintiff refused to submit to post-incident drug testing; and (5) Boulevard terminated Plaintiff for refusing to submit to such testing. Boulevard also submitted four exhibits, including the petition, Plaintiff's entire deposition transcript, and affidavits of two Boulevard personnel. Plaintiff timely opposed the motion but did not file a statement of disputed material facts,

nor did he dispute Boulevard's statement of undisputed facts or object to any of Boulevard's exhibits.

Boulevard's motion came for hearing before the trial court on April 2, 2025, and, on May 7, 2025, the trial court issued a written judgment denying the motion in its entirety. The trial court also issued written reasons for judgment, as follows:

The motion for summary judgment was denied on the basis that an employer has an interest in its employees being honestly compensated for their labor on behalf of the employer. Thus, the dispute, although not the physical altercation, cannot be said to be beyond the employer's objective. *Dickerson v. Piccadilly Restaurants, Inc.*, 99-2633 (La.App. 1st Cir. 12-20-2000), 785 So.2d 842. The incident at issue herein arose due to a belief that one employee was stealing tips belonging, at least in part, to another employee. Thus, the court concluded that:

1. The tortious act was primarily employment-rooted;
2. The violence was reasonably incidental to the performance of the employee's duties;
3. The act occurred on the employer's premises; and
4. The act occurred during the hours of employment.

Dickerson, supra; *LeBrane v. Lewis*, 292 So.2d 216 (La. 1974).

The ruling was authorized by the exception to the worker's compensation exclusive remedy as to the employer by La. R.S. 23:1032 (B):

Nothing in this Chapter shall affect the liability of the employer, or any officer, director, stockholder, partner, or employee of such employer or principal to a fine or penalty under any other statute or the liability, civil or criminal, resulting from an intentional act.

Aware that #2 above (the violence was reasonably incidental to the performance of the employee's duties) is antithetical to the employer's interests, the court also notes that "it is not necessary that all four factors be met in order to find liability." *Barto v. Franchise Enterprises, Inc.*, 588 So.2d 1353 (La.App. 2nd Cir. 1991), writ denied 591 So.2d 708 (La. 1992). *Barto* was cited in *Watkins v. International Service Systems*, (La.App. 2nd Cir. 6-16-99), 741 So.2d 171, writ denied 749 So.2d 640 (La. 1999). *Watkins* noted that an employer can be vicariously liable for the intentional act of its employee. It must be within the course and scope of employment which refers to time and place as herein. Although an employee's stealing tips from other employees is partially a private matter, it is not "entirely extraneous to the employer's interest" in seeing that its employees are fairly and fully compensated for their labors. *Watkins*.

Referring to § 1032 (B)'s exception, the court relied on *Cole v. State Department of Safety and Corrections*, 01-2123 (La. 9-4-02), 825 So.2d 1134 and *Caudle v. Betts*, 512 So.2d 389 (La. 1981), in denying the motion.

Further, the court did not address each claim of plaintiff seriatim as the linchpin of plaintiff's claim is vicarious liability: the other claims would be considered on their merits vel non contingent upon the claim proceeding to trial on the vicarious liability theory. (Plaintiff voluntarily withdrew his claims of negligent hiring).

Boulevard timely filed a notice of intent and thereafter timely filed this writ application. To properly consider this writ application, we assigned the case for briefing by the parties and heard oral arguments in accordance with La. C.C.P. art. 966(H). *See e.g., Zibilich v. Shingledecker*, 24-443 (La.App. 5 Cir. 1/29/25), 405 So.3d 1125, 1127, *reh'g denied* (Feb. 10, 2025).

LAW AND ANALYSIS

On review before this Court, the issue is whether the trial court properly denied Boulevard's motion for summary judgment. We review summary judgment *de novo*, applying the same criteria as the trial court—whether there is any genuine issue of material fact, and whether the movant is entitled to judgment as a matter of law. *Longo v. 700B8, LLC*, 24-1262 (La. 2/19/25), 400 So.3d 913, 914, *reconsideration denied*, 24-1262 (La. 5/20/25), 409 So.3d 212. *De novo* review generally "involves examining the facts and evidence in the record, without regard or deference to the judgment of the trial court or its reasons for judgment." *Neville v. Redmann*, 22-175 (La.App. 5 Cir. 12/31/22), 356 So.3d 568, 577 (quoting *Cutrone v. Eng. Turn Prop. Owners Ass'n, Inc.*, 19-896 (La.App. 4 Cir. 3/4/20), 293 So.3d 1209, 1216), *writ denied*, 23-126 (La. 4/4/23), 358 So.3d 861.

The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action, and is favored and shall be construed to accomplish these ends. La. C.C.P. art. 966(A)(2); *Millet v.*

Moran Foods, LLC, 23227 (La.App. 5 Cir. 3/13/24), 384 So.3d 1074, 1076. A party may move for summary judgment on all or part of the relief requested; La. C.C.P. art. 966(A)(1); and summary judgment may be rendered dispositive of a particular issue, theory of recovery, cause of action, or defense, in favor of one or more parties, even if it does not dispose of the entire case as to that party or parties. La. C.C.P. art. 966(E).

After an opportunity for adequate discovery, a motion for summary judgment "shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law." La. C.C.P. art. 966(A)(3). If the movant will not bear the burden of proof at trial, then the movant's burden on summary judgment "does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out the absence of factual support for one or more essential elements of the adverse party's claim, action, or defense." La. C.C.P. art. 966(D)(1); *Longo*, 400 So.3d at 914-15. In response to the movant's well-pled motion, the burden shifts to the plaintiff to produce factual support sufficient to establish the existence of a genuine issue of material fact. La. C.C.P. art. 967(B); *Millet*, 384 So.3d at 1076.

The determination of whether a genuine issue of material fact exists requires reference to the substantive law applicable to that case. *Hacienda Holding Co., LLC, v. Home Bank*, 20-189 (La.App. 5 Cir. 12/30/20), 309 So.3d 435, 445 (citing *Stephens v. S. Sweeping Servs.*, 03-826 (La.App. 5 Cir. 11/25/03), 862 So.2d 197, 199). The plaintiff "may not rest on the mere allegations or denials of his pleadings, but his response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial." *Longo*, 400 So.3d at 915 (citing La. C.C.P. art. 967(B)). Once the movant has properly supported a motion for summary judgment, "the failure of the [plaintiff] to produce evidence of a material factual dispute mandates the granting of the motion." *Id.* (citing *Dauzat v. Curnest Guillot Logging Inc.*, 08-528 (La. 12/2/08), 995 So.2d 1184, 1187).

Assignments of Error

In five assignments of error, Boulevard asserts that the trial court erred in denying summary judgment with regard to claims of: (1) negligence, brought and pursued in violation of La. R.S. 23:1032; (2) intentional infliction of emotional distress; (3) whistleblower retaliation; (4) intentional acts of non-party coemployees; and (5) vicarious liability for non-party co-employees.

Boulevard argues the trial court erred in denying summary judgment *in toto* without assessing each individual claim. The trial court's written reasons for judgment focus solely on whether the intentional tort exception applied to limit the workers' compensation exclusive remedy. In denying the motion in its entirety, the trial court found genuine issues of material fact exist as to whether the tortious act was primarily employment rooted. The trial court concluded that it did not need to address each claim because "the linchpin of plaintiff's claim is vicarious liability."

We address each of Boulevard's assignments of error below, grouped together by claim type.

Louisiana Whistleblower Statute - Retaliation Claims

Plaintiff alleges that he was wrongfully terminated by Boulevard in retaliation for reporting ("whistleblowing") his concerns that Mike was stealing tips. In his petition, Plaintiff specifies the claim is "retaliation for whistleblowing 'theft,' 'simple assault,' and 'simple battery' under La. Rev. Stat. Ann. §§ 14:67, 14:38, and 14:35." To obtain whistleblower status for retaliatory firing, the Louisiana Whistleblower Statute, La. R.S. 23:967(A), provides, in pertinent part, that:

An employer shall not take reprisal against an employee who in good faith, and after advising the employer of the violation of law:

- (1) Discloses or threatens to disclose a workplace act or practice that is in violation of state law.
- (2) Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of law.
- (3) Objects to or refuses to participate in an employment act or practice that is in violation of law.

La. R.S. 23:967(A). This statute protects employees from retaliation for reporting or refusing to participate in illegal workplace practices. *Ricalde v. Evonik Stockhausen, LLC*, 16-178 (La.App. 5 Cir. 9/22/16), 202 So.3d 548, 552, writ denied, 16-1923 (La. 12/16/16), 212 So.3d 1170.^[1] The statute, however, targets only serious employer conduct that violates the law. *Id.*^[2] This requires the plaintiff to establish "an *actual* violation of state law, not just a good faith belief that a law was broken." *Id.*^[3] Moreover, the plaintiff must establish that the employer-not merely its employees-violated state law. See *Richardson v. Axion Logistics, LLC*, 780 F.3d 304, 306 (5th Cir. 2015); see also *Dillon v. Lakeview Reg'l Med. Ctr. Auxiliary, Inc.*, 11-1878, 2012 WL 2154346, at *5 n.8 (La.App. 1 Cir. 6/13/12), writ denied, 12-1618 (La. 10/26/12), 99 So.3d 651.

Thus, in order to prevail on his claim for whistleblower retaliation, Plaintiff must establish that: (1) Boulevard

itself-not merely its employee-actually violated Louisiana law through a prohibited workplace act or practice; (2) Plaintiff advised Boulevard of the violation; (3) Plaintiff then refused to participate in the prohibited practice or threatened to disclose the practice; and (4) Plaintiff was terminated as a result of his refusal to participate in the unlawful practice or threat to disclose the practice. See *Kelly v. Dept. of Veterans Affs.*, 21-1605, 2022 WL 4232421, at *4 (La.App. 1 Cir 9/14/22); *Hale*, 886 So.2d at 1215-16. "Failure to put forth evidence to satisfy any of these elements must result in a summary judgment in favor of [the defendant]." *Hale*, 886 So.2d at 1215-16.

As stated above, summary judgment "shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact, and that the mover is entitled to judgment as a matter of law." La. C.C.P. art. 966(A)(3). As the mover, Boulevard bears the burden of proof of its motion; however, since Boulevard will not bear the burden of proof at trial, it needs only point out that there is an absence of factual support for one or more elements essential to Plaintiff's claim. La. C.C.P. art. 966(D)(1). Here, Boulevard has pointed out that there is an absence of factual support for an element essential to Plaintiff's whistleblower retaliation claim, to-wit: an actual violation of state law by Boulevard. Plaintiff alleges only that his co-employee, Mike, violated the law (*i.e.*, stealing tips and assault/battery)-he makes no allegation that Boulevard itself violated any law. The burden then shifted to Plaintiff to provide factual support for this essential element of his whistleblower claim.

Upon *de novo* review, we find that, as to his whistleblower retaliation claim, Plaintiff has failed to produce factual support sufficient to show that he will be able to meet his evidentiary burden of proof at trial, and further, that no issue of material fact exists. Therefore, Boulevard is entitled to summary judgment as a matter of law on Plaintiff's whistleblower retaliation claim. La. C.C.P. art. 966(D)(1). As stated above, while Plaintiff must prove Boulevard violated a state law, he has failed to even make such an allegation, much less present evidence to prove it. There is no evidence here that Plaintiff ever encountered a violation of the law by Boulevard. Additionally, even if Plaintiff did allege such a violation by Boulevard, there is still no evidence that Plaintiff ever threatened to disclose the violation to a third-party, nor did he provide the information to a public body or refuse to participate in an illegal act or practice. Plaintiff did not file a statement of disputed material facts, nor did he dispute Boulevard's statement of undisputed facts or object to any of Boulevard's exhibits.

Plaintiff's own deposition testimony, which Boulevard attached as an exhibit to its summary judgment motion, evidences the lack of support for his whistleblower claim. Asked about his claim that Boulevard retaliated against him for reporting Mike, Plaintiff responded: "I don't necessarily believe I was fired for reporting Mike." Seeking to clarify the claim, the following exchange occurred:

Q. In your lawsuit, you allege that you were terminated because -as retaliation for reporting Mike. Why is it you believe that now?

A. I don't necessarily believe I was fired for reporting Mike.

Q. Your allegations are (reading document,) "Defendant retaliated against Plaintiff by wrongfully terminating his position for reporting bartender Mike for his illegal actions." Why do you believe that?

A. I don't know.

Pl. Dep. Tr. 81:7-19.

We find that Plaintiff failed to meet his burden of proof that Boulevard committed an actual violation of state law. Boulevard was therefore entitled to judgment as a matter of law. Accordingly, the trial court erred in denying Boulevard's motion for summary judgment as to Plaintiff's whistleblower retaliation claim. Thus, as it relates to Plaintiff's whistleblower claim, we grant Boulevard's writ, reverse the trial court's judgment, and render summary judgment in favor of Boulevard.

Workers' Compensation Exclusive Remedy - Negligence Claims

Plaintiff asserts multiple negligence-based claims against Boulevard, including negligent infliction of emotional distress and negligent hiring.^[4] Boulevard moved for summary judgment on these claims, arguing that La. R.S. 23:1032 provides Plaintiff's exclusive remedy through workers' compensation. Under Louisiana law, the Workers' Compensation Act is the exclusive remedy for employees injured in the course and scope of employment. La. R.S. 23:1032(A)(1).

Accordingly, an employee may not maintain a tort action against an employer for a work-related injury absent the intentional act exception. *Brightbill v. Circuit Grand Bayou, LLC*, 21-578 (La.App. 5 Cir. 5/11/22), 342 So.3d 127, 135.

In interpreting La. R.S. 23:1031, the Louisiana Supreme Court has held that "compensation shall be an employee's exclusive remedy against his employer for an unintentional injury covered by the act, but that nothing shall prevent an employee from recovering from his employer under general law for an intentional tort." *Caudle v. Betts*, 512 So.2d 389, 390 (La. 1987) (citing *Bazley v. Tortorich*, 397 So.2d 475 (La. 1981)); *Young v.*

Doe, 11-49 (La.App. 5 Cir. 5/24/11), 67 So.3d 632, 634. Louisiana courts have consistently held that an employee's negligence-based claims "are barred as a matter of law by the Louisiana Workers' Compensation Act, which provides the exclusive remedy for any claim of negligence against an employer." *Oramous v. Military Dep't*, 05-3677, 2007 WL 1796194, at *9 (E.D. La. June 18, 2007) (citing La. R.S. 23:1032 and *Deshotel v. Guichard Operating Co.*, 03-3511 (La. 12/17/04), 916 So.2d 72, 75); *Bourgeois v. Curry*, 05-211 (La.App. 4 Cir. 12/14/05), 921 So.2d 1001, 1012 (finding that "the Louisiana Workers' Compensation Law preempts any causes of action . . . sounding in negligence"); *Hirst v. Thieneman*, 04-750 (La.App. 4 Cir. 5/18/05), 905 So.2d 343, 352 (granting defendant's summary judgment as to plaintiff's negligence claims, holding that "Louisiana law unambiguously states that workers' compensation is the exclusive remedy available to an employee for negligence claims against employers").

In its motion for summary judgment, Boulevard established that Plaintiff was an employee of Boulevard acting within the course and scope of his employment at the time of the alleged incident. Plaintiff alleged as much in his petition for damages, and Boulevard conceded it in its motion. Plaintiff's employment status was therefore undisputed. Boulevard argued that Plaintiff's negligence-based claims were barred as a matter of law by the workers' compensation exclusive remedy provision. Plaintiff failed to establish a genuine issue of fact showing that Boulevard was not entitled to the exclusive remedy protection of La. R.S. 23:1032. Indeed, Plaintiff did not substantively address Boulevard's argument regarding his negligence-based claims in either his opposition to the summary judgment or his response to the writ application, relying instead on the generalized assertion that the intentional act exception precluded summary judgment. While the intentional act exception may bear on certain claims, *i.e.*, intentional ones, it does not preclude summary judgment on claims sounding solely in negligence.

Our *de novo* review of the record reveals no genuine issue of material fact that Plaintiff, as Boulevard's employee, is subject to the workers' compensation exclusive remedy provision for claims arising from non-intentional acts during his employment, and Boulevard is entitled to summary judgment as a matter of law. Plaintiff's negligence-based claims are independently and categorically barred by La. R.S. 23:1032. Accordingly, the trial court erred in denying Boulevard's motion for summary judgment as to Plaintiff's negligence claims. Thus, as it relates to Plaintiff's negligence-based claims-including negligent infliction of emotional distress and negligent hiring-we grant Boulevard's writ, reverse the trial court's judgment, and render summary judgment in favor of Boulevard.

Workers' Compensation Intentional Tort Exception

Plaintiff's remaining claims sound in intentional tort. As discussed above, these claims are not subject to the workers' compensation exclusive remedy provision as they fall under the intentional act exception. *See* La. R.S. 23:1032(B). In his petition, Plaintiff alleges his co-employee, Mike, committed the intentional torts of assault and battery against him and that Boulevard is vicariously liable for his actions. Plaintiff also alleges a claim for the intentional infliction of emotional distress. That Plaintiff can sue Boulevard for these claims, does not mean Boulevard is vicariously liable for them. We address each claim in turn below.

1. Assault & Battery

Under Louisiana Civil Code article 2320, "employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed." "There are two essential elements for liability under article 2320: (1) the existence of an employer-employee relationship and (2) the tortious act of the employee was committed during the course and scope of the employment by the employer sought to be held liable." *Lagrange v. Boone*, 21-560 (La.App. 3 Cir. 4/6/22), 337 So.3d 921, 925 (quoting *Maze v. Grogan*, 96-1413 (La.App. 1 Cir. 5/9/97), 694 So.2d 1168, 1170), writ denied, 22-738 (La. 6/22/22), 339 So.3d 1185. Boulevard does not contest the existence of an employer-employee relationship. We therefore address the second vicarious liability element.

Under Louisiana law, vicarious liability for intentional torts is governed by the standard articulated in *LeBrane v. Lewis*, 292 So.2d 216 (La. 1974). There, the Louisiana Supreme Court considered when tortious conduct is within the course and scope of employment. *Id.* The Court promulgated the following factors:

- (1) Whether the tortious act was primarily employment rooted;
- (2) Whether the act was reasonably incidental to the performance of the employee's duties;
- (3) Whether the act occurred on the employer's premises; and
- (4) Whether it occurred during the hours of employment.

Id. All four factors need not be present for liability to be imposed on an employer. *Baumeister v. Plunkett*, 95-2270 (La. 5/21/96), 673 So.2d 994, 996-97. "The particular facts of each case must be analyzed to determine whether the employee's tortious conduct was within the course and scope of his employment." *Id.*

The intentional conduct of the employee must be so closely connected in time, place, and causation to his employment duties as to be regarded as a risk of harm fairly attributable to the employer's business as compared with conduct motivated by personal considerations entirely extraneous to the employer's interest. *Id.* Louisiana courts have consistently held that intentional torts such as assault, battery, and intentional infliction of emotional distress are outside the course and scope of employment when they arise from personal disputes, personal animosity, or purely personal motivations, even if the acts occur at the workplace or during work hours. *Baumeister*, 673 So.2d at 999.

In its motion for summary judgment, Boulevard argues that Mike's alleged tip theft and the assault and battery of Plaintiff were motivated by personal gain, did not further Boulevard's objectives, and were outside the ambit of his employment. Conversely, Plaintiff argues that the fair distribution of customer tips is essential to Boulevard's operations and therefore makes Mike's assault and battery of him employment rooted.

In *Watkins v. International Service Systems*, 32,022 (La.App. 2 Cir. 6/16/99), 741 So.2d 171, writ denied, 99-2129 (La. 10/29/99), 749 So.2d 640, the court found the employer was not vicariously liable for the employee's intentional battery of his supervisor after the supervisor informed the employee of his suspension pending an investigation into the theft of radios. In that case, although the battery occurred before the employee had clocked out from his shift and while at his place of work, the court found that the employee's janitorial duties did not include stealing radios and kicking his supervisor. Moreover, the court found that the employee's battery did not further the employer's objectives, and the battery was not a risk of harm fairly attributable to the employer's business as a janitorial service.

In the instant case, accepting the allegation that Mike stole tips that were supposed to be shared equally among the staff as true, Plaintiff fails to demonstrate the benefit received by Boulevard so as to bring the theft within the ambit of his employment. Likewise, Plaintiff fails to demonstrate how the alleged tip theft furthered the interests of Boulevard.

An employer cannot be held vicariously liable for the wanton criminal activities of an employee which are clearly not in furtherance of the employer's interest in any manner. Plaintiff has failed to establish a genuine issue of material fact that Mike's actions against him, for which he seeks to hold Boulevard vicariously liable, were employment rooted. He submitted no evidence to satisfy his burden on summary judgment. As to this cause of action, therefore, Boulevard was entitled to judgment as a matter of law, and the trial court erred in denying its motion. Thus, as it relates to Plaintiff's claims of vicarious liability for Mike's assault and battery, we grant Boulevard's writ, reverse the trial court's judgment, and render summary judgment in favor of Boulevard.

2. Intentional Infliction of Emotional Distress

To recover for intentional infliction of emotional distress, the plaintiff must prove: (1) extreme and outrageous conduct; (2) specific intent to cause emotional distress or reckless disregard; and (3) severe emotional distress suffered by the plaintiff. *White v. Monsanto Co.*, 585 So.2d 1205, 1209 (La. 1991). "The plaintiff's burden is a heavy one." *Pelitre v. Rinker*, 18-501 (La.App. 5 Cir. 4/17/19), 270 So.3d 817, 831, writ denied, 19-793 (La. 9/17/19), 279 So.3d 378 (citing *Scamardo v. Dunaway*, 96-1036 (La.App. 5 Cir. 4/29/97), 694 So.2d 1041, 1042, writ denied, 97-1395 (La. 9/5/97), 700 So.2d 517). "Conduct which is merely tortious or illegal does not rise to the level of being extreme or outrageous." *Id.* (citing *Nicholas v. Allstate Ins. Co.*, 99-2522 (La. 8/31/00), 765 So.2d 1017).

In *White v. Monsanto*, the Louisiana Supreme Court discussed the intentional infliction of emotional distress cause of action, explaining that "the conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community." *Pelitre*, 270 So.3d at 831 (citing *White*, 585 So.2d at 1209). The Court further opined that the intent element requires a showing that the defendant desired to inflict severe emotional distress or knew that severe emotional distress would be certain or substantially certain to result from his conduct. *White*, 585 So.2d at 1209. Moreover, the distress suffered must be such that no reasonable person could be expected to endure it, and liability arises only where the mental suffering or anguish is extreme. *Id.* at 1210. This tort is disfavored and narrowly construed. Liability attaches only to conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency," and it does not extend to mere insults, indignities, threats, annoyances, or other trivialities. *Id.* at 1209; *Nicholas*, 765 So.2d at 1022. Louisiana courts have consistently held that even harsh, unfair, or insensitive employer conduct does not constitute extreme and outrageous behavior absent truly atrocious circumstances. *Nicholas*, 765 So.2d at 1026; *Beaudoin v. Hartford Acc. & Indem. Co.*, 90-863 (La.App. 3 Cir. 2/12/92), 594 So.2d 1049, 1051.

Plaintiff in this action alleges that Boulevard's conduct surrounding a workplace assault by a co-employee caused him emotional distress. Particularly, Plaintiff avers that management exercised poor judgment in arranging transportation for medical treatment, permitted a non-medical representative to accompany him to the hospital, and sought a drug and alcohol screen unrelated to his immediate injury. In assessing outrageousness, courts may consider the full factual context of the behavior or conduct, including the plaintiff's medical vulnerability and the defendant's position of authority. *White*, 585 So.2d at 1210. In our *de novo* review

of the record, we observe the record does not contain evidence that Boulevard directly delayed or interfered with medical treatment to Plaintiff for a reported workplace injury. Rather, the evidence shows that Plaintiff voluntarily eloped from the hospital after being asked to provide a bodily fluid sample for drug testing. Accordingly, we find Plaintiff fails to demonstrate a genuine issue of material fact to establish that Boulevard's conduct was either extreme or outrageous.

Plaintiff also fails to satisfy the intent element. Intentional infliction of emotional distress liability requires proof that the defendant desired to inflict severe emotional distress or knew such distress was substantially certain to result. *White*, 585 So.2d at 1209. The conduct or behavior must be more than conduct amounting to negligence, poor judgment, or even reckless indifference to meet this stringent requirement. *Nicholas*, 765 So.2d at 1026. In this case, the petition contains no facts suggesting that Boulevard acted with such intent or subjective awareness. Further, Plaintiff presents no evidence in opposition to summary judgment which could be inferred as Boulevard's intent to cause emotional distress.

Finally, Plaintiff fails to allege facts establishing emotional distress of the requisite severity. The distress must be "so severe that no reasonable person could be expected to endure it." *White*, 585 So.2d at 1210. Generalized allegations of fear, anxiety, humiliation, or upset are insufficient, as are pleadings lacking allegations of medical or psychological treatment, debilitating emotional consequences, or lasting trauma. *Moresi v. Dep't of Wildlife & Fisheries*, 567 So.2d 1081, 1096 (La. 1990). Absent such proof, courts routinely reject intentional infliction of emotional distress claims even where the defendant's conduct is objectionable. *Nicholas*, 765 So.2d at 1024-25. The record of this matter does not contain evidence demonstrating that Boulevard's conduct following the incident resulted in Plaintiff experiencing severe emotional distress.

On *de novo* review, we find the record does not contain evidence of conduct or a pattern of behavior that was extreme, intentionally or recklessly inflicted, and productive of severe emotional harm. Because Plaintiff has failed to establish outrageous conduct, the requisite intent, or severe emotional distress, no genuine issue of material fact exists as to the intentional infliction of emotional distress claim, and dismissal is warranted. Boulevard was therefore entitled to judgment as a matter of law, and the trial court erred in denying its motion. Thus, as it relates to Plaintiff's claims for intentional infliction of emotional distress, we grant Boulevard's writ, reverse the trial court's judgment, and render summary judgment in favor of Boulevard.

DECREE

For the foregoing reasons, we grant the writ application, reverse the trial court's judgment, and, after a *de novo* review, render summary judgment in favor of Boulevard.

FHW

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[1] In support, this Court cited to *Hale v. Touro Infirmary*, 04-03 (La.App. 4 Cir. 11/3/04), 886 So.2d 1210, 1214, writ denied, 05-103 (La. 3/24/05), 896 So.2d 1036.

[2] In support, this Court cited to *Fondren v. Greater New Orleans Expressway Comm'n*, 03-1383 (La.App. 5 Cir. 4/27/04), 871 So.2d 688, 691.

[3] In support, this Court cited to *Ross v. Oceans Behav. Hosp. of Greater New Orleans*, 14-368 (La.App. 5 Cir. 11/25/14), 165 So.3d 176, 180, writ denied, 15-05 (La. 3/27/15), 161 So.3d 648 (emphasis in original). See also *Stevenson v. Williamson*, 547 F.Supp.2d 544 (M.D. La. 2008), *aff'd*, 324 Fed.Appx. 422 (5th Cir. 2009) (stating that, to establish a claim under La. R.S. 23:967, an employee "must prove that his employer committed an actual violation of state law").

[4] In his opposition to Boulevard's motion for summary judgment, Plaintiff conceded that his negligent hiring claim was "not applicable to the facts of this case," and stated that he would "voluntarily dismiss it." No dismissal appears in the record before us. We therefore consider the claim in our review.

Circuit Cases on Compensability and Causation

Holmes v. Replacement Parts Inc.

Court:	Court of Appeal of Louisiana
Writing for the Court:	STEPHENS, J.
Docket Number:	56,777-WCA
Decision Date:	20 May 2026
Citation:	Holmes v. Replacement Parts Inc., 56,777-WCA (La. App. May 20, 2026)
Parties:	STEVIE MICHAEL HOLMES Plaintiff-Appellee v. REPLACEMENT PARTS INC. AND ZURICH AMERICAN INSURANCE COMPANY Defendants-Appellants

Id. vLex Fastcase: VLEX-1119931293

Link: <https://fastcase.vlex.com/vid/holmes-v-replacement-parts-1119931293>

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**STEVIE MICHAEL HOLMES Plaintiff-Appellee v. REPLACEMENT PARTS INC. AND ZURICH
AMERICAN INSURANCE COMPANY Defendants-Appellants**

No. 56,777-WCA

Court of Appeals of Louisiana, Second Circuit

May 20, 2026

Appealed from the Office of Workers' Compensation, District 1-E Parish of Ouachita, Louisiana Trial Court No. 23-03646 Brenza Irving Jones Workers' Compensation Judge

ANZELMO LAW BY: DONALD J. ANZELMO COUNSEL FOR APPELLANTS

LAW OFFICES OF STREET & STREET BY: C. DANIEL STREET COUNSEL FOR PLAINTIFFS-APPELLEES, STEVIE MICHAEL HOLMES, DALE ANNETTE LENARD HOLMES, STEVIE MICHAEL HOLMES, JR., AND DUSTIN DEAN HOLMES

Before COX, STEPHENS, and ELLENDER, JJ.

STEPHENS, J.

This appeal arises out of an amended judgment issued by the workers' compensation judge ("WCJ") from the Office of Workers' Compensation Court, District 1E, State of Louisiana, on January 15, 2026, following a hearing on a motion for reconsideration filed by the claimant, Stevie Michael Holmes ("Holmes"), on August 1, 2024. This judgment amended a previous ruling of the WCJ's which had granted a motion for reconsideration in favor of substituted plaintiffs, Dale Annette Lenard Holmes, Stevie Michael Holmes, Jr., and Dustin Dean Holmes,^[1] ordering defendants, Replacement Parts Inc. and Zurich American Insurance Company, to pay for all reasonable and necessary medical treatment for claimant's neck injury which had previously been found compensable and his left shoulder injury which was found to be compensable.^[2] For the reasons set forth below, we affirm the judgment of the WCJ.

FACTS AND PROCEDURAL HISTORY

At the time Holmes was involved in a work-related accident on April 28, 2023, he was employed by Bumper to Bumper (Replacement Parts) as a delivery driver. On July 27, 2023, Holmes filed a "Disputed Claim for Compensation" Form 1008 alleging that Replacement Parts and Zurich, its workers' compensation insurer/benefits administrator, refused to provide medical treatment for his left shoulder as requested by his treating orthopedic surgeon. Holmes sought the recommended treatment/benefits, as well as imposition of

penalties and an award of attorney fees and costs. On September 6, 2023, Holmes filed a motion for medical treatment. In their answer filed on September 13, 2023, defendants admitted that Holmes was injured in an employment-related accident and that compensation benefits had been paid for a period of temporary disability. However, they denied, *inter alia*, further disability and liability for the payment of medical expenses and asserted that Holmes was not entitled to penalties or attorney fees.

Replacement Parts laid Holmes off work on August 24, 2023, because they had nothing for him to do given his restrictions. On August 25, 2023, Holmes filed a "First Supplemental and Amending (Form) 1008" alleging that he needed shoulder surgery due in part to defendants' continued denial of his doctor's recommended injections for his shoulder injury. According to Holmes, his doctor had imposed further restrictions, and his condition continued to deteriorate. Defendants' answer to this amending petition was filed on September 19, 2023. In addition to asserting a dilatory exception of prematurity, defendants re-urged the defenses set forth in their original answer. Holmes filed a "Disputed Claim for Medical Treatment" (Form 1009) on September 29, 2023.

A hearing was held on October 16, 2023. Due to the withdrawal of defendants' exception of prematurity, the only thing under consideration was Holmes's motion for medical treatment. Some of Holmes's medical records, an ultrasound of his left shoulder, a report from Dr. Trettin, and the adjuster's utilization review decision denying treatment, were introduced into evidence, and Holmes testified at the hearing. The WCJ approved Holmes's request for medical treatment for his neck but did not approve it for his left shoulder due to the WCJ's finding that the medical evidence as of that date did not connect Holmes's shoulder complaints to the accident.

A "Second Supplemental and Amending (Form) 1008" was filed by Holmes on November 27, 2023, based on defendants' failure to pay weekly workers' compensation benefits once it ceased paying him wages in lieu of compensation on September 24, 2023. Holmes re-urged his claim for the provision and payment of reasonable and necessary medical treatment to his neck and left shoulder, as well as the imposition of penalties and the assessment of attorney fees and costs. An answer was filed by defendants on January 4, 2024, admitting that Holmes received wages in lieu of compensation after the accident which have been discontinued and denying all other allegations.

On April 29, 2024, Holmes filed a "Motion for Reconsideration" seeking review of that part of the WCJ's October 16, 2023, ruling denying him medical treatment for his left shoulder injury. According to Holmes, additional medical information was available to support his claim of entitlement to such benefits. A hearing on the motion for reconsideration was held on August 1, 2024. On August 29, 2024, following Holmes's death from liver cancer, a motion for substitution of parties plaintiff and affidavit of death and heirship was filed by the claimant's surviving wife and children. The WCJ rendered oral reasons in support of the decision on the motion for reconsideration at a hearing on September 30, 2024.^[3] The WCJ found that the totality of the lay and medical evidence presented established that Holmes's left shoulder complaints were compensable, granted the motion to reconsider, and rendered judgment in Holmes's favor, ordering defendants to pay for all reasonable and necessary medical treatment for Holmes's left shoulder and neck.

On October 29, 2024, the WCJ rendered judgment in favor of the newly substituted plaintiffs and against defendants granting the motion for reconsideration filed by Holmes and ordering defendants to pay for all reasonable and necessary medical treatment for Holmes's injuries to his left shoulder which is found to be compensable and to his neck which was previously found to be compensable.

Defendants filed their own motion for reconsideration and/or new trial on November 6, 2024, urging that the trial court's September 30, 2024, reasons in support of its ruling and October 29, 2024, judgment were contrary to the law and evidence. A hearing on defendants' motion for reconsideration was held on January 6, 2025, and after arguments by counsel, the WCJ took the matter under advisement. The WCJ issued its ruling and reasons in support thereof at a hearing on February 26, 2025. In denying defendants' motion for reconsideration and/or new trial, the WCJ reiterated its prior findings that Holmes was able to perform his job duties prior to the work accident; Holmes's contentions were supported by his supervisor Greg Henry; the shoulder replacement did not become necessary until after the accident; thus, there is clearly a causal connection between Holmes's accident and the required shoulder replacement surgery. A judgment in accordance with this ruling was signed by the WCJ on March 11, 2025.

Defendants filed their petition and order for devolutive appeal on April 9, 2025. On May 8, 2025, plaintiffs filed a motion to enforce the judgment that had ordered defendants to pay for all reasonable and necessary medical treatment for Holmes's injuries to his neck and left shoulder. Plaintiffs also sought imposition of penalties, an award of attorney fees, interest on all sums from date of judicial demand until paid, and costs of these proceedings.

In response to defendants' opposition to their motion to enforce, plaintiffs filed a memorandum pointing out that defendants had taken a devolutive, not a suspensive appeal, from the WCJ's judgment denying defendants' motion for reconsideration. Plaintiffs also noted that the judgment lacked decretal language as well as required reference to information extraneous to the judgment necessary to determine the amount of payments and to whom those payments were to be made. The motion to enforce, which included a request for sanctions, was

denied by the WCJ at a hearing on June 23, 2025. A motion to amend the judgment was filed by plaintiffs on June 25, 2025, setting forth the specific medical providers and amounts allegedly owed to each. A hearing on this motion was held on August 4, 2025. The WCJ declined to amend the judgment in light of the appeal pending at the Second Circuit.

On the jurisdictional check of the appeal at this Court, the lack of decretal language specifying the relief awarded was noted, which meant that the WCJ's October 29, 2024, judgment was not a final judgment for purposes of an immediate appeal. An order was issued by this Court remanding the matter with instructions for the WCJ to supplement the record with certified copies of a judgment amended in accordance with La. C.C.P. art. 1951. This amended judgment, dated January 8, 2026, was filed with this Court on January 15, 2026.

DISCUSSION

Defendants' Argument

Defendants first argue that the WCJ erred in finding that plaintiffs met their burden of proving that Holmes's left shoulder replacement was causally related to his workplace accident that occurred on April 28, 2023. They claim that the new medical evidence relied upon by Holmes (and subsequently plaintiffs) was insufficient to establish that Holmes's left shoulder replacement surgery was related to his workplace injury. This new medical evidence was Dr. Brown's report of December 18, 2023, in which he opined that Holmes's left shoulder replacement was necessary due to the injuries he received in his work-related accident, was not based on a physical examination of Holmes's shoulder, but on a review of medical records from his previous providers.

Defendants also point out that Dr. Brown did not treat Holmes for the left shoulder injury; instead, Holmes was treating with Dr. Brown for his third-party tort claim regarding his neck injuries. Defendants urge that the WCJ should not have reversed its previous factual finding that Holmes failed to meet his burden of proving that the need for a left shoulder replacement was related to injuries caused by his work-related auto accident.

In their second assignment of error, defendants argue that the WCJ erred in relying on the testimony of a fact witness to award Holmes additional medical benefits, as such an award is solely a medical issue. When the WCJ granted the motion for reconsideration filed by Holmes/plaintiffs, she did not discuss Dr. Brown's medical report but relied exclusively on the testimony of Holmes's supervisor. According to defendants, the only evidence the WCJ should have considered to determine whether the shoulder replacement was causally related to the workplace injury was the medical evidence from Dr. Brown's and Dr. Trettin's reports.

Defendants point out that the testimony of a treating physician should be accorded greater weight in a workers' compensation case than that of a physician who examines a patient only once or twice, citing *Frye v. Olan Mills*, 44,192 (La.App. 2 Cir. 4/8/09), 7 So.3d 201. In the instant case, urge defendants, the WCJ should have placed greater weight on Dr. Trettin's report as he was Holmes's treating physician for his left shoulder injury. Defendants point out that the WCJ did just that in denying Holmes's initial motion for treatment for injury to his left shoulder. Defendants also emphasize that Dr. Brown, who only saw Holmes twice, did not ever examine his left shoulder and reiterate that Dr. Brown's report was based solely on a review of Holmes's medical records.

Defendants next contend that the issue of Holmes's disability was not even before the WCJ at the time, since Holmes was already receiving indemnity benefits. According to defendants, they did not deny that Holmes injured his left shoulder at work; they claim to have paid his related medical bills until Dr. Trettin reported that Holmes's shoulder was in the same condition it had been in prior to his accident. Defendants cite Dr. Trettin's August 23, 2023, report, wherein he stated that the left shoulder replacement was related to Holmes's pre-existing shoulder problems, not his work-related accident.^[4]

Plaintiffs' Argument

Plaintiffs contend that the WCJ did not err in finding that Holmes's left shoulder replacement was causally related to his workplace injury. Plaintiffs' evidence consisted of the testimony of Holmes, his wife, and his supervisor, whose testimony was introduced via deposition, as well as Holmes's medical records. According to plaintiffs, defendants' denial of medical benefits for Holmes's shoulder injury was based primarily on an office note made in the medical records of Dr. Trettin, Holmes's treating orthopedist, just six days before Holmes's employment with Replacement Parts began. This note stated that "[e]ventually, [Holmes] is probably going to need his shoulders replaced." Plaintiffs place this into context by explaining that Holmes had arthritic changes in both shoulders, but go on to point out that the record shows that this had never affected his work. Specifically, the testimony of both Holmes and his supervisor Greg Henry established that Holmes was able to do his job, which included lifting and bagging heavy items, before his accident but could not do so afterwards.

Henry, who saw Holmes at the accident scene and spoke with him before the ambulance took the claimant to the hospital, testified that Holmes complained that his left shoulder and neck were injured in the wreck. Henry stated that Holmes was able to do his work the week of the accident (which occurred on a Friday), and there had been nothing unusual about Holmes during that time. According to Henry, Holmes was an excellent employee, always willing to do what was needed. Henry testified that Holmes's occasional complaints of

shoulder soreness in no way affected his ability to do his job.

Holmes testified that he hurt his head, neck, and shoulder in the work-related accident. He worked a few days after the wreck but had to go see Dr. Trettin because he was having trouble lifting parts. Holmes related that his shoulder never stopped hurting even after the surgery, and that before the accident he had no restrictions on his work. Although he had some soreness in his shoulder, Holmes had been able to do his job. Holmes had discussed this with Dr. Trettin but had never had any treatment on his left shoulder before the accident except for an X-ray in May 2021. Holmes noted that after the accident, however, he never had full use of and still had problems using his left arm.

Plaintiffs assert that Dr. Brown was one of Holmes's treating physicians, contrary to the claim made by defendants-Dr. Brown was treating Holmes's *neck* after the work-related automobile accident. As such, Dr. Brown was aware of Holmes's problems with his left shoulder. Dr. Brown reviewed the medical records in this case, including Dr. Trettin's report regarding Holmes's shoulder surgery. Dr. Brown noted in his records that Holmes's left shoulder had a pre-existing condition that was aggravated by the work-related motor vehicle accident. According to plaintiffs, Dr. Brown's opinion is supported by the fact that Holmes's symptoms appeared to have drastically increased in his left shoulder after the head-on collision as evidenced by "marked tendonitis" in the biceps tendon in the shoulder joint. Dr. Brown found objective evidence of injury to Holmes's left shoulder caused by the accident that was not there before.

Plaintiffs note that the evidence presented indicated that Holmes had worked overtime in the four weeks prior to the accident, and his job had not been affected by his shoulder. This is a classic case of aggravation of a preexisting condition, which is compensable. Plaintiffs cite *Henderson v. Graphic Packaging Int'l, Inc.*, 48,491 (La.App. 2 Cir. 11/20/13), 128 So.3d 599, a similar case in which Henderson, the claimant, had pre-existing conditions in his knee. His treating doctor had recommended surgery prior to Henderson's work-related injury. The claimant had been able to perform his employment duties until his work-related injury and after the accident became disabled. The court in *Henderson* observed that a determination of compensability is to be made upon consideration of all of the evidence and affirmed the WCJ's judgment in favor of the claimant.

In this case, argue plaintiffs, it is clear that Holmes's disability began with his serious work-related automobile accident. Until that time, he had received no medical treatment for his left shoulder-specifically, no recommendation that he needed surgery. There was only a general observation by Holmes's treating physician, Dr. Trettin, that he would "probably" need replacement of both shoulders at "some point." Holmes didn't need surgery on his left shoulder until he sustained the work-related injury, which was caused by the work-related accident, contend plaintiffs. His right shoulder, which also had the arthritic condition noted by Dr. Trettin earlier, has not been disabling and has not required any medical treatment.

Defendants have claimed that the WCJ cannot rely on a fact witness's testimony to determine whether further medical treatment is related to a workplace accident and that only medical evidence can be received on the issue of medical causation. Plaintiffs emphasize that in its amended ruling the WCJ found was that Holmes's shoulder disability was caused by the accident. In doing so, the WCJ considered all of the evidence, which is what it was obligated to do, *including* the fact that Holmes was clearly able to do his work prior to the work-related accident, but consistently thereafter, due to an injury to his shoulder cause by the accident, he was unable to perform his job duties.

According to plaintiffs, there is really no question of Holmes's disability because even Dr. Trettin imposed a total restriction on his lifting as of August 23, 2023, the same date that Dr. Trettin claimed Holmes "recovered" from the injury to his shoulder as per his medical note. The WCJ's ruling was neither manifestly erroneous nor an abuse of discretion but was a proper legal determination, not solely a factual finding based on medical evidence. Plaintiffs reiterate that Holmes's disability began with his accident and got worse, not better. This is what entitled him to the presumption of causation. Since the WCJ found causation, she then properly found Holmes's shoulder injury to be compensable, triggering not only payment for indemnity benefits but for medical treatment related to the injury.

Plaintiffs agree with defendants that the general rule is that the treating physician's opinion is entitled to greater weight than a doctor performing a one-time evaluation but note that this principle is not set in stone. Plaintiffs point out that in this case, however, there is substantial circumstantial evidence, as well as Dr. Brown's opinion, which shows a reasonable possibility of causal connection from a medical standpoint. Dr. Brown reviewed Holmes's medical records, including Dr. Trettin's surgical report, and noted that Dr. Trettin performed an anatomic shoulder replacement as well as a biceps tenotomy and tenodesis for Holmes's traumatized biceps tendon. Dr. Brown pointed out that Dr. Trettin's surgical notes included this detail: Holmes's biceps tendon was significantly inflamed consistent with a direct blow to his shoulder. Plaintiffs assert that this is proof that Holmes's shoulder injury was caused by the work-related accident in which he also injured his neck.

It is defendants' position that, because the WCJ did not mention the report of Dr. Brown in her reasons for judgment, she decided the matter without any medical support. Plaintiffs point out that an appeal is from the

judgment, not the reasons for judgment. *Union Federal Credit Union v. Thornton*, 49,529 (La.App. 2 Cir. 1/20/15), 162 So.3d 414. Furthermore, as noted above, Dr. Brown's medical opinion supports the strong circumstantial evidence in this case.

Applicable Legal Principles

An employee is entitled to workers' compensation benefits if he receives personal injury by accident arising out of and in the course of his employment. La. R.S. 23:1031(A). While a claimant is not required to prove the exact cause of the disability, he must show by a preponderance of the evidence that the accident had a causal connection with the disability. *Iberia Medical Center v. Ward*, 09-2705 (La. 11/30/10), 53 So.3d 421; *Whitten v. Patterson UTI Drilling Co., LLC*, 53,431 (La.App. 2 Cir. 4/22/20), 294 So.3d 590; *Crawford v. Town of Grambling*, 51,090 (La.App. 2 Cir. 1/11/17), 211 So.3d 660, writ denied, 17-0284 (La. 4/7/17), 218 So.3d 110. Where the claimant suffers from a pre-existing condition, he may still prevail if he proves that the accident aggravated, accelerated, or combined with the disease or infirmity to produce disability for which compensation is claimed. *Peveo v. WHC Contractors*, 93-1402 (La. 1/14/94), 630 So.2d 689; *Whitten, supra*.

The ultimate determination concerning disability under the workers' compensation statute is by the courts, not the medical experts. *Guillory v. U.S. Fidelity and Guaranty Ins. Co.*, 420 So.2d 119, 124 (La. 1982). Causation is not necessarily and exclusively a medical conclusion; it is usually the ultimate fact to be found by the court, based on all the credible evidence. *Id.*; *Haughton v. Fireman's Fund American Ins. Co.*, 355 So.2d 927, 928 (La. 1978); *Salter v. Desoto Parish Police Jury*, 54,982, p. 18 (La.App. 2 Cir. 5/17/23), 361 So.2d 1259, 1273, writ denied, 23-00818 (La. 10/3/23); *Pugh v. Casino Magic*, 37,166, p. 6 (La.App. 2 Cir. 4/11/03), 843 So.2d 1202, 1205.

Factual findings of the workers' compensation judge are subject to the manifest error standard of review; therefore, for a reviewing court to reverse those factual findings, it must find that a reasonable factual basis does not exist and the record establishes that the factual findings are clearly wrong. *Lafayette Bone & Joint Clinic v. Louisiana United Business SIF*, 15-2137 (La. 6/29/16), 194 So.3d 1112, 1123-24; see also, *Arabie v. CITGO Petroleum Corporation*, 10-2605, p. 4 (La. 3/13/12), 89 So.3d 307, 312; *Dean v. Southmark Construction*, 03-1051, p. 7 (La. 7/6/04), 879 So.2d 112, 117; *Mart v. Hill*, 505 So.2d 1120, 1127 (La. 1987). Whether the claimant has carried his burden of proof and whether testimony is credible are questions of fact to be determined by the workers' compensation judge. *Buxton v. Iowa Police Dept.*, 09-0520, p. 18 (La. 10/20/09), 23 So.3d 275, 287.

In *Edwards v. Sawyer Industrial Plastics, Inc.*, 99-2676, p. 9 (La. 6/30/00), 765 So.2d 328, 333, the Louisiana Supreme Court explained that an appellate court must affirm factual findings of the trier of fact when there is a reasonable basis for them in the record, even when there is substantial evidence to support a contrary conclusion, absent a finding of manifest error. Under the manifest error rule, the reviewing court does not decide whether the factfinder was right or wrong, but only whether its findings are reasonable. *Buxton, supra*; *Stobart v. State, through Dep't of Transp. and Dev.*, 617 So.2d 880, 882 (La. 1993). The manifest error standard applies even when the decision of the workers' compensation judge is based upon written reports, records, or depositions. *Buxton*, 09-0520 at p. 19, 23 So.3d at 287; *Bruno v. Harbert International, Inc.*, 593 So.2d 357, 361 (La. 1992).

While the opinion of a treating physician should typically be accorded greater weight than that of a physician who sees a patient only once or twice, *Miller v. Clout*, 03-0091, p. 6 (La. 10/21/03), 857 So.2d 458, 462, fn. 3; *Bradley v. St. Francis Medical Ctr.*, 51,572, p. 8 (La.App. 2 Cir. 9/27/17), 244 So.3d 722, 729, the treating physician's opinion is not irrebuttable, and the WCJ is required to weigh all of the medical testimony. *Id.*

The fact finder is not precluded from making determinations regarding the credibility of witnesses and respect should be given to those conclusions. After weighing and evaluating medical testimony, the trier of fact may accept or reject, in whole or in part, the opinion expressed by any medical expert. *Green v. K-Mart Corp.*, 03-2495 (La. 5/25/04), 874 So.2d 838; *Lirette v. State Farm Ins. Co.*, 563 So.2d 850 (La. 1990). The trier of fact should evaluate expert testimony by the same rules that are applicable to other witnesses. *McCartney v. Columbia Heights Nursing Home, Inc.*, 25,710 (La.App. 2 Cir. 3/30/94), 634 So.2d 927, 933.

It is a well-settled rule that the lower court's oral or written reasons for judgment form no part of the judgment, and appellate courts review judgments, not reasons for judgment. *Woolsey v. Lucksinger*, 09-0571, p. 77 (La. 4/1/11), 61 So.3d 507, 572; *Bellard v. American Central Ins. Co.*, 071335, p. 25 (La. 4/18/08), 980 So.2d 654, 671; *Woodard v. Brookshire Grocery Co.*, 54,574, p. 4 (La.App. 2 Cir. 8/10/22), 345 So.3d 439, 444, writ denied, 22-01360 (La. 11/16/22), 349 So.3d 1001.

Analysis

This case presents facts similar although not identical to those in *Koenig v. Christus Schumpert Health System*, 44,244 (La.App. 2 Cir. 5/13/09), 12 So.3d 1037. In that case, Ms. Koenig's employer, the hospital, appealed from the WCJ's judgment ordering it to pay weekly indemnity benefits, medical expenses, penalties, and attorney fees to the claimant who claimed to have aggravated a pre-existing shoulder condition in a work-related accident.

According to Christus Schumpert, Ms. Koenig's condition, a torn rotator cuff, was the same after the incident as it was before the accident. Furthermore, she was already scheduled for shoulder surgery. Christus Schumpert claimed that the "great weight" of the medical evidence demonstrated no aggravation of her pre-existing injury. *Id.*, 44,244, p. 8, 12 So.3d at 1043.

Arguing in support of the WCJ's judgment, Ms. Koenig pointed out that her treating physician and the doctor chosen by her employer to provide a second medical opinion agreed that the claimant suffered an aggravation of her pre-existing condition. Ms. Koenig also noted her testimony regarding her increased pain and decreased range of motion after the accident. Because the WCJ's decision was supported by the medical evidence and was not manifestly erroneous, she urged this Court to affirm the judgment. *Id.*, 44,244, p. 8, 12 So.3d at 1044. This Court reviewed the evidence and observed that while Ms. Koenig had a pre-existing condition, she was able to work prior to her August 7, 2006, accident. *Id.* There was also testimony that after her accident, the claimant's condition worsened to a point she was no longer able to perform her job. Both the doctors noted above agreed that her pre-existing condition was aggravated. This credibility determination, *based on the testimony from fact witnesses and medical evidence* as in the instant case, was upheld by this Court. *Koenig*, 44,244, p. 9, 12 So.3d at 1044.

At the hearing on September 26, 2024, where she announced her ruling on Holmes/plaintiffs' motion for reconsideration, the WCJ recognized the well-established rule that the determination of a claimant's disability is to be determined by the totality of the evidence, both lay and medical, before declaring that Holmes's left shoulder complaints were compensable. It is clear that the WCJ considered all of the evidence before her in ruling on the motion to reconsider her prior ruling on the issue of Holmes's shoulder disability. The record supports this determination.

Mr. and Mrs. Holmes testified regarding his limitations at home after the work-related accident, and Holmes's supervisor was adamant that the claimant's trouble at work didn't begin until after he was injured in the accident. Likewise, there was medical evidence in the form of Dr. Brown's opinion to support the WCJ's judgment. Specifically, Dr. Brown opined that "the symptomology appears to have dramatically increased in [Holmes's] left shoulder after the head-on collision and the blow to the shoulder, evidenced by marked tendinitis in the biceps tendon in the shoulder joint itself. Thus, in conclusion it appears [Holmes] had a pre-existing condition aggravated by the motor vehicle accident which occurred while he was working." Because we find a reasonable factual basis in the record for the WCJ's findings, we cannot say that they are clearly wrong or an abuse of discretion.

CONCLUSION

For the reasons set forth above, the judgment of the workers' compensation judge is affirmed. Costs are assessed to the defendants, Replacement Parts Inc. and Zurich American Insurance Company.

AFFIRMED.

[1] Following claimant's death, his surviving wife and children were substituted as party plaintiffs in this action.

[2] The amended judgment was necessary based on this Court's finding during a jurisdictional check that the judgment from which defendants had appealed was not a final judgment as it did not set forth the specific medical bills and amounts to be paid by defendants.

[3] The parties noted for the record their resolution of other pending issues, which included defendants' agreement to: institute the payment of weekly indemnity benefits to Holmes of \$311.19 retroactive to September 24, 2023, with the past due amount to be paid in a lump sum, and the continuation of future benefits in accordance with law; and pay \$2,000 in penalties and \$5,000 in attorney fees.

[4] Defendants filed a reply brief in which they asserted two assignments of error. In response to a motion to strike filed by plaintiffs, this Court issued an Order limiting consideration of the reply brief to assignments of error raised/issues set forth in defendants' original brief. In their rebuttal to arguments asserted by plaintiffs in the motion to strike, defendants contend that plaintiffs are not entitled to the full amount of medical expenses billed by each provider for Holmes's left shoulder treatment because of the WCJ's initial determination that continued treatment for this injury was not compensable. This Court notes, however, that defendants argued at the hearing before the WCJ on plaintiffs' motion to enforce the judgment at which plaintiffs sought to introduce evidence of the specific medical expenses, defendants took the position that there was no need to determine what expenses were "reasonable and necessary" as that would be moot should their appeal succeed.

Cormier v. Swla Ctr. For Health Servs. & La. Workers' Comp. Corp.

Court:	Court of Appeal of Louisiana
Writing for the Court:	VAN H. KYZAR JUDGE
Docket Number:	25-681
Decision Date:	03 June 2026
Citation:	Cormier v. Swla Ctr. For Health Servs. & La. Workers' Comp. Corp., 25-681 (La. App. Jun 03, 2026)
Parties:	DANA CORMIER v. SWLA CENTER FOR HEALTH SERVICES AND LOUISIANA WORKERS' COMPENSATION CORPORATION

Id. vLex Fastcase: VLEX-1120974386

Link: <https://fastcase.vlex.com/vid/cormier-v-swla-ctr-1120974386>

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DANA CORMIER v. SWLA CENTER FOR HEALTH SERVICES AND LOUISIANA WORKERS' COMPENSATION CORPORATION

No. 25-681

Court of Appeals of Louisiana, Third Circuit

June 3, 2026

APPEAL FROM THE OFFICE OF WORKERS' COMPENSATION, DISTRICT 3 PARISH OF CALCASIEU, NO. 22-06547 THOMAS E. TOWNSLEY, WORKERS' COMPENSATION JUDGE

Gregory P. Marceaux

Marceaux Law Firm

COUNSEL FOR PLAINTIFF/APPELLANT:

Dana Cormier

Alysha B. Smith

Johnson, Rahman & Richards

COUNSEL FOR DEFENDANTS/APPELLEES:

SWLA Center for Health Services

Louisiana Workers' Compensation Corporation

Court composed of Van H. Kyzar, Guy E. Bradberry, and Clayton Davis, Judges.

VAN H. KYZAR JUDGE

In this workers' compensation case, Plaintiff, Dana Cormier, appeals the judgment of the workers' compensation judge (WCJ) holding that she failed to prove that she suffered an injury as a result of an accident while in the course and scope of her employment with SWLA Center for Health Services (SWLA), and thereby, dismissing her claim. For the following reasons, we reverse and render.

FACTUAL AND PROCEDURAL HISTORY

Plaintiff has been employed as a medical assistant by SWLA since 2012. In 2021, she was assigned to SWLA's Sowela Technical Community College (Sowela) medical clinic, which is located in the Charleston Building on Sowela's Lake Charles campus. Five SWLA employees worked in the clinic: Plaintiff; Nurse Practitioner Allissa Joseph (NP Joseph); Melinda Beasley, a medical assistant; an unnamed medical assistant; and an unnamed laboratory technician.

Plaintiff's workstation was in the clinic's lobby, about twenty feet from a wall, which SWLA shared with Sowela's culinary department. The culinary department had a kitchen equipped with gas stoves and ovens.

On November 2, 2022, Plaintiff arrived at work wearing an N95 mask because of the COVID outbreak. NP Joseph testified that when she arrived that morning, she smelled gas throughout the clinic, including the lobby where Plaintiff's workstation was located. Ms. Beasley also testified that she smelled gas throughout the day and that she discussed the gas smell with her co-workers, who all indicated that they also smelled gas.

Although Plaintiff's co-workers complained of the gas smell, she did not notice the smell initially because of her N95 mask. However, just after the clinic closed, Plaintiff went outside of the clinic to assist a gentleman that had knocked on the clinic's door. When she returned to the clinic, she was not wearing her mask. It was at this time that Plaintiff first noticed a strong gas smell. When she went to the nurses' office to ask if the nurses smelled the gas, they all confirmed the strong smell.

Plaintiff attempted to report the smell to her supervisor, Sharon Dunbar, but was unable to reach her. She then notified a security guard about the odor, who advised that he would inform the Sowela administration about the smell. The guard was eventually able to advise Ms. Dunbar about the odor. Ms. Dunbar, in turn, reported the odor to Adam Reed, the executive director of facilities, planning, and management for Sowela.

After approximately thirty minutes of smelling the gas, Plaintiff began to experience a headache and dizziness. She then left the building and got into her vehicle, where she passed out. When Plaintiff came to, she realized that she had urinated on herself. Although she drove herself home, she had no recollection of doing so. She was then helped into the home by her husband.

Once home, Plaintiff went to bed, but because she was still suffering from dizziness and a headache, she was taken to CHRISTUS St. Patrick Hospital (St. Patrick) by her husband later that evening. There she was seen by Dr. William Laborde, an emergency room physician, with complaints of generalized weakness, blurred vision, shortness of breath, nausea, and headaches, which she attributed to "inhaling gas at work." Although there is no specific test to establish gas exposure, Dr. Laborde ordered an arterial blood gas test to determine the level of carbon monoxide in Plaintiff's blood. The test results did not show elevated levels of carbon monoxide. Plaintiff was then provided medication and discharged home.

Plaintiff stayed in bed the next day still suffering from weakness and a headache. She was able to advise Ms. Dunbar about the gas inhalation and her inability to work.

When Plaintiff's co-workers returned to work on November 3, 2022, the gas smell was still present. This was reported to the Sowela administration, who in turn contacted CenterPoint Energy (Centerpoint). Brandon Davis, a service technician, was sent to Sowela, and upon his arrival, he noted that a group of people reported smelling gas. In investigating the origin of the gas, Mr. Davis entered the culinary department and discovered that a pilot light on a gas stovetop was extinguished. If the pilot light is out, gas will continue to emit until the pilot light is relit or the gas is shut off. Mr. Davis did not smell any gas, nor did his combustible gas indicator^[1] (CGI) detect the presence of gas.

Plaintiff returned to St. Patrick on November 5, 2022, complaining of left-sided numbness and weakness.^[2] She was referred to a neurologist. On November 14, 2022, she was examined by her primary care physician, Dr. Christian LeBlanc, who noted that Plaintiff had inhaled fumes at work and diagnosed her with left-sided paralysis and tremors. Dr. LeBlanc restricted Plaintiff from working.

On February 9, 2023, Plaintiff was examined by Dr. Faye Shamieh, a neurologist. She presented with weakness,^[3] numbness, and dizziness. Dr. Shamieh felt Plaintiff was suffering from post-chemical exposure, encephalopathy, and seizure disorder. He ordered an EEG; however, SWLA and its insurer, Louisiana Workers' Compensation Corporation (LWCC) (referred to collectively as Defendants) had already refused her claim and authorization was denied.^[4]

Due to Defendants' denial of her workers' compensation claim, Plaintiff became Medicaid qualified. On April 3, 2024, Plaintiff came under the care of the Allen Parish Rural Health Clinic (Rural Health Clinic). By this time, NP Joseph had begun to work at the Rural Health Clinic as a nurse practitioner. NP Joseph noted that Plaintiff was previously exposed to natural gas, and as a result, had suffered a seizure and neurological issues. In her opinion, Plaintiff was suffering from panic disorder and PTSD. Plaintiff was referred to a neurologist and restricted from working.

Plaintiff came under the care of Dr. Reynard Odenheimer, a neurologist. On October 9, 2024, Dr. Odenheimer performed an EMG, which showed changes consistent with left-sided sensory motor polyneuropathy. He was of the opinion that, Plaintiff was suffering from nerve damage on the left side. He noted that Plaintiff had inhaled fumes at work and suffered from left-sided hemisensory, migraines, dystonia tremors,^[5] and chemical exposure. Dr. Odenheimer felt that Plaintiff was unable to work.

Trial of the matter was held on June 11, 2025. At the end of trial, the WCJ orally denied Plaintiffs claim. In his November 2, 2025 judgment, the WCJ held that Plaintiff failed to prove "she suffered an "injury in an accident during the course and scope of her employment with her employer, [SWLA], and its insurer, LWCC, on November 2, 2022." The judgement further held:

Claimant had a pre-existing history of epilepsy (seizure disorder) with recurrent seizures. She had at least three (3) prior seizures before the November 2, 2022, seizure in question and had a subsequent seizure in June 2023. The Court also found serious inconsistencies in when and where the seizure occurred on November 2, 2022.

Based on this finding, Plaintiffs claim was dismissed with prejudice. Plaintiff now appeals the WCJ's judgment, asserting the following assignments of error:

1. The trial court committed legal error in placing an artificial "high burden" of proof on Dana Cormier to show a causal link between the natural gas exposure and her disability.
2. The trial court erred in finding that the pre-existing seizure condition of Dana Cormier prevented her from recovering workers' compensation benefits.
3. The trial court erred in finding natural gas was not in the air at the SWLA Center for Health Services.
4. The trial court erred in allowing an uncertified opinion letter of the defendant's expert into evidence.
5. The trial court erred in rejecting the opinion testimony of Dr. Reynard Odenheimer, neurologist, and Nurse Practitioner Alissa Joseph.
6. The trial court erred in failing to award penalties and attorney's fees.

OPINION

The WCJ's finding that gas was not present at SWLA's clinic.

As part of his oral ruling, the WCJ found that there was no incident where gas or other toxins were leaked into the air at SWLA's clinic on November 2, 2022:

And the deposition of Brandon Davis, a CenterPoint Entergy [sic], on page - that's "Defense Exhibit 8" and Page[s] 13 and 14. He testified, "so I did my incident investigation in there first with my CTI and my nose and then I didn't smell anything and my CTI didn't pick up anything." Page 16, he said he saw the pilot light was out in the stove in the kitchen.

Page 34, his CTI machine measured 0.0 on November 3rd, 2022. On Page 34 and 35 he said - he reported upon arrival no loop found. He checked the appliances. He didn't find the leak. He checked the drains in the restrooms for sewer gas and didn't find a leak there but he did notice and see visually that the pilot light was on.

On Page 37 on how close he was to the pilot light area, he said, quote, "I was right - I got all the way to the - to the range and saw that it was out. And that's what I mean. I didn't pick up anything on my CTI, even standing right next to the - you can stand right next to the stove with the CTI, and it's not in the air."

...

Nurse practitioner Alissa Joseph said that she smelled gas. Nobody else smelled it. The testimony was that Ms. Cormier didn't smell [gas] because she had the mask on until between 4:00 and 4:30 and then after getting the security guard - he didn't smell gas according to Adam Reed and they - Brandon Davis said he didn't smell gas the next day even though he saw the pilot light on. I do think mercaptan has a strong smell, and they smelled mercaptan because of the pilot light being on.

In discussing the deference afforded a trial court's factual finding, this court in *Thymes v. Golden Nugget Lake Charles, LLC*, 23-100, pp. 4-5 (La.App. 3 Cir. 11/2/23), 373 So.3d 129, 133 (alterations in original), *writ denied*,

23-1576 (La. 1/24/24), 378 So.3d 69, stated:

When reviewing a verdict in a civil case, the manifest error-clearly wrong standard applies, and the appellate court should not disturb a finding of fact made in the trial court unless it is clearly wrong.

The Louisiana Supreme Court fashioned a two-part test when applying this standard: (1) is there a reasonable factual basis for the finding of the trial court; and (2) does a reading of the record establish that the finding is not clearly wrong or manifestly erroneous. *Arceneaux v. Domingue*, 365 So.2d 1330 (La. 1978). In *Rosell v. ESCO*, 549 So.2d 840, 844 (La. 1989), the court discussed the manifest error-clearly wrong standard in detail, stating:

It is well settled that a court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of "manifest error" or unless it is "clearly wrong," and where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. *Arceneaux v. Domingue*, 365 So.2d 1330, 1333 (La. 1978); *Canter v. Koehring*, 283 So.2d 716, 724 (La.1973). . . . [I]f the trial court or jury findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. *Arceneaux*, supra at 1333, *Watson v. State Farm Fire & Casualty Ins. Co.*, 469 So.2d 967 (La. 1985)....

When findings are based on determinations regarding the credibility of witnesses, the manifest error-clearly wrong standard demands great deference to the trier of fact's findings; for only the factfinder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said. *Canter*, supra at 724.

Contrary to the findings of the WCJ, the evidence presented at trial overwhelmingly established the presence of a gas or toxic-like smell in Plaintiff's workplace. Mr. Davis's deposition testimony revealed that he was dispatched to Sowela because of a gas complaint on November 3, 2022, the day after the event. Upon arrival, he acknowledged that a group of people complained about the smell of gas. On entering the culinary department's kitchen, he observed that the pilot light on a gas stovetop was not lit. Although gas was being released through the unlit pilot-light hole, Mr. Davis stated that he smelled no gas at that time. After shutting off the kitchen's gas valve, he ran a test with his CGI monitor, which detected no gas. Mr. Davis then turned the gas valve on and relit the pilot light.

Mr. Reed testified that on November 2, 2022, he was advised of a gas smell in the SWLA clinic, which had caused someone to feel faint. Security guards, who were sent to investigate, reported that they smelled something strong in the clinic but did specifically report that the smell was natural gas. The following day, the gas smell was again reported, and CenterPoint was contacted, resulting in Mr. Davis being dispatched to the facility.

NP Joseph, who was accepted as an expert on the standard of care applicable to nurse practitioners, testified that she had worked with Plaintiff for eighteen months at SWLA. She described Plaintiff as a very trustworthy, dependable employee. NP Joseph testified that on November 2, 2022, she was the last employee to arrive at the clinic, and she immediately smelled what she thought was natural gas. She asked the other employees if they smelled anything, and they indicated they did not. NP Joseph stated that she smelled gas the entire day, and she explained that besides Plaintiff, a laboratory technician also became sick from the gas smell and required medical treatment. She pointed out that even if Mr. Davis did not detect any gas, he was not at the clinic until the day after the gas smell was first reported.

Ms. Beasley testified that on November 2, 2022, she and the other employees discussed the gas smell. All of the employees were wearing their N95 masks. She stated that the smell seemed to fade over time, but it seemed stronger after she left and then returned to the clinic. Ms. Beasley confirmed that NP Joseph complained about the gas smell, as did all of the employees. She also recalled that a laboratory technician told her that she was not feeling well that day, but she did not know if the technician was medically evaluated.

Natalie Brooks testified that she was employed at SWLA as a patient access registrar. Although she was not present at the clinic on November 2, 2022, she did work on November 3, 2022, and she did smell something like gas.

Plaintiff testified that although NP Joseph complained of the smell of gas, she did not smell anything initially because of her N95 mask. She did, however, notice a strong gas odor at the end of the day after she left and then returned to the clinic without her mask on. When she was unable to contact her supervisor, Plaintiff reported the smell to a security guard, who indicated that he smelled something and would report it.

The evidence at trial established that the only person who did not smell gas was Mr. Davis, although he

admitted that gas would have been flowing from the stove's unlit pilot light. He indicated that he tested for gas in the kitchen, but this was after he turned off the gas at the source. Additionally, Mr. Davis was not present at the clinic on November 2, 2022. Multiple witnesses testified that they smelled gas or an odor at the clinic on that day. We, therefore, find manifest error in the WCJ's finding that there was no accident associated with the release of gas into the work environment on November 2, 2022.

Whether there was a causal link between the gas exposure and Plaintiff's disability.

It is apparent to this court that from the outset, the WCJ identified Plaintiff's disabling condition as a seizure or seizures rather than the left-sided neurological impairments she suffered as a result of the gas exposure as established by the medical evidence and expert testimony. The WCJ's oral ruling makes this clear:

I didn't have any testimony to say that the smell triggered a preexisting seizure disorder. If I had that, I would have related the seizure to the smell at the Sowela building on - the Charleston Building.

On June 5th, 2023, as I stated earlier, there was a report of another seizure or seizure activity. Natural gas is odorless. Mercaptan has the smell of rotten eggs or sulfur. To cause a seizure, to cause the actual seizure, with regard to natural gas or mercaptan, either one, it takes a large dose or long-term exposure to deprive the brain of oxygen. In order to determine that, it can be shown in blood work. So, Dr. Laborde did blood work and said it didn't show anything.

I think the claimant suffered a pre-existing condition of epilepsy and recurring seizures. She had a seizure that day. I don't know what triggered it. I don't feel that she's met the burden, that she has shown that there was a gas leak that caused her seizure.

I think that Brandon Davis and Dr. Laborde said there was no objective evidence of any gas exposure that would have caused the carbo-oxyhemoglobin level on her blood, so there wasn't a deprivation of oxygen. There was no objective evidence of anything other than an epileptic seizure that evening after she returned to her house.

There wasn't any testimony from any medical provider that really elicited or demonstrated that the smell triggered the seizure for Ms. Cormier.

In *Barber Brothers Contracting v. Young*, 03-747, pp. 3-6 (La.App. 1 Cir. 2/23/04), 873 So.2d 677, 679-81, writ denied, 04-704 (La. 5/7/04), 872 So.2d 1084, the court addressed what a workers' compensation claimant must prove to establish that his work-related accident caused or contributed to his disability, stating:

In order for the employee to recover workers [sic] compensation benefits, it must be determined that the employment somehow caused or contributed to the disability, but it is not necessary that the exact cause be found. *Walton v. Normandy Village Homes Assn. Inc.*, 475 So.2d 320, 324 (La. 1985). If the employee suffered from a pre-existing medical condition, the employee may still prevail if he proves the accident aggravated, accelerated, or combined with the infirmity to produce the disability for which compensation is being paid. *Preveto v. WHC Contractors*, 93-1402, p. 2 (La. 1/14/94), 630 So.2d 689, 691. The Louisiana Supreme Court recognized the existence of a presumption to aid plaintiffs in cases involving pre-existing conditions. *Id.* Specifically, when an employee proves that before the accident he had not manifested disabling symptoms, but commencing with the accident disabling symptoms appeared, and that medical or circumstantial evidence indicates a "reasonable possibility" of a causal connection between the accident and the activation of the disabling condition, the employee's work condition is presumed to have aggravated, accelerated or combined with his pre-existing disease to produce the disability. *Id.*

Once the employee has established the presumption of causation, the opposing party bears the burden of producing evidence to prove that it is more probable than not that the work injury did not accelerate, aggravate, or combine with the pre-existing injury to produce his disability. *Preveto*, 93-1402, pp. 2-3, 630 So.2d at 691. Medical testimony, albeit significant, is not conclusive as to the issue of causation, which is generally the ultimate fact to be decided by the court after weighing all the evidence. *Id.*

On November 2, 2022, Plaintiff presented to St. Patrick at around 9:38 p.m., with complaints of gas inhalation and symptoms of dizziness, weakness, shortness of breath, and nausea. She was seen by Dr. Laborde, who ordered an arterial blood gas test to measure the carbon monoxide in her blood. In his deposition, Dr. Laborde explained that carbon monoxide is a byproduct of natural gas. The test results revealed that Plaintiff's blood level was not elevated at the time she presented. The fact that it was not elevated would indicate that she did not take in sufficient quantities of carbon monoxide. Dr. Laborde did state, however, that there is no specific test to determine if a patient has been exposed to natural gas. Although the length of time between Plaintiff's exposure and the test would result in a much lower carbon monoxide level, the fact that she was still symptomatic led him to believe that carbon monoxide was not causative of her continuing symptoms. Dr. Laborde testified that although he found no objective findings, Plaintiff's subjective symptoms were consistent

with gas exposure. As such, he could not say to a reasonable medical certainty that Plaintiffs seizure was caused by her gas inhalation as opposed to her epileptic history. Plaintiff was provided medication and discharged home.

Plaintiff returned to St. Patrick on November 5, 2022, with concerns of having suffered a stroke, however, CT scans of her brain and lumbar spine were normal. Plaintiff complained of weakness and numbness on her left side. On November 14, 2022, Plaintiff was examined by Dr. LeBlanc, who diagnosed her with left-sided paralysis and tremors and restricted her from working.

The WCJ felt that Plaintiffs condition was caused by her "pre-existing condition of epilepsy and recurring seizures." Plaintiffs medical history indicated that she initially suffered a seizure on May 16, 2021. At the time, Plaintiff went to St. Patrick, where she was seen by Dr. Timothy Best, a neurologist, who prescribed anti-seizure medication. Plaintiff also saw Dr. LeBlanc on May 21, 2021, who noted that she had experienced a seizure with no head injury. Plaintiff advised that she became confused when she sat down to eat, at which time her whole body shook, and she urinated on herself. Dr. LeBlanc's diagnosis included "[e]pilepsy and recurrent seizures[.]" and his report provided, "New onset seizures." Plaintiff was referred to Dr. Best for an evaluation.

On Plaintiffs July 9, 2021 office visit to Dr. LeBlanc, she requested a clearance to return to work. It was noted that she had been seen by Dr. Best and had undergone an EEG. She stated that the vision in her left eye had been blurry since the May 16, 2021 seizure and that she had experienced numbness in the first three fingers of her left hand the day before this visit.

Dr. LeBlanc's September 2, 2021 office note indicates that Plaintiff was seen by an eye doctor and diagnosed with visual migraines. It was noted that she had last been seen in July and had suffered one seizure in May 2021. She had undergone an EEG and an MRI, which were both unremarkable. She was not currently on antiseizure medication. Dr. LeBlanc stated that the patient was unable to drive for six months after her seizure, but if she remained seizure free while off her medication, she could resume driving. Plaintiff was prescribed Topamax, an anticonvulsant medication, and scheduled to return in four weeks.

On November 22, 2021, Plaintiff returned to Dr. LeBlanc and advised that she had experienced a seizure, without loss of consciousness, approximately one month prior to this visit. She reported that she had stopped taking her Topamax due to having severe headaches, and she had not taken Keppra, another anticonvulsant medication, since her initial seizure. Dr. LeBlanc recommended that she restart the Keppra. He restricted her from driving and recommended that she continue working from home.

On January 5, 2022, Plaintiff returned to Dr. LeBlanc and requested a release to drive and to return to work as she had not experienced a seizure since she restarted the Keppra. Dr. LeBlanc's note stated that Plaintiff had suffered from seizure-like activity but she was now on Keppra and had no further issues. He released Plaintiff to return to work, but continued her driving restriction.

Once Plaintiff started taking her medication, she suffered no seizures from September 2021 until November 2, 2022, when she inhaled the gas fumes. During this time, Plaintiff was fully capable of performing her job duties as a medical assistant. NP Joseph opined that the gas had to have caused Plaintiff's seizure since Plaintiff had not had a seizure since September 2021, but had not suffered another seizure since September 2021 until her exposure to the gas.

NP Joseph testified that she began treating Plaintiff at the Rural Health Clinic on April 3, 2024. At that time, Plaintiff presented with left-sided weakness, abnormal speech, and was dependent on a walker. Because the pain was so pronounced on her left side, Plaintiff was referred to Dr. Odenheimer for the performance of an EMG.

NP Joseph last examined Plaintiff in March 2025. At that time, Plaintiffs speech had improved but she still suffered from left-sided weakness and was dependent on a cane. In NP Joseph's opinion, Plaintiff was on a "non-duty status."

In rejecting Plaintiffs claim, the WCJ stated:

We have discrepancies in the testimony of Ms. Cormier with regard to having seizures versus not having seizures. There's at least a report of a seizure between her September visit of 2021 and November 22, 2021, a seizure since last visit; that would be her second seizure, then we have a third seizure on November 2nd, 2022, then we have a fourth potential seizure on November 4, 2022, and then we have another seizure June of 2023.

During the hearing, Plaintiff explained that to her knowledge, she had suffered only two seizures, on May 16, 2021, and on November 2, 2022. She reiterated that in both instances, she lost conscience and urinated on herself. Particularly, the November 2, 2022 seizure occurred when she got into her car to leave work. Plaintiffs husband, Kelyn Thierry, confirmed that Plaintiff was disoriented and had urinated on herself when she arrived home, which was how they knew that she had suffered a seizure.

Regarding whether she had experienced any seizures between September 2021 and November 22, 2022, Plaintiff explained that although she had suffered seizure-like symptoms, these symptoms were related to her anxiety. She stated that her doctors had ruled out that she had suffered seizures.

It should be noted that Dr. LeBlanc's January 5, 2022 report did provide that Plaintiff suffered from "seizure-like" activity but now on Keppra with no further issues. Likewise, regarding the WCJ's statement that Plaintiff had a seizure on November 4, 2022, Plaintiff denied this. This was in reference to a July 29, 2024 note by NP Joseph that Plaintiff had been seizure-free from November 4, 2022. NP Joseph testified that she was told Plaintiff suffered a seizure on November 2, 2022, when her husband found her listless in the garage. Additionally, the November 5, 2022 St. Patrick report provides that Plaintiff presented with a three-day history of progressive weakness affecting her left side. The report also noted that her past medical history was significant for "anxiety."

Finally, regarding the WCJ's statement that Plaintiff had another seizure in June 2023, Dr. LeBlanc's June 15, 2023 report stated that Plaintiff said, "she had another episode." However, the report goes on to state that Plaintiff had a panic attack, and it was recommended that she undergo a psychological examination to rule out a conversion disorder.^[6]

To establish that her current condition was caused by her exposure to gas fumes, Plaintiff submitted the deposition testimony Dr. Odenheimer, who performed her October 9, 2024 EMG. This test revealed nerve damage on Plaintiff's left side. Because Dr. Odenheimer noticed a neurologic condition that he felt he could treat, he began seeing Plaintiff on October 24, 2024. At that time, he noted that Plaintiff presented with left hemisensory motor complaints that affected her face, left arm, and left leg and that her left leg was shaking. His note stated that Plaintiff's left-sensory motor complaints had been ongoing for two years and were related to her inhalation of gas fumes at work in November 2022. The note further stated that Plaintiff experienced a seizure on exposure to the gases.

Dr. Odenheimer's diagnosis included left non-dominant hemiparesis, left hemisensory disturbances, dystonia, dystonia tremor, movement disorder, adjustment disorder, and chemical exposure. In his opinion, Plaintiff's symptoms were related to her inhalation of fumes in November 2022. He stated, "History would suggest she was exposed to a toxin and, after that, developed a variety of symptoms she didn't have before it." Dr. Odenheimer further testified, "I believe that I can say with reasonable degree of certainty, or the phrase I understand we're looking for, is more probable than not that she has a constellation of symptoms that began with an event that took place at work."

In rejecting Dr. Odenheimer's opinion, the WCJ stated:

With regard to Dr. Odenheimer, he said, "the event was a seizure, not -- not toxin exposure causing the seizures", Page 37 of his depo.

Dr. Odenheimer's causal connection opinion, however, is flawed due [to] his knowledge and history of the patient's seizures being incorrectly logged also. Dr. Odenheimer thought Ms. Cormier had only had one prior seizure, which is not correct according to the medical records. The Court has counted at least four seizures and maybe five, but Dr. Odenheimer on Page[s] 39 and 40 said it was idiopathic and it was only one seizure.

Dr. Odenheimer did not state that the event was a seizure as asserted by the WCJ. To the contrary, Dr. Odenheimer's deposition testimony provided:

Q. Is this event a seizure, or why are we calling it an event? Can you explain that for me?

A. Something happened. That's an event.

Q. Okay. Would you say it was a seizure?

A. Somewhere along the line, she had a seizure.

Q. Okay. Is that the event that you're referencing?

A. No. The event was the toxin exposure.

Q. Okay. Is it your opinion that the exposure to a toxin caused her to have a seizure?

A. Probably.

It is clear that the WCJ was of the opinion that Plaintiff's condition was the result of her having a seizure. In his oral ruling, the WCJ stated:

I think that Brandon Davis and Dr. Laborde said there was no objective evidence of any gas exposure

that would have caused the carbo-oxyhemoglobin level on her blood, so there wasn't a deprivation of oxygen. There was no objective evidence of anything other than an epileptic seizure that evening after she returned to her house.

There wasn't any testimony from any medical provider that really elicited or demonstrated that the smell triggered the seizure for Ms. Cormier.

Dr. Odenheimer explained that a stroke is caused by a lack of oxygen to part of the brain, which results in tissue death or hemorrhage,^[7] whereas a seizure is a transient, temporary, electrical phenomena, which affects the brain and can cause a wide variety of symptoms. A person predisposed to seizures is more likely to experience such when subjected to stressors or a derangement in chemistry than a person with no such history. However, Dr. Odenheimer clarified that Plaintiffs current condition was not caused by a seizure, but, instead, was the result of her being neurologically compromised by the inhalation of gas or toxins while at work. Dr. Odenheimer's testimony in this regard provided:

Q. So can you say to a reasonable degree of certainty, knowing what you know now, that her symptoms are due to inhaling a substance on November 2nd of 2022, as opposed to it being an idiopathic seizure or a seizure as a result of medications?

A. I am lumping her globally, and her second seizure is the least of my concerns. Still isn't clear that she would need medication for seizures. She's now had two. That isn't why I felt she would benefit from neurologic consultation, evaluation, and treatment. And seizures, you know, yeah, it - - was part of the picture, but that's the least of my concerns. And if we ever need to address it, I'll treat it. And it's academic to me whether chemical exposure facilitated her next one or enhanced the likelihood of future seizures. That's a - - a non-issue. The issue is she's neurologically compromised whether she had seizures or not. And it was evident just looking at her without hearing any of her history that she had problems that might be treatable.

Dr. Odenheimer stated that toxins can cause nerve damage, and natural gas is a toxin.^[8] His opinion that Plaintiffs neurological symptoms were not the result of a seizure is reinforced by Dr. Laborde, who testified that when Plaintiff returned to St. Patrick on November 5, 2022, her complaints had changed from general weakness to one-sided weakness. At the time, Dr. Laborde felt that this was associated with Todd's paralysis, which is a complication of a seizure that is transient, with the patient regaining functionality a day or two later. However, this is not what happened to Plaintiff as she continues to suffer neurologic symptoms years after her exposure at work. Dr. Odenheimer's opinion that Plaintiffs condition resulted from her exposure to gas rather than from seizures was essentially uncontradicted.

In *Brown v. Town of Ferriday*, 11-570, pp. 2-3 (La.App. 3 Cir. 11/2/11), 76 So.3d 155, 157-58 (alteration in original), this court explained:

The claimant in a workers' compensation action has the burden of establishing a work-related accident by a preponderance of the evidence. *Quinn v. Vidalia Apparel*, 10-712 (La.App. 3 Cir. 12/8/10), 54 So.3d 123. A panel of this court recently reiterated the presumption of causation applicable in workers' compensation cases, stating:

"An employee in a worker[s'] compensation action has the burden of establishing a causal link between the work-related accident and the subsequent disabling condition." *Miller v. Roger Miller Sand, Inc.*, 94-1151, p. 6 (La. 11/30/94), 646 So.2d 330, 334. An employee's disability is presumed to have resulted from the accident if before the accident, the injured employee was in good health, but commencing with the accident, symptoms of the disabling condition appeared and continuously manifested themselves afterwards. *Walton v. Normandy Village Homes Ass'n, Inc.*, 475 So.2d 320 (La.1985). However, the presumption requires either that there is sufficient medical evidence to show there to be a reasonable possibility of causal connection between the accident and disabling condition, or that the nature of the accident, when combined with the other facts of the case, raises a natural inference through human experience of such a causal connection. *Id.*

Richard v. Vermilion Hosp., 10-385, pp. 4-5 (La.App. 3 Cir. 6/9/10), 41 So.3d 1219, 1223 (quoting *Marks v. 84 Lumber Co.*, 06-358 (La.App. 3 Cir. 9/27/06), 939 So.2d 723 (alteration in original)), *writ denied*, 10-1611 (La.10/8/10), 46 So.3d 1269.²

Whether the presumption is applicable is a finding of fact subject to the manifest error-clearly wrong standard of review. *Littleton v. Richardson Med. Ctr.*, 42,082 (La.App. 2 Cir. 4/4/07), 954 So.2d 812 (citing *Detraz v. Lee*, 05-1263 (La. 1/17/07), 950 So.2d 557). However, the manifest error standard no longer applies where the trial court makes one or more legal errors which interdict the fact-finding process. *Evans v. Lungrin*, 97-541, 97-577 (La.2/6/98), 708 So.2d 731. In that case, the appellate court must, if it can, make an independent *de novo* review of the record and render judgment. *Id.*

²This presumption has become known as the "*Housley* presumption." In *Housley v. Cerise*, 579 So.2d 973 (La. 1991), the supreme court held that a plaintiff's disability is presumed to have come from an accident where: 1) the plaintiff was in good health before the accident; 2) the symptoms of the plaintiff's alleged injury appeared and continuously manifested themselves after the accident; and 3) the plaintiff submits evidence, whether medical, circumstantial, or common knowledge, that demonstrates a reasonable possibility of causation between the accident and the alleged injury. Although *Housley* addresses the presumption of causation as it applies to nonworkers' compensation civil cases, the presumption "has its root in workers' compensation cases dating to 1917." *Detraz v. Lee*, 05-1263 (La.1/17/07), 950 So.2d 557.

In *Barber Brothers*, 873 So.2d 677, the claimant asserted that his respiratory, sinus, and dermatitis conditions occurred in the course and scope of his employment from his exposure to asphalt fumes. In upholding the WCJ's award of indemnity and medical benefits, the court stated:

Once the employee has established the presumption of causation, the opposing party bears the burden of producing evidence to prove that it is more probable than not that the work injury did not accelerate, aggravate, or combine with the pre-existing injury to produce his disability. *Preveto v. WHC Contractors*, 93-1402, pp. 2-3 [(La. 1/14/94)], 630 So.2d [689,] 691. Medical testimony, albeit significant, is not conclusive as to the issue of causation, which is generally the ultimate fact to be decided by the court after weighing all the evidence. *Id.*

Id. at 681.

We find that the WCJ committed manifest error in holding that Plaintiff failed to establish a causative link between her inhalation of gas fumes and her condition as evidenced by his statement that he "didn't have any testimony to say that the smell triggered a pre-existing seizure disorder[.]" and "[i]f I had that, I would have related the seizure to the smell[.]" The WCJ incorrectly focused on a seizure, or seizures, as the necessary causative factor for Plaintiff's condition, rather than the exposure to a toxin, the natural gas in this case. This is also evident by the WCJ's statement that "[t]here wasn't any testimony from any medical provider that really elicited or demonstrated that the smell triggered the seizure[.]" While this may be true, it is not the focus of the issue, as clearly stated by Dr. Odenheimer. Plaintiff suffered no neurological effects from her May 2021 seizure. Both Dr. Odenheimer and Dr. Laborde testified that any neurological symptoms from a seizure would be of short duration. The neurological impairments here are long term.

A review of the evidence in this matter clearly establishes that Plaintiff was exposed to gas fumes or toxins while in the course and scope of her employment and that this exposure resulted in neurological damage that continues to affect her face, left arm, and left leg. Dr. Odenheimer testified without equivocation that Plaintiff's symptoms and disability were caused by her exposure to gas and not by any seizure activity. Not only was Plaintiff affected, but the evidence established that a coworker was also affected by the gas fumes.

Prior to this exposure, Plaintiff was fully capable of completing all of her job duties at SWLA; however, following this exposure, she is not.^[9] She is, therefore, entitled to the *Housley* presumption that her disability resulted from her exposure at work on November 2, 2022. As such, Plaintiff is entitled to temporary total disability benefits during her period of disability. La.R.S. 23:1221(1)(a). Based on Plaintiff's wage records, her average weekly wage was \$775.68, with a corresponding compensation rate of \$517.38. Accordingly, we award Plaintiff \$95,818.78 in temporary total disability benefits for the period between November 3, 2022, through May 22, 2026. We further award her future temporary total disability benefits at the rate of \$517.38 per week until she is no longer entitled to such benefits pursuant to La.R.S. 23:1221(1)(d). Said compensation benefits to bear judicial interest from the date compensation was due until the date of satisfaction pursuant to La.R.S. 23:1201.3(A).

Plaintiff is also entitled to all necessary medical treatment. In *Figgins v. Wal-Mart*, 06-806, p. 4 (La.App. 3 Cir. 11/15/06), 945 So.2d 153, 156-57, *writ denied*, 06-2977 (La. 2/16/07), 949 So.2d 421, this court stated:

Louisiana Revised Statute 23:1203(A) mandates that an employer provide an injured employee with all necessary medical treatment. To establish a claim for medical benefits, the employee must show to a reasonable certainty and by a preponderance of the evidence, that the benefits are occasioned by the work-related accident and are necessary. *Alleman v. Fruit of the Loom-Crowley*, 96-1246 (La.App. 3 Cir. 3/5/97), 692 So.2d 485.

Further, the supreme court in *Authement v. Shappert Engineering*, 02-1631, p. 11 (La. 2/25/03), 840 So.2d 1181, 1188, explained:

The workers' compensation scheme was not designed for the worker to pay the costs of his medical treatment. It is the obligation of the employer to pay for the cost of medical services, not the obligation of the employee. The employee should not be denied treatment because a controversy exists as to who will advance costs so that treatment will be rendered.

As will be discussed more fully below, Defendants denied this claim from the onset without a proper investigation, forcing Plaintiff to obtain her own funding for her medical treatment. In addressing a similar situation, this court, in *Smith v. Roy O. Martin Lumber Co.*, 03-1441, p. 8 (La.App. 3 Cir. 4/14/04), 871 So.2d 661, 667- 68, *writ denied*, 04-1311 (La. 9/24/04), 882 So.2d 1144, stated:

Martco also argues the WCJ erred in ruling it could not apply the fee schedule of La.R.S. 23:1034.2 "because the employer denied the claim from the very beginning." Since Martco denied the claim from the onset, Smith was forced to fund the costs of medical treatment himself, either through insurance or from the Veteran's Administration Hospital. La.R.S. 23:1142(E) provides in the "event that the payor has denied that the employee's injury is compensable under this Chapter, then no approval from the payor is required prior to the provisions of any diagnostic testing or treatment for that injury." We agree with the WCJ that the employer is not entitled to rely on the fee schedule benefits after making a total denial of the claim and forcing the claimant to seek medical treatment unilaterally. *See Barron v. First Lake Properties, Inc.*, 93-902 (La.App. 5 Cir. 3/29/94), 636 So.2d 970, 973 (noting if a "claim is found to be valid by the insurer or the court, the employer will be liable for those expenses under La.R.S. 23:1202 as well as La.R.S. 23:1142(D). If it's not compensable, the employer will not be held liable for them.").

At trial, Plaintiff submitted a list of medical expenses she incurred as a result of her injury, totaling \$118,418.71. Defendant is obligated to pay these expenses without benefit of the Office of Workers' Compensation Medical Reimbursement Schedule. Defendant is further obligated to pay all future necessary medical expenses incurred by Plaintiff related to her injury as provided in the Medical Reimbursement Schedule. La.Admin.Code. tit. 40, Pt. I, § 5157.

The trial court's acceptance of Dr. Segura's opinion letter.

Plaintiff assigned as error the WCJ's acceptance of Defendant's uncertified second-medical-opinion letter by Dr. Enrique Segura, a neurologist. At the time the letter was introduced, Plaintiff objected to its acceptance because it was uncertified and was submitted after the deadline for submitting exhibits. Although the WCJ accepted the letter, he stated during his ruling that he did not review it in reaching his decision. In that the letter was not reviewed by the WCJ, we consider this assignment of error moot.

The trial court's failure to award penalties and attorney fees.

Plaintiff asserts that she is entitled to both penalties and attorney fees due to Defendants' failure to adequately investigate and pay her workers' compensation claim. As the WCJ denied Plaintiffs claim for benefits, it did not reach the issue of penalties and attorney fees. Louisiana Code of Civil Procedure Article 2164 authorizes this court to "render any judgment which is just, legal, and proper upon the record on appeal." We find the record such that we can address the issue here.

In *Brown v. Texas-LA Cartage, Inc.*, 98-1063, pp. 8-10 (La. 12/1/98), 721 So.2d 885, 890-91 (alteration in original) (footnote omitted), the supreme court discussed the award of penalties and attorney fees based on the employer's failure to reasonably controvert the employee's workers' compensation claim:

The unambiguous language of La. R.S. 23:1201 clearly establishes that penalties and attorney fees for failure to timely pay benefits shall be assessed unless the claim is reasonably controverted or such nonpayment results from conditions over which the employer or insurer had no control. Unreasonably controverting a claim, which is the exception at issue in this case, requires action of a less egregious nature than that required for arbitrary and capricious behavior. Arbitrary and capricious behavior consists of willful and unreasoning action, without consideration and regard for facts and circumstances presented, or of seemingly unfounded motivation. BLACK'S LAW DICTIONARY 104, 211 (6th ed.1990). Stated another way, such behavior arises from unrestrained exercise of the will or personal preference or lacks a predictable pattern. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, UNABRIDGED 110,333 (1966).

The phrase "reasonably controverted," on the other hand, mandates a different standard. In general, one can surmise from the plain meaning of the words making up the phrase "reasonably controvert" that in order to reasonably controvert a claim, the defendant must have some valid reason or evidence upon which to base his denial of benefits. Thus, to determine whether the claimant's right has been reasonably controverted, thereby precluding the imposition of penalties and attorney fees under La. R.S. 23:1201, a court must ascertain whether the employer or his insurer engaged in a nonfrivolous legal dispute or possessed factual and/or medical information to reasonably counter the factual and medical information presented by the claimant throughout the time he refused to pay all or part of the benefits allegedly owed. This definition is in accord with that presently used by the lower courts to determine whether penalties and attorney fees are owed. *See Antrainer v. Great Atlantic & Pacific Tea Co.*, 97-1554, p. 6 (La.App. 1 Cir. 4/8/98), 712 So.2d 590, 594 ("Given the facts, medical and otherwise, known to the employer or his insurer, did the employer or insurer have a reasonable basis to believe

that medical expenses and compensation benefits were not due the employee."); *Woods v. Ryan Chevrolet, Inc.*, 30,206, p. 9 (La.App. 2 Cir. 2/25/98), 709 So.2d 251, 257 ("The employee's right to such benefits will be deemed 'reasonably controverted' if the employer or insurer had a reasonable basis for believing that medical expenses and indemnity benefits were not due the employee. . . . Reasonably controverting a claim means that the payor has factual or medical information of such a nature that it reasonably counters that provided by the claimant."); *Cook v. Kaldi's Coffee House*, 97-0979, p. 10 (La.App. 4 Cir. 1/28/98), 706 So.2d 1052, 1058 ("The test to determine whether the claimant's right has been reasonably controverted turns on whether the employer or his insurer had sufficient factual and medical information to reasonably counter the factual and medical information presented by the claimant."); *Lemoine v. Hessmer Nursing Home*, 94-836, p. 20 (La.App. 3 Cir. 3/1/95), 651 So.2d 444, 456 ("A workers' compensation claim is 'reasonably controverted,' precluding imposition of penalties and attorney fees, if the employer had sufficient factual and medical information upon which to base a decision to reduce or terminate benefits."). If an employer or insurer reasonably controverts a claim and then becomes aware of information that makes his controversion of that claim unreasonable, he must then pay the benefits owed or be subject to penalties and attorney fees from that point forward.

The case at hand, though involving a different work-related incident and injury, is similar to that reviewed by this court in *Broussard v. Dacon Corp.*, 96-1615 (La.App. 3 Cir. 4/2/97), 692 So.2d 1325, where we determined that the employee's unusual working conditions were the cause of his atrial fibrillation. There, like here, the WCJ did not reach the issue of entitlement to penalties and attorney fees since she dismissed the employee's claim as not compensable. On review, after finding the employee's claim compensable, we stated:

It is settled that a workers' compensation claimant is entitled to penalties and attorney's fees if benefits are withheld or terminated arbitrarily, capriciously, or without reasonable cause by the employer. La.R.S. 23:1201 & La.R.S. 23:1201.2; *Faul v. Bonin*, 95-1236 (La.App. 3 Cir. 8/7/96); 678 So.2d 627, *writ denied*, 96-2221 (La. 11/15/96); 682 So.2d 769. "The test to determine if the employer has fulfilled its duty is whether the employer or his insurer had sufficient factual and medical information to reasonably counter the factual and medical information presented by the claimant." *Id.*, at 632. This court has also held that an employer or insurer "who fails to investigate an employee's compensation claim subjects itself to statutory penalties and attorney's fees." *Laneaux v. Opelousas Artificial Kidney Center*, 93-1264 (La.App. 3 Cir. 6/1/94); 640 So.2d 701, *writ denied*, 94-1794 (La.10/14/94); 643 So.2d 163.

Id. at 1329.

In *Broussard*, we examined the scant notes of the insurer's field representative and held that penalties and attorney fees were appropriate based on the insurer's failure to adequately investigate the claim:

The record does not contain the typed statement referred to by the Liberty Mutual representative. However, the record does contain a handwritten "Illness Preliminary Report" completed by Dacon's Project Manager, Bud Cummings, on the date of the illness, September 25, 1995. In this report, Cummings stated that Broussard became ill on the job and was eventually driven to the emergency room. Cummings further explained that the doctors, having diagnosed a heart flutter, opined that the flutter "could be brought on by a number of things." It was perhaps this statement that prompted the stance taken by the insurer. Perhaps this statement indicated the need for investigation, but it certainly was not a basis for withholding benefits.

Although Cummings clearly suffered his injury while in the course and scope of his employment, Dacon failed to investigate the claim or even contact Broussard's doctors as to the possible causes. Dacon had knowledge of the injury in September 1995 and received medical bills from Broussard beginning in November 1995. Yet, it was not until February 1996 that Dacon interviewed Dr. Yamada. We conclude that Dacon's failure to pay benefits, without any investigation, and without anything more than a speculative basis for withholding benefits, was arbitrary, capricious, and unreasonable. We, therefore, find that penalties and attorney's fees are appropriate in this case.

Id. at 1329-30.

During the trial in the case at hand, the adjuster's notes were entered into evidence by Plaintiff to establish the lack of a valid investigation undertaken by the adjuster. The notes simply indicated that the claim was "not questionable." The notes further provided:

Spoke with our insd. Insd was driving to the LC site. The [accident] was reported late because it just made it to the HR office. Apparently, the [injured worker] had a seizure due to inhaling [f]umes at the work site the day before. Insd will send me all documents and timeline from direct supervisor via email.

There is nothing else in the notes reflecting any further evaluation of the claim by the adjuster and according to

Defendants' response to Plaintiffs interrogatories, no one other than the adjuster investigated this claim. Defendants, in their brief, assert that their investigation included "uncovering Cormier's epileptic condition via obtaining prior medical records, ultimately contributing to the claim denial." A review of the medical records indicates that Dr. LeBlanc's records were certified on February 15, 2023, and those of the other healthcare providers were not certified until March 2023. Therefore, these records were not received by Defendants until months after Plaintiffs exposure, and there is no record of Defendants contacting any medical expert regarding causation in this matter. While Defendants did have Plaintiff examined by Dr. Segura, this was not done until May 16, 2025.

Based on our review, we find that Defendants did not possess "sufficient factual [or] medical information to reasonably" controvert Plaintiff's claim when it was denied. See *Brown*, 721 So.2d at 891. Thus, Plaintiff is entitled to penalties and attorney fees.

Unless "reasonably controverted or if such nonpayment results from conditions over which the employer or insurer had no control [,]" the failure to pay benefits due "shall result in the assessment of penalties and attorney fees. La.R.S. 23:1201(F)(2). The penalties assessed shall be "in an amount up to the greater of twelve percent of any unpaid compensation or medical benefits, or fifty dollars per calendar day for each day in which any and all compensation or medical benefits remain unpaid or such consent is withheld[.]" La.R.S. 23:1201(F). "[H]owever, the fifty dollars per calendar day penalty shall not exceed a maximum of two thousand dollars in the aggregate for any claim[.]" and "[t]he maximum amount of penalties which may be imposed at a hearing on the merits regardless of the number of penalties which might be imposed under this Section is eight thousand dollars." *Id.*

Here, Plaintiff asserts that a penalty of \$8,000.00 is required as Defendants have failed to pay indemnity benefits and medical expenses since the accident. We agree and assess penalties at \$8,000.00. Defendants did not set forth any argument to counter this claim, relying, instead, solely on its defense of the occurrence of the accident and causation.

We also find that an award of attorney fees is warranted. "Some of the factors taken into account by the judge in fixing the amount of the fee are the degree of skill and ability exercised by the attorney, the amount of the claim, the amount recovered for the employee, and the amount of time the attorney devoted to the case." *McCarroll v. Airport Shuttle, Inc.*, 00-1123, p. 9 (La. 11/28/00), 773 So.2d 694, 700. Introduced into evidence at trial were the detailed billing records of Plaintiff's counsel, evidencing a total of 92.2 hours expended in the representation of Plaintiff for work performed through trial. That evidence was not controverted.

In *Cox, Cox, Filo, Camel & Wilson, LLC v. Louisiana Workers' Compensation Corp.*, 21-566, p. 13 (La. 3/25/22), 338 So.3d 1148, 1158, the supreme court found that an award of \$300.00 per hour for a total of 68.5 hours, amounting to \$20,550.00, was a "reasonable" attorney fee for defending the Cox law firm against the workers' compensation claim filed by its employee. Thus, we use that hourly benchmark and fix attorney fees herein at \$27,660.00.

Attorney fees for work performed on appeal.

Plaintiff has requested an additional award of attorney fees for work performed on appeal. "It is within the appellate court's discretion to award or increase attorney's fees for appellate work." *Chandler v. Ouachita Parish Sheriff's Off.*, 48,179, p. 15 (La.App. 2 Cir. 8/7/13), 121 So.3d 1216, 1226. Given that Plaintiff has successfully reversed the WCJ's judgment and has obtained judgment awarding her indemnity benefits and medical benefits as well as penalties and attorney fees pursuant to La.R.S. 23:1201(F), we award her an additional \$7,500.00 in attorney fees for work performed in conjunction with this appeal.

DECREE

For the foregoing reasons, the judgment of the trial court is reversed, and judgment is rendered in favor of Plaintiff, awarding her temporary total disability benefits in the amount of \$95,818.78, for the period of time between November 3, 2022-May 22, 2026, and future temporary total disability benefits continuing during the period of Plaintiff's disability based on her compensation rate of \$517.38 per week. Said compensation benefits to bear judicial interest from the date compensation was due until the date of satisfaction pursuant to La.R.S. 23:1201.3(A). Judgment is rendered in favor of Plaintiff, ordering Defendants to pay all medical expenses incurred by Plaintiff, from the date of her injury through the date of trial, in the amount of \$118,418.71. Defendants are further ordered to pay all necessary future medical expenses incurred by Plaintiff pursuant to the Medical Reimbursement Schedule. Judgment is further rendered in favor of Plaintiff, awarding her penalties in the amount of \$8,000.00; attorney fees in the amount of \$27,660.00; additional attorney fees for work done on appeal in the amount of \$7,500.00; and all costs associated with this trial, including all expert witness and deposition costs. All costs of this appeal are assessed to SWLA Center for Health Services and Louisiana Workers' Compensation Corporation.

REVERSED AND RENDERED.

[1] A combustible gas indicator is an instrument that monitors the gas, carbon monoxide, and oxygen present in the air.

[2] At the emergency room, Plaintiff underwent a drug screen which was positive for opiate, amphetamine, and benzodiazepine. Plaintiff explained that she was prescribed amphetamine for ADHD, benzodiazepine for anxiety, and the opiate was associated with the hydrocodone she was taking for pain following the gas exposure. The hydrocodone had been prescribed to Plaintiff following cervical surgeries she had undergone in 2017 or 2018.

[3] Although Dr. Shamieh's records state that Plaintiff suffered from right-sided weakness, all of her symptoms were, in fact, on her left side.

[4] According to Defendants' discovery responses, Plaintiff, on November 30, 2022, made a demand for the payment of workers' compensation indemnity benefits and authorization for medical treatment, which was denied by Defendants. Plaintiff filed a LWC-WC-1008 claim with the Office of Workers' Compensation on December 14, 2022.

[5] Dystonia is a movement disorder that includes involuntary, painful contractions of the body.

[6] "A conversion disorder, also called functional neurological symptom disorder, is a relatively uncommon mental disorder. Typically the person has physical symptoms that cannot be explained by a thorough diagnostic evaluation." Howard E. LeWine, MD, *Conversion disorder (functional neurological symptom disorder)*, Harvard Health Publishing (Jan. 30, 2026), https://www.health.harvard.edu/a_to_z/conversion-disorder-functional-neurological-symptom-disorder-a-to-z.

[7] Dr. Odenheimer stated that the MRI findings ruled out that Plaintiff suffered a stroke.

[8] Dr. Shamieh felt Plaintiff was suffering from post-chemical exposure.

[9] Dr. LeBlanc, Dr. Odenheimer, and NP Joseph all indicated that Plaintiff was currently incapable of working.

Casas v Great Am. All. Ins. Co.

Court:	Court of Appeal of Louisiana
Writing for the Court:	EDWARDS, J.
Docket Number:	2024 CA 1101
Decision Date:	11 May 2026
Citation:	Casas v Great Am. All. Ins. Co., 2024 CA 1101 (La. App. May 11, 2026)
Parties:	MIRYAM CASAS v. GREAT AMERICAN ALLIANCE INS. CO. AND ROUSES SUPERMARKET #28

Id. vLex Fastcase: VLEX-1118882730

Link: <https://fastcase.vlex.com/vid/casas-v-great-am-1118882730>

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MIRYAM CASAS v. GREAT AMERICAN ALLIANCE INS. CO. AND ROUSES SUPERMARKET #28

No. 2024 CA 1101

Court of Appeals of Louisiana, First Circuit

May 11, 2026

Appealed from the Office of Workers' Compensation, District 5 Parish of East Baton Rouge • State of Louisiana
Docket Number 19- 01103 The Honorable Adam Johnson, Presiding Workers' Compensation Judge

Miryam Casas Baton Rouge, Louisiana Appellant Plaintiff— Pro Se

M. Blake Monroe Lafayette, Louisiana Counsel for Appellees Defendants— Rouse' s Enterprises, LLC and Great American Alliance Insurance Company

Before: Miller, Edwards, and Fields, JJ.

EDWARDS, J.

Plaintiff filed a workers' compensation death claim against Defendants after her son died following an alleged injury sustained while in the course and scope of his employment. After a two-day trial, the workers' compensation judge ("WCJ") rendered judgment in favor of Defendants and against Plaintiff. Plaintiff appealed. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Freddy Casas was a dairy manager at Rouse's Supermarket Store 69 ("the Store") in Baton Rouge.^[1] On February 18, 2018, Mr. Casas worked at the Store from 6:07 a.m. until 2:00 p.m. That evening, Mr. Casas presented to Our Lady of the Lake Hospital ("OLOL") complaining of chest tightness, abdominal cramping, and leg and back pain. Mr. Casas passed away in the early morning hours of February 19, 2018. An autopsy performed at the hospital confirmed the cause of death was an aortic dissection.^[2]

On February 13, 2019, Mr. Casas's mother ("Plaintiff") filed a disputed claim for compensation with the Office of Workers' Compensation, District 5, in which she named Rouse's Enterprises, LLC ("Rouse's") as Mr. Casas's employer and Great American Alliance Insurance Company ("GAAI") as its insurer. Plaintiff alleged that on February 18, 2018, Mr. Casas was working in the frozen department at the Store when several boxes of frozen product fell and struck Mr. Casas in the chest. Plaintiff asserted that Mr. Casas succumbed to his injuries as a result of this incident at his place of work, and she requested parental death benefits under La. R.S. 23:1231(B) in the amount of \$75,000.00 and burial expenses under La. R.S. 23:1210 in the amount of \$7,500.00. Rouse's and GAAI (collectively "Defendants") answered the disputed claim for compensation on June 19, 2019, in which they denied all allegations for lack of sufficient information.

After numerous continuances, a two-day trial began on August 30, 2023. Plaintiff testified that Mr. Casas came home from work on February 18, 2018, and told her, "[M]other, I had an impact in my chest. ... I almost faint[ed]." Plaintiff stated she asked Mr. Casas what happened, and Mr. Casas replied, "A pallet of frozen products [fell] on top of my chest[,] and I almost pass[ed] out."^[3] Plaintiff said she urged Mr. Casas to go to the hospital, but he said, "I'm] going to be okay." According to Plaintiff, Mr. Casas rested at home until 6:00 p.m., brought Plaintiff to bible study, and then went to the casino, where he had two alcoholic beverages. Plaintiff testified that Mr. Casas was complaining of back and kidney pain when he brought her to bible study. Plaintiff stated she called Mr. Casas sometime around 9:30 p.m., at which time he informed her that he had driven himself to the emergency room at OLOL because he was having chest pains. Mr. Casas allegedly told his mother, "I think I'm having a heart attack" and said he was having terrible pains and could not breathe.

Plaintiff testified that she got a ride to the hospital and arrived around 10:30 p.m. Plaintiff stated that when she arrived, Mr. Casas was in the hall on a stretcher alone and was throwing up. Plaintiff testified that Mr. Casas was moved to a patient room sometime after midnight, and at that time, she spoke with a doctor. Plaintiff stated she told Mr. Casas's doctor that Mr. Casas had an "impact in [the] heart"; she also stated that Mr. Casas told her that he told the doctor about his alleged workplace accident.

When asked if Mr. Casas reported the alleged workplace incident to anyone at the Store before he left for the day, Plaintiff stated Mr. Casas told her that he tried to look for one of the managers but could not find one. Plaintiff testified that she encouraged Mr. Casas to report the accident after hours but she was unaware if he did. In addition, Plaintiff testified that she reported Mr. Casas's accident and death to OSHA in January of 2019. OSHA initiated an investigation based on Plaintiff's complaint and ultimately determined that Mr. Casas's injuries and death were not caused by a workplace accident.

Plaintiff also offered the deposition testimony of Fabio Arroyave, a friend of hers who drove her to OLOL on the night of February 18, 2018. Mr. Arroyave testified that Plaintiff told him that Mr. Casas told her something heavy hit him in the chest at work.

A manager at the Store at the time of the incident, Paul Bourgeois, also testified at trial. Mr. Bourgeois stated that Rouse's had a web portal used for reporting workplace accidents and only one of the four store managers could file an accident report into the web portal. Mr. Bourgeois also explicitly stated that Mr. Casas could not file his own accident report into the web portal. The Manager's Floor Inspection Report from February 18, 2018, reflects that Carl Webre, assistant store manager, was on the clock during the same time Mr. Casas was working. Mr. Bourgeois testified that Mr. Webre would have been able to file an accident report into the web portal on Mr. Casas's behalf. Mr. Webre testified that Mr. Casas did not report an accident to him on the date of the alleged accident nor did he learn of a workplace accident on that date from anyone else. Ryan Pauli, another manager at the Store, clocked in at 12:57 p.m. on February 18, 2018, approximately one hour before Mr. Casas left for the day. The trial testimony established Mr. Pauli could have also filled out an accident report on the web portal. Mr. Bourgeois also testified that he did not learn that Mr. Casas allegedly had a workplace accident on the date of his death until a month or two later. Mr. Bourgeois stated that no incident was reported and that he has never been told by anyone else at the Store that Mr. Casas had an accident on the job. On redirect examination, Mr. Bourgeois admitted that the type of accident Mr. Casas reportedly sustained was "possible." Two additional colleagues of Mr. Casas also testified at trial. Neither was aware of any workplace accident that occurred at the Store on February 18, 2018.

Both parties introduced Mr. Casas's OLOL medical records from February 18, and 19, 2018, into the record. The medical records did not contain any entries that indicate Mr. Casas had an accident while in the course and scope of his employment earlier that day, and there is no mention of any accident and/or trauma of any kind. The only mention of any incident from February 18, 2018, is a provider note that states Mr. Casas told OLOL personnel that he had two vodka drinks at L'Auberge Casino and that he and Plaintiff thought someone may have poisoned him.^[4] Deanta Norman, a nurse practitioner who tended to Mr. Casas that night, testified at trial. Ms. Norman stated Mr. Casas was a 45-year-old male who presented for chest pain and reported that he was about to pass out and could not feel his limbs. Ms. Norman stated Mr. Casas reported he thought he was having a stroke or a heart attack. Mr. Casas also reported that he had two "vodkas" while out drinking with friends. Ms. Norman confirmed that she would generally include any information the patient gave regarding an injury on the job or trauma to his chest. Regarding Mr. Casas specifically, Ms. Norman stated, "If it is not documented in my notes, he did not tell me."

Likewise, Dr. Shannon Allwood, one of Mr. Casas's treating physicians at OLOL, testified that neither Mr. Casas nor Plaintiff told her that Mr. Casas suffered any trauma to his chest or any other part of his body or that Mr. Casas had an accident on the job.^[5] Dr. Allwood further testified that she did not find any bruising or abrasions on Mr. Casas's chest or other part of his body and that there was no evidence that Mr. Casas's aortic dissection was caused by any type of trauma. Dr. Allwood also confirmed that both Mr. Casas and Plaintiff told her they believed Mr. Casas may have been poisoned. Dr. Allwood further testified that at least 20 hospital staff members had contact with Mr. Casas yet there were no notes in the OLOL records that any of them were told by Mr. Casas that he had been injured on the job. Dr. Allwood stated that if such a report was made, she would expect

it to be reflected in the medical records.

At the close of evidence, the WCJ ordered the parties to submit post-trial briefs. The WCJ signed a judgment on November 28, 2023, which stated that Plaintiff "failed to prove her son, [Mr.] Casas, had an accident while within the course and scope of his employment with [Rouse's] and that [Plaintiffs] claim for workers' compensation death benefits ... is denied." It is from this judgment Plaintiff now appeals.^[6]

LAW AND ANALYSIS

To recover workers' compensation benefits, a claimant must establish by a preponderance of the evidence that an accident occurred on the job site and that an injury was sustained. *Hirstius v. Tropicare Service, LLC*, 2011-1080 (La.App. 1 Cir. 12/21/11), 80 So.3d 1215, 1216. As in other civil cases, in reviewing the WCJ's factual determinations, including whether the claimant has discharged his burden of proof, this court is bound by the manifest error standard of review. Under that standard of review, an appellate court may only reverse a WCJ's factual determinations if it finds from the record that a reasonable factual basis for the finding does not exist and that examination of the entire record reveals that the finding is clearly wrong. *Hirstius*, 80 So.3d at 1216. Thus, the issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. *Mincey v. Rouse's Enterprises, LLC*, 2023-0251 (La.App. 1 Cir. 11/3/23), 378 So.3d 126, 128. If the factfinder's findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even if convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. *Mincey*, 378 So.3d at 128.

Although procedural rules are construed liberally in favor of workers' compensation claimants, the burden of proof—a preponderance of the evidence—is not relaxed. *Alvis v. Peninsula Gaming Partners, LLC*, 2020-0161 (La.App. 1 Cir. 11/12/20), 316 So.3d 54, 58. Accordingly, the testimony as a whole must show that more probably than not an employment accident occurred and that it had a causal relation to the injury. If the testimony leaves the probabilities equally balanced, the plaintiff has failed to carry the burden of persuasion. Likewise, the plaintiff's case must fail if the evidence shows only a possibility of a causative accident or leaves it to speculation or conjecture. *Alvis*, 316 So.3d at 58.

Former and current employees of the Store testified at trial, and all stated they were not made aware that Mr. Casas suffered a workplace accident on February 18, 2018, until sometime after his death. Mr. Casas did not make a report of a workplace accident to any of his managers at the Store although Rouse's policy requires an employee to immediately report an accident. Furthermore, Mr. Casas's medical providers at OLOL denied being informed of any workplace accident or trauma to his chest. The medical records likewise contain no indication that Mr. Casas sustained injuries from a workplace accident on the day he presented to OLOL. To the contrary, the medical records state that both Mr. Casas and Plaintiff reported that they were concerned someone had poisoned Mr. Casas's drink earlier in the evening.

Plaintiff's testimony was only evidence presented to support a finding that Mr. Casas suffered a workplace accident on February 18, 2018.^[7] Plaintiff testified that Mr. Casas told her about the incident and that both she and Mr. Casas reported the incident to OLOL staff. Plaintiff also offered the testimony of Mr. Arroyave, who stated that Plaintiff informed him that Mr. Casas told Plaintiff he was injured at work. However, Mr. Arroyave admitted that he had no independent knowledge of Mr. Casas's alleged workplace incident or the events of the evening leading up to Mr. Casas's death (with the exception of a few minutes he spent in the emergency room at OLOL).

After considering all of the evidence offered by the parties, the WCJ concluded Plaintiff "failed to prove her son, [Mr.] Casas, had an accident while within the course and scope of his employment with [Rouse's]." Where, as here, the evidence supports two permissible views, a factfinder's choice of one of the views cannot be said to be clearly wrong or manifestly erroneous, and reasonable evaluations of credibility and inferences of fact should not be disturbed upon review. See *McGlothlin v. Christus St. Patrick Hosp.*, 2010-2775 (La. 7/1/11), 65 So.3d 1218, 1237; *Bella v. Knieper*, 2024-0277 (La.App. 1 Cir. 11/20/24), 405 So.3d 1039, 1045, writ denied, 2024-01563 (La. 4/8/25), 405 So.3d 575. After thorough review of the evidence, we find a reasonable factual basis exists to support the WCJ's conclusion that Plaintiff did not carry her burden of proof to establish by a preponderance of the evidence that Mr. Casas had an accident while working at the Store. See *Hirstius*, 80 So.3d at 1216. Accordingly, we find no manifest error in the WCJ's ruling. See *McGlothlin*, 65 So.3d at 1237.

DECREE

For the above and foregoing reasons, the WCJ's November 28, 2023 judgment in favor of Defendants, Rouse's Enterprises, LLC and Great American Alliance Insurance Company, and against Plaintiff, Miryam Casas, is affirmed. Costs of this appeal are assessed to Plaintiff, Miryam Casas.

AFFIRMED.

MILLER, J., concurring.

I respectfully concur. I disagree with the majority's determination that the evidence supports two permissible views. I do not view the issue before us as a choice between two competing views of the evidence. Plaintiff avers that her son's aortic dissection was caused by boxes falling on him at work. I find that Plaintiff simply failed to meet her burden of proving her theory, *i.e.*, that the injuries were caused in a work-related accident, by a preponderance of the evidence. See [*Butler v. L & N Food Stores*, 2011-0577 \(La.App. 1st Cir. 2/10/12\), 91 So.3d 342.](#)

[1] The evidence revealed the alleged incident occurred at Store 69 rather than Store 28, which appears in the caption.

[2] Dr. Shannon Allwood, the attending emergency physician at OLOL on the night of Mr. Casas's passing, explained that an aortic dissection is a disruption between the lumens of the large vessel that comes from the heart to the rest of the body; in other words, it is a break in the wall of the vessel that causes blood to track back into the heart.

[3] During cross examination, defense counsel attempted to impeach Plaintiff by referring to and offering into evidence her deposition testimony where she stated that Mr. Casas did not tell her exactly what happened.

[4] Plaintiff specifically denied that she or Mr. Casas told hospital staff that they were worried Mr. Casas had been poisoned. Rather, Plaintiff testified that hospital staff presented poisoning as a possible cause of Mr. Casas's medical issues.

[5] Dr. Allwood did not appear at trial; rather, Defendants' counsel introduced her deposition testimony as evidence at trial.

[6] Notice of the signing of judgment was mailed on November 30, 2023. Plaintiff filed a (undated) notice of appeal, which the WCJ signed on December 14, 2023.

[7] Plaintiff also introduced the deposition testimony of Wardell Junius, a friend of Mr. Casas. Mr. Junius testified that he spoke with Mr. Casas on the phone on the afternoon of February 18, 2018, for approximately 40 minutes to an hour and that Mr. Casas stated that he was hurt at work by a pallet that hit him near or on his chest. According to Mr. Junius, Mr. Casas stated that he had a sharp pain in his chest and "it was faint but it wasn't consistent." However, Mr. Casas's phone records were introduced into evidence as well. Mr. Junius provided three different phone numbers belonging to him, yet none of these three phone numbers appeared on Mr. Casas's phone records on February 18, 2018. Further, the longest phone call on Mr. Casas's phone records for that day lasted 18 minutes and that call did not originate from and was not made to any of the phone numbers provided by Mr. Junius.

Dunn v. Pallets Assoc.

Court:	Court of Appeal of Louisiana
Writing for the Court:	LANIER, J.
Docket Number:	2025 CA 1051
Decision Date:	27 February 2026
Citation:	Dunn v. Pallets Assoc., 2025 CA 1051 (La. App. Feb 27, 2026)
Parties:	JOHN MELVIN LEON DUNN v. PALLETS ASSOC, INC. dba SABINE WAREHOUSE ZURICH AMERICAN INSURANCE COMPANY

Id. vLex Fastcase: VLEX-1112437056

Link: <https://fastcase.vlex.com/vid/dunn-v-pallets-assoc-1112437056>

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JOHN MELVIN LEON DUNN v. PALLETS ASSOC, INC. dba SABINE WAREHOUSE ZURICH AMERICAN INSURANCE COMPANY

No. 2025 CA 1051

Court of Appeals of Louisiana, First Circuit

February 27, 2026

On Appeal from the Office of Workers' Compensation Administration District 5, State of Louisiana Case No. 24-03262 Honorable Denise J. Lee, Judge Presiding

Michelle M. Sorrells

Baton Rouge, Louisiana

Counsel for Plaintiff/Appellant

John Melvin Leon Dunn

John J. Rabalais

Matthew D. Crumhorn

Covington, Louisiana

Counsel for Defendant/Appellee

Pallets Associates, Inc. dba

Sabine Warehouse

BEFORE: LANIER, WOLFE AND HESTER, JJ.

LANIER, J.

In this workers' compensation dispute, the employer, Pallets Associates, Inc. dba Sabine Warehouse ("Sabine"), appeals from a judgment of the workers' compensation judge ("WCJ") finding that the claimant/employee, John Melvin Leon Dunn, was injured during the course and scope of his employment with Sabine and awarding Mr. Dunn total temporary disability benefits, medical expenses, penalties, and attorney fees as a result thereof. For the following reasons, we reverse in part and affirm in part.

According to the record, Mr. Dunn was injured on June 12, 2024, while crossing the street to clock in for work as a truck driver for Sabine. The accident and events leading up to the accident were captured on surveillance video from cameras located near the scene of the accident. Mr. Dunn was working the day shift at the time of the accident, which begins at 6:00 a.m. Although employees had been told they could clock in up to 15 minutes before their shift, video evidence revealed that Mr. Dunn arrived at work on the day in question at approximately 5:10 a.m. Mr. Dunn testified that he knew the company policy was that he was to arrive at work no earlier than 15 minutes before it was time to punch in for his shift at 6:00 a.m. Nonetheless, Mr. Dunn acknowledged that he always arrived early for every job he had. Mr. Dunn's timecards reveal that he clocked in anywhere from 5:27 a.m. to 5:49 a.m. in the month prior to the accident. Moreover, according to Sabine's Human Resource Manager Linda Mundinger, Mr. Dunn had never been reprimanded for or discouraged from clocking in early. She added that Mr. Dunn's supervisor never chose to address the issue because "it didn't raise any bells or whistles in payroll" because Mr. Dunn was never paid any wages for any time before the start of his shift, 6:00 a.m.

Mr. Dunn further testified that he always "pre-tripped"^[1] his truck before he clocked in for his shift. Mr. Dunn noted that on the day of the accident, he pretripped his truck before moving the truck to the front of the parking lot at 5:21 a.m. Mr. Dunn acknowledged that although his "activity/hold over sheets" reflected that his pre-trips were typically conducted between 6:05 a.m. and 6:25 a.m., these sheets were not accurate. Mr. Dunn indicated he filled out the sheets in this manner because that was the way he was trained. Regarding the pre-trip inspection sheets for Mr. Dunn's truck, Ms. Mundinger testified that the sheets came out of a bound book that stays in the trucks. She noted that there was no pre-trip inspection reflected in the book for the day of the accident.

The accident occurred at 5:24 a.m. After being notified of the accident, a management-level investigation ensued at Sabine. It was determined through Sabine's investigation that Mr. Dunn was not on the clock at the time of the accident, Mr. Dunn was not authorized to be on the clock at that time, and Mr. Dunn was not performing any work related to his employment with Sabine at the time of the accident. Thus, the ultimate decision reached by Sabine was that Mr. Dunn was not in the course and scope of his employment with Sabine at the time of the accident.

On June 28, 2024, Mr. Dunn filed a disputed claim for compensation against Sabine and Zurich American Insurance Company, alleging that no wage or medical benefits had been paid. In addition, Mr. Dunn made a request for penalties and attorney fees, arguing that his claim was compensable. Sabine filed an answer, generally denying Mr. Dunn's claim that he was within the course and scope of his employment at the time of the accident and entitled to wage and medical benefits.

The matter proceeded to trial before the workers' compensation judge ("WCJ") on February 24, 2025, and was taken under advisement. Thereafter, on April 9, 2025, the WCJ issued judgment in favor of Mr. Dunn and against Sabine, finding that Mr. Dunn was within the course and scope of his employment with Sabine at the time of the accident and awarding Mr. Dunn indemnity benefits and medical expenses. The WCJ also ordered Sabine to pay Mr. Dunn \$4,000.00 in penalties for its failure to pay indemnity benefits and medical expenses and \$7,5000.00 in attorney fees. This appeal by Sabine followed, in which it argues that the WCJ erred in finding that Mr. Dunn was in the course and scope of his employment at the time of the accident and in awarding penalties and attorney fees.^[2] *Course and Scope*

Sabine argues on appeal that Mr. Dunn is not entitled to coverage because this accident did not arise out of or in the course and scope of his employment with Sabine. Sabine maintains that based on the record evidence, it is immediately apparent that Mr. Dunn was neither on Sabine's premises nor was he engaged in the performance of work duties during work hours at the time of the accident.

The Workers' Compensation Act provides coverage to an employee for personal injury by accident arising out of and in the course and scope of his employment. La. R.S. 23:1031(A). An employee must prove the chain of causation required by the Workers' Compensation Act by establishing by a preponderance of the evidence that the accident was work-related, that the accident caused the injury, and that the injury caused the disability. *Headley v. Textron Systems*, 2020-1174 (La.App. 1 Cir. 4/26/21), 324 So.3d 1080, 1085. The determination of whether an injury occurred in the course and scope of employment is a mixed question of law and fact. *Jourdan v. Allmerica Financial Benefit Insurance Company*, 2020-0386 (La.App. 1 Cir. 12/30/20), 319 So.3d 934, 938, writ denied, 2021-00133 (La. 3/16/21), 312 So.3d 1099.

For purposes of workers' compensation, the requirement that an employee's injury occur "in the course of employment focuses on the time and place relationship between the injury and the employment. *Sharp v. United Fire & Indem. Co.*, 2015-0976 (La.App. 1 Cir. 12/23/15), 185 So.3d 830, 833. An accident occurs in the course of employment when the employee sustains an injury while actively engaged in the performance of his duties during work hours, either on the employer's premises or at other places where employment activities take the employee. The requirement that an employee's injury "arise out of his employment relates to the character or origin of the injury suffered by the employee and whether the injury was incidental to the employment. *McLin v. Industrial Specialty Contractors, Inc.*, 2002-1539 (La. 7/2/03), 851 So.2d 1135, 1140.

In the instant case, after hearing from the witnesses and considering the documentary evidence in the record, the WCJ concluded that Mr. Dunn was in the course and scope of his employment with Sabine at the time of the accident, making the following factual findings:

[Mr. Dunn] arrived early to work at Sabine, performed a mandated safety check and prepared his work vehicle for the day, all while on the [Sabine's] property. His injury occurred when he crossed the street in an effort to clock in and await his daily safety briefing. Testimony at trial established [Mr. Dunn] frequently started his workday in this manner and [Sabine] allowed him to do so. Further, the location of the accident occurred on a street utilized by those who conducted business with Sabine's client, Exxon, or with Sabine, which is a high industrial area that the public does not frequently use. The accident therefore arose out of the employment with Sabine and was incidental to [Mr. Dunn's] employment.

Following our exhaustive review of the record and the exhibits in this matter, we are unable to say that the WCJ erred in determining that Mr. Dunn was within the course and scope of his employment at that time of this accident. The WCJ's ruling is reasonably supported by the record.

Penalties and Attorney Fees

The Workers' Compensation Act pertinently provides that, unless an employer reasonably controverts a workers' compensation claim, its failure to pay such benefits in accordance with the Act shall result in a penalty and reasonable attorney fees. See La. R.S. 23:1201 (F). An employer reasonably controverts a claim when it has sufficient factual and/or medical information to counter the employee's factual and/or medical information throughout the time it refused to pay all or part of the benefits allegedly owed. See *Brown v. Texas-LA Cartage, Inc.*, 98-1063 (La. 12/1/98), 721 So.2d 885, 890. Statutes providing for penalties and attorney fees are penal in nature and must be strictly construed. *St. Tammany Par. Hosp. v. Ace Am. Ins. Co.*, 2010-1480 (La.App. 1 Cir. 6/16/11), 81 So.3d 3, 6. The crucial inquiry is whether the employer had an articulable and objective reason to deny payment at the time it took action. *Authement v. Shappert Engineering*, 2002-1631 (La. 2/25/03), 840 So.2d 1181, 1188. An employer should not be liable for penalties or attorney fees for taking a close factual or legal question to court for resolution. *Brown v. A M Logging*, 2010-1440 (La.App. 1 Cir. 8/4/11), 76 So.3d 486, 496; see also La. R.S. 23:1202(F)(2).

Herein, we note the WCJ found that Mr. Dunn was entitled to penalties and attorney fees because of Sabine's "arbitrary and capricious" actions. A WCJ's determination that an employer should be cast with penalties and attorney fees is a factual question and generally reviewed under the manifest error standard of review. *Authement*, 840 So.2d at 1188-1189. However, where, as in the instant case, the WCJ commits legal error by applying the incorrect legal standard or principle, this court is required to determine the facts *de novo* from the entire record and render a decision on the merits. *Johnson v. Vinson Guard Service, Inc.*, 92-2187 (La.App. 1 Cir. 3/11/94), 636 So.2d 914, 916.

In this case, after carefully considering the record and the facts known to the employer, we conclude that Sabine had sufficient information to "reasonably controvert" Mr. Dunn's claim that he was within the course and scope of his employment with Sabine at the time of the accident. The representatives from Sabine based their determination regarding course and scope on the video evidence as well as Mr. Dunn's employment records. Sabine concluded that Mr. Dunn was neither on the clock at the time of the accident, nor was he authorized to be on the clock as he had not been approved for overtime.^[3] Based on the evidence presented, we find that Sabine's challenge to Mr. Dunn's claim was not frivolous and was supported by the record. See *Pitre v. Buddy's Seafood*, 2011-0175 (La.App. 1 Cir. 8/16/12), 102 So.3d 815, 824, *writ denied*, 2012-2058 (La. 11/16/12), 102 So.3d 41. Accordingly, we conclude that the WCJ erred in imposing penalties and attorney fees against Sabine pursuant to La. R.S. 23:1201(F), and we reverse that portion of the judgment.

DECREE

For the above and foregoing reasons, we reverse the portion of the WCJ April 9, 2025 judgment that awarded penalties and attorney fees against Pallets Associates, Inc. dba Sabine Warehouse and in favor of John Melvin Leon Dunn. In all other respects, we affirm the April 9, 2025 judgment. We assess all costs associated with this appeal equally between Pallets Associates, Inc. dba Sabine Warehouse and John Melvin Leon Dunn. This memorandum opinion is issued in compliance with Uniform Rules-Courts of Appeal, Rule 2-16.1(B).

REVERSED IN PART; AFFIRMED IN PART.

WOLFE, J., dissents in part and agrees in part.

I dissent in part from the majority's decision which finds that, at the time of the accident in question, Mr. Dunn was in the course and scope of his employment.

For purposes of workers' compensation, the requirement that an employee's injury occur "in the course of

employment focuses on the time and place relationship between the injury and the employment. The principal criteria for determining "course of employment" are time, place, and employment activity. An accident occurs in the course of employment when the employee sustains an injury while actively engaged in the performance of his duties during work hours, either on the employer's premises or at other places where employment activity takes the employee. The requirement that an employee's injury "arise out of" his employment relates to the character or origin of the injury suffered by the employee and whether the injury was incidental to the employment. *Holden v. Mike's Catfish, Inc.*, 2017-1056 (La.App. 1st Cir. 2/27/18), 243 So.3d 588, 591-92. Furthermore, an accident arises out of employment if the risk from which the injury resulted was greater for the employee than for a person not engaged in the employment. The "arising out of" requirement depends on the character or source of the risk that gave rise to the injury and on the relationship of the risk to the nature of the employment; the objective of the "arising out of" inquiry is to separate accidents attributable to employment risks, which are covered, from accidents attributable to personal risks, which are not *Lafitte-Nesom v. Christus Schumpert Highland*, 50,496 (La.App.2d Cir. 2/24/16), 188 So.3d 1100, 1104.

At the time of the accident, Mr. Dunn was neither on the clock nor was he authorized to be on the clock as he had not been approved for overtime, had not performed any required pre-trip inspection reports, and as noted by the employer's HR manager, was simply relocating "his vehicle for [his] convenience[.]" Additionally, Mr. Dunn was on the employer's premises nearly twenty-minutes before he was allowed to clock in, and thirty-five minutes before the start of his shift. Again, while coverage under the workers' compensation statutes has been extended in some cases to include accidents during times for rest or lunch periods or before and after work on the employer's premises, or to include accidents at places where employment duties are performed off the employer's premises, the principal criteria for determining course of employment are time, place, and employment activity. *Mundy v. Department of Health and Human Resources*, 593 So.2d 346,349 (La. 1992). Although Mr. Dunn was on his employer's premises at the time of the accident, he was neither engaged in any employment activity nor performing such actions during work hours. Mr. Dunn's accident was not more attributable to an employment risk than a personal risk. Therefore, I would find that Mr. Dunn was not in the course and scope of his employment at the time of the accident.

Nevertheless, and for these same reasons, I would agree in part with the majority's decision to reverse the workers' compensation judge's award of penalties and attorney's fees, finding that the employer reasonably controverted Mr. Dunn's claim.

[1] "Pre-trip" inspections, which typically take between 10 and 20 minutes, are a Department of Transportation requirement that entail drivers going through "checkpoints and certain things to make sure their vehicle is roadworthy."

[2] Sabine also assigned error to the WCJ's award of temporary total disability benefits, medical expenses, and legal interest on all amounts awarded. However, none of these issues were briefed by Sabine in its appeal to this court. All assignments of error and issues for review must be briefed. The court may consider as abandoned any assignment of error or issue for review that has not been briefed. Uniform Rules-Courts of Appeal, Rule 2-12.4(B)(4). Accordingly, we consider these arguments to be abandoned.

[3] According to Ms. Munding, even when they viewed the videos, which was done after the determination as to course and scope had already been made, Sabine's position remained the same. She indicated that the videos showed no evidence that Mr. Dunn had pre-tripped his truck prior to the accident. Rather, Ms. Munding testified that the videos simply showed that Mr. Dunn "relocated his vehicle for [his] convenience," an action that was not work related.

May v. Berkshire Hathaway Homestate Cos.

Court:	Court of Appeal of Louisiana
Writing for the Court:	FREDERICKA HOMBERG WICKER JUDGE
Docket Number:	25-CA-576, 25-C-491
Decision Date:	20 August 2026
Citation:	May v. Berkshire Hathaway Homestate Cos., 25-C-491, 25-CA-576 (La. App. Aug 20, 2026)
Parties:	CHELSEA MAY v. BERKSHIRE HATHAWAY HOMESTATE COMPANIES, BLUE SKY HOSPITALITY SOLUTIONS LLC DBA CHELSEA MAY v. BLUE SKY HOSPITALITY SOLUTIONS, LLC &BERKSHIRE HATHAWAY HOMESTATE COMPANIES

Id. vLex Fastcase: VLEX-1132519653

Link: <https://fastcase.vlex.com/vid/may-v-berkshire-hathaway-1132519653>

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CHELSEA MAY
v.
BERKSHIRE HATHAWAY HOMESTATE COMPANIES, BLUE SKY HOSPITALITY SOLUTIONS LLC DBA
CHELSEA MAY
v.
BLUE SKY HOSPITALITY SOLUTIONS, LLC &BERKSHIRE HATHAWAY HOMESTATE COMPANIES
Nos. 25-CA-576, 25-C-491
Court of Appeals of Louisiana, Fifth Circuit
August 20, 2026

ON APPEAL THE OFFICE OF WORKERS' COMPENSATION, DISTRICT 7, STATE OF LOUISIANA NO. 25-158, HONORABLE SHANNON BRUNO BISHOP, JUDGE PRESIDING

PLAINTIFF/APPELLANT, CHELSEA MAY In Prproper Person

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COUNSEL FOR DEFENDANT/APPELLEE, BERKSHIRE HATHAWAY HOMESTATE COMPANIES Katherin C. Kovach

Panel composed of Judges Fredericka Homberg Wicker, Jude G. Gravois, and Stephen J. Windhorst

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FREDERICKA HOMBERG WICKER JUDGE
FHW
JGG
SJW

In this consolidated matter, Plaintiff seeks review of the workers' compensation court's September 3, 2025

judgment denying her supplemental motion for partial default judgment, motion to compel further discovery responses, and motion for sanctions, and its September 29, 2025 judgment granting her employer's motion for summary judgment and dismissing her claim with prejudice. For the following reasons, we affirm the judgments.

FACTS AND PROCEDURAL HISTORY

On January 9, 2025, Plaintiff-Appellant Chelsea May filed a Disputed Claim for Compensation ("Form 1008") with the Louisiana Office of Workers' Compensation ("OWC") against her employer, Blue Sky Hospitality Solutions, LLC, and its insurer, and Berkshire Hathaway Homestate Companies (collectively, "Defendants-Appellees"). Plaintiff alleged therein that she suffered a compensable mental injury caused by workplace stress and a hostile work environment that existed from June 17, 2024, through her termination on July 14, 2024. Defendants denied her claim on the basis that it was noncompensable because her mental injury did not result from a sudden, unexpected, and extraordinary event as required under the Louisiana Workers' Compensation Act ("LWCA").

Plaintiff's Interlocutory Motions and Writ Application

On September 3, 2025, the OWC heard several motions filed by Plaintiff, including a supplemental motion for partial default judgment, a motion to compel further discovery responses, and a motion for sanctions. In a written judgment issued the same day, the OWC denied Plaintiff's motions. In its reasons, the OWC judge explained that she denied Plaintiff's motion for default because Defendants had answered the disputed claim, denying compensability; therefore, the claims were

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to be determined at a trial on the merits. Moreover, as it relates to Plaintiff's discovery motion and request for sanctions, the OWC judge held that:

[T]he discovery issue was addressed at the July 18, 2025 hearing. Defendant produced discovery and Claimant was advised to provide information regarding deficiencies. This matter was heard by the Court today, as noted above. The Court does not assess sanctions or evidentiary penalties at this time. Failure to provide the privilege log by September 12, 2025 may result in sanctions and/or penalties.

Thereafter, Plaintiff filed a writ application with this Court seeking supervisory review of the September 3, 2025 judgment.

Defendants' Motion for Summary Judgment and Plaintiff's Appeal

While the writ application was pending, the OWC judge heard Defendants' motion for summary judgment seeking dismissal of Plaintiff's case on the basis that she could not satisfy the requirements for a compensable claim under the LWCA. Plaintiff filed an untimely opposition, which was stricken from the record. Consequently, Plaintiff failed to submit competent summary judgment evidence in opposition to the motion. Accordingly, the facts set forth below are drawn from the evidence submitted by Defendants in support of their motion, which consists primarily of Plaintiff's Form 1008 and the documents she submitted in support of that claim.

In her Form 1008, Plaintiff alleged that she is entitled to workers' compensation benefits because she sustained a compensable mental injury arising from workplace stress and a hostile work environment. At all relevant times, Plaintiff was employed by Blue Sky Hospitality Solutions, LLC as the Human Resources Director for the Marriott Metairie at Lakeway hotel in Metairie, Louisiana. Specifically, Plaintiff alleged that "between June 17, 2024 to July 14, 2024, [she] suffered an extreme and constant amount of harassment, discrimination, isolation, personal defamation, and wage theft," and that "[w]hen

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reported to the corporate office as per the company's policy [she] was terminated via email two [sic] after [she] submitted a complaint by the owner[.]"

Plaintiff attached to her Form 1008 a request for immediate payment of indemnity benefits in which she alleged multiple forms of workplace misconduct. She alleged discrimination, claiming that she was "subjected to unlawful discrimination based on [her] race (Black) and gender (female)," and that the "discrimination manifested in disparate treatment, exclusion from decision-making processes, and being held to different standards than non-black and male colleagues, retaliation, hostile work environment, pay discrimination, FMLA interference, defamation, and wrongful termination." She also alleged retaliation, claiming that "after reporting discriminatory comments made by a corporate executive, [she] experienced a pattern of retaliatory actions, including harassment, isolation, undermining of [her] authority, and

ultimately, termination." She further alleged a hostile work environment was created by the new General Manager by "avoiding and isolating [her] spreading false information about [her] performance, making inappropriate inquiries about [her] FMLA leave, and tampering with [her] pay records."

In addition, Plaintiff alleged pay discrimination, claiming that wages were "deliberately [withheld] without justification, while male colleagues had their time records falsified to receive payment for time they did not work." She alleged FMLA interference, claiming that she was "harassed and provided with misinformation regarding [her] FMLA leave and [her] private medical information was shared inappropriately." She also alleged defamation, claiming that "false and damaging statements were made about [her] character and performance to colleagues, undermining [her] professional reputation." Finally, she alleged wrongful termination, claiming that she "was terminated without a legitimate reason, shortly after filing a formal complaint of discrimination and harassment."

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Plaintiff also attached a timeline of events to her Form 1008. Although the Form 1008 identifies the relevant period as extending from June 17, 2024 through July 14, 2024 (*i.e.*, the date of her termination), the attached timeline spans a broader period, beginning on May 8, 2024, and ending on December 14, 2024. Within that timeline, Plaintiff referenced various conversations, correspondence, complaints, and documents that she contended demonstrated "a culture of discrimination within the company, disregard for employees' concerns, lack of transparency and communication, retaliation against [her] and another employee, harassment and hostile work environment, privacy violations and FMLA interference, lack of support from senior management, wage theft, and disregard of company policies."

Additionally, Plaintiff attached records from Dr. James Owens to her Form 1008. In a note dated September 26, 2024, Dr. Owens stated that Plaintiff presented with complaints of attention-deficit/hyperactivity disorder ("ADHD") and anxiety. According to the note, Plaintiff had been diagnosed with ADHD four years earlier and had been receiving treatment from another physician; however, she reportedly lost her job and health insurance, and her treating physician did not accept Medicaid. Dr. Owens additionally stated that Plaintiff had "experienced excessive and uncontrollable worry occurring more days than not for at least six months, about a variety of topics such as work performance, personal relationships, and everyday responsibilities." The note further reflects that Plaintiff reported being "wrongfully terminated after being harassed for months at work." Plaintiff also identified financial instability as a stressor, explaining that she had been fired two days after buying a new car.

Dr. Owens subsequently reported that Plaintiff participated in a telehealth appointment on October 3, 2024, during which she was evaluated for generalized anxiety disorder ("GAD"), ADHD, and possible post-traumatic stress disorder ("PTSD"). Plaintiff expressed concern that she may have developed PTSD as a

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result of "employment issues in the last 6 months," and Dr. Owens reported that Plaintiff met the criteria for PTSD following her exposure to a traumatic event that had occurred more than one month earlier.

Following a hearing on September 29, 2025, the OWC granted Defendants' motion for summary judgment and dismissed Plaintiff's Disputed Claim for Compensation with prejudice. A written judgment was signed the same day, and Plaintiff subsequently appealed. In her reasons for judgment, the OWC judge explained the ruling, in part, as follows:

The law requires that proof in a mental-mental workers' compensation claim consist of a *sudden, unexpected, and extraordinary stress* related to the employment. In the instant case, Claimant has made allegations of wrongful termination and discrimination, retaliation, hostile work environment, pay discrimination, FMLA interference, [and] defamation that *occurred over a period of time*. The facts show that she also had excessive and uncontrollable worry occurring more days than not for at least six months, about a variety of topics such as work performance, personal relationships, and everyday responsibilities. Thus, based on the facts, evidence, and applicable law, this Court finds that there are no genuine issues of material fact that Claimant has not suffered a workers' compensation mental injury as set forth in La R.S. 1021(8)(b).

(Emphasis added).

Thereafter, Plaintiff filed an appeal in this Court to review the September 29, 2025 judgment.

Consolidation of Matters and Assignments of Error

By order dated January 27, 2026, this Court consolidated Plaintiff's writ application and appeal for review. Oral argument was held on May 5, 2026. The matter was then submitted for decision.

LAW AND ANALYSIS

In her writ application, Plaintiff raises four assignments of error relating to the trial court's September 3, 2025 denial of her motions for default, discovery, and sanctions. In her appeal, Plaintiff raises fifteen assignments of error relating to both the trial court's September 29, 2025 ruling granting summary judgment *and its*

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September 3, 2025 interlocutory rulings. Because the issues and assignments of error are interrelated, we will address them together below.

Standard of Review

On review before this Court, the issue is whether the trial court properly granted Defendants' motion for summary judgment. As in other civil matters, we review summary judgments in workers' compensation cases *de novo*, applying the same criteria as the trial court—whether there are no genuine issues of material fact and the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966; *Longo v. 700B8, LLC*, 24-1262 (La. 2/19/25), 400 So.3d 913, 914, *reconsideration denied*, 24-1262 (La. 5/20/25), 409 So.3d 212; *Zatarains & Gallagher Bassett Servs., Inc. v. Rodney*, 24-128 (La.App. 5 Cir. 12/27/24), 409 So.3d 965, 973, *writ denied*, 25-94 (La. 4/8/25), 405 So.3d 570. *De novo* review generally "involves examining the facts and evidence in the record, without regard or deference to the judgment of the trial court or its reasons for judgment." *Neville v. Redmann*, 22-175 (La.App. 5 Cir. 12/31/22), 356 So.3d 568, 577 (quoting *Cutrone v. Eng. Turn Prop. Owners Ass'n, Inc.*, 19-896 (La.App. 4 Cir. 3/4/20), 293 So.3d 1209, 1216), *writ denied*, 23-126 (La. 4/4/23), 358 So.3d 861.

The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of actions, and is favored and shall be construed to accomplish these ends. La. C.C.P. art. 966(A)(2); *Millet v. Moran Foods, LLC*, 23227 (La.App. 5 Cir. 3/13/24), 384 So.3d 1074, 1076. After an opportunity for adequate discovery, a motion for summary judgment "shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law." La. C.C.P. art. 966(A)(3). If the movant will not bear the burden of proof at trial, then the movant's burden on summary judgment "does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point

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out the absence of factual support for one or more essential elements of the adverse party's claim, action, or defense." La. C.C.P. art. 966(D)(1); *Longo*, 400 So.3d at 914-15. In response to the movant's well-pled motion, the burden shifts to the plaintiff to produce factual support sufficient to establish the existence of a genuine issue of material fact. La. C.C.P. art. 967(B); *Millet*, 384 So.3d at 1076.

The determination of whether a genuine issue of material fact exists requires reference to the substantive law applicable to that case. *Hacienda Holding Co., LLC, v. Home Bank*, 20-189 (La.App. 5 Cir. 12/30/20), 309 So.3d 435, 445. The plaintiff "may not rest on the mere allegations or denials of his pleadings, but his response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial." *Longo*, 400 So.3d at 915 (citing La. C.C.P. art. 967(B)); *see also Darr v. Marine Elecs. Sols., Inc.*, 11-908 (La.App. 5 Cir. 5/22/12), 96 So.3d 527, 533, *writ denied*, 12-1442 (La. 10/8/12), 98 So.3d 860.

Once the movant has properly supported a motion for summary judgment, "the failure of the non-moving party to produce evidence of a material factual dispute mandates the granting of the motion." *Longo*, 400 So.3d at 915 (citing *Dauzat v. Curnest Guillot Logging Inc.*, 08-528 (La. 12/2/08), 995 So.2d 1184, 1187). "Mere conclusory allegations, improbable inferences, and unsupported speculation will not support a finding of a genuine issue of material fact," and "such inferences, allegations, and speculation are not sufficient to satisfy the opponent's burden of proof." *Palowsky v. Campbell*, 22-592 (La.App. 5 Cir. 12/14/23), 378 So.3d 226, 236 (citing *Sears v. Home Depot, USA, Inc.*, 06-201 (La.App. 4 Cir. 10/18/06), 943 So.2d 1219, 1228, *writ denied*, 06-2747 (La. 1/26/07), 948 So.2d 168), *writ denied*, 24-94 (La. 6/5/24), 385 So.3d 1161. "The purpose of this procedural tool is to cut through the meaningless and unsupported allegations, thus getting at the heart of the issues before a trial court and allowing an expedited judgment, if worthy of

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such." *Simon v. Fasig-Tipton Co. of New York*, 524 So.2d 788, 791 (La.App. 3 Cir. 1988), *writs denied*, 525 So.2d 1048, 1049 (La. 1988).

Louisiana Workers' Compensation Act

To recover benefits under the LWCA, an employee must establish that she sustained a personal injury by accident arising out of and in the course of her employment. La. R.S. 23:1031(A). A mental injury caused by mental stress is compensable if the following requirements of La. R.S. 23:1021(8)(b) and (d) are met:

(b) Mental injury caused by mental stress. Mental injury or illness resulting from work-related stress shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this Chapter, unless the mental injury was the result of a sudden, unexpected, and extraordinary stress related to the employment and is demonstrated by clear and convincing evidence.

...

(d) No mental injury or illness shall be compensable under either Subparagraph (b) or (c) unless the mental injury or illness is diagnosed by a licensed psychiatrist or psychologist and the diagnosis of the condition meets the criteria as established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders presented by the American Psychiatric Association.

(Emphasis in original); see also *Charles v. S. Cent. Indus.*, 96-883 (La. 11/25/96), 683 So.2d 706, 708. The "clear and convincing" standard is a heavier burden of proof than the "preponderance of the evidence" standard normally applied in civil cases, but less than the "beyond a reasonable doubt" standard applied in criminal cases. *In re L.M.M., Jr.*, 17-1988 (La. 6/27/18), 319 So.3d 231, 244 n.13 (citing *Louisiana State Bar Ass'n v. Edwins*, 329 So.2d 437, 442 (La. 1976)). To prove a matter by clear and convincing evidence means to demonstrate that the existence of a disputed fact is highly probable, *i.e.*, much more probable than its nonexistence. *Id.*

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The purpose of the LWCA is "[t]o provide for the timely payment of temporary and permanent disability benefits to all injured workers who suffer an injury or disease arising out of and in the course and scope of their employment as is provided in this Chapter." La. R.S. 23:1020.1(B)(1); see also *Paul v. Jefferson Par. Pub. Sch. Sys.*, 13-132 (La.App. 5 Cir. 7/3/13), 121 So.3d 190, 195. This law is "to be interpreted so as to assure the delivery of benefits to an injured employee in accordance with this Chapter." La. R.S. 23:1020.1(C)(1); see also *Paul*, 121 So.3d at 195. The LWCA is remedial in nature, and in interpreting its statutes, the courts must keep in mind the policies and purpose behind the workers' compensation laws. *Paul*, 121 So.3d at 195. To give effect to its intent, its provisions should be liberally construed in favor of the claimant. *Id.* Despite the liberal construction of the statute, the claimant's burden of proof is not relaxed. *Martin v. Olsten Indus. Servs.*, 98-463 (La. 9/18/98), 718 So.2d 404, 406. Reviewing courts must analyze claims of disability caused by mental conditions with the utmost caution, given the nebulous characteristics of mental conditions and the possibility that symptoms may be easily feigned. *Charles*, 683 So.2d at 709.

The foundational interpretive rule governing La. R.S. 23:1021(8)(b) was established by the Louisiana Supreme Court in *Partin v. Merchants & Farmers Bank*, 01-1560 (La. 3/11/02), 810 So.2d 1118. There, the Court held that whether workplace stress is "sudden, unexpected, and extraordinary" must be evaluated under an objective standard rather than from the employee's subjective perspective. *Id.* at 1125. The focus is on the nature of the stress itself, not the employee's belief that the underlying conduct was unfair, wrongful, or particularly upsetting. *Id.* In that case, an employee alleged she suffered a compensable mental injury when her employer demoted her for lack of managerial skills after eighteen years of employment. The Court disagreed, finding that a personnel action is not necessarily

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extraordinary just because the employee perceives it to be unfair. The Court explained:

In this case, Claimant personally found her demotion to be extraordinary and unexpected because she did not know that the bank was displeased with her management skills and she was quite settled in her career. Yet by its nature, a demotion for failing to satisfactorily perform one's job creates stress that is neither unexpected nor extraordinary in the usual course of employment at a bank. That is not to say that a demotion could not be handled in such a way that would make it unexpected or extraordinary. For example, if an employer used violence in demoting an employee, it would perhaps cause stress that is unexpected and extraordinary. In addition, an event such as a robbery would perhaps cause stress that is unexpected and extraordinary at a bank, regardless of how it is conducted. In this case, however, the bank explained to Claimant that it was demoting her to teller because she lacked managerial skills, and it is undisputed that the bank did so in a calm and professional manner. Such a situation does not create stress that is unexpected or extraordinary in the usual course of employment at a bank.

Id. at 1126. "Considering simply the nature of the stress itself," the Court concluded that the employee's mental injury was not compensable under the LWCA because it was neither unexpected nor extraordinary. *Id.*

Since *Partin*, Louisiana courts of appeal, including this Court, have uniformly applied this objective standard and have found relatively few categories of work-related events sufficient to constitute a "sudden, unexpected, and extraordinary" stressor under the LWCA. The cases that have recognized qualifying events share a common thread: they involve sudden, acute threats to physical safety, or traumatic violent occurrences that are wholly outside the ordinary risks of the claimant's particular employment. For example, in *Jeansonne v. Wick Pub. Co.*, 94-462, (La.App. 5 Cir. 11/29/94), 646 So.2d 1212, *writ denied*, 94-2963 (La. 2/3/95), 649 So.2d 405, this Court held that an employee was not entitled to workers' compensation benefits after an argument with her supervisor. The employee alleged a mental injury caused by her supervisor yelling at her. *Id.* at 1216. This Court found there were no threats and that the incident did not constitute the type of "extraordinary stress" contemplated by the workers' compensation statute. *Id.* Although the

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claimant argued she was particularly susceptible to emotional distress, we held that her subjective susceptibility was irrelevant. *Id.* Citing *Bryant v. Giani Inv. Co.*, 626 So.2d 390, 392-93 (La.App. 4 Cir. 1993), *writ denied*, 94-89 (La. 3/18/94), 634 So.2d 852, this Court explained that a claimant's individual sensitivity has no bearing on whether the stress was "extraordinary" for purposes of a mental injury claim. *Id.*

Similarly, in *Favorite v. La. Health Care Auth.*, 98-721 (La.App. 5 Cir. 12/16/98), 725 So.2d 556, the employee alleged mental injury arising from harassment, verbal reprimands, and abusive language from her supervisor. In that case, the evidence showed that the supervisor was hostile toward women and verbally abusive to other employees. *Id.* at 558. This Court emphasized that discrimination statutes were not relevant to the workers' compensation analysis, which was governed by La. R.S. 23:1021, and, although the trial court found an "established pattern and practice of verbal abuse and profane language" that was "appalling, insensitive and wrong," it concluded that the conduct was not sudden, unexpected, or extraordinary. *Id.* On appeal, this Court agreed with the trial court, holding that although the supervisor's behavior was reprehensible, the claimant failed to establish by clear and convincing evidence that her injury resulted from the type of sudden, unexpected, and extraordinary stress required by the statute. *Id.* We explained that a claimant is not entitled to compensation merely because a mental injury is related to general workplace conditions or incidents occurring over an extended period of time; rather, the injury must be precipitated by an unexpected and unforeseen event occurring suddenly. *Id.*

Analysis

Defendants moved for summary judgment on the issue of the compensability. They argued that no genuine issue of material fact exists because Plaintiff's alleged mental injury developed gradually, over an extended period of time, as opposed to

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suddenly, as required under the LWCA. Accordingly, Defendants contend that they are entitled to judgment as a matter of law finding Plaintiff's claim noncompensable and dismissing it with prejudice. As stated above, summary judgment "shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact, and that the mover is entitled to judgment as a matter of law." La. C.C.P. art. 966(A)(3). As the mover, Defendants bear the burden of proof of their motion; however, since Defendants will not bear the burden of proof at trial, they need only point out that there is an absence of factual support for one or more elements essential to Plaintiff's claim. La. C.C.P. art. 966(D)(1).

Here, Defendants pointed to an absence of factual support for an essential element of Plaintiff's claim, namely, that her alleged mental injury is compensable under the LWCA. In her Form 1008, Plaintiff alleged that between June 17, 2024, and her termination on July 14, 2024, she was subjected to ongoing harassment, discrimination, isolation, personal defamation, and wage theft by the hotel's newly hired general manager. According to Plaintiff, the general manager engaged in a continuous pattern of mistreatment during the weeks preceding her termination, resulting in a mental injury caused by workplace stress and a hostile work environment. Plaintiff submitted medical records reflecting that she was later diagnosed with PTSD, which she attributes to these events. Defendants denied compensability on the grounds that the alleged mental injury did not result from a sudden, unexpected, and extraordinary stress as required by La. R.S. 23:1021(8).

Significantly, there is no genuine dispute regarding the underlying facts alleged by Plaintiff. Instead, the dispute concerns whether those facts satisfy the legal requirements for a compensable mental injury claim under the LWCA. Accepting Plaintiff's allegations as true, her claim is based upon repeated instances of

workplace conflict, harassment, discrimination, and stress occurring over the course of approximately four weeks and culminating in her termination. By their

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nature, these allegations describe a gradual and ongoing course of conduct, not a sudden event. Nor do Plaintiff's allegations establish the type of extraordinary stress contemplated by the statute. Although she may have experienced the alleged conduct as deeply distressing, the relevant inquiry is not whether she subjectively perceived the events as extraordinary. The question is whether the alleged stress resulted from a sudden, unexpected, and extraordinary occurrence within the meaning of [La. R.S. 23:1021\(8\)](#). The allegations of persistent workplace harassment, interpersonal conflict, discrimination, and termination over a period of several weeks do not satisfy that standard as a matter of law.

Upon our *de novo* review, we find that Plaintiff failed to produce factual support sufficient to establish that she will be able to meet her burden of proving a compensable mental injury at trial. Because the alleged facts, even if accepted as true, do not constitute a sudden, unexpected, and extraordinary stress under the LWCA, no genuine issue of material fact exists, and Defendants are entitled to judgment as a matter of law. Accordingly, the trial court did not err in granting Defendants' motion for summary judgment and dismissing Plaintiff's claims with prejudice.

CONCLUSION

For the foregoing reasons, we affirm the trial court's September 3, 2025 judgment denying Plaintiff's supplemental motion for partial default judgment, motion to compel further discovery responses, and motion for sanctions, and we affirm the trial court's September 29, 2025 judgment granting Defendants' motion for summary judgment and dismissing Plaintiff's claim with prejudice.

AFFIRMED

Negrete v. Par. of Caddo

Court:	Court of Appeal of Louisiana
Writing for the Court:	ELLENDER, J.
Docket Number:	56,933-WCA
Decision Date:	15 July 2026
Citation:	Negrete v. Par. of Caddo, 56,933-WCA (La. App. Jul 15, 2026)
Parties:	JUDY NEGRETE Plaintiff v. PARISH OF CADDO Defendant

Id. vLex Fastcase: VLEX-1129092760

Link: <https://fastcase.vlex.com/vid/negrete-v-par-of-1129092760>

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JUDY NEGRETE Plaintiff v. PARISH OF CADDO Defendant

No. 56,933-WCA

Court of Appeals of Louisiana, Second Circuit

July 15, 2026

Appealed from the Office of Workers' Compensation, District 1-W Parish of Caddo, Louisiana Trial Court No. 21-06209 Christopher T. Lee Workers' Compensation Judge (*Ad Hoc*)

LIZ MURRILL Attorney General KIRK L. LANDRY E. DAVID GILMER Assistant Attorneys General Counsel for Defendant Appellant, State of Louisiana

JACK BAILEY LAW CORPORATION By: Jack M. Bailey, Jr. Mary L. Salley Bylsma Counsel for Plaintiff- Appellee, Judy Negrete

THOMAS, SOILEAU, JACKSON & COLE, LLP By: Erica M. Ducoing Counsel for Defendants- Appellees, Parish of Caddo and Corvel Corporation

Before THOMPSON, MARCOTTE, and ELLENDER, JJ

ELLENDER, J.

The State of Louisiana appeals a judgment of the Office of Workers' Compensation finding the State was the borrowing employer of the claimant, Judy Negrete, who was a temporary employee of the Caddo Parish Registrar of Voters, and ordering the State to pay one-half of her compensation benefits for an accident sustained while processing absentee ballots for a state election. For the reasons expressed, we reverse and render.

FACTS AND PROCEDURAL HISTORY

Ms. Negrete was hired as a temporary employee of the Registrar of Voters in July 2019. Making an hourly wage of \$11.50, she worked as needed around election times. On March 11, 2021, she was in a storage room filing absentee ballots from a statewide election (Board of Secondary and Elementary Education) in large plastic bins. After moving a bin on a metal shelf, she crouched to sit down, but her office chair had rolled away. Instead of settling on the chair, she fell to the floor and struck the back of her head against another metal shelving unit. (The accident was captured on video, which was admitted at trial.) She injured her back and neck.

Ms. Negrete filed this disputed claim for compensation against the Parish of Caddo ("the Parish") in November 2021. She alleged no wage benefits had been paid (she claimed a comp rate of \$302.66), but her principal claim was for approval of treatment by a neurosurgeon. The Parish responded it was "unknown" whether she was employed by the Parish at the time of her injury, but the specialist authorization was quickly approved.

By an amended claim, in December 2021, Ms. Negrete clarified her employer was the Registrar of Voters but requested service on the State of Louisiana ("the State"), on grounds the Parish had alleged the State was the "actual employer." The Parish followed with a cross-claim against the State. This pleading denied Ms. Negrete was employed by the Parish, but if she was, the Parish was entitled to full indemnification or contribution from the State, under La. R.S. 23:1061 (B) or 23:1031 (C). The State denied all allegations in the cross-claim.

In March 2022, Ms. Negrete and the Parish executed a consent agreement. This conceded that she was the Parish's employee at the time of her accident, and the Parish agreed to pay her comp rate of \$196.47 a week, accrued weekly benefits of \$4,322.34, and any future medical benefits. However, the agreement expressly reserved the Parish's right to seek contribution from the State, "whom Defendant asserts is also an employer of Claimant[.]" as the State was a "joint employer and/or statutory employer and/or borrowing employer[.]"

A large amount of motion practice ensued, which crystallized the issues on appeal. The State asserted, by exception of no cause of action, that it owes comp benefits to "employees of the state, but not those of political subdivisions," under La. R.S. 23:1034 (D); the Registrar of Voters, it argued, is not a State agency but, rather, a Parish agency. The Parish countered Ms. Negrete was an employee of *both*, as she was under the exclusive control of State employees and the State provided a portion of her wages. The Workers' Compensation Judge ("WCJ") denied this exception.

The State then moved for summary judgment asserting the consent agreement was a judicial confession by the Parish that it was Ms. Negrete's employer. It also reasserted the exclusion of benefits for Parish employees, R.S. 23:1034 (D), and denied the existence of statutory employment, under R.S. 23:1061. The Parish responded that, by the prevailing law governing the employer-employee relationship, especially "power of control," Ms. Negrete was a State employee. *Chailland Bus. Consultants v. Duplantis*, 032508 (La.App. 1 Cir. 10/29/04), 897 So.2d 117, writ denied, 04-2922 (La. 2/4/05), 893 So.2d 878. Finding a genuine issue of material fact, the WCJ denied the State's MSJ.

Finally, the Parish filed its own MSJ asserting Ms. Negrete was a "borrowed employee" of the State, as she was performing "work for the State, using State-provided tools, at the direction of State employees." In addition to deposition testimony, the Parish offered an Attorney General Opinion which concluded that, for purposes of "accrued, sick and compensatory leave," the "registrar of voters and his employees are properly classified as state and not parish officials or employees." Op. Att. Gen., No. 85-355 (5/23/85). The WCJ found certain facts were still in dispute and denied the Parish's MSJ.

TRIAL AND EVIDENCE

The matter came to trial in April 2024. The Parish called three witnesses. The first, Ms. Negrete, reiterated she was a "permanent temporary seasonal worker" employed by the Parish. She had been hired by Linda Feazell, the chief deputy registrar and second-in-command, and never considered herself a State employee.

Yazmin Harper, the Parish's human resources supervisor, confirmed the Parish had paid Ms. Negrete's (undisputed) medical and indemnity benefits.

Dale Sibley, the registrar of voters, testified *he* is by statute a State employee, as are his chief deputy and confidential assistant. The Election Code authorizes him to have seven full-time employees, and up to 15 employees at election time, with the temporary employees being paid out of the Parish's budget. He considered Ms. Negrete a Parish employee and never thought he was "lending" her to the State; nobody from the State could fire any of his employees; and Ms. Negrete always used exclusively Parish equipment. He agreed, however, his office processed State elections, his employees (including Ms. Negrete) used a "Yubi Key" to log results into the State computer system, and she was working a State election (the BESE race) when she was injured.

The Parish also offered the deposition of Ms. Feazell, the chief deputy registrar, who confirmed the registrar, Mr. Sibley, had the ultimate authority to hire and fire all employees, and she (Ms. Feazell) could probably fire Ms. Negrete too.

The State offered various documents but called no witnesses. Both sides offered the surveillance video of Ms. Negrete's accident.

ACTION OF THE WCJ

After taking the case under advisement, the WCJ delivered oral reasons. He recognized the claimant and the registrar both considered Ms. Negrete a Parish employee, but he found this not binding. He also recognized that R.S. 23:1034 excluded employees of political subdivisions from the State's workers' comp coverage, but he found the statutes did not explicitly cover registrar personnel. He therefore looked to the nature of the office. One case held the registrar was a "hybrid" agency, *In re Bankston*, 306 So.2d 863 (La.App. 1 Cir. 1975); another found "registrar's employees are considered state employees," *State v. Center for Tech & Civic Life*, 21,670 (La.App. 3 Cir. 3/30/22), 350 So.3d 534, writ denied, 22-00721 (La. 6/28/22), 341 So.3d 568; and an early case

said if an office is established "in the first instance" by the Constitution, it is a State office, *State v. Taylor*, 44 La. Ann. 783, 11 So. 132 (1892). Also, a more recent Attorney General Opinion found the registrar is "subject to the direction" of the Secretary of State and "may not be considered a local employee," Att. Gen. Op. 19-0097 (9/3/19). From this authority, the WCJ found the registrar is a "hybrid office."

The WCJ then stated the parties had abandoned the theories of joint or statutory employment, leaving only the issue of the borrowed employee. The WCJ cited factors purporting to determine whether a claimant is a borrowed employee, *Biggs v. S. Lifestyles Dev. LLC*, 22-463 (La.App. 3 Cir. 3/22/23), 363 So.3d 568.^[1] Applying these factors, the WCJ found the State was a borrowing employer of Ms. Negrete at the time of her accident.

The WCJ rendered judgment finding the claimant sustained a work-related accident and was entitled to indemnity benefits of \$196.47 a week. The judgment further found the State was the claimant's borrowing employer at the time of the work-related accident and held the State liable for one-half of all compensation benefits "paid to date and future[.]"

The State moved for new trial, which was denied, and then took this suspensive appeal.

THE PARTIES' POSITIONS

The State designates three assignments of error. By its first, it urges the WCJ committed legal error in failing to apply the clear and unambiguous language of R.S. 23:1034 (D), under which workers' comp benefits for Parish employees are to be provided by the Parish. A parish is obviously a political subdivision, *State v. Coulon*, 197 La. 1058, 3 So.2d 241 (1941), and the consent agreement established Ms. Negrete was a Parish employee; hence, § 1034 (D) prohibits any order for the State to pay her comp benefits. Even if she really was a "borrowed employee," this statute prohibited the relief granted.

By its second assignment of error, the State urges the WCJ committed legal error by identifying Ms. Negrete as a State employee in derogation of the Election Code. Specifically, R.S. 18:59.2 (A)(1) and 18:59 (I)(1) fix the maximum number of permanent and temporary employees in a registrar's office, and Mr. Sibley's testimony confirmed these limits. Under this scheme, he had filled all permanent positions and had no authority to hire anybody else on behalf of the State; Ms. Negrete, as a temporary worker, was by necessity a Parish employee.

By its third assignment, the State argues, even if the Parish could borrow from the State, the State was not a *borrowing employer* from the Parish. The law recognizes the concept of "borrowing employer," using nine factors, *Lastie v. Cooper*, 14-561 (La.App. 5 Cir. 12/23/14), 167 So.3d 150, writ denied, 15-0123 (La. 5/1/15), 169 So.3d 371. The State submits most of these factors are neutral, as the registrar, Mr. Sibley, clearly works for both the State and the Parish; critically, however, there was no agreement for the State to borrow Ms. Negrete. This, the State submits, is fatal to the claim; in support, it cites *Hall v. Equitable Shipyard Inc.*, 95-1754 (La.App. 4 Cir. 2/29/96), 670 So.2d 543. The State concludes the finding of a borrowed employee cannot exist and is legally wrong.

The Parish argues the WCJ analyzed the case right: Ms. Negrete was employed by the Parish, but she was hired and controlled by State employees, her pay was set by the State, the Attorney General opinions confirm the registrar's employees are indeed State employees, and Mr. Sibley's comments to the contrary are simply not binding on the WCJ. The Parish also submits that, under the employment relationship test of *Chailland*, *supra*, aside from the payment of wages, all factors favored finding employment by the State. It concludes the WCJ committed no legal or manifest error in finding borrowed employment, and it properly allocated payment of benefits in accordance with La. R.S. 23:1031 (C).

APPLICABLE LAW

An employee who receives personal injury by accident arising out of and in the course of his employment, and is not otherwise eliminated from coverage, is entitled to compensation from his employer in the amounts and on the conditions specified by the workers' compensation law. La. R.S. 23:1031 (A). This coverage applies to any person employed by the State or any political subdivision thereof. La. R.S. 23:1034 (A). In the case of public employees, the obligation to pay benefits is allocated between the State and political subdivisions by R.S. 23:1034 (D), which states, in pertinent part and with *emphasis added*:

Employees of the state, but not those of political subdivisions, shall be provided compensation * * * by the office of risk management of the Division of Administration * * *. For purpose of this Section, "employees of the state" mean the employees of "state agencies" as defined by R.S. 39:1527(1). *Employees of political subdivisions shall be provided compensation under this Section by the governing authorities of their respective political subdivisions.* The fact that the state may grant to an employee of a political subdivision any additional or supplemental pay or otherwise provide funds for the payment of such employee's salary shall not make such employee, in whole or in part or in any way, an employee of the state.

Under La. R.S. 39:1527 (3), "state agencies" do not include parish officials set forth in La. Const. art. 6, §§ 5(G)

and 7(B). These constitutional sections, however, do not refer explicitly to registrars of voters.

The governing authority of each parish shall appoint a registrar of voters in the manner provided by law. La. Const. art. 11, § 5. Each registrar may appoint deputies, confidential assistants, or other office employees. La. R.S. 18:59 (A). The salaries of the chief deputy registrar and confidential assistants are paid in part by the state and in part by the parish governing authority. La. R.S. 18:59 (H). The registrar of voters, and his deputy or permanent employees, are considered State employees, for purposes of the retirement system. La. R.S. 11:2031 (10), (11).

Based on its population at the time, the Caddo Parish Registrar of Voters was authorized to have seven positions. La. R.S. 18:59.2 (A)(1)(5). The salaries of "additional temporary personnel" are paid only by the parish governing authority. La. R.S. 18:59 (I)(1).

The jurisprudence recognizes the concept of "borrowed employee," whereby a nonemployee may be "deemed to be under the control of the employer" sufficiently to impose vicarious liability. H. Alston Johnson, 13 La. Civ. L. Treatise (Workers' Comp), 5 ed. (2010), § 58. To determine whether a worker is a borrowed employee, this court applies a nine-question test to the working relationship. *Galindo v. Castillo*, *supra*. The nine questions are:

1. Who has control over the employee and the work he is performing, beyond mere suggestion of details or cooperation?
2. Whose work is being performed?
3. Was there an agreement, understanding, or meeting of the minds between the original and the borrowing employer?
4. Did the employee acquiesce in the new work situation?
5. Did the original employer terminate his relationship with the employee?
6. Who furnished the tools and place for employment?
7. Was the new employment over a considerable length of time?
8. Who had the right to discharge the employee?
9. Who had the obligation to pay the employee?

An admission by a party in a pleading constitutes a judicial confession and is full proof against the party making it. La. C.C. art. 1853; *Conti Holding LLC v. 1025 Bienville LLC*, 22-01288 (La. 3/17/23), 359 So.3d 930; *Sherman v. Anderson-Scott*, 56,429 (La.App. 2 Cir. 8/27/25), 419 So.3d 881, *writ denied*, 25-01240 (La. 12/9/25), 422 So.3d 297.

Factual findings of the WCJ are reviewed under the manifest error standard. *Lafayette Bone & Joint Clinic v. La. United Bus. SIF*, 15-2137 (La. 6/29/16), 194 So.3d 1112; *Marshall v. City of Winnsboro*, 56,553 (La.App. 2 Cir. 11/19/25), 425 So.3d 256, *writ denied*, 25-01631 (La. 3/25/26), 428 So.3d 265. Under this standard, the judgment must stand if it is found to be reasonable. *Buxton v. Iowa Police Dept.*, 09-0520 (La. 10/20/09), 23 So.3d 275; *Marshall v. City of Winnsboro*, *supra*. By contrast, interpretations of the workers' comp law are questions of law and subject to the de novo standard of review, without deference to the legal conclusions of the WCJ. *Burgess v. Sewerage & Water Bd. of New Orleans*, 16-2267 (La. 6/29/17), 225 So.3d 1020; *Eilts v. Twentieth Century Fox TV*, 54,757 (La.App. 2 Cir. 9/21/22), 349 So.3d 1038.

DISCUSSION

The critical question is Ms. Negrete's status as either a State or a Parish employee. The WCJ performed a labored analysis to find the registrar's office was a "hybrid office" and, in the process, sidestepped the basic requirement of the *claimant's* status. We have therefore reviewed Ms. Negrete's employment status de novo.

The law makes the registrar himself a State employee, as the Constitution expressly creates the position, La. Const. art. 11, § 5, and the statutes expressly place the registrar, along with any deputy or permanent employee of the registrar's, in the State retirement system, La. R.S. 11:2031 (10), (11). The attorney general has confirmed that the registrar is a state employee. Att. Gen. Op. 19-0097 (9/3/19).

The situation with the registrar's temporary employees is not so clear. The statutes set out a maximum number of "authorized positions," La. R.S. 18:59.2 (A)(2), and provided that "additional temporary personnel" shall be paid from funds appropriate by the parish governing authority, La. R.S. 18:59 (I)(1). Payment by the Parish exclusively creates a strong inference that such additional temporary personnel are Parish employees. Moreover, the Constitution, the law regarding registrars, R.S. 18:59 (I)(1), and the law regarding State retirement, R.S. 11:2031 (10), (11), conspicuously omit any reference to the registrar's temporary personnel. In

short, the statutes regulating registrars do not regard their temporary employees as State employees.

Specifically relevant to Ms. Negrete, the workers' comp law, R.S. 23:1034 (D), carefully delineates between State employees, who receive benefits from the office of risk management, and other public employees, who receive benefits from their "respective political subdivisions." To emphasize the distinction, the fact that the state may grant an employee of a political subdivision any additional or supplemental pay "shall not make such employee, in whole or in part or in any way, an employee of the state."

This language shows a strong intent that employees who are not designated as State employees cannot receive the workers' comp benefits of State employees. Section 1034 (D), in our view, eliminates any doubt that the Constitution or the law regarding registrars can be "finessed" into calling Ms. Negrete a State employee.

This court also considers the consent agreement entered between Ms. Negrete and the Parish and the testimony of all witnesses. While the agreement reserved the Parish's right to seek contribution from the State, it established that she was a Parish employee, a point reinforced by Mr. Sibley, Ms. Negrete, and Ms. Feazell. This is a judicial confession of the fact. La. C.C. art. 1853; *Sherman v. Anderson-Scott, supra*. While it may not be legally binding as a conclusion of law, it corresponds to the Constitutional and statutory structure, under which a temporary employee is a Parish employee, not a State employee.

In light of this conclusion, we distinguish the dictum in *State v. Center for Tech & Civic Life, supra*: that court's statement, "In fact, the registrar's employees are considered state employees," is followed by an explicit reference to *authorized positions*, R.S. 18:59.2 (A)(1), with respect to laws prohibiting the use of private money to manage elections, R.S. 18:1400.3 (A). We also distinguish the broad language in the heading of one Attorney General opinion, La. Att. Gen. Op. 85-355 (5/23/85): the early reference to "the registrar of voters and his employees as state or parish officials or employees" is later refined to "other permanent employees of the registrars of voters" and "their chief deputies, and confidential assistants" as the State employees with respect to accrued, sick and compensatory leave. Contrary to the WCJ's reasoning, these authorities do not support the legal conclusion that Ms. Negrete was a State employee.

Further, we are unconvinced by the suggestion, raised at trial and at oral argument, that because Ms. Negrete was working a *State election* (BESE) at the time of her injury she can be deemed a State employee. Most municipal and parochial workers are, to some extent, performing duties in compliance with State law - local police enforce State criminal statutes, deputy clerks of court record mortgages and conveyances as required by the Civil Code - but this does not make them State employees. The applicable statute, R.S. 23:1034 (D), carefully places close cases outside the coverage of State workers' comp benefits. With this conclusion, we cannot accept the WCJ's apparent finding that Ms. Negrete was a hybrid employee of the Parish and the State.

Finally, we address the WCJ's principal finding, that the State was a borrowing employer of Ms. Negrete. Given that Mr. Sibley was allocated seven permanent employees, all such positions were filled, and additional, temporary workers could not be considered State employees, we doubt whether the jurisprudential concept of borrowing could apply. However, because it was a large portion of the WCJ's rationale, we have reviewed his factual findings.

To determine whether a worker is a borrowed employee, courts apply a nine-question test to the working relationship. *Galindo v. Castillo, supra*; *Rogers v. State*, 43,000 (La.App. 2 Cir. 4/30/08), 982 So.2d 252, *writ denied*, 08-1178 (La. 9/19/08), 992 So.2d 931. The testimony was uniform: the person with control over the work done by Ms. Negrete was the registrar, Mr. Sibley, or his chief deputy, Ms. Feazell; there was no agreement, implicit or explicit, between the registrar and the State for the performance of Ms. Negrete's functions; she did not terminate her relationship with the Parish; she did not acquiesce in any new work situation; the Parish furnished the tools and place of employment; and the Parish had the right to discharge, and the duty to pay, Ms. Negrete. These factors strongly indicate there was no borrowing. The point was raised that, at the time of her accident, Ms. Negrete was processing absentee ballots for a State election; however, for the reasons already discussed, this cannot change her to a State employee. There is no showing of a "new employment," or that it persisted for any length of time. In short, the record will not support the WCJ's factual finding that she was a "borrowed employee" of the State. That finding is manifestly erroneous and will be reversed. Ms. Negrete was, and remained, a Parish employee.

CONCLUSION

For the reasons expressed, the judgment is REVERSED insofar as it found the State was the claimant's "borrowing employer" and was liable for one-half of her compensation benefits. Judgement is RENDERED casting the Parish of Caddo with all workers' compensation benefits, paid to date and future. Because no appellate costs have been deferred, La. R.S. 13:4521 (A)(1), costs in this court are not assessed. La. C.C.P. art. 2164.

REVERSED AND RENDERED.

^[1] This court notes, *Biggs* applied the concept of *joint employment*, under La. R.S. 23:1031 (B), not *borrowed employees*, a purely jurisprudential concept. However, the latter entails a similar nine-factor analysis. *Galindo v. Castillo*, 56,202 (La.App. 2 Cir. 4/9/25), 409 So.3d 1061, *writ denied*, 25-00570 (La. 9/16/25), 416 So.3d 481.

Circuit Cases on Benefits, Penalties, and Attorney's Fee

Marshall v. City of Winnsboro

Court:	Court of Appeal of Louisiana
Writing for the Court:	COX, J.
Citation:	Marshall v. City of Winnsboro, 425 So.3d 256 (La. App. 2026)
Docket Number:	56,553-WCA
Decision Date:	06 January 2026
Parties:	Jay MARSHALL, Plaintiff-Appellant v. CITY OF WINNSBORO, Defendant-Appellee

Id. vLex Fastcase: VLEX-1116574726

Link: <https://fastcase.vlex.com/vid/marshall-v-city-of-1116574726>

425 So.3d 256

56,553 (La.App. 2 Cir. 11/19/25)

Jay MARSHALL, Plaintiff-Appellant

v.CITY OF WINNSBORO, Defendant-Appellee

No. 56,553-WCA

Court of Appeal of Louisiana, Second Circuit.

Judgment Rendered November 19, 2025

As Corrected January 6, 2026[*259]

Appealed from the Office of Workers' Compensation, District 1-E, Parish of Union, Louisiana, Trial Court No. 2306513, Brenza Irving Jones, Workers' Compensation Judge

LAW OFFICES OF STREET & STREET By: Curtis Daniel Street, Counsel for Appellant

HUDSON, POTTS & BERNSTEIN, LLP, Monroe, By: Brian Paul Bowes Counsel for Appellee

Before COX, THOMPSON, and MARCOTTE, JJ.

COX, J.

¹This civil appeal arises from the Office of Workers' Compensation District 1E, Union Parish. The Honorable Brenza Irving Jones, presiding as the workers' compensation judge ("WCJ"), denied claimant, Jay Marshall, permanent and total disability benefits under [La. R.S. 23:1221\(2\)](#). For the following reasons, we affirm.

FACTS

Jay Marshall ("Marshall"), while employed as a supervisor for the water department for the Town of Winnsboro ("Winnsboro"), injured his back in November 2012, and filed a 1008 claim for workers' compensation against Winnsboro, claiming he suffered a work-related injury. Winnsboro initially refused to pay for medical treatment, arguing Marshall's injury was not work-related and he already received retirement benefits through the Deferred Retirement Option Plan ("DROP"), such that he was not entitled to compensation benefits.

The WCJ concluded Marshall's injury was work-related and he was entitled to temporary total disability benefits ("TTD") beginning September 18, 2013, and after November 1, 2013, those benefits would be converted to supplemental earning benefits ("SEB"). The WCJ also awarded medical and indemnity benefits as well as penalties and attorney fees. On appeal, this Court affirmed the award. *See Marshall v. Town of Winnsboro*, 50,255 (La. App. 2 Cir.[*260] 11/25/15), 184 So. 3d 796 ("*Marshall I*"). In 2017, Marshall filed a claim for compensation seeking reimbursement for mileage and payments associated with his medical visits. In turn, Winnsboro filed a reconventional demand alleging the award for SEB should be terminated because Marshall

voluntarily retired from the workforce.

²The WCJ determined Marshall was entitled to reimbursement because the mileage and payments associated with his medical visits were related to his work injury. The WCJ further found that Marshall did not voluntarily retire but had not returned to work because of his disability. On appeal, this Court affirmed the ruling, finding that under La. R.S. 23:1203(D), Marshall was entitled to reimbursement for medical visits and mileage expenses. This Court also concluded that Marshall had not withdrawn from the workforce but rather was unable to work because of his continued back pain based on testimony and medical evidence presented at trial. *See Marshall v. Town of Winnsboro*, 52,-733 (La. App. 2 Cir. 7/10/19), 277 So. 3d 907 (“*Marshall II*”). Thereafter, Winnsboro has paid, and Marshall has received, 520 weeks of SEB, which terminated on October 8, 2023.

On December 22, 2023, Marshall filed another 1008 claim, alleging his indemnity benefits were wrongfully terminated, and he should receive indemnity benefits for permanent total disability (“PTD”). To support his assertion, Marshall submitted reports from his neurosurgeon, Dr. Bernie McHugh (“Dr. McHugh”), which indicated that Marshall was not suitable for employment due in part to the extensive medication he was prescribed for his back pain. In response, Winnsboro denied Marshall’s allegation and argued that Marshall was not totally and permanently disabled and received the maximum 520 weeks of SEB as ordered by the WCJ. Prior to a hearing on the matter, Winnsboro requested a second medical opinion from another neurosurgeon, Dr. Marshall Cain (“Dr. Cain”), to assess Marshall’s condition. The report was issued on August 20, 2024, wherein Dr. Cain generally disagreed with Dr. McHugh’s report that Marshall could not perform any type of job function.

³Thereafter, the parties stipulated that Marshall (1) was injured in the course and scope of his employment, (2) received 520 weeks of indemnity benefits with a corresponding compensation rate of \$551.20, and (3) those benefits ceased in October 2023. Therefore, the remaining issues before the WCJ were the nature and extent of Marshall’s disability, whether Marshall was permanently and totally disabled, and whether Marshall was entitled to penalties and attorney fees.

A hearing on the matter commenced October 9, 2024, wherein the following evidence and testimony were presented:

First, Marshall provided a brief overview of his medical history in which he testified that since his injury, his primary treating physicians were Dr. McHugh, who performed his three-level surgery in 2014, and Dr. Hardy Gordon (“Dr. Gordon”), whom he sought for pain management. Marshall explained that since his surgery, he received some spinal injections, but his pain had only increased, and Dr. McHugh recommended a second surgery to address the pain. Marshall stated that he declined the procedure because it would make his back “stiff as a board,” whereas now he had some ability to bend. Marshall further stated that he was prescribed several medications for his back, including Norco, Cymbalta, and Celebrex. He explained that the medication was fairly strong and caused drowsiness throughout the day.

Marshall testified that as a result of the ongoing pain in his back and the side effects of his medication, he spends most[*261] of his day lying on the couch, and the few activities he can perform were limited to a few hours of lawn care, recreational hunting and fishing, “piddl[ing] around” in his tool shop with metalwork, and some driving in rural areas. Regarding his ability to perform lawn care, Marshall explained that he used a riding lawn mower ⁴to cut his and his mother’s yards, and he would pick up debris and tree cuttings; however, he has to take several breaks throughout and is “laid up a day or two” after. With respect to hunting and fishing, Marshall explained that he deer hunts about four times a year with assistance from his family, but he can only sit in the deer stand for an hour before his back hurts. Likewise, Marshall stated that while he can fish, his back pain limits how long he can engage in the activity.

Marshall then testified that he had not been employed since indemnity payments ceased because the pain in his back prevents him from performing certain activities, especially those that require him to lift heavy objects or to bend, sit, or stand for long periods of time. Marshall stated that because of his pain, there was no activity he could do on a sustained basis, and he could not be employed at any job where he would have to sit or move around daily.

On cross-examination, Marshall admitted that prior to October 2023, he only saw Dr. McHugh once a year. Marshall further admitted that it was recommended that he receive a spinal stimulator, but that he declined the treatment because of adverse results his family members had after having the procedure. Marshall also admitted that he declined to receive further steroid injections because he did not feel that they alleviated his pain. Marshall also stated he saw Dr. Gordon monthly but could not recall whether he reported on at least three different occasions that the medication kept his pain under control and allowed him to function daily with less pain.

Marshall reiterated that he was not employed and had not applied for any form of work in the last 10 years since his back surgery; however, he could still engage in some physical activity until the pain in his back forced ⁵him to stop. Marshall clarified that his yardwork consisted of picking up and tossing small tree limbs into a hand wagon, weeding with a pressurized sprayer, and using a leaf blower. Marshall also clarified that he only fished

six times in the past year and could do so because he was able to hook his boat to his truck and launch it into the lake without much effort or strain on his back. Marshall further explained that he was also able to occasionally dove hunt because he would sit and lean against a tree as he did. Marshall stated that he could also perform some light mechanics and metalwork in his tool shop because the mill machine only requires small pieces of metal that he can cut while sitting.

In discussing his past work as a supervisor, Marshall testified that he was required to operate a backhoe, install fire hydrants, and lay pipes. He stated that any paperwork he had to fill out was done by hand because he did not know how to operate a computer. Marshall testified that as a supervisor, he had at least 10 different state certifications that he obtained through in-person classes provided by the city. Marshall stated that while he was not employed, he received Social Security disability, retirement, and earns approximately \$3,200 annually from farmland that he rents out.

During an inquiry with the WCJ, Marshall stated that, in reference to the metalwork he does in his tool shop, he has some machines that were given to him that are used to make parts such as gun barrels. **[*262]**

Marshall expressed that he would like to use the machine more, but because it requires some bending to use, he does not use it and stated that he just does not "feel like doing it."

Next, Margaret Dearman ("Dearman"), a workers' compensation claims specialist and adjuster, testified that she was an employee for Risk Management, Inc., a third-party adjuster for Louisiana Municipal Employers Association. Dearman explained that she was responsible for ensuring Marshall's medical treatments were authorized and paid, and his indemnity benefits were distributed monthly. Dearman explained that payments were primarily made for Marshall's yearly visits with Dr. McHugh and his pain medication and muscle relaxers. Dearman noted that prior to Marshall's indemnity benefits being terminated, recommendations were made for steroid injections and a spinal stimulator, but a request was never submitted. She stated, however, that after indemnity benefits were terminated, there was an increase in requests for pain medication, steroid therapy, and a TENS unit; however, a utilization review determined that those procedures were not medically necessary. Dearman clarified that despite Marshall's indemnity payments being terminated, his medical benefits were still active.

Dearman testified that she received progress notes from Dr. McHugh and Dr. Gordon concerning Marshall's disability. Dearman acknowledged that while Dr. McHugh provided that Marshall was "not suitable for any type of meaningful return to the workplace," the report did not indicate that Marshall was totally and permanently disabled. Dearman further noted that neither Dr. Gordon nor Dr. McHugh put any restrictions on Marshall's activities, such as operating heavy machinery, driving, or physical activities like hunting, and there was an indication Marshall could function normally on his medication. Dearman stated that Dr. Cain's report indicated that Marshall could return to some light-duty employment, and the request for PTD was denied on that basis.

Next, Samantha Williamson ("Williamson") was tendered as an expert in vocational rehabilitation. Williamson testified she was assigned to assess Marshall's vocational abilities following his injury. She explained that although she was unable to meet with Marshall in person because his attorney declined the interview, she was nevertheless able to provide an assessment of Marshall's transferable skills based on his experience as a water supervisor, his daily activities and hobbies, his medical records, his depositions, and his functional capacity examination ("FCE") from 2018.

Williamson opined that, from this information, Marshall was capable of returning to some level of work, noting that no restrictions were placed on his ability to drive or operate heavy machinery despite claims that his pain medications made him drowsy. Williamson then enumerated several part-time positions Marshall could apply for that were classified as light-duty activities; likewise, she noted that several of the activities Marshall already engaged in, such as yard work, were classified as light to medium work, and he could perform those on a part-time basis and operate the business himself to set his own hours to take breaks as needed. Williamson testified that she had previous clients **[*263]** with similar back injuries who successfully returned to some form of employment.

On cross-examination, Williamson admitted Marshall's attorney declined her interview because at that time, no doctor had opined Marshall could return to any form of employment. Williamson stated, however, that there are no restrictions that prevent her from being assigned to a case simply because a doctor has not provided a release to return to work. She also admitted that she sent no follow-up letter to meet with Marshall. Williamson stated that while Dr. McHugh opined that Marshall could not return to any form of meaningful employment, Dr. Cain found that based on Marshall's FCE, he was capable to performing light-duty work, to which she agreed. Williamson acknowledged that Dr. Cain's assessment was based, in part, on a six-year-old FCE report, and there was no recent assessment done on Marshall's vocational abilities. Williamson also acknowledged that Marshall's treating physicians would have to approve any employment she found Marshall would be capable of performing.

In response to whether Marshall would be able to work under the influence of his medication, Williamson testified that Dr. Gordon, who prescribes Marshall his pain medication, is aware that drowsiness is a side effect

of his medication, yet placed no restrictions on Marshall's activities despite knowing that Marshall drives in rural areas, hunts, fishes, and even performs yardwork. She also noted that neither Dr. McHugh nor Dr. Gordon provided that Marshall could not work, only that he could not engage in "meaningful employment," which often has a different meaning for doctors than it would in her profession. Williamson noted that Dr. McHugh made no note of whether Marshall was totally and permanently disabled.

At the close of testimony, the WCJ ordered post-trial briefs. Thereafter, on December 11, 2024, the WCJ rendered its ruling with written reasons, finding that Marshall was not totally and permanently disabled, and dismissed his claim with prejudice. This appeal followed.

STANDARD OF REVIEW

[1-4] Whether the claimant has carried his burden of proof and whether testimony is credible are questions of fact to be determined by the WCJ. ⁹*Harris v. City of Bastrop*, 49,534 (La. App. 2 Cir. 1/14/15), 161 So. 3d 948, 957; *State, DOTD v. Berry*, 49,186 (La. App. 2 Cir. 8/13/14), 147 So. 3d 270. Factual findings in workers' compensation cases are subject to the manifest error standard of review. *Id.*; *Buxton v. Iowa Police Dept.*, 09-0520 (La. 10/20/09), 23 So. 3d 275. Under this standard, the reviewing court does not decide whether the workers' compensation judge was right or wrong, but only whether the judge's findings are reasonable. *Buxton v. Iowa Police Dept.*, *supra*. The manifest error standard applies even when the WCJ's decision is based on written reports, records, or depositions. *Harris v. City of Bastrop*, *supra*.

[5-7] The reviewing court is not permitted to reweigh the evidence or reach its own factual conclusions from the record. *Marange v. Custom Metal Fabricators, Inc.*, 11-2678 (La. 7/2/12), 93 So. 3d 1253. When there is a conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel its own inferences and evaluations are as reasonable. *Harris v. City of Bastrop*, *supra*. Where there exist two permissible views of the evidence, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. *Id.* **[*264]**

In *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1979), the Louisiana Supreme Court set forth a two-part test for the appellate review: (1) the appellate court must find from the record that there is a reasonable factual basis for the finding of the trial court, and (2) the appellate court must further determine that the record establishes the finding is not clearly wrong or manifestly erroneous. *See also Ardoin v. Firestone Polymers, L.L.C.*, 10-0245 (La. 1/19/11), 56 So. 3d 215.

¹⁰DISCUSSION

By his first assignment of error, Marshall argues that the WCJ erred in finding he was not entitled to PTD benefits because it erroneously relied on the second medical opinion from Dr. Cain and testimony from Williamson in rendering its decision, rather than reports from his treating physicians and his own testimony that his back pain significantly limited his physical activity.

[8] Marshall first argues that under La. R.S. 23:1317.1, Winnsboro was required to make a request for a second medical opinion "at or prior to the pretrial conference." In this case, Marshall asserts that Winnsboro did not obtain Dr. Cain's report until shortly before trial; therefore, only the medical opinions from his treating physicians should have been given greater weight in the WCJ's ruling. We disagree.

La. R.S. 23:1317.1 provides, in pertinent part:

A. Any party wishing to request an additional medical opinion regarding a medical examination of the claimant pursuant to R.S. 23:1123 and 1124.1 shall be required to make its request at or prior to the pretrial conference. Requests for additional medical opinions regarding medical examinations made after that time shall be denied except for good cause or if it is found to be in the best interest of justice to order such examination.

The record in this case reflects that a scheduling conference was held on May 7, 2024, in which trial was scheduled for July 31, 2024. Thereafter, Winnsboro filed a motion to continue on May 31, 2024, specifying that the parties agreed that another physician, Dr. Cain, would be retained to provide a second medical opinion, following a medical examination and the release of Marshall's medical records. Although a hearing was scheduled to address the motion, the record does not reflect that Marshall opposed the motion, and trial was scheduled for October 9, 2024. Moreover, the record reflects ¹¹that Dr. Cain examined Marshall on August 8, 2024, and submitted his report on August 24, 2024. On September 6, 2024, Winnsboro filed its supplemental and amended pretrial statement, which provided it would submit Dr. Cain's report at trial.

[9, 10] The record indicates that while no pretrial conference was requested by either party or upon order by the WCJ, Winnsboro, as agreed to by Marshall's attorney, requested that another physician examine Marshall for a second medical opinion. Winnsboro provided that it intended to use this information through several motions, and in its pretrial statement several months before trial occurred. Notably, Marshall neither objected

to nor challenged the second medical opinion before the exam or after. La. R.S. 23:1317.1(F) provides:

F. Objections to the additional medical opinion regarding a medical examination shall be made on form LDOL-WC-1008, and shall be set for hearing before a workers' compensation judge within thirty days of receipt. No mediation shall be scheduled on disputes arising under this Section. **[*265]**

Moreover, a WCJ "has the discretion to admit evidence that would otherwise be inadmissible under the Louisiana Code of Evidence." *Jones v. Walpole Tire Service, Inc.*, 38,206 (La. App. 2 Cir. 3/3/04), 867 So. 2d 927. A WCJ is not strictly bound by the technical rules of evidence and has the discretion to determine the admissibility of the evidence in a workers' compensation proceeding. *Id.* La. R.S. 23:1317(A).

[11] Given this, we cannot say that Winnsboro obtained the second medical opinion in violation of La. R.S. 23:1317.1, or that the WCJ erred in permitting the evidence to be submitted. Likewise, we cannot say that the WCJ erred in considering Dr. Cain's report despite Marshall's assertion that ¹²the opinions of his treating physicians should have prevailed over Dr. Cain's opinion, who only examined him once in anticipation of trial.

[12, 13] Generally, our courts have followed the jurisprudential rule that a treating physician's opinion is given more weight than that of a non-treating physician. *Longoria v. Brookshire Grocery Co.*, 37,975, (La. App. 2 Cir. 12/19/03), 862 So. 2d 1172, *writ denied*, 04-157 (La. 4/23/04), 870 So. 2d 299. However, courts applying that doctrine have held that the treating physician's testimony is not irrebuttable, as the trier-of-fact is required to weigh the testimony of *all* of the medical witnesses. *Id.* As this Court noted in *Longoria, supra*:

There can be competing reasonable views of the medical evidence from which the trier-of-fact may choose, regardless of whether the evidence involves the opinion of a specialist or the treating physician. The deference, therefore, to be afforded by the appellate court must be based upon the manifest error doctrine.

Moreover, this Court in *McKinney v. Coleman*, 36,958 (La. App. 2 Cir. 3/14/03), 839 So. 2d 1240, acknowledged that while the opinion of an independent medical examination physician is not conclusive:

... the WCJ must evaluate all of the evidence presented in making a decision as to the claimant's condition. *Jennings American Legion Hosp. v. Daigle*, 01-621 (La. App. 3 Cir. 11/14/01), 801 So. 2d 550, *writ denied*, 01-3294 (La. 9/5/03), 852 So. 2d 1038. The significant weight given to the opinion of the IME physician can be lesser or greater depending on the qualifications or expertise of the physician, the type of examination he performs, his opportunity to observe the patient, his review of other physicians' examinations and tests, and any other relevant factors.

Accordingly, the inquiry is whether, based on the totality of the record, the fact finder was manifestly erroneous in accepting the expert testimony presented by defendants over that presented by the claimant. *See, Miller v. Clout*, 03-91 (La. 10/21/03), 857 So. 2d 458.

¹³In the case sub judice, the WCJ's written reasons for ruling reflect that it reviewed and weighed all of the medical reports submitted in this matter, including Marshall's treating physicians, as well as Dr. Cain's equally. The WCJ was not only in the best position to make credibility determinations, but it was within its purview to evaluate each medical report and afford more or equal weight to either opinion. Importantly, the WCJ provided in its written reasons for ruling that it "gave great consideration to the opinions of Dr. McHugh and Dr. Gordon." Therefore, we cannot say the WCJ was manifestly erroneous in this regard.

[14] Marshall further argues that he takes strong pain medication that causes drowsiness throughout the day, and the instruction on his medication indicates he **[*266]** should not drive or perform any activity that calls for him to be alert. Marshall notes that he performs limited activities and is only able to do so because of the medication. He argues that the WCJ misunderstood the manner in which he can hunt and fish and perform other physical activities.

Specifically, he argues that his activities are primarily sedentary; he does not have to lift or drag heavy objects, and more importantly, he only hunts approximately four times a year, spending no more than an hour to an hour-and-a-half doing this activity. With respect to fishing, Marshall argues again that the activity does not require any strenuous activity; he limits his driving to country roads and is only able to mow his and his mother's yards on a riding lawn mower, which takes him approximately three hours with breaks.

Marshall submits that these limited activities do not reflect his ability to engage in any meaningful employment and asserts that occasional spurts ¹⁴of activity do not defeat his claim that he is totally and permanently disabled. We disagree.

An injured employee may be entitled to PTD benefits when he sustains a very serious or catastrophic injury that renders him unable to return to work in any capacity. La. R.S. 23:1221(2). Moreover, La. R.S. 23:1221(2)(c) provides, in pertinent part:

Whenever the employee is not engaged in any employment or self-employment, compensation for permanent total disability shall be awarded only if the employee proves by clear and convincing evidence, unaided by any presumption of disability, that the employee is physically unable to engage in any employment or self-employment, regardless of the nature or character of the employment or self-employment, including, but not limited to, any and all odd-lot employment, sheltered employment, or employment while working in any pain, notwithstanding the location or availability of any such employment or self-employment.

[15-17] The clear and convincing standard in a workers' compensation case is an intermediate standard falling somewhere between the ordinary preponderance of the evidence civil standard and the beyond a reasonable doubt criminal standard. *Allen v. Graphic Packaging Int'l, Inc.*, 51,080 (La. App. 2 Cir. 1/11/17), 211 So. 3d 1219, writ denied, 17-0426 (La. 4/24/17), 221 So. 3d 68. To prove a matter by clear and convincing evidence means to demonstrate that the existence of the disputed fact is highly probable or much more probable than its nonexistence. *Id.* Absent any evidence to support the notion that a workers' compensation claimant will be forever disabled or is unable or unwilling to learn a new compensable skill or polish the old one he already has, every procedural precaution must be taken to ensure that claimant is not prematurely declared permanently and totally disabled.¹⁵ *Id.*; *Comeaux v. City of Crowley*, 00-928 (La. App. 3 Cir. 12/6/00), 773 So. 2d 899, *aff'd on other grounds*, 01-0032 (La. 7/3/01), 793 So. 2d 1215.

In *Comeaux*, the Louisiana Supreme Court held that La. R.S. 23:1221(2)(c) requires consideration of the claimant's physical condition, wage earning ability, and unsuccessful rehabilitative efforts including the claimant's educational level and ability to be educated. *Comeaux v. City of Crowley*, *supra*.

[18] Moreover, La. R.S. 23:1226(D) provides that before a claimant is found to be permanently and totally disabled, it shall be determined "whether there is reasonable probability that, with appropriate training or education, the injured employee may be rehabilitated to the extent that[*267] such employee can achieve suitable gainful employment and whether it is in the best interest of such individual to undertake such training or education." The requirement of La. R.S. 23:1226 must be construed in *pari materia* with La. R.S. 23:1221(2). *Allen*, *supra*. Unsuccessful rehabilitation attempts, including the lack of ability to be educated or retrained, along with physical incapacity, are proper factors to consider in determining whether a claimant proved his permanent and total disability. *Id.*; *Comeaux*, *supra*.

In the present case, there is no dispute Marshall was injured and suffers from lower back pain. Therefore, the only inquiry is whether Marshall's diagnosis is so disabling it renders him permanently and totally disabled and he is unable to engage in any form of meaningful employment. The WCJ found that Marshall was not entitled to PTD benefits based, in part, on Marshall's own testimony. Specifically, the WCJ stated:

While this Court gave great consideration to the opinions of Dr. McHugh and Dr. Gordon, this Court cannot ignore the extensive activities engaged in by Claimant during the period of ¹⁶alleged disability. The performance of activities as described by Claimant, including mowing, driving, doing metal work, fishing, hunting, and loading trailers, persuades this Court that he failed to demonstrate by clear and convincing evidence that he is physically unable to engage in any employment.

This Court finds Claimant has certainly engaged in activities for which he can receive a substantial income. Furthermore, this Court questions the credibility of Claimant when he testified concerning his limitations. This Court is persuaded that Claimant actually engages in much more undertakings than those revealed during his statements to the Court. For example, Claimant testified about his hunting of deer. He alleges he goes into the woods, kills the deer and then calls his son to come and retrieve the deer. The Court finds this testimony to be suspect.

Furthermore, Claimant contends he only drives in the country but not in town. However, inasmuch as he admits to driving from the town of Winnsboro, Louisiana, to the town of Delhi, Louisiana, this Court finds it difficult to believe that there is a limitation on his driving ability. Additionally, there is medical evidence supporting his ability to return to work, and actual positions were found to accommodate any work restrictions imposed.

On review, we find that the record supports the WCJ's finding that Marshall did not satisfy his burden of proof that he cannot engage in some form of gainful employment, either full-time or part-time, in the future.

While we acknowledge that Marshall was injured and underwent major surgery to address the pain, Marshall's testimony and his medical records reflect that he has made significant progress despite his diagnosis and pain and is not only able to engage in various forms of physical activity, but that his pain can be managed through medication so he can perform those activities. Specifically, Marshall stated that he is able to operate a riding lawn mower to care not only for his own lawn, but his mother's lawn as well. Marshall stated he was able to weed both lawns with a pump sprayer and pick up limbs and other debris on the properties and load them onto a wagon that he pulls by hand.

¹⁷Moreover, Marshall expressed that he still engages in recreational hunting and fishing. By his own admission, Marshall explained that he goes fishing approximately six times a year, and during those[*268] trips, he is not only able to load his gear into the boat by himself and attach his boat trailer to his truck, he can also drive to desired fishing locations, which can range from three, 20, or 30 miles from his home. Marshall further explained that he can launch the boat into the water and retrieve it without assistance. He stated that while fishing, he is able to alternate between sitting and standing and that he does a lot of “moving around” during this time.

Marshall further stated that he is able to deer and dove hunt for a few hours, drive to run errands approximately three times a week, perform some light maintenance around his home, perform some light mechanics on his truck, and engage in light metal work in his toolshed, which he is able to do because it required little to no bending or lifting and he is able to sit on a stool so he would not have to stand for long periods of time. Although Marshall stated he needed to either take breaks between the activities or limit how often he could do them, he nevertheless admitted that he was able to perform these activities despite his pain, which is further supported by his medical records.

Although Marshall emphasizes that Dr. McHugh’s and Dr. Gordon’s opinion that his disability prevented him from returning to any form of meaningful employment should have been given greater weight at trial. However, we note Dr. McHugh was specifically asked whether he believed Marshall was permanently and totally disabled based on his medical history. Dr. McHugh provided a brief statement that:

¹⁸The patient underwent lumbar interbody fusion at L3 through S1 on back on 04-04-12. He did well with that. He subsequently developed further problems at adjacent levels. We have been following him for that and had recommended surgical treatment; however, the patient declined at that point.

He continues to experience significant difficulty regarding his low back. He continues to take narcotic medication on a daily basis.

With the above information, the patient is not suitable for any type of meaningful returning to the work place.

Dr. Gordon was asked whether he agreed with Dr. McHugh’s assessment, to which he also briefly provided, “I have reviewed Dr. McHugh’s notes and recommendations. I agree with his conclusion.”

However, emphasis on these opinions alone ignores the entirety of Marshall’s medical history in which Dr. Gordon acknowledged Marshall’s physical activities such as lawn care and hunting, recommended resuming normal daily activities, and opined that Marshall was able to function and manage his pain because of his medication. Notably, Dr. Gordon’s most recent notes provided, in part:

4/18/2022- Medicines do allow him to function on a daily basis with less pain.

8/10/2022- Medication allows him to function on a daily basis with less pain.

3/3/2023- Back pain is present most of the time. Medicine keeps his pain under control and allow him to function.

4/28/2023- ... Medication is adequate to provide partial relief of pain allowing him to continue his daily activities.

9/19/2023- Continuation of lower back pain. States his medication keep his pain under control.

10/17/2023-... Patient tells me he is actually doing well with his current medications. He tells his medication allows him to function on a daily basis with less pain.

¹⁹**11/14/2023-**... He tells me his medication allows him to function and continue[*269] with his outdoor activities with less pain.

Dr. Gordon’s notes reflect that while Marshall continued to experience lower back pain, he was still able to engage in outdoor activities and even drive without issue. Moreover, Dr. Gordon never restricted Marshall’s ability to drive or operate machinery despite knowing drowsiness was a side effect of the medicine, and Marshall did not complain that his drowsiness impacted his ability to function on a daily basis. Importantly, neither Dr. McHugh nor Dr. Gordon provided a definitive finding that Marshall was permanently and totally disabled, and Dr. Cain, who examined Marshall and reviewed his medical reports, opined Marshall was not permanently disabled and that his medicine would not preclude him from any type of light duty work.²

Further, regarding Marshall’s potential ability to work or to engage in meaningful employment, Williamson, the vocational expert in this case, found that Marshall could return to light duty employment. Williamson explained that she was able to assess and evaluate Marshall without meeting in person, and determined, based on

Marshall's medical history, his FCE, and his depositions, that Marshall could return to light duty employment in the open labor market. Williamson stated that because several of the current activities Marshall already engaged in were considered light duty work, he could be self-employed and work at his own pace in lawn care or perform light maintenance from his tool shop. Williamson also identified that because Marshall was not restricted from driving while using his current medication, he could also drive for companies such as Uber, which would allow him to control his own hours, take breaks as needed, and limit where he would want to drive. Moreover, Williamson noted Marshall owns rental properties, highlighting it as a potential form of employment and income.

Although Marshall has argued that he suffers from chronic back pain and must take several breaks in between activities, his medical reports indicate he is able to function on a daily basis because of his medication and engage in recreational activities despite any potential side effects. Given the record before this Court, we cannot say that Marshall has shown that he is permanently disabled, or that he cannot engage in some gainful form of employment in the future.

Accordingly, we find that the WCJ did not err in its ruling concerning Marshall's disability, we find no merit in Marshall's second assignment of error that the WCJ should have awarded him penalties and attorney fees.

CONCLUSION

For the reasons stated herein, WCJ's findings are affirmed. Costs of this appeal are assessed to Marshall.

AFFIRMED.

1. A TENS (transcutaneous electrical nerve stimulation) unit is a battery-operated device that delivers small electrical currents through electrodes placed on the skin to reduce pain and muscle spasms by blocking pain signals and/or triggering the release of natural painkillers (endorphins).
2. This Court notes that Marshall was previously cleared by at least two physicians to return to light duty or sedentary work. *See Marshall II*.

Ory v. HKA Enters. Indus. Sols.

Court:	Court of Appeal of Louisiana
Writing for the Court:	EDWARDS, J.
Docket Number:	2025 CA 0430
Decision Date:	06 August 2026
Citation:	Ory v. HKA Enters. Indus. Sols., 2025 CA 0430 (La. App. Aug 06, 2026)
Parties:	TYLER ORY v. HKA ENTERPRISES INDUSTRIAL SOLUTIONS, LLC; INDEMNITY INS. CO. OF N. AMERICA

Id. vLex Fastcase: VLEX-1131738332

Link: <https://fastcase.vlex.com/vid/ory-v-hka-enters-1131738332>

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TYLER ORY
v.
HKA ENTERPRISES INDUSTRIAL SOLUTIONS, LLC; INDEMNITY INS. CO. OF N. AMERICA

No. 2025 CA 0430

Court of Appeals of Louisiana, First Circuit

August 6, 2026

Appealed from the Office of Workers' Compensation, District 5 In and For the Parish of East Baton Rouge State of Louisiana Docket Number 22- 05326 The Honorable Denise J. Lee, Presiding Workers' Compensation Judge

Michelle M. Sorrells Baton Rouge, Louisiana COUNSEL FOR APPELLANT PLAINTIFF-Tyler Ory

Eric J. Waltner Lafayette, Louisiana COUNSEL FOR APPELLEE DEFENDANT - 1 -MA Enterprises Industrial Solutions, LLC and Indemnity Insurance Company of North America

BEFORE: MILLER, GREENE9 STROMBERG, EDWARDS, AND FIELDS, J.T.

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EDWARDS, J.

The Office of Workers' Compensation, District 5, rendered a judgment determining (1) Defendants are entitled to a dollar-for-dollar credit for the wages paid to Plaintiff-in lieu of workers' compensation, resulting in an overpayment, and (2) Plaintiff is not entitled to an award of penalties and attorney's fees related to the calculation of his average weekly wage. Plaintiff appealed. For the following reasons, we amend the judgment, and as amended, affirm.

FACTS AND PROCEDURAL HISTORY

Plaintiff, Tyler Ory, worked as a millwright for HKA Enterprises Industrial Solutions, LLC ("HKA") at its Rubicon factory in Geismar, Louisiana. In his position as a millwright, Ory received compensation from HKA in the amount of \$37.99 per hour and \$56.99 per hour for overtime. On January 15, 2022, Ory sustained second and third degree burns on his hands and legs in a workplace accident while in the course and scope of his employment. Ory was "off duty" following his accident, and during that time, HKA paid him a total of \$46,654.40 in wages in lieu of compensation over 19 weeks.

Upon his return to work on May 30, 2022, Ory was unable to perform his preaccident duties as a millwright

due to medical restrictions. As a result, he was assigned to work in an office for a 40-hour work week with minimal overtime opportunities. This "light duty" work resulted in a wage loss. However, HKA's insurer, Indemnity Insurance Company of North America ("Indemnity"), refused to pay supplemental earnings benefits ("SEB") based on its assertion that it was entitled to a dollar-for-dollar credit for the wages HKA paid in lieu of workers' compensation, resulting in an alleged overpayment to Ory in the amount of \$46,186.40.

Ory filed a disputed claim for compensation before the Office of Workers' Compensation on October 13, 2022. Therein, Ory asserted that he is entitled to SEB

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as well as penalties and attorney's fees for Indemnity's failure to timely pay SEB. Ory also disputed the calculation of his average weekly wage on the basis that the four full weeks immediately preceding the accident do not accurately represent his normal average weekly wage. According to Ory, two of the four weeks immediately prior to his accident included significant vacation and holiday time and therefore should be excluded from his average weekly wage calculation and replaced with weeks in which he did perform work.

HKA and Indemnity (collectively "Defendants") filed an answer to Ory's disputed claim for compensation on October 19, 2022, wherein Defendants explicitly denied that Ory is entitled to SEB or that Ory's average weekly wage calculation is incorrect. Defendants also claimed they are entitled to a credit or offset for benefits or expenses already paid by HKA to Ory.

The matter proceeded to trial on October 7, 2024.^[1] After the presentation of evidence, the workers' compensation judge ("WCJ") took the matter under advisement. The WCJ later rendered a judgment and written reasons for judgment on October 29, 2024. Therein, the WCJ decreed Defendants were entitled to a dollar-for-dollar credit in the amount of \$46,186.40 for wages HKA voluntarily paid in lieu of workers' compensation benefits and denied Ory's claim for penalties and attorney's fees related to the calculation of his average weekly wage. However, the WCJ awarded a penalty of \$2,000.00 and attorney's fees in the amount of \$2,000.00 for Defendants' failure to pay the February 2024 SEB installment timely. Ory appealed, assigning the following errors to the WCJ's ruling:

1. The [WCJ] erred in finding that [La. R.S. 23:1206](#) provides for a dollar-for-dollar credit as opposed to a week-to-week credit when the employer voluntarily pays an injured worker wages in lieu of workers' compensation payments.

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2. The [WCJ] erred in the calculation of the credit owed to [Defendants] if her ruling allowing a dollar-for-dollar credit is correct.

3. The [WCJ] erred by allowing a week of vacation where [Ory] did not work and a week with a holiday that [he] did not work a full week into the average weekly wage calculation when the statute requires the calculation to be based on the average actual hours worked in the four full weeks preceding the date of the accident.

STANDARD OF REVIEW

Factual findings in workers' compensation cases are subject to the manifest error or clearly wrong standard of review. [Clifford v. OLOL Regional Medical Center, 2018-1483 \(La.App. 1 Cir. 5/31/19\), 277 So.3d 1210, 1213](#). In applying the manifest error-clearly wrong standard, the appellate court must determine not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. Thus, if the factfinder's conclusions are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Consequently, when there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous. [Clifford, 277 So.3d at 1213](#). However, statutory interpretation is a question of law subject to *de novo* review. [Havard v. Jeanlouis, 2021-00810 \(La. 6/29/22\), 345 So.3d 1005, 1007](#).

EMPLOYER CREDIT FOR WAGES IN LIEU OF COMPENSATION

Ory's first two assignments of error concern the credit the WCJ awarded to Defendants for overpayment of benefits. In his first assignment of error, Ory specifically contests the WCJ's determination that Defendants are entitled to a dollar-for-dollar credit for the overpayments and instead contends the credit should be on a week-to-week basis.

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The governing statute for credits is [La. R.S. 23:1206](#), which states, "Any voluntary payment or unearned wages paid by the employer or insurer either in money or otherwise, to the employee or dependent, and accepted by the employee, which were not due and payable when made, may be deducted from the payments to be made as compensation." In other words, an employer may be entitled to a credit for previous overpayments from future compensation that may be due. [Hebert v. Terrebonne Parish School Bd.](#), 2003-1444 (La.App. 1 Cir. 5/14/04), 879 So.2d 222, 226. However, [La. R.S. 23:1206](#) is silent regarding how that credit is to be applied. Defendants argued, and the WCJ agreed, that Defendants are entitled to a dollar-for-dollar credit for the payments HKA made to Ory in lieu of compensation while he was out due to his injury. Ory, on the other hand, contends the wages HKA paid in lieu of workers' compensation were gratuitous payments, which are not subject to a dollar-for-dollar credit but rather a week-to-week credit, *i.e.*, a deduction from the total number of weeks for which compensation is due.

Absent an express legislative pronouncement as to the correct method of crediting Defendants, we turn to the legislative history of [La. R.S. 23:1206](#) to guide us. See [Adler v. Williams](#), 2016-0103 (La.App. 1 Cir. 9/16/16), 203 So.3d 504, 511 ("One particularly helpful guide in ascertaining the intent of the legislature is the legislative history of the statute in question and related legislation."). The current version of [La. R.S. 23:1206](#) went into effect on July 1, 1983. Prior to that date, the statute stated voluntary payments made by the employer that were not due and payable when made may, "subject to the approval of the court, be deducted from the payments to be made as compensation; provided that in case of disability, such deduction shall be made by shortening the period during which the compensation shall be paid, and not by reducing the amount of the periodical payments." See [Futrell v. Hartford Acc. & Indem. Co.](#), 276 So.2d 271, 275 (La. 1973). That version of [La. R.S. 23:1206](#) expressly provided that the credit should be a week-

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to-week credit and not a dollar-for-dollar credit. See H. Alston Johnson III, *Workers' Compensation Law and Practice*, in 13 La. Civ. L. Treatise § 279 (5th ed.).

When the statute was amended in 1983, however, the express prohibition against dollar-for-dollar credits for unearned wages paid to the claimant was removed from the statute. See 13 La. Civ. L. Treatise § 279. This court, in [Ringo v. Hawco Mfg.](#), 582 So.2d 987,988 (La.App. 1 Cir. 1991), determined the amended version of [La. R.S. 23:1206](#) "no longer prohibits dollar-for-dollar credit to the employer or insurer for overpayments." Several other courts have also concluded that [La. R.S. 23:1206](#) no longer prohibits dollar-for-dollar credit for overpayments. See, *e.g.*, [Breux v. Petro Drive, Inc.](#), 534 So.2d 48 (La.App. 3 Cir. 1988); [Jim Walter Homes v. Lewis](#), 544 So.2d 485 (La.App. 2 Cir. 1989), on reh'g (*per curiam*)-, [Monceaux v. R & R Const., Inc.](#), 2005-533 (La.App. 3 Cir. 12/30/05), 919 So.2d 795, 802, *writs denied*, 2006-0636, 2006-0585 (La. 5/5/06), 927 So.2d 317, 325.^[2]

Those who enact statutory provisions are presumed to act deliberately and with full knowledge of existing laws on the same subject, with awareness of court cases and well-established principles of statutory construction, and with knowledge of the effect of their acts and a purpose in view. [Sebble on Behalf of Estate of Brown v. St. Luke's #2, LLC](#), 2023-00483 (La. 10/20/23), 379 So.3d 615, 623. Additionally, when the legislature alters the wording of a statute, that alteration reflects a legislative intent to substantively change the law. See [Tin, Inc. v. Washington Parish Sheriff's Office](#),

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2012-2056 ([La. 3/19/13](#)), 112 So.3d 197,207. Considering the foregoing cases and the rules of statutory construction recited above, it follows that the change in wording of [La. R.S. 23:1206](#) reflects the legislature's intention to eliminate the requirement of a week-to-week credit.

While we acknowledge the important equitable concerns cited by Ory in his appellant brief, we can find nothing in the law or jurisprudence prohibiting the application of a dollar-for-dollar credit.^[3] As such, we find no error in the portion of the WCJ's judgment that ordered Defendants are entitled to a dollar-for-dollar credit for the voluntary overpayment to Ory. See [Monceaux](#), 919 So.2d at 802.

Having determined the WCJ did not err in awarding Defendants a dollar-for-dollar credit, we now address Ory's second assignment of error: whether the WCJ erred in the calculation of the amount of credit owed to Defendants. In this case, the parties stipulated that (1) Ory was paid \$46,654.40 in lieu of compensation over a 19-week pay period; and (2) the maximum workers' compensation rate at the time of Ory's accident was \$743.00 a week.^[4] This results in an overpayment of \$32,537.40. Ory argues that the WCJ's judgment is incorrect because it awarded a credit for the overpayment of benefits in the amount of \$46,186.40, rather than \$32,537.40.

First, we note that the judgment set forth the incorrect amount of credit to which Defendants are entitled. The parties specifically stipulated at the beginning of trial that HKA paid Ory \$46,654.40 over the course of

19 weeks as wages in lieu of compensation. A stipulation has the effect of a judicial admission or confession, which binds all parties and the court. *Moore v. Murphy Oil USA, Inc.*, 2015-0096 (La.App. 1 Cir. 12/23/15), 186 So.3d 135, 151,

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writ denied, 2016-00444 (La. 5/20/16), 191 So.3d 1066. Therefore, we will amend the judgment to correct this error. See *Benoit v. Benoit*, 2021-0864 (La.App. 1 Cir. 4/4/22), 341 So.3d 719, 736 n.10 (*citing* La. C.C. P. art. 2164) & 737.

Nevertheless, the WC.I is correct that Defendants are entitled to a *credit* for the wages paid to Ory in lieu of compensation. However, that credit is offset by the amount of indemnity benefits to which Ory would have been entitled during that time, which the parties stipulated was \$743.00 a week. Accordingly, the amount of indemnity Defendants would have paid to Ory over the course of the 19 weeks he was "off duty" (\$14,117.00) is subtracted from the total credit Defendants received (\$46,654.40) to determine the total *overpayment*, which, as the parties astutely point out, equals \$32,537.40.

AVERAGE WEEKLY WAGE CALCULATION

Ory's final assignment of error relates to the average weekly wage calculation. Louisiana Revised Statutes 23:1221(3) sets forth the manner of determining the amount of SEB to which an employee is entitled. When an employee suffers an injury that results in the employee's inability to earn wages equal to at least 90% of the wages that the employee earned at the time of the injury, the employee is entitled to SEB in an amount equal to 662/s% of the difference between the average monthly wage that the employee was earning at the time of the injury and the average monthly wage the employee is able to earn after the injury. *La. R.S. 23:1221 (3)(a)(i)*.

To obtain SEB, the employee must prove by a preponderance of the evidence that an injury covered by the Louisiana Workers' Compensation Law resulted in the employee's inability to earn at least 90% of the amount of the employee's wages prior to the injury. See *Clay v. Our Lady of Lourdes Regional Medical Center, Inc.*, 2011-1797 (La. 5/8/12), 93 So.3d 536, 539. In the instant case, the parties agree that Ory was not able to earn at least 90% of his prior earnings. Therefore, the

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only contested issue regarding SEB is the amount of benefits. More specifically, Ory only contests the calculation of his average weekly wage, which in turn affects the calculation of the total amount of SEB to which he is entitled.

Average monthly wages, for purposes of SEB, are computed by multiplying the employee's "wages" by 52 and then dividing the product by 12. *La. R.S. 23:1221(3)(a)(i)*. Louisiana Revised Statutes 23:1021(13) defines "wages" as "average weekly wage at the time of the accident." According to *La. R.S. 23:1021 (13)(a)(i)*, if an employee is paid on an hourly basis and the employee is employed for forty hours or more, his average weekly wage is determined by multiplying his hourly wage rate by the average actual hours worked in the four full weeks preceding the date of accident or forty hours, whichever is greater. The calculation of a claimant's average weekly wage is a factual finding subject to the manifest error-clearly wrong standard of review. *Nitcher v. Northshore Regional Medical Center*, 2011-1761 (La.App. 1 Cir. 5/2/12), 92 So.3d 1001, 1013, *writ denied*, 2012-1230 (La. 9/21/12), 98 So.3d 342.

Ory was an hourly employee. Prior to his accident, Ory was paid \$37.99 per hour for regular time and \$56.99 per hour for any overtime, and he testified at trial that it was normal for him to work overtime. Since Ory's accident occurred on January 15, 2022, La. R.S. 23:1021 (13)(a)(i) requires us to compute Ory's average weekly wage by considering his average weekly wages in the four full weeks prior to that date. The evidence presented at trial established the following earnings for Ory during those four weeks: (1) for the pay period of January 3, 2022 through January 9, 2022 ("week 1"), Ory earned \$1,519.60, representing 32 hours of vacation pay and 8 hours of holiday pay; (2) for the pay period of December 27, 2021 through January 2, 2022 ("week 2"), Ory earned \$2,317.46, representing 40 hours of regular pay and 14 hours of overtime pay; (3) for the pay period of December 20, 2021 through December 26, 2021 ("week 3"), Ory earned \$1,861.54, representing 24

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hours of regular pay, 16 hours of holiday pay, and six hours of overtime pay; and (4) for the pay period of December 13, 2021 through December 19, 2021 ("week 4"), Ory earned \$3,314.79, representing 40 hours of regular pay and 31.5 hours of overtime pay. Using these figures, Defendants calculated that Ory's average weekly wage was \$2,253.35 for the four full weeks prior to the accident.

Ory contests the use of week 1 and week 3 in his average weekly wage calculation. Specifically, Ory points

out that week 1 and week 3 both include vacation and/or holiday pay and that Ory did not perform "actual work" during this time. As such, Ory contends the inclusion of week 1 and week 3 in his average weekly wage calculation "is not an accurate reflection of what he typically earned if he had worked."

It is well settled that overtime is to be considered in the calculation of a claimant's average weekly wage. *Jones v. Craft Resource Solution*, 2024-554 (La.App. 3 Cir. 4/9/25), 409 So.3d 459, 465; *see also Dupree v. International House of Pancakes*, 2005-1021 (La.App. 1 Cir. 5/5/06), 934 So.2d 183, 186. However, the courts differ in determining how to apply La. R.S. 23:1021(13)(a) when the employee worked less than four full weeks prior to the accident. *Jones*, 409 So.3d at 465. For example, in *Doucet v. Crowley Mfg.*, 96-1638 (La.App. 3 Cir. 4/30/97), 693 So.2d 328, *writ granted in part on other grounds*, 97-1438 (La. 9/19/97), 701 So.2d 143-one of the cases Ory relies on-the claimant, who was injured in late January, appealed a ruling on the basis that his average weekly wage was miscalculated. The claimant argued that because one of the four weeks immediately before his accident was a vacation week, it should not have been included in the calculation of his average weekly wage. *Doucet*, 693 So.2d at 328-29. Relying on *Breuhl v. Hercules Concrete Pumping, Inc.*, 94-2311 (La.App. 4 Cir. 5/16/95), 656 So.2d 1055, the *Doucet* court determined that the average weekly wage calculation should not have included the vacation week taken while the factory was

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closed or another week during which the factory was closed and the claimant worked a light schedule. *Doucet*, 693 So.2d at 329; *see also Breuhl*, 656 So.2d at 1059 (finding where two of the four weeks contained vacation and one week in which the plaintiff worked less than six hours, it could not find the evidence showed "the four full weeks" the plaintiff worked prior to the accident). As a result, the *Doucet* court considered the last full week the claimant worked (prior to the two-week factory closure) in calculating the claimant's average weekly wage. *Doucet*, 693 So.2d at 329-30.

However, all cases decided prior to 2012, including *Doucet* and *Breuhl*, relied on the jurisprudential rule of liberal construction in favor of the injured worker. *See Jones*, 409 So.3d at 467. This jurisprudential rule was legislatively overruled in 2012 by the enactment of La. R.S. 23:1020.1(D)(2), which states, in part, that "the laws pertaining to workers' compensation shall be construed in accordance with the basic principles of statutory construction and not in favor of either employer or employee," *See Jones*, 409 So.3d at 466-67; *Juarez v. AJ Lazo Construction, LLC*, 2022-575 (La.App. 5 Cir. 9/20/23), 370 So.3d 1280, 1287.

In applying the basic principles of statutory construction,^[5] it follows that since Ory did not work "full weeks" in week 1 and week 3 prior to his accident, *i.e.*, he worked less than 40 hours during those two weeks, 40 hours is the greater of the two figures. Therefore, the 40-hour presumption applies to week 1 and week 3 for purposes of calculating Ory's average weekly wage.^[6] Here, the WCJ did just that in

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calculating Ory's average weekly wage. Accordingly, we find no legal or manifest error, and we affirm the WCJ's finding as to Ory's average weekly wage.^[7]

DECREE

For all of the above and foregoing reasons, we amend the WCJ's October 29, 2024 judgment to reflect Defendants are entitled to a credit in the amount of \$46,654.40 for wages paid to Plaintiff, Tyler Ory, in lieu of compensation. As amended, the October 29, 2024 judgment is affirmed. All costs of this appeal are assessed to Plaintiff, Tyler Ory.

AFFIRMED AS AMENDED.

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MILLER, J., concurring in part.

I agree with the majority's opinion finding that the workers' compensation judge did not err in its determination that Defendants are entitled to a dollar-for-dollar credit. I further agree with the majority's opinion amending the workers' compensation judge's judgment to correct the amount of credit to which Defendants are entitled and finding that the total overpayment equals \$32,537.40. However, I respectfully concur with the majority's opinion affirming the calculation of Mr. Ory's average weekly wage. I agree with Judge Fields's analysis and calculation of Mr. Ory's average weekly wage and find that it comports with the statutory and jurisprudential authority. In my view, this calculation more accurately reflects Mr. Ory's typical earnings than the calculation accepted by the majority. Nevertheless, I believe that the workers' compensation judge's determination was reasonable, so the applicable standard of review prevents us from adjusting the calculation. I write to emphasize that a straightforward reading of the law does not lead to

only one mathematically certain outcome.

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MFIELDS, J., dissents in part and assigns reasons.

I respectfully dissent from the majority's opinion affirming the claimant's, Mr. Ory, average weekly wage calculation. According to [La. R.S. 23:1021 \(13\)\(a\)\(i\)](#), an employee's average weekly wage is determined by multiplying his hourly wage rate by the average actual hours worked in the four full weeks preceding the date of the accident or forty hours, whichever is greater. Mr. Ory did not work any hours in the week prior to his accident, January 3, 2022 through January 9, 2022, which the majority refers to as "week 1"; rather his compensation was made up completely of vacation and holiday pay. Under such a circumstance week 1 cannot be counted. See [Breuhl v. Hercules Concrete Pumping, Inc., 94-2311 \(La.App. 4th Cir. 5/16/95\)](#), 656 So.2d 1055, 1059. I agree that the weeks of December 27, 2021 through January 2, 2022, "week 2"; December 20, 2021 through December 26, 2021, "week 3"; and December 13, 2021 through December 24, 2021, "week 4", should all be included in Mr. Ory's average weekly wage calculation because Mr. Ory actually worked during these three weeks. In order to reach four full weeks, the week prior to "week 4", the week of December 6, 2021 through December 12, 2021, should be counted as well. See [Breuhl](#), 656 So.2d at 1059; [Doucet v. Crowley Mfg., 96-1638 \(La.App. 3rd Cir. 4/30/97\)](#), 693 So.2d 328, 329-330, *writ granted in part on other grounds*, 97-1438 (La. 9/19/97), 701 So.2d 143; [Davis v. Boise Cascade Co.](#),

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2014-156 (La.App. 3rd Cir. 10/1/14), 149 So.3d 331, 336-337. Mr. Ory earned \$3,884.69 during this week, comprised of forty hours of regular work and forty-one hours of overtime. Using this week, his average weekly wage is \$2,844.62. For those reasons, I believe it was error for the workers' compensation judge to accept the average weekly wage calculation provided by defendants, and award accordingly.

Notes:

[1] Defendants filed a motion for summary judgment prior to trial, which the WCJ denied. Defendants filed a writ application with this court in early 2024, and this court declined to exercise its supervisory jurisdiction. See [Ory v. HKA Enterprises Industrial Solutions, LLC](#), 2024-0020 (La.App. 1 Cir. 2/16/24), 2024 WL 660330 (unpublished).

[2] Ory relies on one outlier case, [Carter v. Continental Assurance Co., 554 So.2d 688 \(La.App. 3 Cir. 1989\)](#). In [Carter](#), the Third Circuit held that the credit due the employer for gratuitous payment in lieu of compensation was to be given on a week-to-week, rather than dollar-for-dollar, basis. See [Carter](#), 554 So.2d at 690. The [Carter](#) court reasoned that if the 1983 amendment was made with the intent to change the law, it would have expressly done so. [Carter](#), 554 So.2d at 691. However, this reasoning is inconsistent with a basic canon of statutory interpretation—that when the legislature alters the wording of a statute, that alteration reflects a legislative intent to substantively change the law. See [Tin, Inc. v. Washington Parish Sheriffs Office](#), 2012-2056 (La. 3/19/13), 112 So.3d 197, 207. Additionally, we are not bound by the legal determinations of other circuits. See [Succession of Willoz](#), 2022-1026 (La.App. 1 Cir. 7/5/23), 2023 WL 4347961, *4 n.5 (unpublished). For these reasons, we find [Carter](#) unpersuasive.

[3] Ory argues all the cases providing a dollar-for-dollar credit involve overpayments by mistake or miscalculation. This is inaccurate. Neither Ringo nor Monceaux presented an issue of mistaken overpayments to the workers' compensation claimant, yet both this court and the Third Circuit applied a dollar-for-dollar credit.

[4] This totals \$14,117.00 for those 19 weeks.

[5] In examining a law, words and phrases shall be read in their context and be given their generally prevailing meaning. See La. C.C. art. 11; La. R.S. 1:3. Further, when a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature. La. C.C. art. 9.

[6] But see [Davis v. Boise Cascade Co.](#), 2014-156 (La.App. 3 Cir. 10/1/14), 149 So.3d 331, 336. We decline to follow [Davis](#) in light of La. R.S. 23:1020.1(D)(3), also enacted in 2012, which states, "If the workers' compensation statutes are to be liberalized, broadened, or narrowed, such actions shall be the exclusive purview of the legislature."

[7] We note this result is consistent with the purpose of the Louisiana Workers' Compensation Law, *i.e.*, to ensure a basic minimum subsistence to persons now wholly or partially unable to earn their prior wage due

to work-related injuries. The legislative objective is not a wage-replacement plan but to guarantee basic subsistence levels thought to be reasonable and economically feasible. See 13 La. Civ. L. Treatise § 277.

Brown v. Creative Risk Sols. & Gallo Mech.

Court:	Court of Appeal of Louisiana
Writing for the Court:	Monique G. Morial, Judge
Docket Number:	2026-CA-0092
Decision Date:	31 August 2026
Citation:	Brown v. Creative Risk Sols. & Gallo Mech., 2026-CA-0092 (La. App. Aug 31, 2026)
Parties:	DONNELL BROWN v. CREATIVE RISK SOLUTIONS AND GALLO MECHANICAL, LLC

Id. vLex Fastcase: VLEX-1133084614

Link: <https://fastcase.vlex.com/vid/brown-v-creative-risk-1133084614>

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DONNELL BROWN
v.
CREATIVE RISK SOLUTIONS AND GALLO MECHANICAL, LLC

No. 2026-CA-0092

Court of Appeals of Louisiana, Fourth Circuit

August 31, 2026

APPEAL FROM THE OFFICE OF WORKERS' COMPENSATION NO. 22-03693, DISTRICT "08"
HONORABLE ABRIL L. BALONEY

DONNELL BROWN PRO SE PLAINTIFF/APPELLANT

GREGORY J. SAUZER TREVOR C. DAVIES MICHAEL L. BALLERO SIMON, PERAGINE, SMITH &
REDFEARN, LLP COUNSEL FOR DEFENDANTS/APPELLEES

(Court composed of Judge Sandra Cabrina Jenkins, Judge Rachael D. Johnson, Judge Monique G. Morial)
Monique G. Morial, Judge

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MGM

SCJ

RDJ

Claimant-Appellant, Donnell Brown, appeals the June 24, 2024 Office of Worker's Compensation (OWC) judgment dismissing his Disputed Claim for Compensation against his employer, Gallo Mechanical, LLC (hereinafter "Gallo") and its administrator, Creative Risk Solutions, LLC (collectively "Defendants"). For the following reasons, we affirm.

Factual and Procedural Background

This is a worker's compensation case. On December 8, 2021, Claimant sustained a crush-type injury to his left middle finger while repairing pipes in the course and scope of his employment with Gallo. On July 11, 2022, Claimant filed a Disputed Claim for Compensation against Defendants seeking temporary total disability ("TTD") benefits, penalties, and attorney fees for Defendants' alleged improper termination of his

indemnity benefits and refusal to authorize related medical treatment. Defendants filed an Answer to the claim, admitting that Claimant was injured in the course and scope of his employment; however,

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Defendants asserted that Claimant had been medically released to return to work and, further, had been offered light duty work that Claimant refused.

On March 27, 2024, the matter proceeded to trial. At trial, the parties stipulated that: (1) Claimant was involved in a work-related accident on December 8, 2021 while in the course and scope of his employment; (2) Claimant's average weekly wage (AWW) is \$1228.00 with a corresponding weekly compensation rate of \$743.00 per week; and (3) Claimant was released to regular work duty on January 10, 2022.

Claimant proceeded to trial pro se.^[1] Claimant testified that, immediately following the accident, he went to an Ochsner Occupational Health facility for treatment and was instructed that he could return to work. He testified that he returned to work after the accident but was in pain and eventually stopped working on March 9, 2022. On March 18, 2022, he again returned to work using only his left hand for one day, but only worked from 6:30 a.m. to 9 a.m. and did not return. Claimant testified that he collected unemployment benefits from May to December 2022. He stated that he thereafter worked briefly for a temp agency beginning in January 2023, when his unemployment benefits expired.

The medical records introduced into evidence reflect that Claimant treated at Ochsner Occupational Health facility on December 8, 2021, for a finger injury. He returned on January 10, 2022, and was instructed to continue to work regular duty

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and to follow-up in five weeks. He returned on February 15, 2022, and was instructed to "protect wound while at work as needed."

On March 8, 2022, Claimant reported to East Jefferson Emergency room for finger pain related to his work-related injury. He was prescribed pain medication and instructed to follow up with hand specialist Dr. Kelly Babineaux. An X-ray taken on that date reflected no fracture, subluxation, or dislocation. On March 15, 2022, Claimant returned to Ochsner Occupational Health and was treated by a Dr. Saeed for his finger injury with a new complaint of finger neuropathy. Claimant was instructed to limit use of his left hand and arm pending an "MRI to be scheduled once authorized," and to follow-up with the clinic in 7-10 days. Dr. Saeed recommended restricted use of the left hand pending performance and results of the recommended MRI. Dr. Saeed did not instruct Claimant that he was disabled or unable to return to work.

On March 24, 2022, Claimant underwent an MRI of his left finger, which revealed tenosynovitis and osteoarthritis but no fracture, edema, or dislocation. The records do not indicate that Claimant ever returned to Dr. Saeed following the MRI as instructed.

On May 24, 2022, Claimant followed up with Dr. Babineaux who diagnosed him with complex regional pain syndrome ("CRPS"). Dr. Babineaux instructed Claimant that he had no work restrictions as to his dominant arm, but restrictions of "limited or minimal use" of his left arm at that time. On August 22, 2022, Claimant was again treated for his left finger injury and related CRPS. At that

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time, he was referred to pain management and hand therapy. The records reflect he was discharged from hand therapy for "plateau/poor effort."

Claimant introduced into evidence a single-page document from a chiropractor's office stating that Claimant could not work from March 22, 2022 to May 22, 2022. However, there is no medical documentation establishing any causal connection between Claimant's work injury and the alleged disability- in other words, there is no report from the chiropractor to state when or why Claimant was evaluated by the chiropractor or to link the alleged inability to work to his December 8, 2021 work injury.

Defendants introduced into evidence the medical records and deposition testimony of Dr. Claude Williams with Southern Orthopaedic Specialists. Dr. Williams testified that he examined Claimant on December 5, 2022, and noted full active range of motion in both wrists, no atrophy swelling or deformity of the left hand, but did note left hand guarding. Concerning Dr. Babineaux's CRPS diagnosis, Dr. Williams testified that it is very uncommon, but not impossible, for a patient to develop CRPS from a finger crushing injury. He testified to his opinion that, at the time of his December 5, 2022 evaluation, Claimant more likely than not did not have CRPS.

Dr. Williams opined that the MRI findings of osteoarthritis and any abnormal findings from the MRI were

more likely than not unrelated to the finger injury at issue. Ultimately, Dr. Williams opined that Claimant sustained a contusion and laceration of the left middle finger. He further opined that the

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contusion and laceration is blunt trauma to the finger, that had completely resolved. Dr. Williams concluded that it was more likely than not that Claimant could have returned to regular work duty as of January 10, 2022.

Defendants introduced into evidence the deposition testimony and Second Medical Opinion ("SMO") report prepared by Dr. Barton Wax, a Board-Certified Orthopedic Surgeon with Jefferson Orthopedic Clinic.^[2] Dr. Wax agreed that CRPS resulting from a finger injury is extremely rare and that, at the time of the August 9, 2023 exam, Claimant showed no objective signs of CRPS. He opined that, even had Claimant previously suffered from CRPS, he observed no signs of it at the time of his subsequent exam.

Dr. Wax noted some inconsistencies in Claimant's exam and opined that Claimant's exam suggested "symptom magnification."^[3] Concerning Claimant's subsequent treatment by a chiropractor, Dr. Wax testified to his opinion that a chiropractor would not be the appropriate provider to treat an acute finger injury. Dr. Wax further concluded that Claimant could return to work with no restrictions.

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Defendants called Mr. Justin Morgan, the safety director for Gallo, as a witness. Mr. Morgan testified that he was informed of the accident at issue shortly thereafter and followed Claimant's progress, coordinating payment of medical payments for Claimant's treatment immediately following the accident. Mr. Morgan testified that he spoke by telephone with Claimant's treating physician, Dr. Saeed, immediately after Claimant's March 15, 2022 appointment. He testified that Dr. Saeed suggested that Claimant be put on light duty work while awaiting the results of an MRI.

Mr. Morgan testified that he offered Claimant a position, with the same pay, consistent with Dr. Saeed's recommendations. Defendants introduced into evidence a March 22, 2022 letter that Gallo sent to Claimant offering light duty work in compliance with Dr. Saeed's recommendations. Mr. Morgan testified that Claimant did not accept light duty work and did not return to work after March 18, 2022.

Mr. Morgan testified that a nurse case manager with Creative Risk Solutions ("CRS") was assigned to Claimant's case. Mr. Morgan learned through the CRS case manager that Claimant refused to sign a choice of physician form when requested. Mr. Morgan testified that his decision to terminate Claimant's benefits was the result of Claimant's failure to submit a Choice of Physician Form, failure to attend multiple SMO appointments and other scheduled treating physician appointments, and his failure to cooperate with the nurse case manager and adjuster for his claim.

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Defendants introduced into evidence a "Separation Notice" indicating that Claimant's employment was involuntarily terminated on April 18, 2022. That document indicates that Claimant's last date worked was March 18, 2022.

The OWC took the matter under advisement and requested post-trial briefs. On June 24, 2024, the OWC issued a written judgment, dismissing Claimant's Disputed Claim for Compensation. The OWC found that "Claimant failed to establish that he is unable to engage in any employment, that Claimant is statutorily barred from receiving TTD benefits during any period that he received unemployment benefits, and that Claimant failed to establish that Employer was arbitrary and capricious when it terminated benefits in April 2022." This timely appeal followed.

DISCUSSION

On appeal, Claimant contends that the OWC erred in (1) failing to award reinstatement of his indemnity benefits; (2) failing to award penalties and attorney fees under La. R.S. 23:1201 for Defendants' arbitrary and capricious actions in terminating his benefits; and (3) failing to recognize his retaliatory discharge claim pursuant to La. R.S. 23:1361.

Assignments of Error One and Two

On appeal, Claimant contends that the OWC erred in failing to reinstate his temporary total disability benefits ("TTD benefits"). Relatedly, Claimant complains that the OWC erred in failing to award penalties and attorney fees under

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La. R.S. 23:1201 for Defendants' arbitrary and capricious action in terminating his benefits.

Termination of Indemnity Benefits

This Court has set forth a claimant's burden to prove entitlement to TTD as follows:

To prove entitlement to temporary total disability benefits, an employee must prove by "clear and convincing evidence, unaided by the presumption of disability, that the employee is physically unable to engage in any employment or self-employment, regardless of the nature or character of the work, including but not limited to employment while working in pain." *La. R.S. 23:1221(1)(c)*; *See also Williams*, 07-0464, p. 3, 996 So.2d at 293. The burden of proof by clear and convincing evidence "means to demonstrate that the existence of a disputed fact is much more probable than its nonexistence." *Hall v. MacPapers, Inc.*, 11-1548, p. 5-6 (La.App. 4 Cir. 5/30/12), 95 So.3d 1131, 1135 (quoting *Molinere v. Vinson Guard Service, Inc.*, 05-0116, p. 5 (La.App. 4 Cir. 7/13/05), 914 So.2d 566, 571). Also, to carry the burden of proving disability by clear and convincing evidence, the employee must present "objective medical evidence" of the disabling injury. *Duplessis v. Tulane University Medical Center*, 10-0267, p. 3 (La.App. 4 Cir. 8/25/10), 47 So.3d 992, 995. "Stated otherwise, to satisfy the elevated burden of proving by clear and convincing evidence, the jurisprudence recognizes that the claimant must introduce medical evidence of a disability." *Id.*; *See also Williams*, 07-0464, p. 3, 996 So.2d at 293-294; *Jackson v. Sysco Food Services*, 05-1304, p. 2 (La.App. 4 Cir. 6/7/06), 934 So.2d 191, 193; *Daniel v. New Orleans Pub. Serv.*, 02-2427, p. 6 (La.App. 4 Cir. 12/3/03), 861 So.2d 721, 726.

"Disability can be proven by medical and lay testimony. The trial court must weigh all the evidence, medical and lay, in order to determine if the claimant has met his or her burden." *Bailey v. Smelser Oil & Gas, Inc.*, 620 So.2d 277, 280 (La. 1993); *Jackson*, 05-1304, p. 2, 934 So.2d at 193 (plaintiff failed to meet her burden of proof that she was physically unable to perform any type of employment).

Gaines v. Home Care Sols., LLC, 15-0895, pp. 14-15 (La.App. 4 Cir. 4/6/16), 192 So.3d 794, 803-04.

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Thus, a claimant seeking TTD benefits must prove that he is unable to engage in any employment. "A claimant who can perform light duty work is not entitled to TTD benefits." *Hall*, 11-1548, p. 6, 95 So.3d at 1135. Moreover, the OWC's factual findings as to whether a claimant is entitled to indemnity benefits are subject to the manifest error or clearly wrong standard of appellate review. *Id.*, 11-1548, p. 4, 95 So.3d at 1134.

At trial, the OWC questioned Claimant during his testimony, "do you have any evidence that speaks specifically to the nature and extent of your injury?" Claimant responded, "No, ma'am I don't." The parties stipulated that Claimant was released to work without restrictions on January 10, 2022. Thereafter, Claimant was placed on restricted duty as to his left hand and arm, for a finite period of time, and Defendants put forth evidence to show that light duty employment was offered. The record demonstrates that Claimant refused to return to light duty work.

Claimant's argument before this Court suggests that he is under the impression that as long as he is under the care of a medical provider and not employed, that he should be entitled to benefits. The law however requires that, for a claimant to be eligible to collect TTD benefits, Claimant bears the burden to put forth specific medical testimony or evidence demonstrating that he is unable to work in any capacity and that such disability is causally related to the work injury at issue in litigation. The record reflects that Claimant put forth no medical evidence to demonstrate any disability attributable to his work-related injury that

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would render him unable to engage in any type of employment and entitle him to TTD benefits.^[4] Thus, we find no error in the OWC's failure to reinstate Claimant's benefits. This assignment of error lacks merit.

Penalties and Attorney Fees

On appeal, Claimant contends that the OWC erred in failing to award Claimant penalties and attorney fees under La. R.S. 23:1201 for Defendants' arbitrary and capricious actions in discontinuing benefits.

La. R.S. 23:1201(F) provides for the assessment of penalties and attorney fees for a Defendant's failure to pay benefits. La. R.S. 23:1201(1) provides for an increased assessment of penalties and attorney fees where the OWC makes a factual determination that the employer-defendant's actions in discontinuing benefits were arbitrary and capricious. However, La. R.S. 23:1201(F)(2) instructs that such penalties awarded under La. R.S. 23:1201 "shall not apply if the claim is reasonably controverted... ."

"Although the Worker's Compensation Act is to be liberally construed in regard to benefits, penal statutes are to be strictly construed." *Hall, Inc.*, 11-1548, pp. 12-13, 95 So.3d at 1139. Moreover, the OWC's determination as to whether penalties and attorney fees should be assessed against an employer for its actions in terminating or discontinuing indemnity benefits is a question of fact and shall not

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be disturbed absent manifest error. *Id.*, 11-1548, p. 13, 95 So.3d at 1139. In determining the factual issue of whether an employer's actions are arbitrary and capricious, the manifest error standard of review is applied, and the crucial inquiry is "whether the employer can articulate an objective reason for discontinuing benefits at the time it took the action." *Irving v. Transit Mgmt. of Se. Louisiana, Inc.*, 10-0360, p. 5 (La.App. 4 Cir. 7/20/10), 44 So.3d 796, 799-800 (quoting *Frith v. Riverwood*, 04-1086, p. 12 (La. 1/19/05), 892 So.2d 7, 15).

As stated above, Claimant failed to meet his burden to prove any work-related injury affecting his ability to engage in any employment. For a brief period of time, Claimant was instructed to restrict use of his left arm and to return to essentially "light duty" work pending results of an MRI. Defendants put forth evidence to show that Gallo offered Claimant light duty employment for Claimant's same pre-injury pay. Moreover, Claimant acknowledged that in January 2023, after the expiration of his unemployment benefits, he sought employment through a temporary employment agency. Claimant failed to present any medical or expert evidence to demonstrate his alleged complete inability to work was a result of the December 8, 2021 injury at issue.

Mr. Morgan testified at trial that the following factors demonstrated Claimant would not cooperate with the worker's compensation process and ultimately led to the decision to terminate Claimant's indemnity benefits: (1) Claimant's failure to report to work after light-duty employment was offered for the same pay; (2) Claimant's failure to attend multiple SMO and scheduled treating

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physicians' appointments; and (3) Claimant's refusal to sign a Choice of Physician form as requested.

Based on the lack of evidence in the record on appeal to demonstrate that Claimant was unable to engage in any employment, and based on our upholding the OWC's determination that Claimant failed to meet his burden to prove he was entitled to any indemnity benefits, we cannot find that the OWC was manifestly erroneous in its judgment declining to award penalties or attorney fees against Defendants under La. R.S. 23:1201. This assignment of error lacks merit.

Assignment of Error Three

Retaliatory Discharge Claim

On appeal, Claimant raises the argument that he was improperly terminated while receiving benefits and under a medical disability. Claimant asserts that Defendants' actions in terminating him after his injury support a retaliatory discharge claim for penalties and attorney fees under La. R.S. 23:1361. That provision provides that an employer shall not discharge an employee because of the employee's filing or reporting of a worker's compensation benefits claim. The statute further provides:

Any person who has been denied employment or discharged from employment in violation of the provisions of this Section shall be entitled to recover from the employer or prospective employer who has violated the provisions of this Section a civil penalty which shall be the equivalent of the amount the employee would have earned but for the discrimination based upon the starting salary of the position sought or the earnings of the employee at the time of the discharge, as the case may be, but not more than one year's earnings, together with reasonable attorney's fees and court costs.

La. R.S. 23:1361(C).

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On appeal, Claimant asks this Court to impose a civil penalty and fees against Defendants under the provisions of La. R.S. 23:1361. Claimant did not assert this claim for retaliatory discharge at the lower court level before the OWC. As a general rule, this court will not consider an issue raised for the first time before us which was not pleaded, urged, or addressed in the court below. *Johnson v. Orleans Par. Sch. Bd.*, 05-1038, p. 6 (La.App. 4 Cir. 5/3/06), 932 So.2d 687, 691.^[5] Accordingly, we decline to consider Claimant's assignment of error related to a retaliatory discharge claim.

DECREE

For the reasons provided herein, the June 24, 2024 judgment of the OWC is affirmed.

AFFIRMED

Notes:

[1] On May 11, 2023, Claimant's counsel withdrew as counsel of record. On September 26, 2023, new counsel enrolled but subsequently withdrew on December 19, 2023.

[2] Claimant initially refused to undergo an SMO. On February 10, 2023, Defendants filed a motion to compel Claimant to undergo a second medical opinion (SMO), alleging that Claimant failed to appear at an SMO medical appointment and that Defendants forfeited a \$3,000 advanced fee for Claimant's failure to appear. On April 11, 2023, the OWC granted Defendants' motion to compel and ordered that Claimant appear for an SMO.

On May 9, 2023, Defendants filed a "Motion to Dismiss Worker's Compensation suit for Failure to Comply with Judgement Ordering Claimant Submit to a Second Medical Opinion Examination, Seek Reimbursement of Medical Costs, and Assess Legal Costs and Fees." On June 21, 2023, the OWC denied Defendants' motion to dismiss but ordered Claimant again to submit to an SMO and ordered Claimant to reimburse Defendants \$3,000.00 in medical expenses and \$875.00 in attorney fees, deferring payment of those fees and costs until resolution of the litigation.

[3] Dr. Wax testified that after he examined Claimant, he observed Claimant return to his parked car in the parking lot. At that time, Dr. Wax observed Claimant remove his left hand brace, throw it into the car, open the door with his left hand and drive away with his left hand on the steering wheel.

[4] Although Claimant did not address supplemental earning benefits (SEBs) in brief to this Court, we further find that the record contains no testimony or evidence to prove that he is unable to earn 90% of his pre-injury wages. "Under the provisions of La. R.S. 23:1221 (3)(a), an employee is entitled to receive SEB benefits if the employee sustains a work-related injury that results in an inability to earn 90% or more of the average pre-injury wage." *Hall*, 11-1548, p. 10, 95 So.3d at 1138. The initial burden is on the claimant to prove the inability to earn that amount. *Id.* Thus, Claimant failed to meet his burden to prove that he would be entitled to any SEB benefits.

[5] This Court has recently stated that "Rule 1-3 of the Uniform Rules of the Courts of Appeal provides, in pertinent part, that "[t]he Courts of Appeal shall review issues that were submitted to the trial court and that are contained in specifications or assignments of error, unless the interest of justice requires otherwise." Under that rule, "in general, issues not argued before the trial court for decision will not be considered for the first time on appeal, unless the interest of justice clearly requires otherwise." *Reissland v. Valluzzo Companies, LLC*, 25-0379, p. 25 (La.App. 4 Cir. 12/29/25), — So.3d—, 2025 WL 3754077, *writ denied*, 26-00184 (La. 5/12/26), 430 So.3d 1084 (citing *Clavo v. Fara Ins. Serv.*, 18-0727, p. 7 (La.App. 4 Cir. 1/30/19), 363 So.3d 286, 291). This exception applies when constitutional or due process rights have been violated or a clear deprivation of rights is established. Such does not apply in this case.

Loewen v. New Orleans Louisiana Saints LLC

Court:	Court of Appeal of Louisiana
Writing for the Court:	SCHLEGEL, J.
Citation:	428 So.3d 704
Docket Number:	25-CA-304
Decision Date:	04 December 2025
Parties:	Mitchell LOEWEN v. The NEW ORLEANS LOUISIANA SAINTS LLC and Berkley Specialty Underwriting Managers, LLC

Id. vLex Fastcase: VLEX-1122131574

Link: <https://fastcase.vlex.com/vid/loewen-v-new-orleans-1122131574>

428 So.3d 704

25-304 (La.App. 5 Cir. 12/4/25)

Mitchell LOEWEN

v.The NEW ORLEANS LOUISIANA SAINTS LLC and Berkley Specialty Underwriting Managers, LLC

No. 25-CA-304

Court of Appeal of Louisiana, Fifth Circuit.

December 4, 2025[*706]

ON APPEAL FROM THE OFFICE OF WORKERS' COMPENSATION, DISTRICT 7, STATE OF LOUISIANA, NO. 20-6014, HONORABLE SHANNON BRUNO BISHOP, JUDGE PRESIDING

COUNSEL FOR PLAINTIFF/APPELLANT, MITCHELL LOEWEN, Frank A. Bruno, New Orleans, Shannon C. Lindsey

COUNSEL FOR DEFENDANT/APPELLEE, THE NEW ORLEANS LOUISIANA SAINTS, LLC AND BERKLEY, SPECIALTY UNDERWRITING MANAGERS, LLC, Christopher J. Kane, Edwin G. Laizer, New Orleans,

Panel composed of Judges Fredericka Homberg Wicker, Scott U. Schlegel, and Timothy S. Marcel

SCHLEGEL, J.

¹This is the second appeal in this matter. Claimant, Mitchell Loewen, seeks review of the workers' compensation court's February 10, 2025 judgment in favor of defendants, The New Orleans Louisiana Saints, LLC and Berkley Specialty Underwriting Managers, LLC, which dismissed his claim for permanent partial disability (PPD) benefits for impairment to his left knee. In order to recover PPD benefits, [La. R.S. 23:1221\(4\)\(q\)](#) requires a claimant to establish his percentage of anatomical loss or impairment pursuant to the most recent edition of the American Medical Association's (AMA) "Guidelines to the Evaluation of Permanent Impairment." The workers' compensation court denied Mr. Loewen's claim based on its finding that his medical expert evidence failed to meet this standard. For reasons explained more fully below, we find that several of the factual determinations the workers' compensation court made to reach this decision were inaccurate and contrary to the undisputed evidence.

Thus, we reverse the workers' compensation court's February 10, 2025 judgment and find that Mr. Loewen introduced competent and reliable evidence from his treating orthopedic surgeon to establish his impairment rating in accordance with **[*707]** [La. R.S. 23:1221\(4\)\(q\)](#). We further render judgment in favor of Mr. Loewen in the amount of \$13,244.00, and order defendants to pay the costs of this appeal. However, we deny Mr. Loewen's claim for penalties and attorney's fees.

FACTS AND PROCEDURAL BACKGROUND

A detailed discussion of the factual and procedural background of this matter is contained in our prior opinion, *Loewen v. New Orleans Louisiana Saints, LLC*, 22-507 (La. App. 5 Cir. 6/7/23), 367 So.3d 846, *writ denied*, 23-939 (La. 10/31/23), 372 So.3d 812. In *Loewen*, we amended the workers' compensation court's prior judgment to reflect that Mr. Loewen injured his left knee, rather than ²his left ankle, while in the course and scope of his employment with the New Orleans Saints on December 6, 2019. *Id.* at 852-53. We also affirmed the decision to deny Mr. Loewen's claim for supplemental earnings benefits. *Id.* at 853-55. Finally, we remanded the matter for a ruling on Mr. Loewen's alternative claim for PPD benefits, including "a determination of whether Mr. Loewen established his disability or impairment rating under the American Medical Association's guidelines for evaluating permanent impairment, pursuant to [La. R.S. 23:1221\(4\)\(q\)](#)." ¹ *Id.* at 855-56. This issue is the subject of the current appeal.

On remand, the workers' compensation court set the matter for trial on July 1, 2024. The parties did not introduce any new evidence at the trial. But they did stipulate that Mr. Loewen would be entitled to receive the applicable maximum workers' compensation rate in the amount of \$688.00 per week, if the court awarded PPD benefits.² Following oral argument by the parties, the workers' compensation court took the matter under advisement. On February 10, 2025, the court rendered judgment in favor of defendants and dismissed Mr. Loewen's claim for PPD benefits based on the following findings:

³IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Claimant, Mitchell Loewen, failed to establish his disability or impairment rating under the American Medical Association's guidelines for evaluation impairment, pursuant to [La R.S. 23:1221\(4\)\(Q\)](#).

* * *

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the American Medical Association's Guides are used by physicians to assess permanent impairment ratings. The degree of an injured worker's impairment must be determined by medical expert opinions.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the records show Claimant's impairment rating was determined by an unlicensed physical therapist. Casey Garretson was not a board certified or licensed occupational therapist. Although a physical therapist was listed on the report, he had no involvement in the evaluation and his involvement was for billing purposes only. Garretson graduated occupational[*708] therapy school, took a 6th Edition course on impairment ratings, and had training through Functional Testing Centers. However, he was not a licensed occupational therapist qualified to give an expert medical opinion on impairment rating.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Garretson did not review any MRIs. He relied on the doctor's notes, subjective findings, and information Claimant "filled out on a form." The information from the form was not documented in the records. Dr. Ylanan concurred with Garretson's opinion. However, Dr. Ylanan did not participation (sic) in the examination, review, or calculation of the impairment rating.

On April 10, 2025, Mr. Loewen filed a motion for devolutive appeal, which the workers' compensation court granted on April 11, 2025.

Impairment Rating

The central issue before this Court on appeal is whether the impairment rating Mr. Loewen introduced into evidence was sufficient to meet the standard set forth in [La. R.S. 23:1221\(4\)\(q\)](#) - that is whether the percentage of anatomical loss to his left knee is "as established in the most recent edition of the [AMA] 'Guides to the Evaluation of Permanent Impairment.'" ³ Therefore, we begin our analysis with a review of the factual and procedural history pertaining specifically to the impairment rating at issue.

The first trial in this matter was set on September 2, 2021. On June 15, 2021, defendants filed a motion for summary judgment arguing in part that Mr. Loewen did not have an impairment rating to prove his alternative claim for PPD benefits. In his opposition to the summary judgment motion, Mr. Loewen explained that he was in the process of obtaining an impairment rating from his ⁴treating physician in Arkansas, Dr. Ramon C. Ylanan.⁴ Mr. Loewen attached copies of communications between his attorney and Dr. Ylanan on July 9, 2021, wherein Dr. Ylanan explained that when a workers' compensation patient needs an impairment rating, he sends the patient to a physical therapist for a functional capacity evaluation (FCE) and impairment rating. Dr. Ylanan also indicated that he would need to reevaluate Mr. Loewen before he could provide an impairment rating. The workers' compensation court heard arguments on the summary judgment motion on July 23, 2021, and took the matter under advisement.

Shortly after the hearing on the summary judgment motion, the discovery deadline expired on August 2, 2021.

Two weeks later, on August 16, 2021, Mr. Loewen's counsel emailed defense counsel "Dr. Ylanan's report dated August 12, 2021 (with addendum)," which also included reports for the FCE and "Sixth Edition Impairment" rating prepared by Functional Testing Centers, Inc.

Functional Testing's Reports to Dr. Ylanan

The "Functional Capacity Evaluation" and Sixth Edition Impairment rating reports that Functional Testing sent to Dr. Ylanan were both electronically signed by[*709] "Stuart A. Jones, PT, DPT, CDA, CFE, Physical Therapist" and "Casey Garretson, BS, CFE, CEAS, Certified Functional Evaluator." Following their signatures, the impairment rating contained the following language and signature line for Dr. Ylanan's approval: "I have reviewed and agree with this impairment rating." The facsimiles forwarding the FCE and impairment rating from Functional Testing to Dr. Ylanan contained messages from Functional Testing's owner, Rick Byrd, indicating that with respect to the FCE, Mr. Loewen "does have mild deficits with crouching and stair climbing, but is very functional overall 5(outside the scope of playing professional football)." With respect to the impairment rating, Mr. Byrd commented that Mr. Loewen "did have objective findings to support a knee impairment but did not have objective findings in the physical examination or through medical records that indicated ankle impairment."

More specifically, the impairment rating report indicated that the injuries to Mr. Loewen's left knee included: "1. Chondromalacia of Left knee 2. Derangement of posterior horn of lateral meniscus, left knee." And the surgical history referenced two prior ACL reconstruction surgeries on Mr. Loewen's left knee in 2011 and 2014. The report also indicated that a June 11, 2020 MRI by Dr. Tommy Hinton revealed:

The presence of a tear in the posterior root ligament attachment site of the lateral meniscus, there is stable abnormal signal throughout the posterior horn and body of the lateral meniscus likely related to a prior meniscal tear and repair, finding consistent with a prior partial meniscectomy involving the posterior horn and body of the medial meniscus, and there is degenerative osteophyte formation involving the bilateral femoral condyles and the medial and lateral tibial plateau.

The impairment rating listed Mr. Loewen's current complaints as "[l]eft knee and ankle pain that is increased with walking for prolonged periods and physical activities that require bending/squatting from the knees."

With respect to the calculation of the impairment rating, the report explained that the:

"6th edition guidelines requires identifying the impairment Class of Diagnosis condition (CDX), which is then adjusted to grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

The report contains the following explanations and calculations to determine the 11% impairment rating using the AMA's Guide to the Evaluation of Permanent Impairment, Sixth Edition:

6[*710]

428 So.3d 710.jpg

Dr. Ylanan's Report

Dr. Ylanan's August 12, 2021 report consists of progress notes from Mr. Loewen's office visit on that same day. The report states that Mr. Loewen was there "to follow-up for his left knee pain, left ankle pain, and to review his functional capacity eval (sic) and impairment rating." Dr. Ylanan indicated that he reviewed Mr. Loewen's past medical and surgical history, including the surgeries on his knee, as well as his social and family history. The report also indicates that Dr. Ylanan conducted an examination of Mr. Loewen's left knee. During his examination of the patella or kneecap, Dr. Ylanan found crepitus, which is a popping or grinding sound during movement. Dr. Ylanan also stated his 7examination of the knee was consistent with the worsening of Mr. Loewen's "medial knee pain." Dr. Ylanan also noted swelling in the knee and indicated that Mr. Loewen's exam that day was "slightly worse compared to last time." Following his examination, Dr. Ylanan assessment included "chondromalacia of left knee."[*711]

The report also indicated that Mr. Loewen reported that he was currently working on his farm in Hawaii and that "at the end of the day he has significant pain, and swelling in both joints sometimes, even after standing just for over 20 minutes in the same position." Mr. Loewen also reported that his pain was affecting his daily activities and he was "unable to run or even go on long walks with his family, and is getting in the way of what he wants of an active lifestyle." Dr. Ylanan recommended that Mr. Loewen receive preventative treatment, including physical therapy and injections, but indicated that he may eventually need a total knee replacement.

The report further indicates that following his consultation with Mr. Loewen and examination of his left knee,

Dr. Ylanan reviewed the findings in Functional Testing's impairment rating and agreed with the percentage of impairment assigned in the report:

We reviewed his FCE and impairment rating today, and I agree with the findings for both. He was provided with an 11% impairment in the lower left extremity, 4% whole body impairment.

Motion to Strike

On August 25, 2021, defendants filed a motion to strike to prohibit Mr. Loewen from introducing the FCE, impairment rating, and any testimony related to them, into evidence at the trial. In their supporting memorandum, defendants argued that they did not receive the FCE and impairment rating until August 16, 2021, two weeks after the discovery deadline and two weeks prior to trial. ⁸Defendants further argued that they were prejudiced by the late disclosure because they did not have time to conduct any depositions or otherwise refute the reports.

Due to Hurricane Ida, the motion to strike and September 2, 2021 trial were continued for four months to January 10, 2022. On January 7, 2022, the workers' compensation court denied defendants' motion for summary judgment due to the existence of genuine issues of material fact. Prior to the start of the trial, the workers' compensation court heard oral arguments regarding defendants' motion to strike the FCE and impairment rating. During the hearing, defendants raised the same arguments regarding the untimely production of these reports. They also argued that the FCE report did not consider Mr. Loewen's pre-existing injuries prior to playing for the Saints, but they did not raise any specific objections with respect to the calculations or explanations contained in the impairment rating. Following oral argument, the workers' compensation court denied defendants' motion to strike, but ruled that it would leave the trial open and allow defendants the opportunity to depose Mr. Loewen's expert and to retain their own expert.

Following the trial, defendants deposed Casey Garretson, the Functional Testing employee who conducted Mr. Loewen's evaluation for the FCE and impairment rating but did not retain their own expert. On February 25, 2022, the parties resumed the trial and defendants introduced Mr. Garretson's deposition into evidence without any further arguments from the parties. The workers' compensation court also granted the parties time to file post-trial memoranda.

Post-Trial Memoranda and Casey Garretson Deposition

In their post-trial memorandum filed on April 19, 2022, defendants explained that following Mr. Garretson's deposition, they asked the workers' compensation court for **[*712]** permission to file a *Daubert*⁵ motion. They contend that ⁹the court denied their request and instructed them to address this issue in their post-trial memorandum.

With respect to the impairment rating, defendants argued in their post-trial memorandum that the workers' compensation court should disregard this evidence because it was unreliable, based on subjective and/or partial information, and was completed by an unqualified provider. Defendants argued that Mr. Loewen needed expert medical testimony to establish his impairment rating under *La. R.S. 23:1221(4)(q)*. They asserted that Mr. Garretson was not qualified to provide an expert opinion because he was not a licensed physician or a licensed occupational therapist at the time he conducted the evaluations, and he did not have adequate training or education.

Defendants also argued that when asked during his deposition, Mr. Garretson did not know the qualifications required to conduct an impairment rating and could not recall how he calculated the impairment rating for Mr. Loewen's left knee. They complained that Mr. Garretson could not remember the specific medical records he utilized to complete the impairment rating and failed to consider the impact of the two prior ACL reconstructions that Mr. Loewen had in college prior to his NFL career on the impairment of his knee. Defendants also complained that a portion of the impairment rating relied on Mr. Loewen's subjective responses to questions regarding his abilities, but Mr. Garretson did not document Mr. Loewen's responses.

Our review of Mr. Garretson's deposition reveals that many of defendants' characterizations of his testimony are overstated. With respect to his education and training, Mr. Garretson testified that he received a Bachelor of Science degree in exercise science from the University of Central Arkansas in 2016, which he completed as a prerequisite for occupational therapy school. He explained that an exercise science degree involves the study of movement. In 2017, he obtained a ¹⁰certification to perform FCEs from Functional Testing and an additional certification from Occupro.⁶ He estimated that he performed 50 or 60 FCEs in 2017 alone. Mr. Garretson then started occupational therapy school in 2018 and completed a three-year doctorate program in August 2021.

Mr. Garretson explained that his specific qualifications to conduct the impairment rating included his undergraduate and graduate degrees, as well as training he obtained from Functional Testing. He also completed a course through Ergo Science that taught him "how to effectively do impairment ratings in the Sixth Edition." Mr. Garretson estimated that he had completed 150 impairment ratings since 2017.⁷**[*713]**

He further explained that on August 11, 2021, when he conducted Mr. Loewen's impairment rating, he had graduated from occupational therapy school, but had not yet received his board certification or his license from the Arkansas State Medical Board.⁸ Mr. Garretson testified that because he did not have his license at that time, Stuart Jones, a physical therapist employed by Functional Testing, looked over his impairment ratings before they were sent to a patient's doctor.⁹ He agreed, though, that Mr. Jones was not present during Mr. Loewen's evaluation on August 11, 2021.

¹¹During the deposition, defense counsel also asked Mr. Garretson about the information he relied upon to calculate the impairment rating. Mr. Garretson explained that he relied on doctor's notes and diagnoses contained in Mr. Loewen's medical records, as well as physical findings from his evaluation of Mr. Loewen. Mr. Garretson indicated that he reviewed a large volume of doctor's notes and could not recall the exact source for each finding in the impairment rating. The second page of the impairment rating lists the physical findings as "moderate crepitation with active movement of the left knee that is consistent with repeated trial testing." Mr. Garretson explained that crepitation is grinding or popping and that he heard and felt this in Mr. Loewen's knee.

Mr. Garretson also testified in detail regarding the process he followed to complete the impairment rating in accordance with the Sixth Edition of the applicable AMA guidelines. First, he determined from Mr. Loewen's medical records that he had a "Meniscal with partial medial and lateral tears." The next step was to review the "Knee Regional Grid" in the AMA guidelines, Table 16.3 on Page 509 of the AMA guidelines. This table explains that "Mild Problem is a Class 1 Impairment (CDX) with a mid-range default value of 10% LEI [lower extremity impairment]." Thus, he determined that the CDX value was 1.

Next, Mr. Garretson had Mr. Loewen complete the American Academy of Orthopedic Surgeon's (AAOS) Lower Limb Instrument, which is a form questionnaire to determine functional history. Mr. Garretson explained that he did not have Mr. Loewen physically fill out a form but rather pulled the questions up on his computer. He asked Mr. Loewen the questions and then determined the score while consulting the AMA guidelines. He explained that examples of some of the listed questions were: "How stiff was your lower limb in the last week? How ¹²swollen was your lower limb in the last week? How painful was it to do these different activities ... walking on flat surfaces, going up and down stairs, laying in bed." Mr. Loewen's responses indicated a mild deficit or problem, resulting in a grade modifier value of 1 for functional history (GMFH).[*714]

The next step involved the physical examination findings explained above - palpatory findings of crepitation - leading to a grade modifier physical examination (GMPE) value of two. Mr. Garretson explained that a score of two is moderate. Finally, he reviewed the clinical studies of Mr. Loewen's left knee and determined he had "documented chondromalacia of the left knee." This corresponded with a grade modifier value of 1 for clinical studies (GMCS).

Mr. Garretson then used the net adjustment formula outlined above to determine the net adjustment value of one, which is then added to 10% resulting in an 11% impairment rating to the left lower extremity using Table 16-10, p. 530 of the AMA guidelines.

LAW AND DISCUSSION

On appeal, Mr. Loewen argues that the workers' compensation court erred as a matter of law by denying him PPD benefits. As part of this argument, Mr. Loewen asserts that defendants waived their procedural opportunity to challenge his expert because they failed to file a *Daubert* motion prior to trial. Mr. Loewen argues, in the alternative, that the workers' compensation court committed manifest error in its assessment of key factual findings that led the court to erroneously disregard his impairment rating.

Waiver Pursuant to La. C.C.P. art. 1425(F)(1)

[1] We first address Mr. Loewen's argument that defendants waived their opportunity to challenge Mr. Garretson's qualifications to provide an expert opinion because they failed to file a pre-trial *Daubert* motion pursuant to La. C.C.P. art. 1425(F)(1).

¹³The version of La. C.C.P. art. 1425(F)(1) in effect at the time of the 2022 trial provided as follows:

Any party *may* file a motion for a pretrial hearing to determine whether a witness qualifies as an expert or whether the methodologies employed by such witness are reliable under Articles 702 through 705 of the Louisiana Code of Evidence. The motion shall be filed not later than sixty days prior to trial and shall set forth sufficient allegations showing the necessity for these determinations by the court. (Emphasis added).¹⁰

Mr. Loewen's counsel first sent the FCE and impairment rating reports to defense counsel on August 16, 2021, after the discovery deadline and just two weeks prior to the first trial date. Defendants promptly filed a motion to strike the FCE,[*715] impairment rating, and related testimony, as untimely. After denying defendants'

motion to strike, the workers' compensation court granted defendants the opportunity to depose Mr. Loewen's expert after the first day of trial. Defendants stated in their post-trial memorandum that after they completed Mr. Garretson's deposition and learned of the issues regarding his qualifications, they asked the workers' compensation court for leave to file a *Daubert* motion before the trial resumed in February 2022. However, the court instructed them to address these issues in their post-trial memorandum.

Considering these unique circumstances, we do not find that defendants waived their opportunity to challenge Mr. Garretson's qualifications or the impairment rating he prepared by failing to file a separate *Daubert* motion.

14Permanent Partial Disability

Mr. Loewen next contends that the workers' compensation court erred by finding that he failed to establish his impairment rating under the AMA's Guides to the Evaluation of Permanent Impairment pursuant to La. R.S. 23:1221(4)(q), as a matter of law, or alternatively, based on the court's incorrect factual findings.

La. R.S. 23:1221(4) provides for permanent partial disability benefits for anatomical loss of use, in relevant part, as follows:

(4) **Permanent partial disability.** In the following cases, compensation shall be solely for anatomical loss of use or amputation and shall be as follows:

* * *

(h) For the loss of a leg, sixty-six and two-thirds percent of wages during one hundred seventy-five weeks.

* * *

(o) In all cases involving a permanent partial anatomical loss of use or amputation of the members mentioned hereinabove, compensation shall bear such proportion to the number of weeks provided for herein for the total loss of such members as the percentage loss or impairment to such members bears to the total loss of the member, provided that in no case shall compensation for an injury to a member exceed the compensation payable for the loss of such member.

* * *

(q) No benefits shall be awarded or payable in this Paragraph unless the percentage of the anatomical loss of use or amputation, as provided in Subparagraphs (a) through (o) of this Paragraph or the percentage of the loss of physical function as provided in Subparagraph (p) or (s) of this Paragraph is as established in the most recent edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment."

Louisiana courts have recognized that pursuant to La. R.S. 23:1221(4)(q), the percentage of anatomical loss must be established according to the most recent edition of the AMA's Guides to the Evaluation of Permanent Impairment. See ¹⁵*Ashley v. Stelly's Cajun Yams*, 98-2209 (La. 12/11/98), 721 So.2d 894; *Lanoue v. All Star Chevrolet*, 03-12 (La. App. 1 Cir. 11/7/03), 867 So.2d 755, 759-60. In *Sumrall v. Crown Zellerbach Corp.*, 525 So.2d 272, 274 (La. App. 1st Cir. 1988), the First Circuit further recognized that "the import of the clear language of [La. R.S.] 23:1221(4)(q) does not permit the use of lay testimony in determining the percentage of disability under [La. R.S.] 23:1221(4)."

[2-5] The determination by the workers' compensation court as to whether the claimant has discharged his burden of proof is a factual determination that will not be disturbed upon review in the[*716] absence of manifest error or unless clearly wrong. *Loewen*, 367 So.3d at 853-54. The manifest error/clearly wrong standard of appellate review applies in workers' compensation cases even when the court's decision is based upon written reports, records or depositions. *Id.* at 854. The findings of a workers' compensation judge will not be set aside unless the reviewing court finds them to be clearly wrong in light of the record viewed in its entirety. *Dean v. Southmark Const.*, 03-1051 (La. 7/6/04), 879 So.2d 112, 117. Furthermore, a workers' compensation judge is given wide discretion in ruling on the admissibility of evidence, and those determinations will not be disturbed absent a clear showing of abuse of that discretion that has prejudiced substantial rights. *Burkett v. Jefferson Par. Fire Dep't*, 24-335 (La. App. 5 Cir. 1/29/25), 404 So.3d 1051, 1058, *writ denied*, 25-308 (La. 5/29/25), 410 So.3d 149.

The issue on appeal is whether the workers' compensation court erred by finding that the impairment rating prepared by Mr. Garretson and approved by Dr. Ylanan failed to meet the requirements set forth in La. R.S. 23:1221(4)(q). Mr. Loewen argues that the court found the degree of impairment must be determined by "medical expert opinions," but it is unclear what the court intended by this finding. Mr. Loewen further argues that La. R.S. 23:1221(4)(q) does not delineate the type of expert witness required to satisfy the requirements of

this statute. ¹⁶Defendants argue, on the other hand, that Louisiana courts require a licensed physician to establish the impairment rating and the workers' compensation court correctly determined that Mr. Garretson was not qualified to provide an expert opinion in this case.

We agree that the language in [Section 23:1221\(4\)\(q\)](#), requiring a claimant to establish the anatomical loss of use in accordance with the AMA guidelines, indicates that expert medical evidence is necessary. But [La. R.S. 23:1221\(4\)\(q\)](#) does not state that a licensed physician is the only medical expert who can establish an AMA impairment rating. More significantly, the statute does not contain any language that would prohibit a physician from referring the preparation of the AMA impairment rating to another provider, and then adopting or approving the impairment rating, as occurred in the instant matter. *See, e.g., Douglas v. Kitchen Bros. Mfg.*, 30,637 (La. App. 2 Cir. 6/24/98), 715 So.2d 663, 665 (explaining that orthopedic surgeon who opined on the claimant's impairment rating sent the claimant to a physical therapist "for an assessment of his disability and an impairment rating" prior to providing an opinion).

[6] Regardless, it is not necessary for this Court to reach a determination as to whether health care providers other than physicians can provide an expert opinion regarding an AMA impairment rating. After considering the entirety of the record, we find that the workers' compensation court was manifestly erroneous in concluding that Mr. Loewen failed to establish his impairment rating in accordance with [La. R.S. 23:1221\(4\)\(q\)](#). There is no dispute that Dr. Ylanan was qualified to provide an impairment rating, and the undisputed facts outlined above indicate that the workers' compensation court's finding that Dr. Ylanan did not participate in the "examination, review, or calculation of the impairment rating" was clearly wrong. Dr. Ylanan explained in his communications with Mr. Loewen's counsel that it was his practice to refer workers' compensation patients to a physical ¹⁷therapist to prepare an FCE and impairment rating, and that he would need to reevaluate Mr. Loewen. In fact, Dr. Ylanan met with Mr. **[*717]** Loewen the day after Mr. Garretson prepared the impairment rating for the specific purpose of conducting an examination and to review the FCE and impairment rating. During his examination of Mr. Loewen's knee, Dr. Ylanan noted that he found crepitus, just as Mr. Garretson did in the physical findings portion of the impairment rating report. Dr. Ylanan also provided a detailed summary of Mr. Loewen's subjective complaints regarding his pain and limitations. After completing these tasks, Dr. Ylanan confirmed in his report that he reviewed and agreed with the 11% percentage assessed for the impairment rating.¹¹ Clearly, the intent of this entire process was for Functional Testing to prepare the impairment rating and for Dr. Ylanan to review and approve the finding. There is no prohibition against this practice in [La. R.S. 23:1221\(4\)\(q\)](#).

[7] We further find that the workers' compensation court was manifestly erroneous to the extent it determined that the impairment rating prepared for Dr. Ylanan was inadequate because Mr. Garretson did not have an occupational therapist license. At the time he prepared the impairment rating, Mr. Garretson had an undergraduate degree in exercise science, a doctorate degree in occupational therapy, and specific training on Sixth Edition impairment ratings through an outside course and from his employer, Functional Testing. Mr. Garretson's curriculum vitae attached to his deposition also confirms that he had prepared 150 impairment ratings since 2017. Mr. Garretson also provided detailed testimony regarding the steps he followed in accordance with the AMA guidelines to prepare Mr. Loewen's impairment rating. And Mr. Garretson testified that ¹⁸because he did not have his license at that time, Mr. Jones reviewed his "impairment ratings before we send them to the doctor."

Finally, defendants have not pointed to any specific inaccuracies with respect to the calculations set forth in the impairment rating report. And they have not offered any medical expert testimony to rebut the 11% impairment rating assigned to Mr. Loewen's left knee.

Based on the foregoing, we find that the workers' compensation court was manifestly erroneous in its determination that Mr. Loewen "failed to establish his disability or impairment rating ... pursuant to [La. R.S. 23:1221\(4\)\(q\)](#)." The impairment rating completed by Mr. Garretson was reviewed and approved by a licensed physical therapist and was adopted by Mr. Loewen's treating orthopedic surgeon, Dr. Ylanan, after an examination and review. Thus, we find that the impairment rating offered by Mr. Loewen constitutes competent expert medical evidence to satisfy his burden to prove the percentage of the anatomical loss of use of his left knee as established in the most recent edition of the AMA's Guides to the Evaluation of Permanent Impairment.

PPD Award

Mr. Loewen contends that pursuant [La. R.S. 23:1221\(4\)\(h\) and \(o\)](#), he is entitled to 11% of 175 weeks of benefits. He further contends that the "Employee's Workers' Compensation Rate is equal to the Statutory Maximum Workers' Compensation Rate" in effect at the time of his injury "as published by the Louisiana Workforce Commission Office of Workers' Compensation Administration in accordance with [La. **\[*718\]** R.S. 23:1202](#), which is \$688.00." At the second trial, defendants stipulated that if the court awarded PPD benefits, Mr. Loewen would be entitled to receive the applicable maximum workers' compensation rate in the amount of \$688.00 per week.

¹⁹Mr. Loewen contends that multiplying this amount (\$688.00) by one hundred seventy-five (175) weeks as provided in [La. R.S. 23:1221\(4\)\(h\)](#) amounts to \$120,400.00. This amount (\$120,400.00) is multiplied by the 11% loss of function/impairment rating pursuant to [La. R.S. 23:1221\(4\)\(o\)](#), to determine that Mr. Loewen is entitled to \$13,244.00 for his PPD award. Defendants do not dispute these calculations in their appellate brief.

Accordingly, we award Mr. Loewen \$13,244.00 in PPD benefits.

Penalties and Attorney's Fees

Mr. Loewen also contends that the workers' compensation court erred by failing to award him attorney's fees and costs.

[8-10] Awards of penalties and attorney's fees in workers' compensation matters are essentially penal in nature, being imposed to discourage indifference and undesirable conduct by employers and insurers. [Williams v. Rush Masonry, Inc.](#), 98-2271 (La. 6/29/99), 737 So.2d 41, 46. Pursuant to La. R.S. 23:1201(F), an employer or insurer may be assessed with penalties and attorney's fees for failure to timely pay indemnity or medical benefits where the employer or insurer has failed to "reasonably controvert" the claim. [Stretzinger v. Claims Mgmt., Inc.](#), 19-168 (La. App. 5 Cir. 12/11/19), 285 So.3d 591, 599. To determine whether a claimant's right to benefits has been reasonably controverted, thereby precluding the imposition of penalties and attorney's fees under La. R.S. 23:1201, a court must ascertain whether the employer engaged in a non-frivolous legal dispute or possessed factual and/or medical information to reasonably counter the factual and medical information presented by the claimant throughout the time he refused to pay the benefits allegedly owed. *Id.*

[11] We find that Mr. Loewen is not entitled to recover penalties and attorney's fees from defendants. Mr. Loewen sought PPD benefits as an alternative reward and he produced the impairment rating necessary to recover these benefits after the ²⁰discovery deadline. In addition, we do not find that defendants' legal challenges to validity of the impairment rating were frivolous under the circumstances at issue in this matter.

CONCLUSION

For the reasons explained above, we reverse the workers' compensation court's February 10, 2025 judgment and grant judgment in favor of claimant, Mitchell Loewen, in the amount of \$13,244.00 for permanent partial disability benefits. We further order defendants, The New Orleans Louisiana Saints, LLC and Berkley Specialty Underwriting Managers, LLC, to pay the costs of these proceedings, but deny Mr. Loewen's claims for penalties and attorney's fees.

REVERSED; JUDGMENT RENDERED

1. [La. R.S. 23:1221\(4\)\(q\)](#) provides that "[n]o benefits shall be awarded or payable in this Paragraph unless the percentage of the anatomical loss of use or amputation, as provided in Subparagraphs (a) through (o) of this Paragraph or the percentage of the loss of physical function as provided in Subparagraph (p) or (s) of this Paragraph is as established in the most recent edition of the American Medical Association's 'Guides to the Evaluation of Permanent Impairment.' "

2. This amount is the maximum weekly workers' compensation rate in effect in December 2019, as published by the Louisiana Workforce Commission Office of Workers' Compensation Administration in accordance with La. R.S. 23:1202.

3. The parties agree that the Sixth Edition is the most recent edition of the AMA's Guides to the Evaluation of Permanent Impairment.

4. Mr. Loewen returned home to Maui in Hawaii after he ended his NFL football career. He contends that he was unable to find an orthopedic surgeon who would treat him in Maui due to his pending workers' compensation claims. Therefore, he sought treatment with his former orthopedic surgeon, Dr. Ylanan, who treated him when he attended college and played football at the University of Arkansas.

5. [Daubert v. Merrell Dow Pharmaceuticals, Inc.](#), 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993).

6. Mr. Garretson testified that the protocol for FCEs used by Functional Testing was designed with the assistance of Jill Galper, "who wrote the book on Functional Capacity Evaluations."

7. Contrary to defendants' representation, defense counsel did not ask Mr. Garretson about qualifications required to conduct an impairment rating. Rather, defense counsel asked Mr. Garretson what the requirements were to conduct an FCE and Mr. Garretson explained that it was his understanding that you had to have a bachelor of science degree, but that it may not always be required. He explained that Functional Testing requires a degree and that they hire athletic trainers, physical therapists, occupational therapists, and exercise physiologists/kinesiologists to perform FCEs. He explained that some insurance companies require licensed therapists and some do not. He further testified that all of Functional Testing employees have certifications

through multiple providers to perform FCEs.

8. At the time of his deposition in February 2022, Mr. Garretson had obtained his occupational therapist license and board certification from the National Board for Certification in Occupational Therapy. His curriculum vitae indicates that he received his certification and license in 2021. Mr. Garretson also testified that he had become a co-owner of Functional Testing.

9. As explained above, Mr. Jones electronically signed Mr. Loewen's impairment rating. Mr. Garretson also explained that Mr. Jones was included on FCE reports prepared by Mr. Garretson for billing purposes because some insurance companies preferred to have a licensed physical therapist or occupational therapist listed on the report,

10. In 2024, the Louisiana legislature amended Article 1425(F)(1) to provide that "[a] party seeking to challenge whether a witness qualifies as an expert or whether the methodologies employed by the witness are reliable under Code of Evidence Articles 702 through 705 *shall* file a motion for a pretrial hearing." (Emphasis added). See La. Acts 2024, No. 371, § 1.

The 2024 comment to this amendment explains that the Louisiana legislature changed the language from "may" to "shall" to address jurisprudence holding that the prior version of Article 1425(F)(1) did not require a pre-trial motion to challenge an expert's qualifications:

The amendment to Paragraph F of this Article makes clear that a pretrial hearing is necessary to determine whether a witness qualifies as an expert or whether the methodologies employed by the witness are reliable. This would change the result reached by the First Circuit in [Williams v. State Farm Mutual Automobile Insurance Company](#), 322 So.3d 795, 797 (La. App. 1 Cir. 2021), in which the court held that the use of the permissive "may" did not mandate a pretrial motion to challenge the qualifications of an expert.

11. La. Admin. Code, Tit. 40, Pt. I, § 6209 governs expert medical testimony in workers' compensation proceedings and provides that "[e]xpert medical testimony may be admitted by: 1. certified medical records; 2. deposition; 3. oral examination in open court proceedings; however, no more than two physicians may present testimony for either party except by order of the judge; 4. any other manner provided by law."

Jardneaux v. Guernsey Holdings SDI TX Holdings Co, LLC

Court:	Court of Appeal of Louisiana
Writing for the Court:	JONATHAN W. PERRY, JUDGE
Docket Number:	25-548
Decision Date:	13 May 2026
Citation:	Jardneaux v. Guernsey Holdings SDI TX Holdings Co, LLC, 25-548 (La. App. May 13, 2026)
Parties:	TAMMI YOUNG JARDNEAUX v. GUERNSEY HOLDINGS SDI TX HOLDINGS CO, LLC & ZENITH INSURANCE COMPANY

Id. vLex Fastcase: VLEX-1119081347

Link: <https://fastcase.vlex.com/vid/jardneaux-v-guernsey-holdings-1119081347>

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TAMMI YOUNG JARDNEAUX v. GUERNSEY HOLDINGS SDI TX HOLDINGS CO, LLC & ZENITH INSURANCE COMPANY

No. 25-548

Court of Appeals of Louisiana, Third Circuit

May 13, 2026

ON APPEAL FROM THE OFFICE OF WORKERS' COMPENSATION, DISTRICT 3 PARISH OF CALCASIEU, NO. 24-03886 THOMAS E. TOWNSLEY, WORKERS' COMPENSATION JUDGE

Megan C. Gladner

Blue Williams, LLC

COUNSEL FOR DEFENDANTS/APPELLANTS: Guernsey Holdings SDI TX Holdings Co, LLC & Zenith Insurance Company

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COUNSEL FOR PLAINTIFF/APPELLEE: Tammi Young Jardneaux

Court composed of Elizabeth A. Pickett, Jonathan W. Perry, and Wilbur L. Stiles, Judges.

JONATHAN W. PERRY, JUDGE

In this workers' compensation case, the employer and its workers' compensation insurer appeal the various penalties and the attorney fee awarded to the injured worker. We affirm.

FACTS AND PROCEDURAL HISTORY

This case arose from a work accident on May 23, 2024, when Tammi Jardneaux ("Ms. Jardneaux") injured her shoulder, head, and leg as a result of her employment as a carhop at the Kinder Sonic ("Sonic").^[1] Ms. Jardneaux stated that she was cleaning out the unventilated shed, became heated, and felt dizzy. She walked into the front of the Sonic restaurant and was placed in a chair. After sitting in the chair, Ms. Jardneaux passed out and fell out of the chair. The left side of her head struck the concrete floor, leaving a knot on the left side of her head above her ear; she also struck her left shoulder and arm, as well as her left knee and leg.

Ms. Jardneaux was taken from Sonic by ambulance to West Allen Hospital and then airlifted to Our Lady of

Lourdes Regional Medical Center ("Lourdes") in Lafayette where she was treated for a stroke. There, she was diagnosed as having had a stroke and tPA, a very aggressive blood thinner, was administered by Dr. Saad Karim ("Dr. Karim"), a board certified vascular neurologist, to abort the stroke. After a two-day hospital stay at Lourdes, Ms. Jardneaux was told not to go back to work and to see her family physician, Dr. Patrick England ("Dr. England").

Ms. Jardneaux saw Dr. England on May 31, 2024. At that time, Ms. Jardneaux had bruising on the left side of her body from her shoulder to her elbow and from mid-thigh to mid-calf.

On June 4, 2024, Ms. Jardneaux was notified that Sonic was controverting her workers' compensation claim, questioning whether her injury was due to a preexisting condition or disease that was the cause of her fainting spell. Counsel for Ms. Jardneaux filed a disagreement, stating "No pre-existing condition caused client's injuries. There is no medical basis that this is true. Claimant was injured in the course & scope of her job." Thereafter, on August 5, 2024, Ms. Jardneaux filed her petition for wage benefits, medical treatment, penalties and attorney fees, against Sonic and its insurer, Zenith Insurance Company, (collectively, "Defendants").

On or about August 23, 2024, Dr. Brett Cascio ("Dr. Cascio") filed a request with Zenith, seeking to evaluate and treat Ms. Jardneaux's left knee pain and left shoulder pain. Shortly thereafter, on August 26, 2024, Travis Kibler, a claims specialist for Zenith, denied the request as follows:

Deny - denied claim Zenith is deferring utilization review of the treatment requests as Zenith is disputing liability for either the occupational injury for which treatment is being requested or the requested treatment itself on grounds other than medical necessity.

A similar request was made by Dr. Matthew Burton ("Dr. Burton"), a neurosurgeon who was evaluating Ms. Jardneaux for treatment of pain on the left side of her neck. The record contains no reply from either Defendant to Dr. Burton's request.

On September 30, 2024, Ms. Jardneaux filed a Motion for Expedited Hearing for Medical Treatment, stating, "Claimant asked to have an initial visit with his [sic] physician of choice ["Dr. Burton"] for her stroke and ["Dr. Cascio"] for her shoulder and knee. Claimant was denied this treatment for Dr. Cascio. The 1010 for [Dr. Burton] was never answered." Sonic approved Ms. Jardneaux's October 2, 2024 request for medical evaluation with Dr. Cascio. And on October 25, 2024, the parties entered a Consent Judgment regarding Ms. Jardneaux's entitlement to medical treatment. In that judgment, Sonic agreed that Ms. Jardneaux was authorized to a one-time evaluation of Ms. Jardneaux with Dr. Burton; and treatment with Dr. Cascio "relative to those injuries sustained in her fall, pursuant to the dictates of the Medical Guidelines, and normal 1010 submission process." Defendants also reserved the right to challenge the "nature and extent of any such injuries pursuant to an SMO, IME, and/or should additional information be revealed in the course of discovery calling same into question." In exchange, Ms. Jardneaux deferred the issue of penalties and attorney fees to the merits of the case. On November 6, 2024, Sonic made its first payment of indemnity benefits. And on November 7, 2024, the Workers Compensation Judge ("WCJ") signed the consent judgment.

After Dr. Burton indicated that he offered Ms. Jardneaux a cervical fusion surgery on January 16, 2025, to address a spinal cord injury from her work-accident that manifested itself with neck pain, Sonic sought a second medical opinion ("SMO") from a neurosurgeon, Dr. Thomas Bertuccini ("Dr. Bertuccini"). After completing his examination of Ms. Jardneaux, on March 12, 2025, Dr. Bertuccini disagreed with Dr. Burton's diagnosis that she suffered a spinal cord injury and that surgery was required. Additionally, Dr. Bertuccini opined that it was common for neck pain to be associated with a shoulder injury and deferred any further opinion about a pre-existing shoulder problem and whether surgery was needed to address that medical condition to an orthopaedist. After Sonic received Dr. Bertuccini's SMO report on April 21, 2025, it approved the shoulder surgery Dr. Cascio recommended.

On May 15, 2025, a trial was held before the WCJ, and a final judgment was handed down on May 21, 2025. The court found that Ms. Jardneaux suffered physical injuries to her head, neck, left shoulder, and left knee, because of her workinjury. As a result of these injuries, the court considered Ms. Jardneaux temporarily, totally disabled. However, it found the stroke that occurred after her fall was unrelated to her work-injury.

The court also found Defendants were arbitrary and capricious in handling aspects of the claim and awarded a combined penalty of \$6,000 for Defendant's delay in paying indemnity benefits, the denial of an initial visit to Dr. Cascio for Ms. Jardneaux's left shoulder and left knee injuries, and the delay in approving the left shoulder surgery recommended by Dr. Cascio. Lastly, the WCJ awarded an attorney fee of \$5,000 for representation provided to Ms. Jardneaux and cast Defendants with all costs of the proceedings.

Defendants then appealed, limiting their argument to the assessment of penalties and attorney fees.

ASSIGNMENTS OF ERROR

1. The [WCJ] committed manifest error in finding [Ms. Jardneaux] was entitled to a \$2,000 penalty for a delay in

paying indemnity benefits at trial.

2. The [WCJ] committed manifest error in finding [Ms. Jardneaux] was entitled to a penalty for denying an initial visit to Dr. Brett Cascio for the left shoulder and left knee injury at trial.

3. The [WCJ] committed manifest error in finding [Ms. Jardneaux] was entitled to a penalty for allegedly delaying the approval of the left shoulder surgery recommended by Dr. Cascio.

4. The [WCJ] committed manifest error in finding [Ms. Jardneaux] was entitled to \$5,000 in attorney fees at trial.

APPELLANTS' ARGUMENT

Defendants contend that the award of penalties and attorney fees was manifestly erroneous based on the facts of the claim, the initial controversion of the claim because of the unrelated stroke that occurred after the work-injury, and the timeline of events. Thus, they argue that the total penalty award of \$6,000 for the delay in paying indemnity benefits, the initial denial of Ms. Jardneaux's visit to Dr. Cascio, and the delay in approving her surgery for her left shoulder and knee injury should be reversed. In the alternative, should this court find Defendants failed to reasonably controvert the claim, they argue that the \$2,000 award for each penalty should be reduced to \$350 each. Defendants argue that should it be found that the penalty awards were not justified, the award of \$5,000 in attorney fees should also be declared to have been manifestly erroneous. Finally, they contend that even if the attorney fees are not reversed, Jardneaux is not entitled to an increase of attorney fees because she failed to answer the appeal.

APPELLEE'S POSITION

Ms. Jardneaux, relying on *Guidry v. Serigny*, 378 So.2d 938 (La.1979); *Fontenot v. Wal-Mart Stores, Inc.*, 03-1570 (La.App. 3 Cir. 4/7/04), 870 So.2d 540, *writ denied*, 04-1131 (La. 6/25/04), 876 So.2d 843; and *Woodard v. Brookshire Grocery Co.*, 54,574 (La.App. 2 Cir. 8/10/22), 345 So.3d 439, *writ denied*, 22-1360 (La. 11/16/22), 349 So.3d 1001, contends that Defendants focused their attention on trying to show that the stroke, a non-compensable, pre-existing condition, caused her fall despite the fact that no evidence was provided to show that Ms. Jardneaux had suffered any stroke-like symptoms prior to her fall. She argues that to the contrary, the evidence showed that Ms. Jardneaux suffered a compensable work injury to her head, neck, left shoulder, and left knee, and Defendants failed to timely provide indemnity payments and medical benefits. Therefore, she asserts that the WCJ was not manifestly erroneous when it awarded penalties and attorney fees for Defendants' failure to timely address these issues. Moreover, as asserted in her brief, attorney fees may be awarded in this court for defending the WCJ judgment.

STANDARD OF REVIEW

It is well-established that the findings of a workers' compensation judge are subject to the manifest error or clearly wrong standard of appellate review. *Chaisson v. Cajun Bag & Supply Co.*, 708 So.2d 375 (La.1998). As shown in *Maricle v. Sunbelt Builders, Inc.*, 05-398, p. 3 (La.App. 3 Cir. 11/2/05), 916 So.2d 1226, 1229, *writ denied*, 05-2506 (La. 3/31/06), 925 So.2d 1261, "[t]he factual findings of the WCJ in a workers' compensation case are subject to a manifest error or clearly wrong standard of review." Likewise, "[t]he determination of whether an employer should be cast with penalties and attorney fees is a question of fact which should not be reversed absent manifest error." *Sigler v Rand*, 04-1138, pp. 10-11 (La.App. 3 Cir. 12/29/04), 896 So.2d 189, 196, *writ denied*, 05-278 (La. 4/1/05), 897 So.2d 611, (citing *Romero v. Northrop-Grumman*, 01-24 (La.App. 3 Cir. 5/30/01), 787 So.2d 1149, *writ denied*, 01-1937 (La. 10/26/01), 799 So.2d 1144). Finally, "[a]wards of penalties and attorney's fees in workers' compensation are essentially penal in nature, being imposed to discourage indifference and undesirable conduct by employers and insurers." *Williams v. Rush Masonry, Inc.*, 98-2271, pp. 8-9 (La. 6/29/99), 737 So.2d 41, 46.

In applying the manifest error-clearly wrong standard, the appellate court must determine not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. *Seal v. Gaylord Container Corp.*, 97-0688, p. 4 (La. 12/02/97), 704 So.2d 1161 at p. 4; *Banks*, 96-2840 at pp. 7-8, 696 So.2d at 556; *Freeman*, 93-1530 at p. 5, 630 So.2d at 737-38; *Stobart v. State*, 617 So.2d 880, 882 (La.1993). Where there are two permissible views of the evidence, a factfinder's choice between them can never be manifestly erroneous or clearly wrong. *Seal*, 97-0688 at p. 5; *Banks*, 96-2840 at p. 8, 696 So.2d at 556; *Stobart*, 617 So.2d at 882. "Thus, 'if the [factfinder's] findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even if convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently.'" *Seal*, 97-0688 at p. 5; *Banks*, 96-2840 at p. 8, 696 So.2d at 556 (quoting *Sistler v. Liberty Mut. Ins. Co.*, 558 So.2d 1106, 1112 (La.1990)).

Chaisson, 708 So.2d at 381.

ANALYSIS

The indemnity benefit

Louisiana Revised Statutes 23:1201(B) states, "The first installment of compensation payable for temporary total disability, permanent total disability, or death shall become due on the fourteenth day after the employer or insurer has knowledge of the injury or death, on which date all such compensation then due shall be paid." Likewise, La.R.S. 23:1201(F) states, in pertinent part:

[F]ailure to provide payment in accordance with this Section or failure to consent to the employee's request to select a treating physician or change physicians when such consent is required by R.S. 23:1121 shall result in the assessment of a penalty in an amount up to the greater of twelve percent of any unpaid compensation or medical benefits, or fifty dollars per calendar day for each day in which any and all compensation or medical benefits remain unpaid or such consent is withheld, together with reasonable attorney fees for each disputed claim; however, the fifty dollars per calendar day penalty shall not exceed a maximum of two thousand dollars in the aggregate for any claim.

Additionally, La.R.S. 23:1224 states: "No compensation shall be paid for the first week after the injury is received; provided, that in cases where disability from injury continues for two weeks or longer after date of the accident, compensation for the first week shall be paid after the first two weeks have elapsed."

Defendants argue that it was not until October 16, 2024, that Dr. Cascio, an orthopaedic specialist, provided the first TTD opinion not related to the stroke Ms. Jardneaux suffered. Defendants then argue that its payment of the first TTD benefit on November 6, 2024, was timely under the provisions of La.R.S. 23:1224. Accordingly, Defendants contend that their timely payment shows that the WCJ manifestly erred when it ruled that Ms. Jardneaux was entitled to a \$2,000 penalty for the delay in instituting indemnity benefits. We find no merit to Defendants' argument.

By focusing its attention on the stroke, Sonic ignores that Ms. Jardneaux's accident was not the fainting spell or the stroke that caused her to fall. Her accident was the fall itself. *See Guidry, 378 So.2d 938*. When Ms. Jardneaux fell from her chair, she had been clearing a storage shed that contained items used in Sonic's day-to-day business. After carrying out those work-related duties, she became overheated and went into Sonic's building only to find it even hotter inside. Ms. Jardneaux's activities furthered Sonic's business, and her employment required her performance of those duties.

Although she was being treated for a post-accident stroke, the notes of Dr. Karim state, "Patient has chronic longstanding weakness in the left arm due to rotator cuff tear." Similarly, Elizabeth Savoy, the Physician Assistant who treated Ms. Jardneaux on May 25, 2024, noted that "[s]he was able to move all 4 extremities [but] does have limited range of motion to left arm due to rotator cuff tear. She does complain of pain in the left shoulder."

On May 30, 2024, Travis Kiebler ("Mr. Kiebler"), Zenith's senior claims specialist, questioned Ms. Jardneaux in a recorded telephone interview about the work-accident. In response to the question, "What part of your body was injured in this accident?" Ms. Jardneaux responded, "I have a knot on the side of my head above my left ear. Left shoulder is in a lot of pain. I am using a brace on my left knee. Left knee." Under Nurse Activity, it is also noted "History of rotator cuff repair[.]"

In *Sweezy v. Lake Charles Healthcare, LLC*, 25-122, pp. 13-14 (La.App. 3 Cir. 9/10/25), 422 So.3d 314, 323 (emphasis in the original), this court stated:

A trial court's award for penalties and attorney fees is proper absent evidence contradicting the facts, medical testimony, and records adduced at trial. "The unambiguous language of La. R.S. 23:1201 clearly establishes that penalties and attorney fees for failure to timely pay benefits shall be assessed unless the claim is reasonably controverted or such nonpayment results from conditions over which the employer or insurer had no control." *Brown v. Texas-LA Cartage, Inc.*, 98-1063, p. 8 (La. 12/1/98), 721 So.2d 885, 890. "[T]he test to determine whether an employee's right to benefits has been reasonably controverted turns on whether the employer or his insurer had **sufficient factual information to reasonably counter the factual information presented by the claimant.**" *Thibodeaux v. L.S. Womack, Inc.*, 94-1375, p. 2 (La.App. 3 Cir. 4/5/95), 653 So.2d 123, 125. The employer "has a continuing duty to investigate the employee's claim and to assess factual information before the denial of benefits." *Pete v. Quality Const. Specialists & Bridgefield Cas. Ins. Co.*, pp. 6-7 (La.App. 3 Cir. 12/9/09), 25 So.3d 241, 245, writ denied, 10-41 (La. 3/12/10), 28 So.3d 1029.

Again, in her answers to interrogatories propounded by Defendants, Ms. Jardneaux stated that she suffered a work accident two years earlier when she worked for Sonic; at that time, she tore her rotator cuff. Although she was off work for a while, she was later able to continue working as a carhop at Sonic. She stated that her medical treatment was paid for, but not the wages she lost.^[2] In her testimony at trial, Ms. Jardneaux also stated that her fellow employees told her that when she passed out, she landed on her left side and struck her head on the concrete floor.

Considering the record evidence, we find that Sonic did not fully investigate Ms. Jardneaux's claim, ignored evidence of other injuries she had in her fall, and failed to reasonably controvert Ms. Jardneaux's entitlement to TTD indemnity benefits for her work-related injuries separate from her post-accident stroke. After reviewing the arguments of counsel and the facts of this case, we find that the WCJ did not abuse its discretion when it found that Ms. Jardneaux was entitled to a \$2,000 penalty for delaying her indemnity benefits. Furthermore, as this medical information was available to the Defendants immediately after the work-accident and payment of indemnity benefits did not commence until November 6, 2024, we find no merit to Defendants' contention that the \$2,000 penalty should be reduced. *Denial of an initial doctor's visit*

Further Defendants contend that the WCJ manifestly erred when it assessed a \$2,000 penalty for their failure to authorize Ms. Jardneaux's initial visit with Dr. Cascio. They argue that August 23, 2024, was the first time Ms. Jardneaux requested an evaluation with her choice of physician, Dr. Cascio. Even though Defendants admit that they denied Ms. Jardneaux's request, they assert that denial was because they had only been provided with medical records that stated she was diagnosed with an ischemic stroke and had left-sided weakness, face droop, and aphasia.

Nevertheless, Defendants stress that ultimately they did approve Ms. Jardneaux's request for Dr. Cascio's treatment on October 2, 2024. Defendants rely on La.R.S. 23:1201(E)(1), a statute that states that medical benefits shall be paid within sixty days after the employer or insurer receives written notice thereof. Defendants point out that their ultimate approval was provided within forty days of Ms. Jardneaux's request, well within the sixty day window provided in La.R.S. 23:1201(E)(1), and penalties were not assessable against them. For the following reasons, we find no merit to Defendants' assertion.

In *Batiste v. Minerals Technology, Inc.*, 21-795 (La.App. 3 Cir. 6/8/22), 344 So.3d 193, this court highlighted the WCJ's failure to address the employee's choice of physician claim separately from his claim for medical expenses. Indeed, our reading of La.R.S. 23:1201(E) shows that it only mentions "medical benefits" when it imposes a payment window of sixty days and makes no such reference to the selection of a treating physician. Besides, La.R.S. 23:1201(F) further recognizes this distinction when it states that "failure to provide payment in accordance with this Section or failure to consent to the employee's request to select a treating physician or change physicians . . . shall result in the assessment of a penalty . . . together with reasonable attorney fees for each disputed claim[.]" The specific use of the disjunctive word "or" in La.R.S. 23:1201(F) clearly indicates a distinction between medical payments and the employee's right to choose a physician.

Moreover, La.R.S. 23:1121(B)(1) provides that: (i) the employee has a right to a *summary proceeding* when the employer denies his right to an initial physician of choice; and (ii) the WCJ is mandated to set the hearing within three days of receiving the employee's motion for the *expedited hearing* and the hearing shall be held no less than ten nor more than thirty days after the employee or his attorney files the motion for an expedited hearing. If we were to accept Defendants' contrary argument, it would require us to insert language in La.R.S. 23:1201(F) that does not exist. Additionally, such an interpretation as Defendants suggest would weaken the employee's right to promptly select one treating physician in any field or specialty as it would create an expansive window of approval in favor of the employer.

Next, Defendants contend that they did not have a definitive diagnosis, other than that Ms. Jardneaux had suffered from a stroke, to support approval of Dr. Cascio's treatment of her neck, shoulder, and knee injury. For the following reasons, we find no merit to that argument.

The medical records from Lourdes indicate that Ms. Jardneaux had a prior torn rotator cuff and left knee injury, that the left side of her body exhibited significant bruising, that she complained of left shoulder and leg pain during her hospitalization, and that she fell while she was seated in a chair in the anteroom of an overheated Sonic restaurant. Our review of the record shows that Ms. Jardneaux made similar statements to Mr. Kiebler just days after her work-injury. Dr. Karim would later testify at trial that the fall at Sonic could not have caused the stroke. And Dr. Karim also said that even though the stroke could explain the left eye loss of Ms. Jardneaux's peripheral vision, her word aphasia, and her left foot drop, he could not connect the stroke with bruising to the left side of Ms. Jardneaux's body.

In *Tate v. Cabot Corporation*, 01-1652, pp. 5-6 (La.App. 3 Cir. 7/3/02), 824 So.2d 456, 461, *writ denied*, 02-2150 (La. 11/22/02), 829 So.2d 1044, this court stated:

Because an employer takes his employee as he finds him, a preexisting condition does not prevent recovery through workers' compensation. *Curtis v. Wet Solutions, Inc.*, 98-789 (La.App. 3 Cir. 12/9/98); 722 So.2d 421. Aggravation of a preexisting injury may constitute a disabling injury when, for example, the plaintiff begins to suffer new symptoms after the second workplace accident. *Howell v. Serv. Merchandise Co., Inc.*, 95-79 (La.App. 3 Cir. 8/9/95); 663 So.2d 96. To be compensable, the aggravation of a preexisting injury must result from an identifiable and discernable incident. *City of Eunice v. Credeur*, 99-302 (La.App. 3 Cir. 10/13/99); 746 So.2d 146, *writ granted in part, judgment vacated in part on other grounds*, 99-3249 (La.1/28/00); 753 So.2d 226. Moreover, there must be a causal link between the aggravation and a work related incident. *Turner v. Lexington House*, 14-1264

(La.App. 3 Cir. 4/15/15), 176 So.3d 1071, writ denied, 15-952 (La. 8/23/15), 176 So.3d 405.

Additionally, in *Pete v. Quality Const. Specialists & Bridgefield Cas. Ins. Co.*, 09-642, pp. 6-7 (La.App. 3 Cir. 12/9/09), 25 So.3d 241, 245, writ denied, 10-41 (La. 3/12/10), 28 So.3d 1029, this court stated:

The employer or insurer has a continuing duty to investigate the employee's claim and to assess factual information before the denial of benefits. *Penn v. Wal-Mart Stores, Inc.*, 93-1262 (La.App. 3 Cir. 6/15/94), 638 So.2d 1123, writ denied, 94-1835 (La.10/28/94), 644 So.2d 651. Thus, a failure to investigate the employee's claim subjects the employer or insurer to penalties and attorney fees. *McClendon v. Keith Hutchinson Logging*, 96-2373 (La.App. 1 Cir. 11/7/97), 702 So.2d 1164, writ denied, 97-2872 (La.2/13/98), 706 So.2d 995.

Considering the well-established jurisprudence and the facts reflected in the record, we find the WCJ was not manifestly erroneous when it imposed penalties and attorney fees for Defendants' failure to timely approve Dr. Cascio's treatment of Ms. Jardneaux.

Request for shoulder surgery

Defendants assert that when they received Dr. Burton's medical notes offering a cervical fusion surgery to address Ms. Jardneaux's neck pain^[3] and Dr. Cascio's approval request to perform a left shoulder surgery, they had only received medical records that outlined that she had suffered a stroke with left-side deficits and medical complaints of left shoulder pain. Nevertheless, they assert that in their requests for surgical approval, neither Dr. Burton nor Dr. Cascio identified if the pain and surgical necessity were due to Ms. Jardneaux's fall out of the chair at Sonic or a residual result of the stroke or a combination of both. For that reason, Defendants state in their brief that they "exercised the right to a SMO on the cervical issue[,]" and an examination was scheduled for March 12, 2025, with Dr. Bertuccini, a neurosurgeon.

As noted earlier, Dr. Bertuccini provided Sonic with his SMO report on April 21, 2025. At that time, he disagreed with Dr. Burton's recommended neck surgery but deferred his opinion to an orthopaedist "about a pre-existing left shoulder problem and/or indication for the surgery[.]" Upon receipt of Dr. Bertuccini's SMO report, Sonic approved Ms. Jardneaux's shoulder surgery. Based upon this scenario, Defendants further argue that Dr. Bertuccini's report clarified the causation issue relative to Ms. Jardneaux's shoulder pain and approved that surgery sixty-seven days after Dr. Cascio's request was received. Accordingly, Defendants argue that they had a reasonable basis to deny shoulder surgery pending the SMO report. For the following reasons, we find no merit to Sonic's argument.

We have earlier detailed the records from Lourdes and Zenith's investigation of the complaints that Ms. Jardneaux specified about her left shoulder pain while she was hospitalized and that two years prior, she had a rotator cuff injury to her left arm. Additionally, Dr. Karim's trial testimony was clear that a stroke cannot cause a complete rupture of the rotator cuff and shoulder labrum.

Considering these well-established facts in the record, we find the WCJ was not manifestly erroneous when it imposed penalties and attorney fees for Sonic's delay in authorizing Ms. Jardneaux's left shoulder surgery.

Furthermore, even though Defendants had information on which to connect Ms. Jardneaux's injuries to her fall and not the post-accident stroke, it was not until Defendants received Dr. Bertuccini's SMO report on April 21, 2025, that they approved the shoulder surgery Dr. Cascio recommended. As of at least October 16, 2024, Dr. Cascio opined that Ms. Jardneaux had a complete rotator cuff tear or rupture of her left shoulder. In light of these facts, we likewise find no merit to Defendants' assertion that we should reduce that \$2,000 penalty to \$350.

Attorney fees

Having found no merit to their assignments of error, we now address Defendants' further assertion that the WCJ abused its discretion when it awarded a \$5,000 attorney fee.

Defendants argue that during the nine and one-half months that Ms. Jardneaux's claim was pending: she met and spoke with her attorney three or four times; he conducted minimal discovery; and "the result of trial was not [to] obtain any additional benefit to [Ms. Jardneaux]." Contending that the record only supports an award of attorney fees of \$700 at most, Defendants urge us to reduce the attorney fee award accordingly. For the following reasons, we find no merit to Defendants' argument.

A trial court has great discretion in determining an award of attorney fees. *Corbello v. Iowa Prod.*, 02-826 (La. 2/25/03), 850 So.2d 686. Under the abuse of discretion standard, "the role of the reviewing court is not to determine what it considers to be an appropriate award, but rather it is to review the exercise of discretion by the trier of fact." *Covington v. McNeese State Univ.*, 12-2182, p. 11 (La. 5/7/13), 118 So.3d 343, 351. However, the trial court's factual findings are reviewed pursuant to the manifest error standard of review. *Id.*

In *Caldwell v. West Fraser (South), Inc.*, 23-731, p. 25 (La.App. 3 Cir. 8/21/24), 393 So.3d 982, 999, *writ denied*, 24-1171 (La. 12/11/24), 396 So.3d 965, the court stated:

The Louisiana Supreme Court has long held, "The purpose of imposition of penalties and attorney fees is to discourage indifference and undesirable conduct by employers and insurers." *Authement v. Shappert Eng'g*, 02-1631, p. 11 (La. 2/25/03), 840 So.2d 1181, 1188. When determining whether penalties and attorney fees should be imposed on an employer, the crucial inquiry is "whether the employer had an articulable and objective reason to deny benefits at the time it took action." *Id.* "To reasonably controvert a claim, an employer must have sufficient factual and medical information to reasonably counter the factual and medical information provided by the employee." *McCarty v. State, Off. of Risk Mgmt.*, 94-033, p. 5 (La.App. 3 Cir. 10/5/94), 643 So.2d 886, 889.

In *Charles v. Acadia St. Landry Guest Home*, 01-129, pp. 9-10 (La.App. 3 Cir. 6/6/01), 787 So.2d 1206, 1212-13, *writ denied*, 01-1965 (La. 10/26/01), 799 So.2d 1146, this court said:

While we are loath to base an award of attorney fees solely on the number of billable hours, the amount of time devoted to a case is a factor to be used in determining the amount of an attorney fee award. *Britton v. City of Natchitoches*, 97-1038 (La.App. 3 Cir. 2/11/98); 707 So.2d 142, *writ denied*, 98-203 (La. 6/26/98); 719 So.2d 1057. We also base the amount of the attorney fee award on the degree of skill and ability exercised, the amount of the claim, and the amount recovered. *Id.* An additional factor to be considered is the worker's ability to hire counsel. We do not exist in a vacuum, immune to the realities of the real world and the inability of a worker's compensation claimant to find effective or adequate counsel. This is a factor that must be contemplated, considering the real world reluctance of counsel in today's legal environment to accept worker's compensation cases. "The injured worker would effectively be denied the protection offered by the workers' compensation statutes if he or she was unable to find an attorney to represent his or her interests." *Jones v. Evangeline of Natchitoches, Inc.*, 97-869, pp. 7-8 (La.App. 3 Cir. 12/10/97); 704 So.2d 905, 909, *writ not considered*, 98-0106 (La.3/13/98); 712 So.2d 864.

In the present case, Defendants chose to test whether Ms. Jardneaux's work injuries to her neck, left shoulder, and knee were compensable or were related to the stroke she suffered post-accident. In so doing, we found that Sonic presented insufficient factual and medical information to reasonably counter the facts and medical information Ms. Jardneaux provided. After reviewing the positive impact counsel for Ms. Jardneaux made for his client, we find the WCJ did not abuse its discretion in awarding a \$5,000 attorney fee.

However, we note that counsel for Ms. Jardneaux has asserted in brief that he is entitled to additional attorney fees for successfully defending the judgment of the WCJ. In *Clover v. Redfish Rentals, Inc.*, 22-470, pp. 11-12 (La.App. 3 Cir. 2/8/23), 357 So.3d 522, 532, this court stated:

Here, there is no doubt that Claimant has incurred more costs in successfully defending his award from the WCJ's judgment, and an award of attorney's fees for work done on appeal may be proper. However, an appellee who neither answers an appeal nor appeals from the trial court's judgment is not entitled to additional attorney's fees for legal services rendered on appeal. La.Code Civ.P. art. 2133; *Trejo v. Canaan Const., LLC*, 52,697 (La.App. 2 Cir. 6/26/19), 277 So.3d 499. Although a request for additional attorney fees is made in his appeal brief, Claimant did not correctly request them by answering this appeal. "An assertion in a brief cannot serve as an answer to appeal." *Pritchard v. GEICO Ins. Co.*, 17-273, 17-274, p. 10 (La.App. 3 Cir. 11/8/17), 242 So.3d 787, 794. Thus, we deny Claimant's request to increase his award for attorney fees incurred in the process of this appeal.

Here, counsel for Ms. Jardneaux neither answered the appeal nor appealed. His request to increase the attorney fee asserted only in the appellate brief is denied.

DECREE

For the reasons set forth herein, we affirm the judgment of the WCJ. The request for additional attorney fees for representation on appeal by Ms. Jardneaux is denied. Costs of this appeal are assessed to Guernsey Holdings SDI TTX Holdings Co, LLC and Zenith Insurance Company.

AFFIRMED.

[1] For clarity, the legal name of the defendant/employer is Guernsey Holdings SDI TX Holdings Co., LLC. However, it is known and referred to in the record as Sonic. For ease of reference, we will refer to the employer/appellant as Sonic.

[2] There is no evidence about how Ms. Jardneaux was compensated for her medical expenses for this prior

shoulder injury. Even though those medical records may have been available, there is nothing in the record to show that Defendants sought or reviewed these documents.

^[3] The record does not show that Dr. Burton sought approval of that surgery from Defendants.

Reissland v. Valluzzo Cos.

Court:	Court of Appeal of Louisiana
Writing for the Court:	Dale N. Atkins, Judge.
Docket Number:	2025-CA-0379
Decision Date:	29 December 2025
Citation:	Reissland v. Valluzzo Cos., 2025-CA-0379 (La. App. Dec 29, 2025)
Parties:	DAPHNE REISSLAND v. VALLUZZO COMPANIES, LLC

Id. vLex Fastcase: VLEX-1099416955

Link: <https://fastcase.vlex.com/vid/reissland-v-valluzzo-cos-1099416955>

1

DAPHNE REISSLAND v. VALLUZZO COMPANIES, LLC

No. 2025-CA-0379

Court of Appeals of Louisiana, Fourth Circuit

December 29, 2025

APPEAL FROM THE OFFICE OF WORKERS' COMPENSATION NO. 23-04315, DISTRICT "7" Honorable Heather Fairchild, Judge

Timothy E. Benedetto WORKERS' COMPENSATION, LLC COUNSEL FOR PLAINTIFF/APPELLANT, Daphne Reissland

Trenton J. Oubre Terrel A. Thomas Charles C. Szeszycki BREAZEALE, SACHSE & WILSON, LLP COUNSEL FOR DEFENDANT/APPELLEE, Valluzzo Companies, LLC

Court composed of Judge Tiffany Gautier Chase, Judge Dale N. Atkins, Judge Monique G. Morial

Dale N. Atkins, Judge.

REVERSED IN PART; VACATED IN PART; REMANDED WITH INSTRUCTIONS; ANSWER TO APPEAL DENIED

DNA

TGC

MGM

This is a workers' compensation case. Employee-appellant is Daphne Reissland ("Ms. Reissland"), and employer-appellee is Valluzzo Companies, LLC ("Valluzzo"). Ms. Reissland appeals the judgment issued by the workers' compensation judge ("WCJ")^[1] on December 5, 2024. In that judgment, in pertinent part, the WCJ found Ms. Reissland was a part-time employee when she worked for Valluzzo and sustained a workplace injury; and Ms. Reissland assigns error to the finding that she was a part-time employee as opposed to a full-time employee. Further, the WCJ held Ms. Reissland proved she experienced a work place accident; she experienced a work-related injury; she sustained injuries related to the work accident; and a causal connection between the work accident and her injuries. However, the WCJ found Ms. Reissland made false statements for the purpose of obtaining workers' compensation benefits in violation of La. R.S. 23:1208, such that she forfeited her right to benefits and would be required to pay restitution to Valluzzo. In this latter regard, the WCJ issued another judgment on January 13, 2025, in which it delineated the amount Ms. Reissland owed Valluzzo in restitution and ordered Ms. Reissland to pay a civil penalty pursuant to La. R.S. 23:1208(D). Ms. Reissland assigns error to the WCJ's finding that she made misstatements in violation of La. R.S. 23:1208 such that she forfeited her right to benefits and must pay restitution. In the alternative, Ms. Reissland assigns error to the WCJ's restitution calculation.

In addition to asserting assignments of error in its appellee brief, Valluzzo filed an "Answer . . . to the Appeal of Appellant" ("Answer"). Therein, Valluzzo seeks review of the WCJ's failure to award it all attorney's fees incurred pursuant to La. R.S. 23:1208(C)(4); the total requested attorney's fees and costs pursuant to La. R.S. 23:1310.9; judicial interest on the restitution award pursuant to La. R.S. 23:1201.3; and additional costs, including penalties and attorney's fees, pursuant to La. R.S. 23:1201(G) for Ms. Reissland's failure to pay any of the amount ordered in the restitution judgment. Additionally, Valluzzo asserts the WCJ erred in certain parts of the December 5, 2024 judgment, specifically in finding that Ms. Reissland proved the alleged workplace accident of May 4, 2023; proved she sustained a work-related injury; proved she sustained injuries related to the work accident; and proved a causal connection between the accident and her injuries. Valluzzo also contends the WCJ erred in the December 5, 2024 judgment in finding Valluzzo did not prove entitlement to the intoxication presumption due to Ms. Reissland's delay in submitting to its drug testing request. Further, Valluzzo asserts the WCJ erred in finding Valluzzo failed to prove Ms. Reissland's intoxication was the cause of her work accident.

For the following reasons, we reverse the WCJ's December 5, 2024 judgment in part; vacate the January 13, 2025 judgment; and remand this matter to the WCJ with instructions. We deny the requests by Valluzzo in its Answer.

FACTUAL AND PROCEDURAL HISTORY

Incident, Early Treatment, and Initiation of Benefits

According to Ms. Reissland, she injured her left hip on May 4, 2023, while employed by Valluzzo at a McDonald's located in Meraux, Louisiana. Describing the accident and injury in the Disputed Claim for Compensation - Form 1008 she ultimately filed, Ms. Reissland stated that "[w]hile in the course and scope of her employment . . . , [she] injured her left hip while throwing away garbage." Based on Ms. Reissland's account of the incident in the record, she injured herself while attempting to lift a bag of garbage that was heavier than anticipated because, unbeknownst to her, another employee had placed liquids and grease in it. Additionally, Ms. Reissland explained she was unable to perform her job duties the day after the incident, May 5, 2023, and left her shift early, whereupon she immediately sought treatment with her primary care physician, Dr. Lagarde-May ("Dr. May") at DePaul Community Health Center.

On June 6, 2023, Dr. Kevin Johnson ("Dr. Johnson") evaluated Ms. Reissland and noted complaints of pain in her lower back, left hip, and left leg. Dr. Johnson recommended Ms. Reissland undergo conservative care and rendered her totally disabled from work. Thereafter, on June 19, 2023, Valluzzo instituted Ms. Reissland's indemnity benefits, ultimately determining that Ms. Reissland was entitled to temporary total disability benefits in the amount of \$275.02 per week as calculated based on an average weekly wage of \$412.53 per week.

Subsequently, on June 23, 2023, Dr. Nicholas DiGerolamo ("Dr. DiGerolamo") evaluated Ms. Reissland, and he also noted that she complained of pain in her lower back, left hip, and left leg, with pain centralized in her left lower back area. Then, Dr. Johnson evaluated Ms. Reissland again on July 25, 2023, and likewise noted her complaints of pain in her lower back, left hip, and left leg. Dr. Johnson maintained his designation of Ms. Reissland as totally disabled from work, recommended that she continue conservative care, and ordered a lumbar MRI.

On November 6, 2023, orthopedic spine specialist Dr. Marco Rodriguez ("Dr. Rodriguez") evaluated Ms. Reissland, reviewed the MRI taken of her spine, and reported two bulging discs and one herniated disc in her lumbar spine. Given Ms. Reissland's continued pain, Dr. Rodriguez recommended she undergo epidural steroid injections and continued her total disability restrictions. Dr. Rodriguez requested authorization for continued care on November 15, 2023, but Valluzzo denied the request based on a "causality issue." On November 20, 2023, Dr. Rodriguez also requested authorization to perform lumbar transforaminal injections, but Valluzzo denied this too on the basis of a "question of causality."

Medical Authorization Forms

On June 22, 2023, Valluzzo forwarded several release authorization forms to Ms. Reissland, including a Health Insurance Portability and Accountability Act ("HIPAA") authorization. Approximately one month later, Ms. Reissland signed the HIPPA authorization thereby allowing Valluzzo's claims adjuster to access her medical records.

Thereafter, on August 11, 2023, Valluzzo contacted Ms. Reissland and asked her to execute another HIPPA authorization in favor of its counsel. Ms. Reissland refused to execute the additional authorizations on the grounds that her claim was not yet in litigation and that she had already signed the prior HIPPA authorization. In a subsequent attempt by Valluzzo to get Ms. Reissland to sign the HIPPA authorization in favor of its counsel, Valluzzo sent a cover letter which stated that Valluzzo's counsel was "the authorized designee of [Valluzzo] to procure records, reports, pathology, radiology bills and all other documents or materials specified in requests submitted on behalf of [Valluzzo]." In response to this letter, Ms. Reissland revoked all prior signed authorizations. On August 17, 2023, Valluzzo terminated Ms. Reissland's indemnity benefits due to her

"hindrance and arbitrary actions in blocking all medical records discovery and" in "denying [Valluzzo] from being able to obtain all relevant medical records . . . in further investigation and [evaluation of] this claim." Ms. Reissland subsequently re-executed a HIPPA authorization on September 1, 2023, whereupon Valluzzo reinstituted her indemnity benefits on September 13, 2023.

Disputed Claim for Compensation

Before Valluzzo reinstituted her benefits, however, on August 29, 2023, Ms. Reissland filed her Disputed Claim for Compensation - Form 1008 ("Claim Form"). On the Claim Form, Ms. Reissland noted Valluzzo terminated her workers' compensation benefits on August 17, 2023. Ms. Reissland requested, in pertinent part:

Any and all equitable relief owed, including but not limited to entitlement to awards of penalties and attorney's fees in accordance with La. R.S. 23:1201 et seq.; entitlement to reimbursement of costs in accordance with La. R.S. 23:1310.9; entitlement to judicial interest on all amounts awarded including but not limited to awards of penalties, attorney's fees and costs.

In subsequent pleadings, Ms. Reissland also requested judicial interest on penalties, attorney's fees, and costs.

Though Ms. Reissland's Claim Form listed her injured body part as her left hip, during the course of this dispute, she ultimately complained of lower back problems too and amended her claim to include that complaint. Additionally, throughout the course of the proceedings, Ms. Reissland maintained that she was a full-time employee and that Valluzzo should have classified her as such in calculating her benefits. According to Ms. Reissland's deposition testimony, her supervisor informed her that she would be a full-time employee.

Answer and Request for Preliminary Determination Hearing

On September 20, 2023, Valluzzo timely filed its Answer and, in pertinent part, requested a preliminary determination hearing ("PDH") to determine whether Ms. Reissland was entitled to continue receiving benefits. In this regard, Valluzzo explained that Dr. Douglas Lurie ("Dr. Lurie") examined Ms. Reissland on July 25, 2023, and was "not able to assign any type of causation of [Ms. Reissland's] current complaints in light of the strong nonorganic overlay," and that she "should return to regular duty immediately."

Ms. Reissland opposed Valluzzo's request for a PDH in a Motion to Strike Request for PDH, asserting that Valluzzo had not offered evidence that it complied with all of the provisions of La. R.S. 23:1201.1(A) that are a prerequisite for any request for a PDH. Specifically, Ms. Reissland claimed that Valluzzo did not show that it sent the Notice of Initial Payment (LWC Form 1002) to her on the same day that the first payment of compensation was made. Though we need not delineate the specifics of same, it is important to note that the WCJ eventually granted Valluzzo's request for a PDH and conducted one.

In pertinent part, in its Answer, Valluzzo also contended Ms. Reissland delayed properly and timely reporting her work incident thereby thwarting the administration of a prompt drug test immediately after the alleged accident. According to Valluzzo, by failing to allow for prompt drug screening, Ms. Reissland forfeited all rights to compensation pursuant to La. R.S. 23:1124.

Valluzzo also asserted that La. R.S. 23:1081(7)(b) established a presumption that Ms. Reissland was intoxicated at the time of the accident in light of her failure to submit to a timely drug screening.

Termination of Benefits

On January 10, 2024, Valluzzo terminated Ms. Reissland's indemnity benefits on the grounds that she committed fraud pursuant to La. R.S. 23:1208 by misrepresenting her prior and post-accident medical treatment and history, alleged disabilities, condition, and basis and need for medical care. Valluzzo further contended Ms. Reissland committed fraud pursuant to La. R.S. 23:1208.1 by making willful misrepresentations and false statements regarding her true and accurate medical history, pre-accident history, medications, and lost time from work. Valluzzo also denied all requests for future medical treatment. Additionally, Valluzzo filed a Supplemental and Amending Answer, as well as a Reconventional Demand, with these same allegations. In its Reconventional Demand, Valluzzo contended it was entitled to restitution and reimbursement in light of Ms. Reissland having committed fraud and having made willful misrepresentations. In pertinent part, Ms. Reissland had already submitted to a deposition, during which she denied having a specific history of back pain, back problems, or treatment for back pain and back problems; but her medical records revealed otherwise. Valluzzo ultimately submitted with one of its pleadings a November 3, 2023 supplemental report from Dr. Lurie. Therein, Dr. Lurie opined that Ms. Reissland's history was inaccurate, noting that she did in fact have a prior history of back problems and there was no record of her being treated by Dr. May on the day after the alleged incident contrary to Ms. Reissland's report.

Dr. Marco Rodriguez's Deposition

On March 22, 2024, Ms. Reissland deposed Dr. Rodriguez. In his deposition, Dr. Rodriguez noted that Ms.

Reissland's reason for her initial appointment with him on November 6, 2024, was "cervical, thoracic, and lumbar" pain. According to Dr. Rodriguez, Ms. Reissland denied having any history of low back pain before her injury, and he did not know that Ms. Reissland had prior diagnoses of lumbar radiculopathy. Nevertheless, Dr. Rodriguez testified he would not change his opinion that Ms. Reissland began to experience left leg radiculopathy as a result of her May 4, 2023 work incident.

Trial on the Merits

On October 16, 2024, the WCJ held a trial on the merits. Valluzzo submitted the transcript of Dr. May's August 9, 2024 deposition as one of its exhibits. Therein, Dr. May denied having seen Ms. Reissland on May 5, 2023, and noted the absence of a record for a visit on that date. Dr. May also testified that she had diagnosed Ms. Reissland with lumbar radiculopathy on multiple occasions prior to her alleged workplace accident and explained the diagnosis to Ms. Reissland. Additionally, the WCJ heard testimony from Lauren Sulik ("Ms. Sulik") and Ms. Reissland.

Ms. Sulik's Testimony

Regarding the calculation of Ms. Reissland's average weekly wage based on average hours worked, Ms. Sulik, Valluzzo's claims adjuster, testified that she calculated it using the part-time employee classification for Ms. Reissland. Ms. Sulik admitted that nothing on Ms. Reissland's pay stubs directly stated that she was a part-time employee; however, Ms. Sulik noted the "job code" listed on Ms. Reissland's pay stubs was "job code 100," which indicated Ms. Reissland was a "crew member." As explained by Ms. Sulik, all crew members are considered part-time employees. Ms. Sulik further explained that although no document specifically indicated that Ms. Reissland was classified as a part-time employee, only salaried managers at Valluzzo are full-time. According to Ms. Sulik, the part-time/full-time distinctions between crew members and salaried managers is common knowledge, but she could not refer to any location where this distinction was in writing.

Ms. Sulik added that the Valluzzo policy handbook specifies that crew members are not guaranteed a full-time schedule but can be given more hours the longer they have been employed and after they have proven their abilities. Ms. Sulik stated she used both the policy handbook and Ms. Reissland's status as a crew member to determine her average weekly wage. Valluzzo submitted the policy handbook as one of its exhibits. In pertinent part, it defines part-time employee as "those who are not assigned to a temporary or introductory status and who are regularly scheduled to work less than the full-time work schedule." (We also note that when asked during a deposition whether Ms. Sulik had any written acknowledgement that Ms. Reissland knowingly accepted part-time employment, Ms. Sulik responded, "Written? No, not to my knowledge.")

Ms. Reissland's Testimony

Ms. Reissland testified she sought examination from Dr. May on the day after her alleged workplace accident and informed her other doctors about this visit with Dr. May. When asked whether Dr. May had previously diagnosed her with lumbar radiculopathy prior to her work accident, Ms. Reissland answered "no," explaining that she had never heard of that diagnosis until her own counsel mentioned it to her during the proceedings in this matter and had specifically never heard that diagnosis from Dr. May. Ms. Reissland testified that she had never been diagnosed with or sought treatment for lumbar radiculopathy; did not know what the condition meant; and had never received an explanation regarding the diagnosis from Dr. May. Further, Ms. Reissland then testified that she still did not know what lumbar radiculopathy was and that she did not understand why she continued to receive questions about back pain because it was her hip that she injured in the workplace accident, not her back. Additionally, Ms. Reissland testified that she did not remember reporting back pain to Dr. May prior to the workplace accident, and Ms. Reissland stated she did not have a history of low back pain. Ms. Reissland also testified that her pain from the incident at work was different from any pain she had previously experienced.

December 5, 2024 Judgment

Following the trial on the merits, the WCJ signed a judgment on December 5, 2024, which stated, in pertinent part:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court finds that claimant, Daphne Reissland, met the burden of proof necessary to establish the alleged work place accident of May 4, 2023.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that claimant, Daphne Reissland, met the burden of proof necessary to establish a work related injury.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that claimant, Daphne Reissland, met her burden of proof to show that she sustained injuries related to the work accident.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that claimant, Daphne Reissland, is a part-

time employee, with an average weekly wage of \$412.52 and a corresponding TTD rate of \$275.02.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant, Valluzzo Companies, LLC, is not entitled to the intoxication presumption due to the delay of the drug testing request.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant, Valluzzo Companies, LLC, failed to prove that claimant's intoxication was the cause of her work accident.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the suspension of benefits due to the refusal by claimant and claimant's counsel to provide medical release authorizations is moot as the reinstatement of benefits and retroactive payment has already been paid in full.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant, Valluzzo Companies, LLC, failed to prove that claimant committed fraud pursuant to *La. R.S. 23:1208.1*.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that claimant, Daphne Reissland, made false statements for the purpose of obtaining workers' compensation benefits in violation of *La. R.S. 23:1208*.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that claimant, Daphne Reissland, has forfeited her rights to workers' compensation benefits due to her violations of *La. R.S. 23:1208*.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that claimant, Daphne Reissland, failed to meet the burden of proof necessary to establish a violation of *La. R.S. 23:1208* against defendant, Valluzzo Companies, LLC.

IT IS FINALLY ORDERED, ADJUDGED AND DECREED that judgment is hereby rendered in favor of Defendant and against Claimant as set forth herein. The matter is set for a hearing to determine restitution costs on behalf of the defendant on January 6, 2025, at 9:00 a.m.

The record establishes Valluzzo continued paying Ms. Reissland's indemnity benefits until December 10, 2024, at which time they suspended her benefits in light of the WCJ's December 5, 2024 judgment.

January 13, 2025 Judgment

Subsequently, on January 6, 2025, the WCJ held a restitution hearing, and found that Valluzzo did not have the requisite knowledge that Ms. Reissland's made false statements for the purpose of obtaining benefits until December 5, 2024 (the date of the WCJ's prior judgment). On January 13, 2025, the WCJ issued another judgment, which stated, in pertinent part:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the claimant is ordered, pursuant to *La. R.S. 23:1208(C)(4) and (D)*, to pay restitution for benefits claimed or payments obtained for the cost or value of indemnity benefits, the cost or value of health care, medical case management, vocational rehabilitation, transportation expense, and the reasonable costs of investigation and litigation as follows:

Restitution in the amount of \$21,490.86 in indemnity benefits,

Restitution in the amount of \$13,076.05 in health care benefits, and

Restitution in the amount of \$5,158.94 in reasonable costs of investigation and litigation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the claimant is ordered, pursuant to *La. R.S. 23:1208(D)*, to pay a civil penalty in the amount of \$5,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the claimant shall pay this civil penalty directly to the employer in accordance with the holding in *Yarnell Ice Cream Company v. Allen*, 759 So.2d 1066 (La.App. 2 Cir. 5/10/00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that matter [sic] is dismissed with prejudice.

Ms. Reissland's timely appeal to this Court followed, and Valluzzo timely filed its Answer with this Court.

ASSIGNMENTS OF ERROR AND ANSWER

In her brief to this Court, Ms. Reissland asserts five assignments of error. Specifically, she contends:

1. The [WCJ] was manifestly erroneous in finding [Ms.] Reissland committed fraud pursuant to *La. R.S. 23:1208*.

2. In the alternative, the [WCJ] abused its discretion in awarding restitution under La. R.S. 23:1208 through the date of its December 5, 2024 judgment.
3. The [WCJ] committed legal error in calculating [Ms.] Reissland's indemnity benefits based on her classification as a "part[-]time" worker.
4. The [WCJ] abused its discretion in failing to award multiple penalties and attorney's fees pursuant to La. R.S. 23:1201(I) and/or (F).
5. The [WCJ] committed legal error in failing to award [Ms.] Reissland cost reimbursement pursuant to La. R.S. 23:1310.9 and failing to award judicial interest on all penalties, costs, and attorney's fees awarded.

Valluzzo asserts three assignments of error in its brief to this Court. Specifically, Valluzzo contends:

1. The [WCJ] committed manifest error in the failure to award [Valluzzo] all attorney's fees incurred by [Valluzzo] as established in evidence and made part of the Trial Court record, to be included as part of the Restitution Judgment as "reasonable costs of investigation and litigation" in the Judgment rendered on January 6, 2025, pursuant to La. R.S. 23:1208.
2. The [WCJ] committed manifest error in its failure to award all requested attorney's fees and the total cost of the proceedings, pursuant to La. R.S. 23:1310.9, plus judicial interest on the entire restitution award pursuant to La. R.S. 23:1201.3 to [Valluzzo] against [Ms. Reissland] in the Restitution Judgment rendered on January 6, 2025.
3. The [WCJ's] Restitution Judgment of January 6, 2025, should be modified and revised to award [Valluzzo] all additional damages and costs, including penalties and attorney's fees upon the running of all deadlines, pursuant to La. R.S. 23:1201(G).

Additionally, Valluzzo filed an Answer with this Court. In its Answer, Valluzzo prays for and requests the following relief:

- [1]. That the [WCJ's] [j]udgment of January 6, 2025, appealed from by [Ms. Reissland] be modified, revised and amended, to expressly award all requested attorney's fees and the total costs and expenses of these proceedings and all recoverable amounts with legal interest to [Valluzzo] pursuant to La. R.S. 23:1208(C)(4) and (D).
- [2]. That the Trial Court Judgment of January 6, 2025, appealed from by [Ms. Reissland] be modified, revised and amended to award all attorney's fees and costs and all recoverable amounts with legal interest to [Valluzzo], on grounds that [Ms. Reissland's] claims were not brought on reasonable ground pursuant to La. R.S. 23:1310.9.
- [3]. That this Honorable Court award judicial interest on all sums owed to [Valluzzo], by [Ms. Reissland], pursuant to La. R.S. 23:1201.3.
- [4]. That this Honorable Court award all further costs, expenses, and attorney's fees incurred in responding to this appeal by [Ms. Reissland]. Through its response, [Valluzzo's] counsel has and will exercise additional work, effort, and skill in answering and responding to this appeal considering all costs, briefs, pleadings and oral arguments herein; and based upon [Valluzzo's] efforts, [Ms. Reissland] must pay the costs of this additional effort to [Valluzzo] pursuant to La. C.C.P. Art. 2133(A).
- [5]. Except as specifically set forth in the Answer by [Valluzzo] herein, [Valluzzo] prays that the Judgment of the Trial Court rendered on December 5, 2024, be specifically affirmed and approved, subject to the specific demands, modifications and revisions set forth in [Valluzzo's] Answer herein; That the Judgment of the Trial Court rendered in Open Court on January 6, 2025, and signed as a Written Judgment on January 13, 2025, granting restitution of benefits be affirmed and approved herein, except for the specific demands, modifications, revisions, as set forth in the Answer by [Valluzzo] herein; and
- [6]. That [Ms. Reissland] be condemned to pay all costs and all expenses and applicable recoverable amounts of this appeal to [Valluzzo].

We begin our discussion with Ms. Reissland's assignments of error before resolving Valluzzo's assignments of error and the requests in Valluzzo's Answer.

DISCUSSION

Ms. Reissland's Assignments of Error

Assignment of Error Number One: The WCJ's Finding Ms. Reissland Violated La. R.S. 23:1208 and Forfeited Her Right to Benefits

In her first assignment of error, Ms. Reissland asserts the WCJ "was manifestly erroneous in finding [she] committed fraud pursuant to La. R.S. 23:1208." At the outset, Ms. Reissland contends she did not make any false statements. Nonetheless, Ms. Reissland further contends that to the extent she made "false" statements, she did not make them "willfully." That is, Ms. Reissland argues it "was clearly not the case" that she "*intentionally* misrepresented her past medical history . . . and . . . withheld . . . information . . . for the purpose of obtaining benefits." Additionally, Ms. Reissland argues that "[t]o the extent [she] made 'false' statements," they "were inadvertent and inconsequential." In this regard, she cites to jurisprudence for the proposition that if treating physicians do not change their opinions about the causation element of a workers' compensation claimant's claim, then the misrepresentation was inadvertent and inconsequential.

Countering, Valluzzo asserts the WCJ "made a correct factual finding, based on all testimony and evidence presented at trial, that [Ms. Reissland], made willful misrepresentations and committed fraud pursuant to La. R.S. 23:1208 and forfeited all benefits." In particular, Valluzzo argues that "[c]ontrary to [her] testimony, [Ms. Reissland's] prior medical records reveal that she has an extensive past medical history of low back pain and treatment since at least 2009 through 2023." Additionally, Valluzzo asserts Ms. Reissland made "significant false statements" regarding her "medical evaluations and treatment after the accident with Dr. May at Depaul Community Health Clinic."

The WCJ ruled Ms. Reissland forfeited her rights to workers' compensation benefits due to her violation of La. R.S. 23:1208. Louisiana Revised Statutes 23:1208(A) states that "[i]t shall be unlawful for any person, for the purpose of obtaining or defeating any benefit or payment under the provisions of this Chapter, either for himself or for any other person, to willfully make a false statement or representation." The statute delineates criminal and civil penalties a workers' compensation judge may assess when an employee violates La. R.S. 23:1208(A). Additionally, if a violation of La. R.S. 23:1208(A) occurs, the "employee . . . shall . . . forfeit any right to compensation benefits under this Chapter." La. R.S. 23:1208(E). Disqualification from benefits under La. R.S. 23:1208 occurs when there is "1) a false statement or representation, 2) which is willfully made, and 3) which is made for the purpose of obtaining workers' compensation benefits." *Baker v. Harrah's*, 2015-0229, p. 32 (La.App. 4 Cir. 3/9/16), 190 So.3d 379, 399 (citing *Resweber v. Haroil Constr. Co.*, 1994-2708, 3138, p. 7 (La. 9/5/95), 660 So.2d 7, 12).

Because "[t]he issue of whether an employee has forfeited her rights to benefits is a factual determination," the appellate court "should not . . . disturb[]" that finding "on appeal absent manifest error." *Hebert v. Fresh Market, Inc.*, 2019-0412, p. 19 (La.App. 4 Cir. 9/18/19), 280 So.3d 756, 771 (citing *Baker*, 2015-0229, p. 32 (La.App. 4 Cir. 3/9/16), 190 So.3d 379, 399). Under that standard of review, "the appellate court determines whether the trier of fact's conclusion was reasonable, not whether the trier of fact was right or wrong." *Safford v. New Orleans Fire Dep't*, 2023-0495, p. 23 (La.App. 4 Cir. 2/1/24), 384 So.3d 909, 928 (citing *Thibodaux v. Grand Isle Shipyard*, 2016-0583, p. 6 (La.App. 4 Cir. 12/21/16), 207 So.3d 459, 464). Nevertheless, "if legal error interdicts the fact-finding process in a workers' compensation proceeding, then the appellate court applies the *de novo* standard of review instead." *Id.* (internal quotation marks omitted) (quoting *Thibodaux*, 2016-0583, p. 6, 207 So.3d at 465). As this Court has explained, "Statutory forfeiture is a harsh remedy and must be strictly construed." *Hebert*, 2019-0412, p. 19, 280 So.3d at 771 (citing *Baker*, 2015-0229, p. 32, 190 So.3d at 399). Therefore, an "inadvertent or inconsequential statement[]" will not give rise to a finding of a willful misstatement, triggering statutory penalties." *Id.*

In an Opinion issued by this Court, *Hutchison v. Aldworth Co.*, the focus, in pertinent part, was on whether the medical providers' opinions as to the worker's injury would change upon learning about the worker's misstatements regarding prior complaints to the body part allegedly injured in the workplace accident. 2004-0024, pp. 9-10 (La.App. 4 Cir. 11/10/04), 888 So.2d 1052, 1058. This Court found the employer had "not put forth any evidence that any of [the employee's] alleged false statements were made for the purpose of obtaining compensation benefits." *Id.* at p. 9, 888 So.2d at 1058. Specifically, this Court noted the employer "present[ed] no evidence from any of the medical providers that their findings regarding [the employee's] disability status and their opinion that the work accident aggravated [his] preexisting condition would have changed as a result of these purported false statements." *Id.* at pp. 9-10, 888 So.2d at 1058. Accordingly, this Court affirmed the workers' compensation judge's denial of the employer's claim for forfeiture of benefits pursuant to La. R.S. 23:1208. *Id.* at p. 10, 888 So.2d at 1058. Similarly, in *Ebarb v. Boise Cascade Co.*, the Louisiana Third Circuit Court of Appeal ("Third Circuit") found no manifest error in the workers' compensation judge's denial of the employer's La. R.S. 12:1208 fraud defense as it related to the employee's lower back claim. 2016-94, p. 19 (La.App. 3 Cir. 7/13/16), 202 So.3d 1087, 1100. The Third Circuit noted that "all of the physicians found that [the employee] suffered at least a sprain or a strain of her lower back as a result of her March 26, 2012 work-related accident." *Id.* Additionally, the Third Circuit pointed out that one of the doctors "admitted that while he would consider any prior medical records in reaching an opinion on causation, he denied that he would automatically change his opinion if presented with medical records evidencing [the employee] had prior lower back complaints." *Id.*

In the matter *sub judice*, we find the WCJ erred in failing to consider the effect-or lack thereof-of Ms. Reissland's alleged misstatements and thus failed to consider whether they were inadvertent or inconsequential. As in

Hutchison and *Ebarb*, we likewise note the absence of evidence from any of the medical providers that their opinion about Ms. Reissland's injury would change based on her alleged misstatements about her prior back pain and problems, as well as her history of treatment for back pain and problems. In fact, Dr. Rodriguez opined Ms. Reissland sustained an injury related to her workplace accident and suffered from left leg radiculopathy after the accident. Dr. Rodriguez stated that even upon learning Ms. Reissland had prior back pain and problems, this did not change his opinion. Additionally, Dr. Rodriguez characterized Ms. Reissland's post-accident pain as "a completely new issue." In his supplemental report, Dr. Lurie merely found that Ms. Reissland misstated her history of back pain and problems based on her medical records but did not mention how or if this affected his diagnosis.

Similarly, Valluzzo contends Ms. Reissland misrepresented her treatment history when she claimed she saw Dr. May on the day after the accident because Dr. May had no record of a visit for that date. Again, the issue is whether this alleged misstatement changed any of the medical providers' opinions. Though seeking treatment immediately following the accident might have bolstered Ms. Reissland's claim that she suffered a workplace injury the day prior, none of the medical providers stated their opinion would change upon learning that Ms. Reissland did not in fact see Dr. May the day after the accident. Accordingly, we reverse the WCJ's December 5, 2024 judgment insofar as it held Ms. Reissland violated La. R.S. 23:1208 and forfeited her right to workers' compensation benefits.

Further, we note that La. R.S. 23:1201.3(A) provides:

If payment of compensation or an installment payment of compensation due under the terms of an award, except in case of appeals from an award, is not made within ten days after the same is due by the employer or insurance carrier liable therefor, the workers' compensation judge may order a certified copy of the award to be filed in the office of the clerk of court of any parish, which award whether accumulative or lump sum, when recorded in the mortgage records, shall be a judicial mortgage as provided in Civil Code Article 3299. Any compensation awarded and all payments thereof directed to be made by order of the workers' compensation judge shall bear judicial interest from the date compensation was due until the date of satisfaction. The interest rate shall be fixed at the rate in effect on the date the claim for benefits was filed with the office of workers' compensation administration.

As explained by the Louisiana Fifth Circuit Court of Appeal, "Because the language of [La. R.S. 23:101.3(A)] is mandatory, an award of legal interest in workers' compensation cases is not discretionary with the court, as the interest attaches automatically until the judgment is satisfied, whether prayed for in the petition or mentioned in the judgment." *Phillips v. Joseph Mgmt. Servs., Inc.*, 2003-715, p. 13 (La.App. 5 Cir. 11/12/03), 861 So.2d 625, 634. See also La. R.S. 1:3 (stating that "[t]he word 'shall' is mandatory and the word 'may' is permissive"). Thus, Ms. Reissland is entitled to interest from the date compensation was due and until the date of satisfaction per La. R.S. 23:1201.3(A).

Assignment of Error Number Two: The Award of Restitution under La. R.S. 23:1208 through the date of the December 5, 2024 Judgment

Next, and in the alternative, Ms. Reissland asserts the WCJ abused its discretion in awarding restitution pursuant to La. R.S. 23:1208 through the date of its December 5, 2024 judgment. Having reversed the finding in the WCJ's December 5, 2024 judgment that Ms. Reissland violated La. R.S. 23:1208 and forfeited her right to benefits, we also necessarily vacate the WCJ's January 13, 2025 restitution judgment, which ordered Ms. Reissland to reimburse the benefits she received and to pay a penalty. This assignment of error as is now moot.

Assignment of Error Number Three: The Calculation of Ms. Reissland's Indemnity Benefits Based on Her Classification as a "Part Time" Worker

Next, Ms. Reissland argues the WCJ "committed legal error in calculating [her] indemnity benefits based on her classification as a 'part time' worker." Ms. Reissland disputes that Valluzzo hired her as a part-time employee; and she notes that under La. R.S. 23:1021(11), the record must demonstrate an "objective finding that the employee *knowingly* accepted employment under [the limited conditions delineated in La. R.S. 23:1021(11)] at the time of his [or her] hiring." Accordingly, Ms. Reissland contends the WCJ should have calculated her average weekly wage using the forty-hour presumption contained in La. R.S. 23:1021(13)(a)(i), which would yield an average weekly wage of \$440.00 with an applicable compensation rate of \$293.33. Valluzzo does not address this assignment of error in its brief to this Court.

In defining "part-time employee," La. R.S. 23:1021(11) provides that this is "an employee who as a condition of his [or her] hiring knowingly accepts employment that (a) customarily provides for less than forty hours per work week, and (b) that is classified by the employer as a part-time position." If an employment contract does not comply with the definition of part-time employment found in La. R.S. 23:1021(11), it does not controvert the plaintiff-employee's claim of full-time status. *Leger v. A-1 Nursing Registry*, 1998-1731, p. 4 (La.App. 3 Cir. 4/28/99), 737 So.2d 142, 144. As explained by the Third Circuit, "[a]ny measure short of informing the employee

of his part-time status does not satisfy the" definition of part-time employee found in [La. R.S. 23:1021\(11\)](#). *Id.* (quoting [Scott v. Central Indus., Inc.](#), 602 So.2d 201 (La.App. 3d Cir. 1992)). Additionally, pay stubs cannot establish an employee's status as full- or part-time because the employee does not receive these until after accepting his or her position. *Id.* at pp. 8-9, 737 So.2d at 147.

In *Johnson v. Travelers Insurance Co.*, the Third Circuit focused on the "knowingly" aspect of [La. R.S. 23:1021\(11\)](#), stating:

The record is replete with evidence that plaintiff did not "knowingly" accept employment that customarily provides for less than forty hours per week. Plaintiff considered himself to be a full-time, regular employee. . . . Furthermore, plaintiff was always available for work and he worked as much as they needed him. The record reflects that plaintiff was never told that he was classified or considered "part-time". It is incumbent upon employers to define "part-time" status of certain employees and to establish some procedure to satisfy the criterion that the employee had knowingly taken a part-time job.

509 So.2d 519, 521 (La.App. 3d Cir. 1987). In so ruling, the Third Circuit also quoted favorably from the trial court's reasons for judgment, which emphasized a liberal construction of [La. R.S. 23:1021](#) in favor of the employee:

"Workmen's Compensation rests upon the sound economic principle that those who enjoy the product of a business-whether it be in the form of goods or services-should ultimately bear the costs of the injuries or deaths that are incident to the manufacture, preparation and distribution of the product." Malone and Johnson, *supra*, Section 32, p. 38. These costs are then passed on to the consumer. *supra*, Section 32, p. 39. The alternative is to have the employee shoulder the costs for which he is ill equipped to do, and he cannot pass the costs on to the consumer. See also [Trappey v. Lumberman's Mut. Cas. Co.](#) 229 La. 632, 86 So.2d 515 (1956); [Green v. Heard Motors Co.](#), 224 La. 1077, 71 So.2d 849 (1954). Our Supreme Court held that the Compensation Act must be given a liberal interpretation to effectuate [sic] its beneficent purpose of relieving workmen of the crushing [sic] economic burden of work-connected injuries by diffusing the cost in channels of commerce. [Danielsen v. Security VanLines, Inc.](#) 245 La. 450, 158 So.2d 609 (1963).

Id., 509 So.2d at 520 (alterations in original).

In *Leger*, the plaintiff-employee filed a Disputed Claim for Compensation - Form 1008, in which she "claimed she should be receiving the maximum compensation rate of \$330.00 a week rather than the \$268.75 she was receiving at the time." 1998-1731, p. 2, 737 So.2d at 143. "[T]he workers' compensation judge found that [the plaintiff-employee] was a full-time employee entitled to the maximum compensation rate of \$330.00 based on a forty[-]hour presumption of wages" but "denied [her] request for penalties and legal fees." *Id.* On appeal, the defendant-employers asserted the workers' compensation judge erred in finding the plaintiff-employee was a full-time employee, and the plaintiff-employee asserted the workers' compensation judge erred in not awarding penalties and attorney's fees to her. *Id.* at pp. 3, 6, 737 So.2d at 144-145. On appeal, the Third Circuit affirmed the finding that the plaintiff-employee was a full-time employee. *Id.* at p. 4, 737 So.2d at 144. In so ruling, the Third Circuit noted the defendant-employers relied on the plaintiff-employee's employment contract and pay stubs to prove that they were reasonable in believing her position was a part-time one. *Id.* at p. 7, 737 So.2d at 146. The Third Circuit explained that the employment contract did not comply with definition of part-time employment found in [La. R.S. 23:1021](#) so as to controvert the plaintiff-employee's claim of full-time status. *Id.* at p. 8, 737 So.2d at 157. Regarding the pay stubs, the Third Circuit explained that these "show[ed] nothing more than that [the plaintiff-employee] did not work forty hours a week" but could not "show that [she] accepted the position knowing it was part-time since any pay checks could not have been received until after the position was accepted." *Id.* at pp. 8-9, 737 So.2d at 147. For those reasons, the Third Circuit also found the defendant-employers failed to reasonably controvert the plaintiff-employee's claim that she should have been treated as a full-time employee for workers-compensation benefits. *Id.*

We find *Leger* analogous to the matter *sub judice*. As previously defined, Ms. Reissland's situation does not comport with the definition of part-time employee found in [La. R.S. 23:1021\(9\)](#). In discussing the computation of Ms. Reissland's benefits, Ms. Sulik testified that the "job code" listed on Ms. Reissland's pay stubs was "job code 100" which indicated "crew member," and Ms. Sulik explained that all crew members are considered part-time employees. Even assuming arguendo that Ms. Reissland knew what the "job code 100" designation meant, as in *Leger*, Ms. Reissland's pay stubs are not evidence that she *accepted* the position knowing it was part-time because she did not receive any pay checks until after she agreed to work for Valluzzo. Further, Ms. Sulik testified that there was a distinction between crew members and salaried managers in that Valluzzo considered only the latter to be full-time employees, but nothing in Ms. Reissland's employment documents delineates this distinction nor could Ms. Sulik point to a written document establishing same. That is, while Valluzzo classified this as a part-time position per [La. R.S. 23:1021\(11\)](#), the problem is that Ms. Reissland did not know this. The Valluzzo policy handbook defines part-time employees as "those who are not assigned to a temporary or introductory status and who are regularly scheduled to work less than the full-time work schedule." Again,

whether Ms. Reissland ultimately would or would not be "regularly scheduled to work less than the full-time work schedule," was not information known to Ms. Reissland's at the time she accepted the position with Valluzzo. In fact, Ms. Reissland testified during her deposition that Valluzzo informed her that she would be a full-time employee. Valluzzo failed to offer any evidence in writing or any testimony to show they informed Ms. Reissland that she would be a part-time employee. As in *Johnson*, Ms. Reissland testified about working overtime on multiple occasions during her tenure on the job, such that she was available to work and worked when Valluzzo needed her. Also as in *Johnson*, it was incumbent upon Valluzzo-as the employer-to define the "part-time" status of Ms. Reissland and to establish some procedure to satisfy the criterion that she knowingly accepted part-time employment. Valluzzo failed to do that. Therefore, we agree with Ms. Reissland that the WCJ erred in calculating her indemnity benefits based on her classification as a part-time worker. We remand with instructions to the WCJ to calculate Ms. Reissland's benefits based on [La. R.S. 23:1021\(13\)\(a\)\(i\)](#).

Assignment of Error Number Four: Penalties and Attorney's Fees Pursuant to La. R.S. 23:1201(I) and/or (F)

Next, in her fourth assignment of error, Ms. Reissland contends the WCJ erred in failing to award multiple penalties and attorney's fees pursuant to La. R.S. 23:1201.1(I) and/or (F). In this section of her brief, Ms. Reissland asserts five reasons why she is entitled to certain penalties and fees. We will discuss each reason in turn.

Ms. Reissland's First Argument

Ms. Reissland contends that although "La. R.S. 23:1201(K)(2) provides an employer 'safe harbor' protection from imposition of penalties and attorney's fees if it accepts and complies with a [workers' compensation judge's] preliminary determination," that "employer must first show it complied with La. R.S. 23:1201.1(A)-(E)" to be entitled to said preliminary determination. Ms. Reissland argues that the WCJ legally erred in finding that Valluzzo was entitled to a PDH under La. R.S. 23:1201.1(H) as Valluzzo failed to comply with La. R.S. 23:1201.1(A)-(E). More particularly, Ms. Reissland argues Valluzzo did not comply with La. R.S. 23:1201.1(A) when it "*failed to issue Notices of Controversion (LWC-WC Form 1002)*" upon denying Dr. Rodriguez's request for authorization for continued care and injections. Ms. Reissland asserts that because Valluzzo was not entitled to the PDH in the first place, it was also not entitled to the safe harbor provisions of La. R.S. 23:1201.1(K)(2), such that she is entitled to penalties and attorney's fees under that statute.

In response, Valluzzo counters that Ms. Reissland "did not file or assert *any timely* objection or proffer whatsoever that [it] had not issued the appropriate LWC Form 1002 *contesting causation*." Valluzzo argues Ms. Reissland "is now improperly and untimely asserting this objection to the PDH at the [a]ppellate level without ever making any timely objection whatsoever at the [t]rial [c]ourt level." We agree with Valluzzo.

Rule 1-3 of the Uniform Rules of the Courts of Appeal provides, in pertinent part, that "[t]he Courts of Appeal shall review issues that were submitted to the trial court and that are contained in specifications or assignments of error, unless the interest of justice requires otherwise." Under that rule, "in general, issues not argued before the trial court for decision will not be considered for the first time on appeal, unless the interest of justice clearly requires otherwise." *Clavo v. Fara Ins. Serv.*, 2018-0727, p. 7 (La.App. 4 Cir. 1/30/19), 363 So.3d 286, 291 (first citing *Hurst v. Dep't of Police*, 2014-0119, p. 6 (La.App. 4 Cir. 7/23/14), 146 So.3d 857, 860-61; and then citing Uniform Rules, Courts of Appeal, Rule 1-3). In discussing the "interest of justice" exception, the Third Circuit has explained that it "is not without limitation" and listed the following "limited circumstances" when courts have applied it:

(a) when fundamental constitutional due process is involved; (b) when a jurisdictional concern is implicated; (c) when a trial judge may have had improper ex parte communication; (d) where the proper resolution of an issue is beyond a doubt or where injustice might occur; (e) when an incorrect law has been applied; and (f) when a pure question of law is involved and the failure to consider it would result in the miscarriage of justice.

Bayou Bridge Pipeline, LLC v. 38.00 Acres, 2019-565, p. 9 (La.App. 3 Cir. 7/15/20), 304 So.3d 529, 539.

If the interest of justice exception does not apply and a party presents an argument for the first time on appeal, then that party "seek[s] to introduce a completely new issue to th[e] case," one which "was neither presented . . . to the trial court, nor ruled upon by the trial court." *McLane v. S., Inc. v. Bridges*, 2013-1819 (La.App. 1 Cir. 11/3/14), 2014 WL 5588893, at *4. Were an appellate court to consider that new issue, it would be equivalent to permitting a party to shift to a new argument and to "a better horse to ride" at the appellate level after "[h]aving met with a lack of success at the trial court with" her original argument. *Id.*, at *4. This is unfair to the opposing party and presents potential judicial inefficiency problems by not permitting the trial court to resolve issues in the first place. In discussing Uniform Rule 1-3, the Louisiana First Circuit Court of Appeal has explained that "[La.] C.C.P. art. 2164 provides authority for [an appellate] court to take up an issue raised . . . for the first time under special circumstances," such as "a workers' compensation case, [or] one in which a party is appearing without the benefit of legal counsel." *Id.* (citing *Pinkins v. Cardinal Wholesale Supply, Inc.*, 619 So.2d 52, 55 (La. 1993)). Nonetheless, under the discretion vested in it by Uniform Rule 1-3 and under La. C.C.P. art. 2164, an

appellate court may decline to consider an issue raised for the first time on appeal by a workers' compensation claimant. *See Allen v. Affordable Home Furnishings*, 2013-176, p. 4 (La.App. 3 Cir. 11/13/13), 130 So.3d 345, 347-48; *James v. Formosa Plastics Corp. of La.*, 1995-1749, p. 5 (La.App. 1 Cir. 4/4/96), 672 So.2d 319, 322.

Turning to the matter *sub judice*, Ms. Reissland did not present the issue of whether Valluzzo violated La. R.S. 23:1201.1(A) by failing to issue Notices of Controversion to the WCJ, nor did the WCJ rule upon same. Rather, in her Motion to Strike, Ms. Reissland contended Valluzzo failed to demonstrate it complied with La. R.S. 23:1201.1(A) insofar as Valluzzo did not show that it sent a Notice of Initial Payment (LWC-WC Form 1002) to Ms. Reissland on the same day that it first issued compensation. The WCJ denied Ms. Reissland's Motion to Strike on this basis. Thus, having met with a lack of success before the WCJ, Ms. Reissland now seeks to introduce a new issue and shift her argument on appeal. Using the examples from *Bayou Bridge Pipeline, LLC*, "as guideposts," we do not find that the issue of whether Valluzzo complied with the requirements of La. R.S. 23:1201.1(A) insofar as issuing Notices of Controversion falls within the parameters of the "interest of justice" exception. 2019-565, p. 9, 304 So.3d at 539. Nor do we find that the circumstances of this case warrant us exercising our discretion under La. C.C.P. art. 2164 and ruling on Ms. Reissland's new argument. Accordingly, we do not consider Ms. Reissland's argument that the WCJ legally erred in finding Valluzzo was entitled to a PDH even though Valluzzo failed to issue Notices of Controversion.

Ms. Reissland's Second Argument

In her second argument as to why the WCJ erred in failing to award multiple penalties and attorney's fees, Ms. Reissland contends Valluzzo forfeited the safe harbor protections of La. R.S. 23:1201.1(K)(2) when it failed to comply with La. R.S. 23:1201.1(J)(4). Specifically, Ms. Reissland asserts Valluzzo forfeited the protections because Ms. Sulik testified at the PDH that she used the company handbook when determining Ms. Reissland's compensation benefits, yet Valluzzo did not provide the company handbook to Ms. Reissland's counsel within ten days of her request for a PDH.

Louisiana Revised Statutes 23:1201.1 is titled "Controversion of compensation and medical benefits." In terms of the safe harbor protections discussed by Ms. Reissland, La. R.S. 23:1201.1(K)(2) states that "[a]ny employer or payor who accepts and complies with the workers' compensation judge's determination within ten calendar days, shall not be subject to any penalty or attorney fees arising out of the original notice which was the subject of the preliminary hearing." Turning to the section of the statute that Ms. Reissland contends Valluzzo violated, La. R.S. 23:1201.1(J)(4) provides:

Any employer or payor requesting a preliminary determination hearing shall produce all documentation relied on by the employer or payor in calculating, modifying, suspending, terminating, or controverting the employee's benefits. These documents shall be disclosed to the employee or the employee's representative within ten days of the request for the preliminary determination hearing.

Delineating the result of failing to comply with the statute, La. R.S. 23:1201.1(L) states:

Notwithstanding any provision in this Section to the contrary, the failure to comply with any provision of this Section shall not itself be considered a failure to reasonably controvert benefits; however, failure of the employer or payor to comply shall result in loss of penalty and attorney fee protections provided in this Section.

In the matter *sub judice*, the record establishes Valluzzo first requested a PDH on September 19, 2023, when it filed its Answer. Nonetheless, Valluzzo did not provide a copy of the company handbook to Ms. Reissland's counsel until November 15, 2023. Thus, as Ms. Reissland correctly points out, Valluzzo violated La. R.S. 23:1201.1(J)(4). As Ms. Reissland also accurately explains, La. R.S. 23:1201.1(L) mandates the loss of the penalty and attorney's fee protections provided in La. R.S. 23:1201.1(K)(2) when an employer has failed to comply with any part of the statute. Ms. Reissland is therefore correct that Valluzzo lost the protections from penalties and attorney's fees provided by La. R.S. 23:1201.1(K)(2). This merely means, however, that Valluzzo lost the *protections* from penalties and attorney's fees, not that Ms. Reissland is automatically entitled to same absent us finding a basis for such an award. *See Hendrick v. Patterson*, 47,668, p. 16 (La.App. 2 Cir. 1/16/13), 109 So.3d 475, 484-85 (holding that "[a]ttorney fees and penalties are never automatically assessed against the defeated party, but rather are awarded only when the statutory requirements for such are met"). Therefore, we will continue our consideration of Ms. Reissland's arguments as to why she is entitled to penalties and attorney's fees.

Ms. Reissland's Third Argument

Next, Ms. Reissland contends that when Valluzzo terminated her benefits after she refused to sign a HIPPA authorization to allow Valluzzo's counsel to have access to her medical records prior to the beginning of litigation, Valluzzo's termination of her benefits was arbitrary, capricious, and without probable cause. As explained by Ms. Reissland in her brief, after she signed a HIPPA authorization permitting Valluzzo's claims adjuster to access her medical records, Valluzzo then contacted her and asked her to execute HIPPA authorizations in favor of its counsel "as the authorized designee of Valluzzo." Ms. Reissland states in her brief

that she objected to Valluzzo's counsel having access to her medical records before the case was even in litigation, so she "revoked *all* prior authorizations," after which Valluzzo terminated her workers' compensation indemnity benefits. (Emphasis added.) Ms. Reissland argues that, "[s]imply put, there is no legal basis for suspending benefits when a claimant refuses to allow an employer's attorney access to her medical records."

Regarding the "Release of medical records and information," La. R.S. 23:1127(B) provides:

A. It is the policy for the efficient administration of the workers' compensation system that there be reasonable access to medical information for all parties to coordinate and manage the care for the injured worker and to facilitate his return to work.

B. (1) In any claim for compensation, a health care provider who has at any time treated the employee related to the compensation claim shall release any requested medical information and records relative to the employee's injury, to any of the following persons:

(a) The employee, his agent, or his representative.

(b) A licensed and approved vocational rehabilitation counselor assigned to the employee's claim.

(c) Another health care provider examining the employee.

(d) The employer, his agent, or his representative.

(e) The employer's workers' compensation insurer or its agent or representative.

(2) Any information relative to any other treatment or condition shall be available to the employer or his workers' compensation insurer by subpoena or through a written release by the claimant.

Ms. Reissland contends Valluzzo violated La. R.S. 23:1201(I) by terminating her benefits after she refused to sign a written release. That statute provides:

Any employer or insurer who at any time discontinues payment of claims due and arising under this Chapter, when such discontinuance is found to be arbitrary, capricious, or without probable cause, shall be subject to the payment of a penalty not to exceed eight thousand dollars and a reasonable attorney fee for the prosecution and collection of such claims.

La. R.S. 23:1201(I).

As explained by the Louisiana First Circuit Court of Appeal in discussing La. R.S. 23:1201(I), "Arbitrary and capricious behavior consists of willful and unreasoning action, without consideration and regard for facts and circumstance[s] presented, or of seemingly unfounded motivation. The crucial inquiry is whether the employer has [an] articulable and objective reason for discontinuing benefits at the time it took that action." *Life Flight of New Orleans v. Homrighausen*, 2005-2538, p. 8 (La.App. 1 Cir. 12/28/06), 952 So.2d 45, 52 (citing *Authement v. Wal-Mart*, 2002-2434, p. 11 (La.App. 1 Cir. 9/26/03), 857 So.2d 564, 574). The "[s]tatutory provisions permitting the assessment of penalties and attorney fees for nonpayment of workers' compensation benefits are penal in nature," so they "must be strictly construed." *New Line Environmental & Canal HR v. Davis*, 2015-1885, p. 10 (La.App. 1 Cir. 10/7/16), 205 So.3d 921, 928. With these precepts in mind, we consider whether Valluzzo's termination of Ms. Reissland's benefits was arbitrary, capricious, or without probable cause.

Though Ms. Reissland argues Valluzzo had "no legal basis for suspending [her] benefits," such that it acted arbitrarily, capricious, and without probable cause, under the circumstances of this case, we disagree. When Ms. Reissland refused to sign a HIPPA in favor of Valluzzo's counsel, she also notably revoked all prior authorizations as admitted in her brief to this Court. As quoted above, within the workers' compensation scheme, La. R.S. 23:1127 seeks to establish "reasonable access to medical information for *all* parties." La. R.S. 23:1127(A) (emphasis added). Among those to whom "a health care provider who has at any time treated the employee related to the compensation claim shall release any requested medical information and records relative to the employee's injury" are "[t]he employer, his agent, or his representative," as well as "[t]he employer's workers' compensation insurer or its agent or representative." La. R.S. 23:1127(B)(1)(d-e). When Ms. Reissland revoked her prior authorizations, this included authorizations that permitted Valluzzo's claims adjuster to access her medical records. Ms. Reissland thereby denied Valluzzo's "workers' compensation insurer or its agent or representative" access to any of her records, including those related to her compensation claim and alleged injury, in contravention of La. R.S. 23:1127(B)(1)(e). As a result of Ms. Reissland revoking all prior authorizations, Valluzzo itself also no longer had access to Ms. Reissland's medical records despite the employer being among those to whom a health care provider is to "release any requested medical information and records relative to the employee's injury." La. R.S. 23:1127(B)(1)(d). Upon Ms. Reissland revoking all prior authorizations, Valluzzo and its claims adjuster could no longer "coordinate and manage" her claim, let alone investigate it, thereby providing Valluzzo with an "articulable and objective reason for discontinuing benefits." Based on the facts of this case, we find Valluzzo's decision to terminate Ms. Reissland's benefits-in the face of a

lack of access to her medical records regarding treatment related to the alleged accident and injury forming the basis of her claim-did not rise to the level of arbitrary, capricious, or without probable cause. Accordingly, we disagree with Ms. Reissland that she is entitled to attorney's fees under La. R.S. 23:1201(I).

In the alternative, Ms. Reissland "contends she is entitled to a \$2,000.00 penalty pursuant to La. R.S. 23:1201(F) for [Valluzzo's] failure to reasonably controvert her benefits on those grounds." Apart from that one statement in her brief, Ms. Reissland provides no argument in support of that claim. Regarding the appellant brief, Rule 2-12.4(B)(4) of the Uniform Rules of the Courts of Appeal instructs that "[a]ll assignments of error and issues for review *shall* be briefed. The court may deem as abandoned any assignment of error or issue for review which has not been briefed." (Emphasis added.) As recently explained by the Louisiana Second Circuit Court of Appeal, "A mere statement of an assignment of error in a brief does not constitute the briefing of the assignment of error." *Young v. Woods*, 56,328, p. 12 (La.App. 2 Cir. 7/16/25), 418 So.3d 475, 482 (citing *State v. Davis*, 52,517 (La.App. 2 Cir. 5/22/19), 273 So.3d 670). We therefore exercise our discretion under Uniform Rule 2-12.4 and consider Ms. Reissland's argument of entitlement to a penalty under La. R.S. 23:1201(F) abandoned because she did not brief this issue.

Ms. Reissland's Fourth Argument

Next, Ms. Reissland asserts that because Valluzzo improperly classified her as a part-time worker in calculating her benefits, she is entitled to a \$2,000 penalty under La. R.S. 23:1201(F). That statute provides, in pertinent part:

F. Except as otherwise provided in this Chapter, failure to provide payment in accordance with this Section . . . shall result in the assessment of a penalty in an amount up to the greater of twelve percent of any unpaid compensation or medical benefits, or fifty dollars per calendar day for each day in which any and all compensation or medical benefits remain unpaid or such consent is withheld, together with reasonable attorney fees for each disputed claim; however, the fifty dollars per calendar day penalty shall not exceed a maximum of two thousand dollars in the aggregate for any claim. The maximum amount of penalties which may be imposed at a hearing on the merits regardless of the number of penalties which might be imposed under this Section is eight thousand dollars. An award of penalties and attorney fees at any hearing on the merits shall be res judicata as to any and all claims for which penalties may be imposed under this Section which precedes the date of the hearing. Penalties shall be assessed in the following manner:

. . . .

(2) This Subsection shall not apply if the claim is reasonably controverted or if such nonpayment results from conditions over which the employer or insurer had no control.

La. R.S. 23:1201(F)(2).

To reasonably controvert a claim as that phrase is used in La. R.S. 23:1201(F)(2), "the defendant[-employer] must have some valid reason or evidence upon which" it based its decision. *Brown v. Texas-LA Cartage, Inc.*, 1998-1063, p. 9 (La. 12/1/98), 721 So.2d 885, 890. In determining whether the employer has such a reason or such evidence, the "court must ascertain whether the employer or his insurer engaged in a nonfrivolous legal dispute or possessed factual . . . information to reasonably counter the factual . . . information presented by the claimant[-employee]." *Id.* In general, Louisiana courts do not impose "penalties . . . for simple miscalculations," but the courts do impose "penalties and attorney's fees . . . where the insurer gather[ed] incomplete data in preparing the claim." *Richard v. HSLI & Touro Infirmary*, 2012-873, p. 10 (La.App. 5 Cir. 5/23/13), 119 So.3d 617, 623 (citing *Stegall v. J. & J Exterminating*, 1994-1279 (La.App. 3 Cir. 3/1/95), 651 So.2d 400). As recently explained by the Louisiana First Circuit Court of Appeal, "[t]he fact that [a defendant-employer] may have mistakenly miscalculated the amount due or . . . later paid the amount due after it was requested by [the plaintiff-employee's] counsel does not exempt [the defendant-employer] from penalties and/or attorney fees." *Bonvillian v. Great Am. Alliance Ins. Co.*, 2024-1025, p. 9 (La.App. 1 Cir. 5/22/25), 417 So.3d 731, 738.

For the reasons discussed in the section of this Opinion reversing the WCJ's finding that Ms. Reissland was a part-time employee, we also find that Valluzzo failed to reasonably controvert Ms. Reissland's claim that Valluzzo should have calculated her benefits based on her being a full-time employee. Valluzzo also did not present evidence regarding any extenuating circumstances over which it had no control so as to excuse its decision to calculate Ms. Reissland's benefits based on her being a part-time employee as opposed to a full-time one. Instead, based on the record, Valluzzo merely gathered incomplete information in determining Ms. Reissland's benefits by failing to ascertain whether Ms. Reissland had knowingly accepted employment that customarily provided for less than forty hours per week. Therefore, we remand this matter for the WCJ to determine and assess "a penalty in an amount up to the greater of twelve percent of any unpaid compensation or medical benefits, or fifty dollars per calendar day for each day in which any and all compensation or medical benefits remain unpaid . . . , together with reasonable attorney fees," noting that "the fifty dollars per calendar day penalty shall not exceed a maximum of two thousand dollars in the aggregate." La. R.S. 23:1201(F).

Ms. Reissland's Fifth Argument

Ms. Reissland further argues her attorney is entitled to attorney's fees under La. R.S. 23:1201(I) and/or (F). Other than listing La. R.S. 23:1201(I) in the heading of this subsection of her brief, Ms. Reissland does not further brief its applicability. Elsewhere in this section of her brief regarding penalties and attorney's fees, Ms. Reissland contended she was entitled to attorney's fees under La. R.S. 23:1201(I) because Valluzzo was arbitrary, capricious, and without probable cause in terminating her benefits after she refused to sign a HIPPA in favor of Valluzzo's counsel and revoked her prior authorizations. We have already discussed why Valluzzo's decision to terminate Ms. Reissland's benefits was not arbitrary, capricious, and without probable cause in light of Ms. Reissland preventing Valluzzo from having access to her medical records so as to investigate, coordinate, and manage her claim contrary to La. R.S. 23:1107. Because Ms. Reissland's brief provides no other information or argument as to the applicability of La. R.S. 23:1201(I) or how this section of her brief differs from the prior one, we decline to consider the matter further. *See* Rule 2-12.4, Uniform Rules, Courts of Appeal.

Likewise, Ms. Reissland provides no additional information regarding how her contention that her counsel is entitled to attorney's fees under La. R.S. 23:1201(F) in this subsection of her brief differs from her contentions elsewhere in her brief. In the prior subsection, we already concluded that Ms. Reissland is entitled to attorney's fees because Valluzzo improperly designated her a part-time employee in computing her benefits. In light of Ms. Reissland's failure to brief her alleged entitlement to additional attorney's fees under La. R.S. 23:1201(F), we exercise our discretion under Uniform Rule 2-12.4 and do not further consider this matter.

Assignment of Error Number Five: Cost Reimbursement Pursuant to La. R.S. 23:1310.9 and Judicial Interest Pursuant to La. R.S. 23:1201.3(A)

Finally, Ms. Reissland asserts the WCJ "committed legal error in failing to award [her] cost reimbursement pursuant to La. R.S. 23:1310.9 and [in] failing to award judicial interest on all penalties, costs, and attorney's fees awarded." Ms. Reissland contends that because she "incurred costs in obtaining medical records, depositions, filing fees, and preparation of the trial record herein," she seeks reimbursement of said "costs in accordance with La. R.S. 23:1310.9 to be determined by a [r]ule to [t]ax [c]osts." Additionally, Ms. Reissland seeks judicial interest on past due indemnity benefits, medical benefits, penalties, attorney's fees and costs pursuant to La. R.S. 23:1201.3(A).

We begin with Ms. Reissland's request for costs under La. R.S. 23:1310.9.

That statute provides:

If the workers' compensation judge before which any proceedings for compensation or concerning an award of compensation have been brought, under the Workers' Compensation Act, determines that such proceedings have not been brought on a reasonable ground, or that denial of benefits has not been based on a reasonable ground, the workers' compensation judge shall assess the total cost of the proceedings to the party who has brought them or the party who has unreasonably denied payment of benefits.

La. R.S. 23:1310.0. A workers' compensation judge has broad discretion in his assessment of costs and fees under La. R.S. 23:1310.9. *Guillory v. St. Michael PFU, LLC*, 2023-674, p. 8 (La.App. 3 Cir. 4/17/24), 389 So.3d 140, 146-147 (citations omitted). On appeal, the appellate court considers whether the workers' compensation judge abused that discretion. *Id.* In *Guillory*, the Third Circuit explained that while La. R.S. 23:1310.9 "mandates the assessing of costs in situations when the proceedings have not been brought on a reasonable ground or when the denial of benefits has not been based on a reasonable ground," the applicability of that statute is contingent on the trial court actually making one of the foregoing determinations. *Id.* at p. 8, 389 So.3d at 146. That is, if "[t]he trial court did not make such a determination," then "that statute is inapplicable." *Id.* In the matter *sub judice*, the WCJ made no such determination as to the unreasonableness of Valluzzo's denial of benefits, so this statute is inapplicable.

Thus, we disagree with Ms. Reissland that she is entitled to cost reimbursement under La. R.S. 23:1310.9 and deny her request for same.

We next turn to Ms. Reissland's request for judicial interest under La. R.S. 23:1201.3(A) "on all penalties, costs, and attorney's fees awarded." Previously, we concluded Ms. Reissland is not entitled to costs under La. R.S. 23:1210.9, and elsewhere throughout this Opinion we have not awarded costs to Ms. Reissland. Accordingly, there are no costs for which we must consider whether to attach judicial interest.

In support of her contention that a court can award judicial interest on penalties and attorney's fees when specifically prayed for, Ms. Reissland cites to *Smith v. Quarles Drilling Co.*, 2004-0179 (La. 10/29/04), 885 So.2d 562. As explained by the Louisiana Supreme Court in *Smith*, "Interest on an attorney fee award is not 'allowed by law' pursuant to [La.] R.S. 23:1201.3." 2004-0179, p. 9, 885 So.2d at 568 (citing La. C.C.P. art. 1921). This is because "penalties and attorney[']s fees in workers' compensation cases are not considered compensation." *Day v. Superior Derrick Servs.*, 2011-749, p. 14 (La.App. 3 Cir. 12/7/11), 80 So.3d 654, 665 (citing *Burns v.*

Interstate Brands Corp., 2009-705 (La.App. 3 Cir. 2/3/10) 30 So.3d 271). Therefore, as Ms. Reissland correctly observes, "in order to receive interest on penalties and attorney fees, a party must pray for interest in his pleadings." *Id.* Ms. Reissland did so, such that she is entitled to judicial interest on the penalty and attorney's fees we awarded under La. R.S. 23:1201(F) in light of Valluzzo's failure to reasonably controvert her claim that she was entitled to full-time status for purposes of computing her benefits.

Within the workers' compensation scheme, an award of compensation is distinct from an award of penalties and attorney's fees. *Sharbono v. Steve Lang & Son Loggers*, 1997-0110, p. 6 (La. 7/1/97), 696 So.2d 1382, 1386. That is, "fees and penalties are not 'compensation' within the meaning of the statute." *Id.* As such, the Louisiana Supreme Court has held that the date on which interest attaches on these respective awards also differs. *See generally id.* While interest attaches to compensation on the date of demand, interest attaches to penalties and attorney's fees on the date of judgment. *Id.* at pp. 10-11 (La. 7/1/97), 696 So.2d 1382, 1388-89. As explained in *Sharbono*:

Because attorney's fee awards depend for their very existence upon a discretionary finding . . . , any amount of attorney's fees awarded to the victor is "due" only from the date of judgment. Prior to that time, the victor was not entitled to those funds. Because the losing party did not deprive the victor of the use of funds to which the victor was entitled, no prejudgment interest may be calculated on the award of attorney's fees. Rather, post[-]judgment interest on that amount may be calculated only from the date the debt came into being and thus became due to the date it is paid. To hold otherwise would be to unfairly compensate the victor, and penalize the loser, for a deprivation which never took place. . . .

Finally, there is the matter of interest on penalties. Both federal and state jurisprudence is nearly uniform in holding that penalty interest is entirely of the post-judgment variety, and thus is calculated only from the date the penalties are awarded until the date they are paid. . . .

Just as with attorney's fees awards, penalties are never automatically assessed against the defeated party, but rather are awarded only when the statutory requirements for such are met. . . . Because awards of penalties and attorney's fees are not automatic . . . , they come due, if at all, only on the date of their award . . . ; thus, such awards may not earn interest until after that date.

Id. (footnotes omitted). In light of the foregoing jurisprudence, Ms. Reissland is entitled to judicial interest on the penalty and attorney's fees that the WCJ will assess under La. R.S. 23:1201(F)-for Valluzzo's failure to reasonably controvert her claim that she was entitled to full-time status for purposes of computing her benefits-upon the WCJ determining same.

Attorney's Fees and Costs for Appeal

Ms. Reissland also contends she "is entitled to additional attorney's fee[s] for additional work performed in pursuing this appeal and for the costs of the appeal to be assessed against" Valluzzo. Louisiana Code of Civil Procedure Article 2164 provides, in pertinent part:

The appellate court shall render any judgment which is just, legal, and proper upon the record on appeal. The court may award damages, including attorney fees, for frivolous appeal or application for writs, and may tax the costs of the lower or appellate court, or any part thereof, against any party to the suit, as in its judgment may be considered equitable.

An appellate court has "discretion to award . . . attorney's fees for appellate work." *Chandler v. Oachita Par. Sheriff's Office*, 48,179, pp. 15-16 (La.App. 2 Cir. 8/7/13), 121 So.3d 1216, 1226 (citing *Nesbitt v. Nesbitt*, 46,514 (La.App. 2 Cir. 9/21/11), 79 So.3d 347). In deciding whether to exercise aforesaid discretion we are mindful that "[a]wards of attorney['s] fees in workers' compensation cases are essentially penal in nature, and are intended to deter indifference and undesirable conduct by employers and insurers toward injured employees." *Smith*, 2004-0179, p. 6, 885 So.2d at 566 (citations omitted). Nonetheless, while "the benefits in the Workers' Compensation Act are to be liberally construed, penal statutes are to be strictly construed." *Id.* at p. 7, 885 So.2d at 566 (citations omitted). Even if a plaintiff-employee largely prevails on appeal, the discretion accorded to the appellate court permits the court to decline to award attorney's fees. *See King v. Gulf Coast Constr., Inc.*, 1994-1019, p. 3 (La.App. 4 Cir. 12/28/94), 648 So.2d 498, 500. Considering the facts of this case and a lack of "indifference and undesirable conduct" by Valluzzo toward Ms. Reissland, we decline to exercise our discretion to award attorney's fees for work on appeal to Ms. Reissland.

Turning to Ms. Reissland's request for costs, "A court can tax costs against any party in any manner it considers equitable." *Latour v. Steamboats, LLC*, 2023-00027, p. 17 (La. 10/20/23), 371 So.3d 1026, 1041 n.10 (first citing La. C.C.P. art. 1920; and then citing La. C.C.P. art. 2164). This is true of both the trial and appellate courts. *Danna v. Ritz-Carlton Hotel Co.*, 2020-0116, pp. 37-38 (La.App. 4 Cir. 3/24/21), 365 So.3d 679, 705 (first citing La. C.C.P. art. 1920; then citing La. C.C.P. art. 2164; and then citing *Scamardo v. Dunaway*, 1994-545, p. 11 (La.App. 5 Cir. 2/15/95), 650 So.2d 417, 422). However, considering the facts of this case, we decline to assess Valluzzo with the costs of this appeal.

Valluzzo's Assignments of Error

As delineated previously, Valluzzo also asserted assignments of error in its brief to this Court. In its first assignment of error, Valluzzo contends the WCJ erred in failing to award all attorney's fees it incurred as part of the January 13, 2025 restitution judgment pursuant to La. R.S. 23:1208. Our reversal of the WCJ's finding that Ms. Reissland violated La. R.S. 23:1208 and vacatur of the January 13, 2025 judgment renders this assignment of error moot.

In its second assignment of error, Valluzzo asserts the WCJ manifestly erred in failing to award attorney's fees and costs pursuant to La. R.S. 23:1310.9 plus judicial interest on the restitution award pursuant to La. R.S. 23:1201.3. Beginning with the latter, we have vacated the WCJ's January 13, 2025 restitution judgment, thereby rendering this assignment of error moot. Regarding attorney's fees and costs under La. R.S. 23:1310.9, Valluzzo contends that "[a]ppellate courts have recognized that costs may be awarded under La. R.S. 23:1310.9 when fraud is found under La. R.S. 23:1208." However, we have reversed the WCJ's finding of a violation of La. R.S. 23:1208, such that Valluzzo's contention it is entitled to fees and costs for same is now moot.

Finally, in its third assignment of error, Valluzzo argues this Court should modify and revise the WCJ's January 13, 2025 restitution judgment to award Valluzzo "all additional damages and costs, including penalties and attorney's fees upon the running of all deadlines, pursuant to La. R.S. 23:1201(G)." Louisiana Revised Statutes 23:1201(G) provides:

If any award payable under the terms of a final, nonappealable judgment is not paid within thirty days after it becomes due, there shall be added to such award an amount equal to twenty-four percent thereof or one hundred dollars per day together with reasonable attorney fees, for each calendar day after thirty days it remains unpaid, whichever is greater, which shall be paid at the same time as, and in addition to, such award, unless such nonpayment results from conditions over which the employer had no control. No amount paid as a penalty under this Subsection shall be included in any formula utilized to establish premium rates for workers' compensation insurance. The total one hundred dollar per calendar day penalty provided for in this Subsection shall not exceed three thousand dollars in the aggregate.

Again, Valluzzo is seeking additional amounts stemming from the now-vacated January 13, 2025 restitution judgment. Because we have vacated that judgment, Valluzzo's third assignment of error is now moot too. In sum, all three of Valluzzo's assignments of error in its appellee brief have been rendered moot by our prior holdings. Next, we consider Valluzzo's Answer.

Valluzzo's Answer

As previously stated, Valluzzo filed an Answer with this Court wherein it seeks modification of certain aspects of the WCJ's December 5, 2024 judgment and the WCJ's January 13, 2025 judgment, as well as frivolous appeal damages. In its Answer, Valluzzo has six requests. Because the first, third, and fourth requests are related, we will discuss those together before moving onto the second, fifth, and sixth requests.

Requests Numbers 1, 3, and 4

In its first request, Valluzzo seeks review of the WCJ's failure to award Valluzzo all attorney's fees incurred to be made part of the restitution award pursuant to La. R.S. 23:1208(C)(4). Then, in its third request, Valluzzo asks for judicial interest on the restitution award pursuant to La. R.S. 23:1201.3. In its fourth request, Valluzzo prays for additional costs, including penalties and attorney fees, pursuant to La. R.S. 23:1201(G) for Ms. Reissland's failure to pay any amount required by the WCJ's January 13, 2025 judgment. We already addressed Valluzzo's request pursuant to La. R.S. 23:1201(G) in our resolution of Valluzzo's assignments of error. That request and Valluzzo's first and third requests are for additional amounts stemming from the January 13, 2025 restitution judgment. Because we vacated the WCJ's January 13, 2025 judgment, we deny Valluzzo's first, third, and fourth requests as moot insofar as they are offshoots of the now vacated restitution judgment.

Request Number 2

In its second request, Valluzzo asserts the WCJ erred in failing to award the total requested attorney's fees and costs pursuant to La. R.S. 23:1310.9. Valluzzo asks this Court to modify the WCJ's January 13, 2025 judgment so as to award such fees and costs under the statute. However, as previously explained in addressing Valluzzo's assignments of error, Valluzzo seeks fees and costs under La. R.S. 23:1310.9 pursuant to Ms. Reissland's violation of La. R.S. 23:1208. We reversed the WCJ's finding of a violation of La. R.S. 23:1208, so Valluzzo's contention that it is entitled to fees and costs for same is now moot.

Request Number 5

Next, Valluzzo asserts the WCJ erred in certain parts of the December 5, 2024 judgment, specifically in finding

that Ms. Reissland proved the alleged workplace accident of May 4, 2023; proved she sustained a work-related injury; proved she sustained injuries related to the work accident; and proved a causal connection between the accident and her injuries. Additionally, Valluzzo contends the WCJ erred in finding Valluzzo did not prove entitlement to the intoxication presumption due to Ms. Reissland's delay in submitting to its drug testing requests. Further, Valluzzo asserts the WCJ erred in finding Valluzzo failed to prove Ms. Reissland's intoxication was the cause of her work accident. Valluzzo asks this Court to modify these aspects of the WCJ's December 5, 2024 judgment.

Of note, Valluzzo did not provide any explanation or reasons in its Answer as to why this Court should amend these parts of the December 5, 2024 judgment. Louisiana Code of Civil Procedure Article 2133(A) states, in pertinent part, that "[t]he answer filed by the appellee shall be equivalent to an appeal on his part from any portion of the judgment rendered against him in favor of the appellant and of which he complains in his answer." Because Valluzzo's Answer constitutes an appeal, we will treat the answer like an appellant brief. Regarding the appellant brief, Rule 2-12.4(B)(4) of the Uniform Rules of the Courts of Appeal instructs that "[a]ll assignments of error and issues for review *shall* be briefed. The court may deem as abandoned any assignment of error or issue for review which has not been briefed." (Emphasis added.) In *St. Germain v. St. Germain*, this Court applied Uniform Rule 2-12.4(B)(4) to an appellee's answer. 2020-0146, p. 2 (La.App. 4 Cir. 3/17/21), 315 So.3d 443, 445 n.1. Specifically, the Court deemed appellee's request for "costs and attorney's fees for having to oppose a frivolous appeal" as abandoned because "[c]ounsel did not brief the issue on appeal." *Id.* (citing Uniform Rules, Courts of Appeal, Rule 2-12.4(B)(4)). Though Rule 2-12.4(B)(4) gives the appellate court discretion in deciding whether to deem an issue abandoned, as in *St. Germain*, we decline to exercise our discretion and review these parts of the judgment in light of Valluzzo's failure to brief its argument as to their invalidity. To act otherwise, i.e., to analyze and discuss the validity of these parts of the judgment, permits a defendant-appellee like Valluzzo to throw a "kitchen sink" argument at this Court without any effort on its part. There are no extenuating circumstances (e.g., a *pro se* party) that justify Valluzzo's failure to brief these issues. Accordingly, we deny Valluzzo's answer in this regard.

Request Number 6

Finally, Valluzzo requests "all further costs, expenses, and attorney's fees incurred in responding to this appeal" pursuant to La. C.C.P. art. 2133(A). Louisiana Code of Civil Procedure Article 2133 delineates when an appellee must answer an appeal. It provides, in pertinent part, that "[a]n appellee shall not be obliged to answer the appeal unless he desires to have the judgment modified, revised, or reversed in part or unless he demands damages against the appellant." La. C.C.P. art. 2133(A). Further, La. C.C.P. art. 2164 provides:

The appellate court shall render any judgment which is just, legal, and proper upon the record on appeal. The court may award damages, including attorney fees, for frivolous appeal or application for writs, and may tax the costs of the lower or appellate court, or any part thereof, against any party to the suit, as in its judgment may be considered equitable.

In interpreting La. C.C.P. art. 2164, this Court recently held that "unless the appeal is unquestionably frivolous, damages will not be granted" as "[a]ppeals are always favored" and "frivolous appeal damages may result in a chilling effect . . . on the appellate process." *Hose v. O'Connell*, 2024-0493, p. 43 (La.App. 4 Cir. 5/8/25), __ So.3d __, __, 2025 WL 1341639, at *21 (as amended on rehearing) (internal quotation marks omitted) (quoting *Alexander v. La. State Bd. of Priv. Investigator Exam'rs*, 2023-0159, p. 41 (La.App. 4 Cir. 10/25/24), 409 So.3d 37, 66). This Court has also held that "[b]ecause the statute [La. C.C.P. art. 2164] allowing the imposition of damages for frivolous appeal is penal in nature, it must be strictly construed in favor of the appellant." *Id.* at p. 44, __ So.3d at __, 2025 WL 1341639, at *21 (quoting *Forrester v. Bruno*, 2023-0336, 0335, p. 12 (La.App. 4 Cir. 12/7/23), 380 So.3d 598, 606). If there is any "[d]oubt as to whether an appeal is frivolous," then the appellate court should resolve the issue "in the appellant's favor." *Id.* (quoting *Forrester*, 2023-0336, 0335, p. 13, 380 So.3d at 607).

An appeal is a frivolous one if it "does not present a substantial legal question, if the sole purpose of the appeal is delay, or if the appealing counsel does not seriously believe the view of the law that he advocates." *Id.* (quoting *Alexander*, 2023-0159, 409 So.3d at 67). Therefore, an appellate court will award "[d]amages for a frivolous appeal . . . if the appellant is attempting to delay the action, if the appellant does not believe what he is advocating, or if the appeal presents no substantial legal question." *Id.* For an award of frivolous appeal damages to be "proper," the appellant's "proposition advocated" must be "so ridiculous or so opposed to rational thinking that it is evident beyond any doubt that it is being deliberately professed for ulterior purposes." *Id.* "Unless the appeal meets one of those criteria, the appellate court will not award frivolous appeal damages even if the 'appeal lacks serious legal merit.'" *Id.* (quoting *Forrester*, 2023-0336, 0335, p. 13, 380 So.3d at 607).

Applying the rule of strict construction against Valluzzo and considering the record in this case, we conclude Ms. Reissland's appeal is not frivolous. The record does not support a finding that Ms. Reissland filed her appeal for the purpose of delaying the action; her counsel did not seriously believe the law or position advocated; or the appeal presented no substantial legal question(s). Therefore, this matter does not meet the requirements of a frivolous appeal. We deny Valluzzo's request for costs, expenses, and attorney's fees pursuant to La. C.C.P. art.

2133(A).

DECREE

For the foregoing reasons, we reverse the WCJ's December 5, 2024 judgment in part; vacate the January 13, 2025 judgment; and remand this matter to the WCJ with instructions. We deny the requests found in Valluzzo's Answer.

REVERSED IN PART; VACATED IN PART; REMANDED WITH INSTRUCTIONS; ANSWER TO APPEAL DENIED

[1] Throughout this Opinion, "WCJ" will refer to the particular workers' compensation judge who rendered the decision in this matter.

Nicholas v. Raymond Laborde Corr. Ctr.

Court:	Court of Appeal of Louisiana
Writing for the Court:	JONATHAN W. PERRY, JUDGE
Docket Number:	25-256
Decision Date:	03 June 2026
Citation:	Nicholas v. Raymond Laborde Corr. Ctr., 25-256 (La. App. Jun 03, 2026)
Parties:	VEDA NICHOLAS v. RAYMOND LABORDE CORRECTIONAL CENTER

Id. vLex Fastcase: VLEX-1120982012

Link: <https://fastcase.vlex.com/vid/nicholas-v-raymond-laborde-1120982012>

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VEDA NICHOLAS v. RAYMOND LABORDE CORRECTIONAL CENTER

No. 25-256

Court of Appeals of Louisiana, Third Circuit

June 3, 2026

APPEAL FROM THE OFFICE OF WORKERS' COMPENSATION, DISTRICT 2 PARISH OF AVOYELLES, NO. 21-05130 DONA RENEGAR, WORKERS' COMPENSATION JUDGE

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Court composed of Shannon J. Gremillion, Candyce G. Perret, and Jonathan W. Perry, Judges.

JONATHAN W. PERRY, JUDGE

In this workers' compensation case, the issue before us is whether penalties and attorney fees were rightfully awarded under La.R.S. 23:1201(G) for failure to timely pay court costs. For the following reasons, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

Veda Nicholas ("Claimant") sustained injury to her ankle and leg while in the course and scope of her employment as a correctional officer at the Raymond Laborde Correctional Center in August 2021. Claimant instituted this proceeding in September 2021 against the State of Louisiana through the Department of Public Safety and Corrections ("Defendant").

The parties entered a consent judgment reflecting Claimant's right to indemnity and medical benefits. Defendant filed a contested motion to dismiss with prejudice, which the workers' compensation judge ("WCJ") granted. Claimant appealed.^[1] In *Nicholas v. Raymond Laborde Correctional Center*, 24-47, p. 11 (La.App. 3 Cir. 10/2/24), 395 So.3d 982, 990, a panel of this court reversed the WCJ's judgment and, in conclusion, decreed, "Costs of this proceeding are assigned to Defendant/Appellee, State of Louisiana through the Department of Public Safety and Corrections, Raymond Laborde Correctional Center in the amount of \$763.20."

On February 3, 2025, a Motion and Order for Penalties and Attorney Fees was filed, alleging: "As of this date, [Claimant] has not been reimbursed her appeal costs paid as ordered in the Judgment." Claimant requested penalties and attorney fees pursuant to La.R.S. 23:1201(G) "as a result of [Defendant's] failure to pay in accordance with the Judgment signed October 2, 2024."

Opposing the motion, Defendant argued, "Contrary to Claimant's assertion, this [court's] judgment did not award these costs to Claimant. Rather, it assigned the costs of the appellate proceedings to Defendant." In addition, Defendant alleged the court costs had been timely paid to the Office of Workers' Compensation ("OWC"). According to Defendant, a check dated October 7, 2024, for \$763.20 had been issued to the OWC by its third party administrator, Sedgwick Claims Management Services ("Sedgwick"). The check then was sent via certified mail to the OWC on October 16, 2024, with delivery on October 21, 2024.^[2]

Defendant alternatively argued that court costs are not a workers' compensation benefit for which La.R.S. 23:1201(G) contemplates an award of penalties and attorney fees. Defendant contended penalties and attorney fees are sanctioned only if the employer fails to provide medical or indemnity benefits or fails to timely satisfy a judgment ordering that these benefits be provided. *See* La.R.S. 23:1201 and La.R.S. 23:1201.1. For the sake of argument, Defendant asserted that even if La.R.S. 23:1201(G) would authorize penalties and attorney fees for court costs, Claimant would still need to show that Defendant was arbitrary, capricious, or unreasonable in some way.^[3] Defendant additionally insisted that the court costs in the prior appeal were timely paid as this court ordered; Claimant had provided no proof that she paid court costs; and only after a check had already been issued and mailed to the OWC did Claimant demand that Defendant pay court costs directly to her.

At the hearing in this matter, Claimant's documentary evidence revealed that a Notice of Estimate of Appeal Charges was issued by the OWC on December 20, 2023, instructing Claimant to send three separate checks to the OWC totaling \$697.20^[4]: one in the amount of \$150.00 made payable to a court reporter; one in the amount of \$340.00 made payable to this court; and one in the amount of \$207.20 made payable to the OWC. On January 18, 2024, three separate checks were issued to the OWC from an account belonging to counsel for Claimant's law firm.^[5] Also included in Claimant's documentary evidence were: emails on October 17 and 18, 2024, between counsel for Claimant and defense counsel-Defendant gave notice that court costs had been sent to the OWC, to which counsel for Claimant replied, requesting that Defendant pay court costs to Claimant; and a check dated January 24, 2024,^[6] written by Claimant to her counsel's law firm, as reimbursement for her appeal costs.

Following a hearing on March 6, 2025, the WCJ granted Claimant's request for penalties and attorney fees, explaining, in relevant part:

I'm going to find that the costs assessed by the Third Circuit were an award. And I base that on code of civil procedure article 1920,^[7] which provides that all costs shall be paid by the party cast and may be taxed by a rule to show cause.

So I'm going to find that court costs are an award under a judgment. And in this case I'm going to find that the judgment was not paid timely. It should have been paid to Ms. Nicholas within 30 days of the judgment becoming final and non-appellable.

The resulting judgment of March 18, 2025, ordered Defendant to pay Claimant "\$763.20 in court costs, \$3,000.00 in penalties[,] and \$1,500.00 in attorney[] fees for its failure to timely pay the Judgment awarding costs in the amount of \$763.20, with all amounts owed to bear interest at the statutory rate from the date of this Judgment until paid."

This suspensive appeal by Defendant followed. Claimant has answered Defendant's appeal, seeking additional attorney fees for work done at the appellate level.

ASSIGNMENTS OF ERROR

Defendant advances two assignments of error:

1. The OWC was manifestly erroneous in finding that DPSC failed to timely pay an award under a final, non-appealable judgment and in awarding Ms. Nicholas penalties and attorney[] fees.
2. The OWC committed legal error when it determined that an assessment of costs by this [c]ourt in the prior appeal was an "award" under [La.R.S.] 23:1201(G).

In answer to Defendant's appeal, Claimant requests additional attorney fees for all work done in answering and defending this appeal.

APPELLANT'S ARGUMENTS

Defendant argues the WCJ manifestly erred in determining that it failed to timely pay court costs. Thus, Defendant contends La.R.S. 23:1201(G) was not triggered and the awards of penalties and attorney fees are clearly wrong.

Defendant also argues there is no authority under La.R.S. 23:1201(G) to award penalties and attorney fees for failure to pay court costs. Thus, Defendant contends the WCJ legally erred in determining that La.R.S. 23:1201(G) applies to an assessment of court costs.

APPELLEE'S POSITION

Claimant argues it is undisputed that she was not paid or reimbursed her appeal costs until the time of the hearing on March 6, 2025. She contends that penalties and attorney fees are mandatory and were properly assessed under La.R.S. 23:1201(G) for Defendant's failure to pay a final, non-appealable judgment.

LAW AND DISCUSSION

The issue before this court is whether La.R.S. 23:1201(G) mandates penalties and attorney fees for failure to pay court costs. As this is purely a legal question, involving the proper interpretation of a statute, not facts or discretion, we review this ruling under the de novo standard of review. *Carver v. La. Dep't of Pub. Safety*, 171340 (La. 1/30/18), 239 So.3d 226 (citing *La. Mun. Ass'n v. State*, 04-227 (La. 1/19/05), 893 So.2d 809).

Louisiana Revised Statutes 23:1020.1 explicitly sets forth the purpose and legislative intent of Louisiana's workers' compensation laws. The purpose is threefold:

- (1) To provide for the timely payment of temporary and permanent disability benefits to all injured workers who suffer an injury or disease arising out of and in the course and scope of their employment as is provided in this Chapter.
- (2) To pay the medical expenses that are due to all injured workers pursuant to this Chapter.
- (3) To return such workers who have received benefits pursuant to this Chapter to the work force.

La.R.S. 23:1020.1(B). The legislature intended "[t]hat the Louisiana Workers' Compensation Law is to be interpreted so as to assure the delivery of benefits to an injured employee in accordance with this Chapter" and "[t]o facilitate injured workers' return to employment at a reasonable cost to the employer." La.R.S. 23:1020.1(C).

Penalties and attorney fees in workers' compensation matters are governed by La.R.S. 23:1201(G), which provides:

If any award payable under the terms of a final, nonappealable judgment is not paid within thirty days after it becomes due, there shall be added to such award an amount equal to twenty-four percent thereof or one hundred dollars per day together with reasonable attorney fees, for each calendar day after thirty days it remains unpaid, whichever is greater, which shall be paid at the same time as, and in addition to, such award, unless such nonpayment results from conditions over which the employer had no control. No amount paid as a penalty under this Subsection shall be included in any formula utilized to establish premium rates for workers' compensation insurance. The total one hundred dollar per calendar day penalty provided for in this Subsection shall not exceed three thousand dollars in the aggregate.

"Awards of penalties and attorney fees in workers' compensation cases are essentially penal and are imposed to deter indifference and undesirable conduct by employers and their insurers toward injured workers." *Ortega v. Cantu Servs., Inc.*, 19-202, p. 9 (La.App. Cir. 10/23/19), 283 So.3d 1024, 1032.

Louisiana Revised Statutes 23:1317(B) governs court costs in workers' compensation cases, stating:

Costs may be awarded by the workers' compensation judge, in his discretion, and when so awarded the same may be allowed, taxed, and collected as in other civil proceedings. The fees of expert witnesses shall be reasonable and fixed in the original judgment. The judgment rendered shall have the same force and effect and may be satisfied as a judgment of a district court.

"In its application of La.R.S. 23:1317(B), the jurisprudence has uniformly held that the allocation of court costs lies within the workers' compensation judge's discretion and can be reversed only upon a showing of an abuse of that discretion." *Ortega*, 283 So.3d at 1033.

The state is generally exempt from having to advance court costs. *See* La.R.S. 13:4521. However, an exception to the general rule exists in [La.R.S. 13:5112](#), which provides, in relevant part:

A. In any suit against the state or any department, board, commission, agency, or political subdivision thereof, the trial or appellate court, after taking into account any equitable considerations as it would under Article 1920 or Article 2164^[8] of the Code of Civil Procedure, as applicable, may grant in favor of the successful party and against the state, department, board, commission, agency, or political subdivision against which judgment is rendered, an award of such successful party's court costs under R.S. 13:4533 and other applicable law as the court deems proper but, if awarded, shall express such costs in a dollar amount in a judgment of the trial court or decree of the appellate court.

Thus, [La.R.S. 13:5112\(A\)](#) commands that costs be assessed to the state in favor of the prevailing party, but such costs must be given in a specific dollar amount in the final judgment or decree. In the prior appeal, the rule of [La.R.S. 13:5112\(A\)](#) was followed when a panel of this court ruled, "Costs of this proceeding are assigned to Defendant/Appellee, State of Louisiana through the Department of Public Safety and Corrections, Raymond Laborde Correctional Center in the amount of \$763.20." *Nicholas*, 395 So.3d at 990.

In this matter, Claimant equates our allocation of court costs as an award which Defendant was required to pay to her within thirty days-failure to reimburse court costs. Claimant contends the WCJ rightly imposed penalties and attorney fees because this court's October 2, 2024 judgment assigned costs to Defendant. Claimant argues La.R.S. 23:1201(G) applies since the penalty was sought for Defendant's failure to pay a final judgment. In support of her contention, Claimant points to three cases: *Richard v. Coastal Culvert & Supply, Inc.*, 11-232 (La.App. 3 Cir. 10/5/21), 76 So.3d 131, writ denied, 11-2459 (La. 1/13/12), 77 So.3d 964; *Morvant v. Shop Rite, Inc.*, 12-956 (La.App. 3 Cir. 2/6/13), 108 So.3d 1287, writ denied, 13-933 (La. 5/31/13), 118 So.3d 400; and *Lummus v. Shoney's*, 99-90 (La.App. 5 Cir. 6/1/99), 738 So.2d 117. We disagree.

In *Richard*, 76 So.3d 131, this court reversed the OWC's denial of penalties and attorney fees, under La.R.S. 23:1201(G), finding the employer had improperly underpaid an expense item related to a work-related knee injury. In *Morvant*, 108 So.3d 1287, this court assessed a penalty under La.R.S. 23:1201(G) for the employer's failure to pay legal interest, which is a mandated award under La.R.S. 23:1201.3(A). In *Lummus*, 738 So.2d 117, our colleagues on the fifth circuit affirmed a penalty under La.R.S. 23:1201(G), finding the employer was arbitrary and capricious in failing to pay costs owed under a judgment upon request by the claimant.

We find the cases relied upon by Claimant are not dispositive of the specific issue in this case. Simply put, they fail to establish La.R.S. 23:1201(G) mandates penalties and attorney fees for failure to pay court costs. Furthermore, we find no statutory or jurisprudential authority for assessing penalties and attorney fees under La.R.S. 23:1201(G) for Defendant's failure to pay court costs to Claimant. The WCJ's judgment assessing penalties and attorney fees is reversed.

Lastly, the OWC received \$763.20 from Defendant on October 21, 2024, nineteen days after this court's judgment in the prior appeal. The WCJ confirmed this by issuing an Order Releasing Appellate Costs on March 11, 2025, which acknowledges "that on October 21, 2024, the [OWC] received a check in the amount of \$763.20 from Sedgwick[.]" The WCJ further pronounced that Defendant "has been ordered to pay the \$763.20 in appellate costs directly to [Claimant], [Defendant] should be refunded the \$763.20 appellate costs paid to the [OWC,] . . . and the funds should be released." In conclusion, the WCJ ordered "that the [OWC] shall refund the appellate costs in the amount of \$763.20 payable to . . . and mailed directly to [Sedgwick.]"

"When a law is clear and unambiguous and its application does not lead to absurd consequences, the law must be applied as written, and no further interpretation may be made in search of the legislative intent. La. C.C. art. 9; La. R.S. 1:4." *Hartman v. St. Bernard Par. Fire Dep't & Fara*, 20-693, p. 9 (La. 3/24/21), 315 So.3d 823, 829. Louisiana Revised Statutes 23:1201(G) is a penal statute and, therefore, it "is to be strictly construed in favor of the party against whom the sanctions are sought." *Silk v. Silk*, 29,864 (La.App. 2 Cir. 9/24/97), 699 So.2d 1175.

Court costs are not explicitly included as an award under La.R.S. 23:1201(G). Without such language, interpreting La.R.S. 23:1201(G) to mandate penalties and attorney fees for the failure to pay court costs in this matter would lead to the absurd consequence of rewarding strategy over professionalism. *See Zinn v. Zagis, USA, LLC*, 20-971 (La. 12/22/20), 307 So.3d 193 (especially the dissenting and concurring opinions).

Answer to Appeal

Claimant requests attorney fees for work done on appeal. Generally, a workers' compensation claimant is entitled to an increase in attorney fees to reflect additional time incurred in defending the employer's unsuccessful appeal. *Ryan v. Cajun Indus., L.L.C.*, 20-617 (La.App. 3 Cir. 11/3/21), 330 So.3d 324. However, in light of our reversal of the judgment before us, the relief requested by Claimant in her answer to appeal is denied.

DECREE

For the foregoing reasons, the March 18, 2025 judgment is reversed. Each party shall bear her/its own costs of this appeal. Pursuant to [La.R.S. 13:5112\(A\)](#), Defendant/Appellant, State of Louisiana through the Department of Public Safety and Corrections, Raymond Laborde Correctional Center, is assigned costs in the amount of \$240.00.

REVERSED.

[1] The only issue before this court at that time was whether a workers' compensation claim could be dismissed with prejudice following entry of a consent judgment.

[2] The evidence in this matter contains the certified mail receipt, or green card, confirming these mailing and delivery dates.

[3] To avoid a penalty under La.R.S. 23:1201(G), the employer must show that the nonpayment is due to a condition beyond the employer's control. The arbitrary and capricious standard applies to a penalty assessed under subsection I of La.R.S. 23:1201.

[4] The record in the prior appeal includes a cost letter that reflects a \$66.00 fee for "Workers' Compensation Costs Prior to the Appeal," which explains the difference between the amount requested by the OWC, \$697.20, and the amount assigned by this court, \$763.20.

[5] On February 18, 2024, a fourth check was issued to OWC in the amount of \$50.00 from an account belonging to counsel for Claimant's law firm. This check contained the notation, "Filing fees/Mtn to Ext Ddln[.]"

[6] Defendant alleges no proof was provided showing Claimant had in fact paid the appeal costs until a copy of this check was attached to Claimant's Reply Memorandum in Support of Motion for Penalties and Attorney Fees. We note the certificate of service signed by Claimant's counsel is dated March 5, 2025, one day before the hearing was held in this matter.

[7] Louisiana Code of Civil Procedure Article 1920 states, "Unless the judgment provides otherwise, costs shall be paid by the party cast, and may be taxed by a rule to show cause. Except as otherwise provided by law, the court may render judgment for costs, or any part thereof, against any party, as it may consider equitable."

[8] Louisiana Code of Civil Procedure Article 2164 provides:

The appellate court shall render any judgment which is just, legal, and proper upon the record on appeal. The court may award damages, including attorney fees, for frivolous appeal or application for writs, and may tax the costs of the lower or appellate court, or any part thereof, against any party to the suit, as in its judgment may be considered equitable.

Circuit Cases on Procedure and Litigation Traps

Crowley v. Rojas

Court:	Court of Appeal of Louisiana
Writing for the Court:	PITMAN, C. J.
Citation:	427 So.3d 342
Docket Number:	56,647-WCA
Decision Date:	08 January 2026
Parties:	Raymond CROWLEY, Plaintiff-Appellant v. Caesar ROJAS dba Rojas Paint, Defendant-Appellee

Id. vLex Fastcase: VLEX-1119929940

Link: <https://fastcase.vlex.com/vid/crowley-v-rojas-1119929940>

427 So.3d 342

56,647 (La.App. 2 Cir. 12/17/25)

Raymond CROWLEY, Plaintiff-Appellant

v.Caesar ROJAS dba Rojas Paint, Defendant-Appellee

No. 56,647-WCA

Court of Appeal of Louisiana, Second Circuit.

Judgment Rendered December 17, 2025

Rehearing Denied January 8, 2026[*343]

Appealed from the Office of Workers' Compensation, District 1-W, Parish of Caddo, Louisiana, Trial Court No. 21-02580, Brenza Irving-Jones, Workers' Compensation Judge

THE SMITH LAW OFFICE, LLC, Bossier City, By: Eskridge E. Smith, Jr., Counsel for Appellant

ANZELMO LAW, Monroe, By: Donald J. Anzelmo, Counsel for Appellee

Before PITMAN, COX, and THOMPSON, JJ.

PITMAN, C. J.

¹Plaintiff-Appellant Raymond Crowley appeals the Workers Compensation Judge's (the "WCJ") granting of an exception of res judicata in favor of Defendant-Appellee Cesar Rojas.¹ For the following reasons, we reverse the judgment of the WCJ and remand for further proceedings.

FACTS

This case was previously before this court in *Crowley v. Rojas*, 55,616 (La. App. 2 Cir. 5/22/24), 386 So. 3d 1243, writ denied, 24-00792 (La. 10/15/24), 394 So. 3d 822 ("*Crowley I*"). In *Crowley I*, this court stated the following facts relevant to this appeal:

On May 12, 2021, Crowley filed a disputed claim for compensation. He stated that he was employed as a general laborer by Cesar Rojas d/b/a Rojas Paint. He alleged that he fractured his ankle, which required surgery, in September 2020 when he and Rojas were cutting a tree on Rojas's property. He stated that he had not been provided medical treatment and contended that penalties and attorney fees were due to him.

On June 25, 2021, Cesar Rojas d/b/a Rojas Paint filed an answer denying that it employed Crowley at

the time of the alleged injury or that Crowley was performing[*344] services arising out of and in the course of his employment at the time of the alleged injury. It denied that Crowley was temporarily or permanently disabled, that he sustained an injury resulting in a loss of earning capacity and that he is entitled to rehabilitation services.

On October 25, 2021, Crowley filed a supplemental and amending claim for workers' compensation benefits. He contended that if his employer was not Cesar Rojas d/b/a Rojas Paint, then he was in the employ of Rojas, individually, such that he was employed either by Cesar Rojas d/b/a Rojas Paint, an entity owned by Rojas, or he was employed by Rojas, individually, and had an accident in the course and scope of his employment.

On August 9, 2022, Crowley filed a request for compromise or lump sum settlement. He named "Rojas Painting, LLC" as the employer and Bridgefield Casualty Insurance Company as the insurer. On August 19, 2022, Crowley, "Rojas Painting, LLC" and Bridgefield filed a joint petition, order and release with reservation of rights. They agreed that Crowley would receive \$7,500 in a lump sum and stated that **this settlement was limited to Crowley's claims against "Rojas Painting, LLC" and Bridgefield and did not include his claims against Rojas, individually. The WCJ approved the settlement and dismissed the matter with prejudice, with reservation of Crowley's rights against Rojas, individually.** (Emphasis added.)

On April 13, 2023, Rojas filed a peremptory exception of prescription. He requested that all claims against him be dismissed because any such claims prescribed after not being brought within one year of the accident at issue. He noted that the alleged accident occurred in September 2020; that on May 3, 2021, Crowley filed the original claim naming Cesar Rojas d/b/a Rojas Paint as the defendant; and that on October 20, 2021, Crowley filed the amended claim to add Rojas, individually, as a defendant.

On May 12, 2023, Crowley filed an opposition to the exception of prescription. He argued that the original claim satisfactorily named Rojas as a defendant, whether as an individual or as a person running a business. In the alternative, he argued that the amended claim was not untimely because it did not add a new party or change the basis for the claim for benefits. He explained that the amendment clarified the status of the defendant and related back to the original claim.

A hearing on the exception was held on June 5, 2023.... The WCJ determined that Rojas, individually, is a different party from Cesar Rojas d/b/a Rojas Paint and granted the exception of prescription.

On June 13, 2023, the WCJ signed an order granting the peremptory exception of prescription. It dismissed all of Crowley's claims against Rojas with prejudice.

Crowley appealed. This court determined that:

[T]he WCJ erred in determining that Rojas, individually, and Cesar Rojas d/b/a Rojas Paint are different parties and then granting Rojas's exception of prescription. Rojas, individually, and Cesar Rojas d/b/a Rojas Paint are one and the same. Cesar Rojas d/b/a Rojas Paint is not a juridical person separate and apart from the natural person, Cesar Rojas. The amended petition did not name a new defendant and related back to the date of the filing of the original[*345] petition, which was timely filed within the one-year prescriptive period.

3Accordingly, this court reversed the judgment of the WCJ and remanded for further proceedings. Rojas filed an application for a writ of certiorari with the Louisiana Supreme Court, which the Court denied.

On December 13, 2024, Rojas filed a peremptory exception of res judicata. He argued that Crowley's claims are barred because they were decided by the August 2022 settlement. He noted that the settlement was between Crowley, Rojas Painting, LLC and its insurer. He explained that as this court in *Crowley I* determined that Rojas, individually, and Cesar Rojas d/b/a Rojas Paint are one and the same, the claims against Rojas, individually, are barred by the doctrine of res judicata because Crowley already reached a settlement with "Rojas Paint, LLC."

On January 13, 2025, Crowley filed an opposition to the exception of res judicata. He noted that the settlement was limited to his claim against Rojas Painting, LLC and its insurer and did not include his claim against Rojas, individually. He argued that his remaining claims against Rojas, individually, have not been the subject of a prior judgment and are not subject to dismissal.

A hearing on the exception was held on February 24, 2025. Counsel for Rojas argued that because of this court's decision in *Crowley I* that Rojas, individually, and Cesar Rojas d/b/a Rojas Paint are the same party, Crowley cannot reserve rights against the party that he also released. Counsel for Crowley argued that Rojas Painting, LLC is not the same party as Rojas, individually, or Cesar Rojas d/b/a Rojas Paint. Counsel contended that the only parties that were dismissed by the settlement were Rojas Painting, LLC and its insurer and that Crowley's claims were reserved against Rojas, individually, and Cesar Rojas d/b/a Rojas Paint. The WCJ 4concluded that it

did not find a distinction between Rojas Painting, LLC and Cesar Rojas d/b/a Rojas Paint. Therefore, it determined that the claims are barred by the doctrine of res judicata as they were decided by the settlement.

On March 5, 2025, the WCJ granted the exception of res judicata and dismissed with prejudice all Crowley's claims against Rojas.

Crowley appeals.

ARGUMENTS

Crowley argues that the WCJ erred in concluding that Rojas Painting, LLC is the same party as Rojas, individually; granting the exception of res judicata; and dismissing his claims against Rojas, individually, and Cesar Rojas d/b/a Rojas Paint. He contends that this court's ruling in *Crowley I* that Rojas, individually, and Cesar Rojas d/b/a Rojas Paint are the same juridical person does not change the legal premise that Rojas Painting, LLC is a distinct and separate party from Rojas, individually. He states that his settlement was with Rojas Painting, LLC and its insurer; that Rojas, individually, was not a party to the settlement; and that he reserved all claims against Rojas, individually, in the settlement.

Rojas argues that the WCJ correctly granted his exception of res judicata. He contends that the settlement with Rojas Painting, LLC released Rojas, individually, because this court in *Crowley I* ruled that Rojas, individually, and his painting company are one and the same.

Louisiana's law on res judicata is set forth in La. R.S. 13:4231 and states:

Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal[*346] or other direct review, to the following extent:

(1) If the judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and merged in the judgment.

(2) If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.

(3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

[1-3] A reading of La. R.S. 13:4231 reveals that a second action is precluded when all of the following are satisfied: (1) the judgment is valid; (2) the judgment is final; (3) the parties are the same; (4) the cause or causes of action asserted in the second suit existed at the time of final judgment in the first litigation; and (5) the cause or causes of action asserted in the second suit arose out of the transaction or occurrence that was the subject matter of the first litigation. *Burquieres v. Pollingue*, 02-1385 (La. 2/25/03), 843 So. 2d 1049. Both the civilian law and the common law mandate that there must be "identity of parties" before the doctrine of res judicata can be used to preclude a subsequent suit. *Id.* This requirement does not mean that the parties must have the same physical identity but that the parties must appear in the same capacities in both suits. *Id.*

There are two kinds of persons: natural persons and juridical persons. La. C.C. art. 24. A natural person is a human being. *Id.* A juridical person is an entity to which the law attributes personality, such as a corporation or a partnership. *Id.* The personality of a juridical person is distinct from that of its members. *Id.*

[4-6] An LLC is an entity to which the law attributes personality and is, therefore, a juridical person. *Ogea v. Merritt*, 13-1085 (La. 12/10/13), 130 So. 3d 888. Therefore, as a general proposition, the law considers an LLC and the member(s) comprising the LLC as being wholly separate persons. *Id.* "Piercing the corporate veil," which is not at issue in the case *sub judice*, is an exception to this general proposition. *Id.*

[7] The party who urges the exception of res judicata bears the burden of proving its essential elements by a preponderance of the evidence. *Eddens v. Exceptional Client Care, LLC*, (La. App. 2 Cir. 2/26/14), 135 So. 3d 784.

[8] The res judicata effect of a prior judgment is a question of law that is reviewed de novo. *B.A. Kelly Land Co., LLC v. Aethon United BR LP*, 54,115 (La. App. 2 Cir. 9/22/21), 327 So. 3d 1071, writ denied, 21-01828 (La. 2/8/22), 332 So. 3d 671.

[9, 10] A de novo review of the record before this court on appeal confirms that the WCJ erred in granting the exception of res judicata and dismissing Crowley's claims against Rojas, individually, and Cesar Rojas d/b/a Rojas Paint. This court in *Crowley I* determined that Rojas, individually, and Cesar Rojas d/b/a Rojas Paint are

the same party because a trade name does not have a separate existence apart from the individual doing business under that trade name. See *Holmes v. Lee*, 35,021 (La. App. 2 Cir. 9/28/01), 795 So. 2d 1232. The analysis in *Crowley I* is inapplicable to[*347] determining whether Rojas Painting, LLC and Rojas, individually, are one and the same. Louisiana law and jurisprudence are clear that an LLC and the member(s) comprising the LLC are wholly separate persons. Therefore, Rojas Painting, LLC and Rojas, individually, are not the same parties, and the WCJ erred in ruling that they are for the purposes of res judicata. Pursuant to the reservation of rights set forth in the settlement between Crowley, Rojas Painting, LLC and its insurer,² Crowley reserved his right to pursue claims against Rojas, individually, and Cesar Rojas d/b/a Rojas Paint, and these claims are not barred by res judicata.

Accordingly, this assignment of error has merit, and we need not address Crowley's remaining assignments of error.

CONCLUSION

For the foregoing reasons, we reverse the WCJ's granting of the exception of res judicata and remand for further proceedings. Costs of this appeal are assessed to Defendant-Appellee Cesar Rojas.

REVERSED AND REMANDED.

APPLICATION FOR REHEARING

Frances Jones Pitman - WRITING, Jeff Cox, James Mark Stephens, Jefferson Rowe Thompson, Craig Owen Marcotte, JJ.

Rehearing denied.

1. Rojas's first name is incorrectly spelled as "Caesar" in the case's caption.
2. The reservations of rights states that Crowley agreed to accept the settlement: [I]n full, final, complete, and absolute satisfaction of any and all claims, actions, or demands, of every nature whatsoever, whether past, present, or future, that appearer may have against ROJAS PAINTING, LLC, BRIDGEFIELD CASUALTY INSURANCE COMPANY, and/or any of their respective insureds, insurers, affiliates, subsidiaries, parent companies, employees, representatives, agents, heirs or assigns, or against any other individual, business, firm, entity, or any other person or persons, whether in workers' compensation, tort, contract, or otherwise

Bowie v. Knight Transp.

Court:	Court of Appeal of Louisiana
Docket Number:	2025 CW 0653
Decision Date:	23 October 2025
Citation:	Bowie v. Knight Transp., 2025 CW 0653 (La. App. Oct 23, 2025)
Parties:	JAMES BOWIE v. KNIGHT TRANSPORTATION, INC

Id. vLex Fastcase: VLEX-1093772645

Link: <https://fastcase.vlex.com/vid/bowie-v-knight-transp-1093772645>

1

JAMES BOWIE v. KNIGHT TRANSPORTATION, INC

No. 2025 CW 0653

Court of Appeals of Louisiana, First Circuit

October 23, 2025

In Re: Knight Transportation, Inc. and Sedgwick, applying for supervisory writs, Office of Workers' Compensation, District 6, No. 24-02798.

BEFORE: McCLENDON, C.J., LANIER, GREENE, STROMBERG AND FIELDS, JJ.

WRIT GRANTED. The Office of Workers' Compensation's February 18, 2025 judgment which overruled Defendants', Knight Transportation, Inc. and Sedgwick, Exception of Lack of Subject Matter Jurisdiction is reversed. The determination as to whether a claimant was working under a contract of hire made in Louisiana, pursuant to La. R.S. 23:1035.1, is a factual one. *Jackson v. Royal T Energy, LLC*, 50, 645 (La.App. 2d Cir. 6/22/16), 197 So.3d 706, 709, *writ denied*, 2016-1383 (La. 11/7/16), 209 So.3d 99. The facts relevant to this inquiry are undisputed that plaintiff, James Bowie, travelled to Mississippi to complete pre-employment paperwork, drug testing, and a driving test, etc.; was dispatched to multiple states, including Louisiana, from Mississippi; and the conditional offer stated he was not officially hired until the pre-employment conditions had been met. These facts show that a contract of hire was not made in Louisiana under La. R.S. 23:1035.1. Therefore, Defendants' Exception of Lack of Subject Matter Jurisdiction is granted and plaintiff's claims are dismissed without prejudice.

WIL

HG

TPS

WEF

McClendon, C.J., dissents and would deny the writ.

Casimier v. Audubon Nature Inst.

Court:	Court of Appeal of Louisiana
Writing for the Court:	Paula A. Brown, Judge.
Docket Number:	2025-CA-0765
Decision Date:	19 May 2026
Citation:	Casimier v. Audubon Nature Inst., 2025-CA-0765 (La. App. May 19, 2026)
Parties:	IDELL S. CASIMIER v. AUDUBON NATURE INSTITUTE, INC.

Id. vLex Fastcase: VLEX-1119631593

Link: <https://fastcase.vlex.com/vid/casimier-v-audubon-nature-1119631593>

1

IDELL S. CASIMIER v. AUDUBON NATURE INSTITUTE, INC.

No. 2025-CA-0765

Court of Appeals of Louisiana, Fourth Circuit

May 19, 2026

APPEAL FROM THE OFFICE OF WORKERS' COMPENSATION NO. 21-03173, DISTRICT "08", HONORABLE Catrice Johnson-Reid, The Office of Workers' Compensation.

Idell S. Casimier, PRO SE PLAINTIFF/APPELLANT.

Philip Jude Borne, CHRISTOVICH & KEARNEY, L.L.P., COUNSEL FOR DEFENDANT/APPELLEE.

(Court composed of Judge Paula A. Brown, Judge Dale N. Atkins, Judge Nakisha Ervin-Knott).

Paula A. Brown, Judge.

PAB

DNA

NEK

This is a workers' compensation case. Appellant, Idell S. Casimier ("Ms. Casimier"),^[1] appeals the Office of Workers' Compensation ("OWC") May 9, 2022 judgment, which dismissed with prejudice all of her claims against Appellee, Audubon Nature Institute ("Audubon"). For the reasons that follow, we reverse the OWC's judgment and remand the matter for further proceedings consistent with this opinion.

PROCEDURAL HISTORY

On November 13, 2018, Ms. Casimier was employed by Audubon and was working at Audubon's Aquarium of the Americas facility^[2] when she allegedly collapsed and sustained injuries to her shoulder and knees. Quite some time later, acting in a *pro se capacity*, on June 7, 2021, Ms. Casimier filed a Disputed Claim for Compensation/Form 1008 with the OWC, naming Audubon as her employer.^[3]

Ultimately, the matter was set for trial on May 4, 2022. The record reflects that Ms. Casimier, still acting in a *pro se capacity*, appeared and participated in a pre-trial conference with the OWC judge and counsel for Audubon. In that conference, Audubon offered to settle Ms. Casimier's claim for \$5,000.00 (five thousand dollars), which she promptly rejected. After being informed by the OWC judge that in the absence of an agreement the trial would go forward as scheduled, Ms. Casimier-apparently unhappy with the proceedings-left the building. Prior to exiting, the OWC judge warned Ms. Casimier that the trial would go forward even in her absence. At the trial, because Ms. Casimier was not present, counsel for Audubon moved to have her claim

dismissed, which the OWC judge orally granted, noting that the claim would be dismissed with prejudice. A signed, written judgment reflecting that ruling was issued on May 9, 2022, dismissing Ms. Casimier's claim with prejudice. Notice of judgment was mailed the following day.

This timely appeal followed.

DISCUSSION

Assignments of Error

Ms. Casimier asserts the district court erred in five respects: (1) dismissing her claim with prejudice "without knowing abandonment"; (2) failing to consider her age, injury, and lack of counsel; (3) failing to consider attorney neglect; (4) failing to conduct a full merits hearing; and (5) imposing an excessive sanction. After a brief review of the law cited by Audubon and a preliminary matter, we will address the only issue pertinent to our review.

Relevant Law and Standard of Review

Louisiana Code of Civil Procedure article 1672(A)(1) instructs that:

A judgment dismissing an action shall be rendered upon application of any party, when the plaintiff fails to appear on the day set for trial. In such case, the court shall determine whether the judgment of dismissal shall be with or without prejudice.

"A decision to grant an involuntary dismissal is subject to the manifest error and abuse of discretion standard of review." *Peterson v. Rochon*, 21-0365, p. 4 (La.App. 4 Cir. 12/1/21), 332 So.3d 208, 211 (citing *Brooks v. Tradesmen Int'l, Inc.*, 03-1871, p. 3 (La.App. 4 Cir. 9/1/04), 883 So.2d 444, 446). "In deciding whether the dismissal is with or without prejudice pursuant to [La. C.C.P. art.] 1672(A), a trial court is afforded great discretion, as the trial judge is more familiar with the conditions and requirements of their trial docket." *Brooks*, 03-1871 at p. 3, 883 So.2d at 446 (citing *Malter v. McKinney*, 310 So.2d 696, 698 (La.App.1st Cir. 1975)). "Therefore, a trial court's decision to dismiss a case with or without prejudice is reviewed on appeal pursuant to an abuse of discretion and manifest error standard." *Id.* "However, in cases of workers' compensation, rules of procedure are to be liberally construed." *Id.* (citing *Piper v. Dillard's Dep't Store*, 621 So.2d 865 (La.App. 4 Cir. 1993)).

Uniform Rules-Courts of Appeal

At the outset we note that Ms. Casimier has not briefed any of her assigned errors, as required by the Uniform Rules-Courts of Appeal, Rule 2-12.4(B)(4), which provides:

All assignments of error and issues for review shall be briefed. The court may deem as abandoned any assignment of error or issue for review which has not been briefed.

Instead, she sets forth the following arguments/statements as to why her claim should not have been dismissed with prejudice: she did not knowingly abandon her claim; dismissal with prejudice is reserved for extreme misconduct; she was injured, confused and abandoned by counsel; and the court denied her a full hearing, violating fairness and due process. Nevertheless, this Court has explained that "[w]here *pro se* litigants are concerned, in the interest of justice, Louisiana appellate courts will read *pro se* filings indulgently and attempt to construe a brief as though assignments of error were properly made." *Lewis v. Dep't of Human Servs.*, 17-0608, p. 5 (La.App. 4 Cir. 3/21/18), 242 So.3d 675, 679 (quoting *Richard v. Hawthorne*, 15-559, p. 8 (La.App. 5 Cir. 5/12/16), 192 So.3d 273, 278). "However, even with the leeway or patience extended to a *pro se* litigant in the form of liberally construed pleadings, the *pro se* claimant is required to meet her burden of proof." *Id.* (quoting *Greenwood Cmty. Ctr. v. Calep*, 48,737, p. 7 (La.App. 2 Cir. 1/15/14), 132 So.3d 470, 474.

Dismissal with Prejudice

After review of the applicable law in this case, we find the dispositive issue before this Court is whether dismissal of Ms. Casimier's claim with prejudice was procedurally appropriate. Relying on *Peterson* and a handful of other cases decided by this Court, Audubon takes the position that dismissal with prejudice was warranted because: (1) Ms. Casimier did not file a pre-trial statement or trial exhibit list as ordered by the district court; and (2) by leaving the courthouse, Ms. Casimier demonstrated a knowing and willful choice to abandon her claim.

In support of its first assertion, Audubon cites to the cases of *Hebert v. C.F. Bean Corp.*, 00-1029 (La.App. 4 Cir. 4/25/01), 785 So.2d 1029 and *Brower v. Quick Serv. Body Shop*, 377 So.2d 878 (La.App. 4 Cir. 1979) for the premise that dismissal is appropriate when a plaintiff appears for trial unprepared to proceed. Those cases are easily distinguishable from the case *sub judice*. In both *Hebert* and *Brower* the plaintiffs did not appear at trial, but their unprepared counsel did.

Neither case dealt with a workers' compensation claim, and each case was dismissed *without* prejudice.

Next, Audubon distinguishes the cases previously decided by this Court in *Peterson*, *Brooks* and the recent case of *Feliciano v. Hutson*, 25-0335 (La.App. 4 Cir. 6/4/25), 424 So.3d 70. We do not find the need to recite the facts of those cases because, as Audubon admits in its brief, those cases are all factually dissimilar from the case at hand. We will, however, highlight the tenets set forth in those cases applicable to the matter now before us. In *Feliciano*, we reiterated "that litigants appearing *pro se* should generally be given more latitude than litigants represented by counsel, as they are at a disadvantage having no formal training in the law and rules of procedure." 25-0335 at pp. 2-3, 424 So.3d at 72 (citing *In Re: Med. Rev. Panel Claim of Scott*, 16-0145, pp. 14-15 (La.App. 4 Cir. 12/14/16), 206 So.3d 1049, 1058). In *Brooks*, we recognized that "a dismissal with prejudice [may deny a *pro se* litigant] the opportunity to have his day in court." 03-1871, p. 5, 883 So.2d at 447. And in *Peterson*, we concluded that "[i]f the record does not contain evidence of a plaintiff's act of 'willfulness, bad faith, or fault,' a single failure of a plaintiff to appear may not be sufficient support for a dismissal of the plaintiff's claim, with prejudice." 21-0365 at pp. 4-5, 332 So.3d at 211 (citation omitted). Of these three cases, only the *Brooks* Court was faced with a workers' compensation claim, and that Court and all the other decisions cited by Audubon utilized La. C.C.P. art. 1672 to reach their conclusions.

Notwithstanding this line of jurisprudence, and though not raised by the parties, we find, *sua sponte*, that the statutory scheme applicable to involuntary dismissal in OWC cases-specifically LAC 40:I.5705-to be controlling over the more general rule found in La. C.C.P. art. 1672. This Court has consistently noted, "[T]he general rule of statutory construction is that a specific statute controls over a broader, more general statute." *Green v. Phipps-Green*, 25-0006, p. 5 (La.App. 4 Cir. 6/19/25), 416 So.3d 1, 5 (alteration in original) (quoting *Schindler v. Russ*, 22-0533, p. 13 (La.App. 4 Cir. 8/8/22), 346 So.3d 309, 317). In reference to OWC claims, the authority for this approach is codified in La. R.S. 23:1310.1(C), which establishes:

The assistant secretary [of the OWC] shall have the authority to adopt reasonable rules and regulations, including the rules of procedure before the workers' compensation judges, according to the procedures established by the Administrative Procedure Act. All rules and regulations, properly approved and promulgated under the Administrative Procedure Act, shall be consistent with the Workers' Compensation Law and shall be binding in the administration of that law.

Louisiana Administrative Code 40:I.5705 provides, in relevant part:^[4]

A. A claim may be dismissed without prejudice after contradictory hearing properly noticed by the court on the judge's own motion or on ex parte motion of a party for the following reasons:

* * *

4. where a claimant fails to appear for any properly noticed conference or hearing;

* * *

C. Any order of dismissal shall allow for reinstatement of the action within 30 days for good cause shown.

D. The workers' compensation judge may order the claim dismissed, with prejudice, after a contradictory hearing, when it is shown that more than 90 days has elapsed since a claim was dismissed for any reason listed in Subsection A of this Section and no good cause has been shown for reinstatement.

Thus, we find that when the OWC judge dismissed Ms. Casimier's claim with prejudice the court abused its discretion by failing to comply with the process laid out in §5705. A plain reading of this code reveals that, pursuant to paragraph A, as an initial step, an OWC court may dismiss a claim without prejudice for failure to appear at a hearing, following a contradictory hearing. After that hearing, if the dismissal is granted, the claimant then has thirty days to seek reinstatement of the claim by demonstrating good cause for their absence pursuant to paragraph C. Finally, pursuant to paragraph D, if after the lapse of ninety days a claimant fails to show good cause, an OWC court may dismiss a claim with prejudice-but only following a contradictory hearing. The record reflects that the court failed to follow any of these directives. Accordingly, we remand the matter to the OWC court to comply with the procedural safeguards as delineated by LAC 40:I.5705.

DECREE

For the foregoing reasons, we reverse the May 9, 2022 judgment of the OWC court, which dismissed Ms. Casimier's claim with prejudice, and remand the matter for proceedings consistent with this opinion.

REVERSED AND REMANDED WITH INSTRUCTIONS

[1] The case caption indicates that Ms. Casimier's first name is "Idell," which is consistent with the disputed claim form filed with the OWC. However, Ms. Casimier's handwritten notice of appeal and brief to this Court indicate that her first name is "Idella."

[2] This facility has since been renamed as the Audubon Aquarium.

[3] Ms. Casimier also named Risk Management Services, Inc. as administrator, but this entity was later dismissed from the case pursuant to an August 12, 2021 judgment.

[4] We note that this was the version in effect at the time of Ms. Casimier's hearing. Section 5705 has since been amended by Louisiana Works, Office of Workers' Compensation Administration, LR 51:1622 (October 2025), the only change being to substitute the word "party" for "claimant" under subparagraph A(4).

Hyginus v. Ochsner Health System/Clinic Found.

Court:	Court of Appeal of Louisiana
Writing for the Court:	JOHNSON, J.
Citation:	428 So.3d 953
Docket Number:	25-CA-293
Decision Date:	18 December 2025
Parties:	Anthony HYGINUS v. OCHSNER HEALTH SYSTEM/CLINIC FOUNDATION

Id. vLex Fastcase: VLEX-1122130254

Link: <https://fastcase.vlex.com/vid/hyginus-v-ochsner-health-1122130254>

428 So.3d 953

25-293 (La.App. 5 Cir. 12/18/25)

Anthony HYGINUS

v.OCHSNER HEALTH SYSTEM/CLINIC FOUNDATION

No. 25-CA-293

Court of Appeal of Louisiana, Fifth Circuit.

December 18, 2025[*955]

ON APPEAL FROM THE OFFICE of WORKERS' COMPENSATION, DISTRICT 7, STATE of LOUISIANA, NO. 24-1576, HONORABLE HEATHER PETH FAIRCHILD, JUDGE PRESIDING

COUNSEL FOR PLAINTIFF/APPELLANT, ANTHONY HYGINUS, Pius A. Obioha

COUNSEL FOR DEFENDANT/APPELLEE, OCHSNER CLINIC FOUNDATION, Virginia J. Mclin, Kirk L. Landry, Baton Rouge

Panel composed of Judges Susan M. Chehardy, Marc E. Johnson, and Stephen J. Windhorst

JOHNSON, J.

¹Plaintiff/Appellant, Anthony Hyginus, appeals a judgment that dismissed his workers' compensation claim in favor of Defendant/Appellee, Ochsner Clinic Foundation, filed in the office of Workers' Compensation, District 7. Mr. Hyginus filed a disputed claim for compensation for medical and permanent residual benefits, to which Ochsner filed several exceptions. The exceptions were sustained, and Mr. Hyginus was allowed to amend his claim. He filed two amended disputed claims. Ochsner filed a motion to dismiss, asserting the defects in the claim were not cured. The motion to dismiss was granted. For the following reasons, we affirm the judgment as amended.

FACTS AND PROCEDURAL HISTORY

On March 20, 2024, Mr. Hyginus filed a Form 1008 disputed claim for compensation with the office of Workers' Compensation (hereinafter referred to as "the OWC"). In his claim, Mr. Hyginus alleged that, on December 22, 2021, he sustained injuries on an elevator at Ochsner Hospital located on Jefferson Highway, while performing duties as a Spiritual Care Supervisor. He stated that Elevator #61 malfunctioned on the seventh floor and rapidly dropped from the seventh floor to the first floor, ending with an abrupt stop. He described being violently thrown to the ground during the rapid descent and being knocked unconscious. Mr. Hyginus claimed to have been stuck in the elevator for an extended period of time.

Mr. Hyginus alleged that he sustained painful and debilitating injuries to his entire body. He indicated that he was receiving medically necessary care, and he sought continuous care. Mr. Hyginus asserted that Ochsner

initiated workers' compensation plans for him with third-party administrators, Sedgwick Claims Management Service, Inc. (hereinafter referred to as "Sedgwick") and Broadspire; however, Ochsner had failed to authorize any medical benefits on his behalf since ₂December 1, 2022. He also asserted no wage benefits had been paid. The claim did not identify a registered agent for Ochsner.

Ochsner filed an answer to Mr. Hyginus's claim on June 3, 2024, denying indebtedness to Mr. Hyginus for any workers' compensation benefits.¹ Along with its[*956] answer, Ochsner filed exceptions of improper venue, lack of procedural capacity, no right of action, no cause of action, insufficiency of service and citation, prescription, prematurity, vagueness, and ambiguity. Specifically, Ochsner argued that Mr. Hyginus's alleged entitlement to any form of wage or indemnity benefits was prescribed on its face. With respect to the exception of prematurity, it argued that Mr. Hyginus's claim for medical treatment in his disputed claim was premature because he had not complied with the procedures set forth in La. R.S. 23:1020.1, *et seq.*—particularly, the initiation of a request for medical treatment *via* a Form 1010—prior to filing.

A hearing on the exceptions was held on September 5, 2024. In a judgment rendered on September 19, 2024, the OWC sustained the exceptions of no right of action and no cause of action in favor of Broadspire and Sedgwick and dismissed Mr. Hyginus's claims against them without prejudice. The OWC sustained the exception of insufficiency of service and citation and allowed Mr. Hyginus 21 days from the signing of the judgment to properly execute service upon Ochsner. It further sustained the exceptions of prescription, no cause of action, prematurity, and vagueness. Regarding those exceptions, Mr. Hyginus was allowed 14 days from the signing of the judgment to amend his disputed claim to provide more specific factual allegations regarding his entitlement to indemnity benefits and medical benefits.

Mr. Hyginus filed an amended disputed claim for compensation on October 3, 2024, asserting altered allegations. In the amended claim, he asserted that ₃Ochsner initiated bi-weekly permanent residual benefit payments for him in the amount of \$1,354.68, but those payments were terminated on November 25, 2022. He also stated that Ochsner initiated medical benefit payments; however, the last payment was made by Ochsner on January 17, 2024 for services billed on April 27, 2022. Mr. Hyginus claimed that he was entitled to permanent partial disability or permanent residual wage compensation beginning November 25, 2022 because his ability to work was permanently impaired. He also claimed entitlement to continued medical benefits commencing from the last issued billing date of December 1, 2022. The amended claim did not identify a registered agent for Ochsner.

In response, Ochsner filed a motion to dismiss on November 22, 2024. In its motion, Ochsner argued that Mr. Hyginus's purported October 3, 2024 amended claim did not properly seek service upon Ochsner; did not address any exception related to medical benefits; did not address the exceptions of no cause of action and no right of action; and did not cure the exception of prescription. Ochsner contended Mr. Hyginus failed to identify its registered agent and requested service at an address found to be improper by the OWC. It averred that the purported amended claim did not specifically identify any disputed or unauthorized medical treatment and failed to provide information regarding his or his healthcare providers' compliance with the workers' compensation procedures. Ochsner argued that Mr. Hyginus failed to address his attorney's July 7, 2023 letter regarding his no right of action. Concerning the exception of prescription, Ochsner maintained that Mr. Hyginus's purported disputed claim had prescribed, as the original claim was filed on March 20, 2024—more than one year after its alleged last payment was made on November 25, 2022.

Prior to the hearing on the motion to dismiss, Mr. Hyginus filed a second amended disputed claim for compensation on December 11, 2024. That filing ₄listed[*957] C T Corporation System as Ochsner's registered agent for service. Mr. Hyginus also amended his claim to include the names of his healthcare providers and treatment dates. Furthermore, despite alleging that he was paid permanent residual wage benefits in the "Additional Information" section, the box on the form stating that no wage benefits had been paid was checked.

Also on December 11, 2024, Mr. Hyginus opposed Ochsner's motion to dismiss. He acknowledged an oversight in originally identifying Ochsner's registered agent but asserted that the procedural defect was rectified and service of process would be effectuated on Ochsner's registered agent. Mr. Hyginus argued that his attorney sent the July 7, 2023 letter under the impression that the matter was a tort action, based upon the information he had at that time. Since that time, his attorney reexamined the factual scenario and opined that it supported both a workers' compensation case and a tort case.

In reference to the exception of prescription, Mr. Hyginus asserted that his second amended disputed claim revised the allegation to state that no disability benefits were paid at any material time. He argued that a related tort case was filed in Orleans Parish Civil District Court on December 21, 2022, but it was dismissed on December 17, 2023. Another tort case stemming from the same injury was filed in the 24th Judicial District Court on December 6, 2023; however, it was dismissed on March 25, 2024. He claimed that those tort cases tolled the prescriptive period for filing his workers' compensation claim.

A hearing on Ochsner's motion to dismiss was held on January 15, 2025. At the hearing, the OWC judge orally

found Mr. Hyginus failed to produce any evidence of the cases that he alleged interrupted prescription. The judge further found Mr. Hyginus failed to provide any evidence of indemnity payments allegedly paid by Ochsner. In a judgment dated January 16, 2025, the OWC granted Ochsner's motion and dismissed Mr. Hyginus's action in its entirety with 5prejudice.

Mr. Hyginus filed a motion for new trial and motion to vacate on February 4, 2025. In his motion, he argued that the availability of new and important evidence—his medical treatment history and a properly executed choice of physician form—was neither available nor obtainable prior to the hearing on the motion to dismiss. Mr. Hyginus further argued that the lack of assistance from the office of Workers' Compensation and/or Ochsner's insurer hindered his ability to present a complete case.

A hearing on Mr. Hyginus's motion for new trial was held on March 11, 2025. The motion was denied in adjudgment rendered on March 12, 2025. The judgment again dismissed Mr. Hyginus's action with prejudice. In its reasons for judgment, the OWC found that Mr. Hyginus failed to produce the allegedly newly discovered medical records or the choice of physician form. The OWC reasoned that Mr. Hyginus was unable to prove that he could not, with due diligence, have obtained those records prior to the hearing. As such, the OWC found that Mr. Hyginus was unable to prove that he qualified for one of the peremptive grounds set forth in La. C.C.P. art. 1972(2). The instant appeal followed.

ASSIGNMENTS of ERROR

On appeal, Mr. Hyginus alleges that the OWC committed reversible error by sustaining Ochsner's: 1) exception of prescription; 2) exception of insufficiency of service and citation; 3) exceptions of lack of procedural capacity, no right of action, and no cause of action as to Broadspire and Sedgwick Claims Management Service, Inc.; 4) exception of prematurity; 5) exception of **[*958]** vagueness and ambiguity; and 6) exception of no cause of action. He further alleges that the OWC committed reversible error by not affording him another opportunity to amend his petition.

6LAW AND ANALYSIS

General Motion to Dismiss Law

[1] Louisiana courts generally employ an abuse of discretion standard when reviewing lower court decisions on sanctions or dismissal. *Chavez v. Metso Minerals Indus., Inc.*, 23-1029 (La. 10/24/24), 395 So.3d 771, 781, *reh'g denied*, 23-1029 (La. 12/12/24), 397 So.3d 306. *See also, Jones v. Cisneros*, 20-582 (La. App. 4 Cir. 4/7/21), 315 So.3d 959, 962, where the court held, "An appellate court reviews a trial court's ruling on a motion to dismiss under an abuse of discretion and manifest error standard of review." In this matter, we are tasked with determining whether the OWC abused its discretion by dismissing Mr. Hyginus's entire workers' compensation disputed claim.

Prescription

Mr. Hyginus alleges the OWC erroneously found his disputed claim prescribed. He claims that Ochsner's prescription argument is both legally and factually unsupported. He argues that the last payment for his authorized medical treatment was made in December of 2022; thus, he had until December of 2025 to file a claim for medical benefits for his work-related injury. Mr. Hyginus contends that his March 19, 2024 filing was well-within the prescriptive period for his workers' compensation claim.

In opposition, Ochsner argues that the OWC properly sustained its exception of prescription because Mr. Hyginus's disputed claim was prescribed on its face. It avers that Mr. Hyginus alleged the accident occurred on December 22, 2021; yet, his initial claim was not filed until March 20, 2024—well over one year from the date of the alleged accident. Ochsner further avers that Mr. Hyginus's amended claim did not cure the prescription defect. It contends that the burden of proof shifted to Mr. Hyginus to present evidence that the one-year prescriptive period for indemnity benefits was interrupted or suspended, and Mr. Hyginus failed to do so. 7As a result, Ochsner maintains that the OWC properly granted its motion to dismiss.

La. R.S. 23:1209 provides the following pertinent prescriptive periods for workers' compensation claims by stating:

A. (1) In case of personal injury, including death resulting therefrom, all claims for payments shall be forever barred unless within one year after the accident or death the parties have agreed upon the payments to be made under this Chapter, or unless within one year after the accident a formal claim has been filed as provided in Subsection B of this Section and in this Chapter.

(2) Where such payments have been made in any case, the limitation shall not take effect until the expiration of one year from the time of making the last payment, except that in cases of benefits payable pursuant to R.S. 23:1221(3) this limitation shall not take effect until three years from the time of making the last payment of benefits pursuant to R.S. 23:1221(1), (2), (3), or (4).

...

C. All claims for medical benefits payable pursuant to R.S. 23:1203 shall be forever barred unless within one year after the accident or death the parties have agreed upon the payments to be made under this Chapter, or unless within one year after^[*959] the accident a formal claim has been filed with the office as provided in this Chapter. Where such payments have been made in any case, this limitation shall not take effect until the expiration of three years from the time of making the last payment of medical benefits.

[2-4] The function of the peremptory exception is to have the plaintiff's action declared legally nonexistent or barred by the effect of law; hence, this exception tends to dismiss or defeat the action. *Ruffins v. HAZA Foods of Louisiana, LLC*, 21-619 (La. App. 5 Cir. 5/25/22), 341 So.3d 1259, 1262, citing *Farber v. Bobear*, 10-985 (La. App. 4 Cir. 1/19/11), 56 So.3d 1061, 1069. Prescriptive statutes are strictly construed against prescription and in favor of the claim. *Henry v. Southwest Airlines*, 23-522 (La. App. 5 Cir. 7/31/24), 392 So.3d 1176, 1179, *writ denied*, 24-1081 (La. 11/20/24), 396 So.3d 68. of the possible constructions of prescriptive statutes, the one that maintains enforcement of the claim, instead of the one that bars enforcement, should be adopted. *Id.*

[5-8] ^gThe burden of proof in an exception of prescription lies with the party asserting it; however, where the petition shows on its face that it has prescribed, the burden shifts to the plaintiff to prove the prescriptive period has been interrupted or suspended. *McClellan v. Premier Nissan, L.L.C.*, 14-726 (La. App. 5 Cir. 2/11/15), 167 So.3d 934, 935. At a hearing on a peremptory exception pleaded prior to trial, evidence may be introduced to support or controvert the exception. *Coleman v. Ace Property & Casualty Ins. Co.*, 19-305 (La. App. 5 Cir. 11/27/19), 284 So.3d 1262, 1268, quoting *In re Med. Review Panel of Gerard Lindquist*, 18-444 (La. App. 5 Cir. 5/23/19), 274 So.3d 750. In the absence of evidence, a peremptory exception must be decided upon the facts alleged in the petition with all of the allegations accepted as true. *Id.* Furthermore, when no evidence is introduced at the hearing on the exception, the reviewing court simply determines whether the trial court's finding was legally correct. *Id.*

[9, 10] If evidence is introduced at the hearing on the peremptory exception of prescription, the trial court's findings of fact are reviewed under the manifest error/clearly wrong standard of review. *Bailey v. Pinnacle Polymers, LLC*, 24-490 (La. App. 5 Cir. 4/2/25), 412 So.3d 1063, 1076. If the findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse, even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. *Id.*

[11] In the case at bar, Mr. Hyginus alleged in his original disputed claim that his work-related accident occurred on December 22, 2021 and Ochsner initiated permanent residual benefit payments and medical benefit payments to him for that accident. However, he alleged that Ochsner terminated payments for those benefits in November 2022 and December 2022, respectively. Mr. Hyginus fax filed his first disputed claim for compensation on March 20, 2024. After the September 5, 2024 hearing on the various exceptions (including prescription) filed ^gby Ochsner, the OWC found that Mr. Hyginus's disputed claim was prescribed and allowed him to file an amended disputed claim to cure the defects.²^[*960]

[12] Ochsner filed its motion to dismiss on November 22, 2024, asserting Mr. Hyginus failed to cure the defects in his first disputed claim. The January 15, 2025 hearing on the motion to dismiss was the OWC's second opportunity to consider whether Mr. Hyginus's permanent residual and medical benefit claims were prescribed.³ Four exhibits were admitted into evidence in support of maintaining Mr. Hyginus's claim at that hearing: a USPS tracking number for an item received by USPS on October 8, 2024 that had not been delivered; a USPS tracking number for an item received by USPS on December 30, 2024 that had not been delivered; an "Estimated Physician Charges" letter from LA Health Solutions dated November 27, 2024; and a copy of the amended disputed claim for compensation that was fax-filed on October 3, 2024. Ochsner offered two exhibits into evidence: the September 19, 2024 judgment and a July 7, 2023 letter from Mr. Hyginus's attorney.⁴ At the conclusion of the hearing, the OWC orally found that Mr. Hyginus failed to present any evidence that allegedly interrupted prescription. The court then granted the motion to dismiss.

In light of the record, we will now consider whether the OWC's findings were reasonable. *See, Bailey, supra.* Mr. Hyginus alleged that permanent residual benefit payments and medical benefit payments paid by Ochsner were respectively terminated in November 2022 and December 2022. According to La. R.S. 23:1209(A)(2), the permanent residual benefit claim would have had a one-year prescriptive period starting from the time of the last payment. Mr. Hyginus did not ¹⁰file his disputed claim until March 20, 2024. Consequently, his permanent residual benefit claim is prescribed on its face. To defeat prescription for that claim, Mr. Hyginus had the burden of proving that it was timely filed. A review of the record shows that he failed to present any evidence of the alleged payments for his permanent residual benefit claim by Ochsner at any of the hearings. Additionally, Mr. Hyginus argued that lawsuits filed in Orleans Parish Civil District Court and the 24th Judicial District Court tolled the prescriptive period for filing his workers' compensation claim. Yet, he failed to present any evidence of those cases to the OWC for consideration. Mr. Hyginus failed to prove that the prescriptive period for his permanent residual benefit claim had been interrupted or suspended. After reviewing the evidence presented,

we cannot find that the OWC abused its discretion by dismissing Mr. Hyginus's permanent residual benefit claim against Ochsner on the basis that it was prescribed.

[13] Regarding Mr. Hyginus's medical benefit payment claim, pursuant to La. R.S. 23:1209(C), he would have had a three-year prescriptive period to file his claim commencing from the time the alleged last payment was made by Ochsner. In his original disputed claim, Mr. Hyginus alleged that medical benefit payments were terminated by Ochsner on December 1, 2022. In his amended disputed claims, he alleged that the last payment was issued on January 17, 2024. Even when considering the earliest alleged date of the termination of medical benefit payments, December 1, 2022, Mr. Hyginus would **[*961]** have had until December 1, 2025 to file a claim for the medical benefits. The March 20, 2024 filing of his disputed claim with the OWC was well-within the time delay for filing his medical benefit claim and was not prescribed on its face. Thus, it was Ochsner's burden to prove that the medical benefit claim was prescribed. Ochsner failed to present any evidence, *e.g.*, an affidavit or deposition testimony from an Ochsner representative stating the last date of payment, if any, showing that the claim was prescribed. ¹¹Accordingly, we find the OWC abused its discretion in finding that Hyginus's medical benefit claim was prescribed and dismissing that claim against Ochsner.

Prematurity

[14] Mr. Hyginus alleges that the OWC erred in finding his disputed claim to be premature. He argues that either payment for medical treatment or discontinuation of payments for medical treatment should be reviewable through the filing of Form 1008, as he did with his disputed claim. He contends that his claim for medical benefit payments is in accordance with the provisions of Louisiana law.

Ochsner avers that its exception of prematurity was properly maintained and Mr. Hyginus's medical treatment claim was correctly dismissed. It argues that workers' compensation law mandates the initiation of a request for medical treatment *via* an LWC-WC-1010 form. It further argues that, in the event of a dispute regarding medical treatment, the dispute must first be filed with the office of Medical Director *via* an LWC-WC-1009 form. Ochsner contends that Mr. Hyginus failed to present any evidence that he or his healthcare provider followed the procedures set forth in La. R.S. 23:1203.1.

[15, 16] An action will be deemed premature when it is brought before the right to enforce it has accrued. *Wilson v. St. Helena School Board*, 18-1532 (La. App. 1 Cir. 6/3/19), 393 So.3d 358, 360, citing La. C.C.P. art. 423. The exception raising the objection of prematurity is generally utilized in cases where the law has provided a procedure for a claimant to seek administrative relief before resorting to judicial action. *Id.*

[17] An employer's obligation to provide medical treatment for his injured employee is governed by La. R.S. 23:1201, *et seq.* *Soniat v. Crown Buick and Risk Management Services*, 14-489 (La. App. 5 Cir. 12/16/14), 166 So.3d 278, 282. Pursuant to the Louisiana Administrative Code, "medically necessary treatment" includes services that are in accordance with the medical treatment Guidelines and ¹²are clinically appropriate and effective for the patient's illness, injury, or disease. *Daniels v. State Through Department of Transportation and Development*, 52,750 (La. App. 2 Cir. 7/17/19), 275 So.3d 998, 1005. Generally, an employee must receive prior approval from his employer before he seeks non-emergency medical attention for a work-related accident or injury. *Id.* at 1006.

La. R.S. 23:1203.1(K) provides,

After the issuance of the decision by the medical director or associate director of the office, any party who disagrees with the decision may then appeal by filing a "Disputed Claim for Compensation", which is LWC Form 1008, within forty-five days of the date of the issuance of the decision. The decision may be overturned when it is shown, by clear and convincing evidence, the decision of the medical director or associate medical director was not in accordance with the provisions of this Section.

In his disputed claim for compensation, Mr. Hyginus sought medical benefits that **[*962]** were allegedly terminated by Ochsner, indicating a dispute regarding medical treatment. At the hearing on the motion to dismiss, Mr. Hyginus was allowed an opportunity to present evidence of his medical benefit payment claim. He failed to present any relevant evidence of his properly submitted medical claims in compliance with La. R.S. 23:1203.1 for consideration by the OWC. While Mr. Hyginus is correct in his position that filing a disputed claim for compensation is a proper mechanism for payment of medical treatment or discontinuation of payments for medical treatment, he fails to acknowledge that a Form 1008 is to be filed *after* the issuance of the decision by the medical director or associate director of the office. Based upon the evidence presented, we find Mr. Hyginus's medical benefit claim in his Form 1008 was premature.

Accordingly, after considering the opportunities Mr. Hyginus had to present evidence that his medical benefit payment claim was properly filed, we dismiss his claim with prejudice. Based upon the findings in this opinion, we preterm discussion of Mr. Hyginus's remaining assignments of error.

13 **DECREE**

For the foregoing reasons, we affirm the OWC's judgment that dismissed Mr. Hyginus's workers' compensation claim against Ochsner as amended.

AFFIRMED AS AMENDED

1. Sedgwick Claims Management Services, Inc. and Broadspire also joined in Ochsner's pleading.
2. The appellate record does not contain a minute entry or a transcript of the September 5, 2024 hearing. Therefore, we cannot determine whether evidence was accepted by the OWC.
3. In workers' compensation matters, the technical rules of evidence are relaxed but findings must nonetheless be based on "competent evidence." *Lummus v. Shoney's*, 99-90 (La. App. 5 Cir. 6/1/99), 738 So.2d 117, 120.
4. The letter stated, "this is not a worker's compensation case. Mr. Anthony Hyginus was going home and not on duty at the time when his injuries occurred. For the foregoing reasons, Mr. Hyginus' case is a tort case."

Letteff v. Estate of Yocum

Court:	Court of Appeal of Louisiana
Writing for the Court:	STONE, J.
Citation:	429 So.3d 875
Docket Number:	56,672-CA
Decision Date:	25 February 2026
Parties:	Jason LETEFF, Plaintiff - Appellee v. ESTATE OF Trebor YOCUM and GEICO Casualty Company, Defendants - Appellees

Id. vLex Fastcase: VLEX-1126047519

Link: <https://fastcase.vlex.com/vid/letteff-v-estate-of-1126047519>

429 So.3d 875

56,672 (La.App. 2 Cir. 2/25/26)

Jason LETEFF, Plaintiff - Appellee

v. ESTATE OF Trebor YOCUM and GEICO Casualty Company, Defendants - Appellees

No. 56,672-CA

Court of Appeal of Louisiana, Second Circuit.

Judgment Rendered February 25, 2026[*877]

Appealed from the Fifth Judicial District Court for the Parish of Franklin, Louisiana, Trial Court No. 48203B, Honorable Will Barham, Judge

THE LAW OFFICE OF VICTOR JOSEPH WOODS, JR., By: Victor Joseph Woods, Jr., Counsel for Intervenor/Appellant, Donald Ray Coleman

CREED & CREED, By: Michael Robert Creighton, Counsel for Plaintiff Appellee, Jason Letteff

DAVENPORT, FILES & KELLY, LLP, By: Grant M. Tolbird, Bradford J. Smith, Counsel for Defendant Appellee, GEICO Casualty Company

HOGGATT LAW, LLC, By: Eric Micah Hoggatt, Counsel for Defendant Appellee, Estate of Trebor Yocum

Before PITMAN, STONE, and MARCOTTE, JJ.

STONE, J.

¹This case arises from the Fifth Judicial District Court, concerning a motor vehicle accident involving two vehicles with each operated by Jason Letteff (“Letteff”) and Trebor Yocum (“Yocum”), respectively. The appellant, Donald Coleman (“Coleman”), was a passenger in the vehicle driven by Letteff at the time of the collision. Letteff filed suit against the Estate of Trebor Yocum and GEICO Casualty Insurance Company (“GEICO”) for damages he sustained in the accident.¹ Nearly three years following the accident, Coleman filed a petition for intervention, seeking to join in Letteff’s lawsuit for his own injuries. GEICO filed a peremptory exception of prescription, asserting that Coleman’s suit was barred because it was not brought within the one-year prescriptive period. The district court sustained GEICO’s exception and dismissed Coleman’s claim. This appeal followed.

FACTS & PROCEDURAL HISTORY

On November 29, 2021, Coleman was a passenger in the vehicle operated by Letteff, his coworker, traveling

southbound on Louisiana Highway 17 in Franklin Parish. They were both employed by the Franklin[*878] Parish Police Jury and acting within the course and scope of their employment, when they were rear-ended by the vehicle driven by Yocum. On November 15, 2022, Leteff filed a petition for damages against Yocum's estate and GEICO (Yocum's insurer) for injuries sustained in the accident.

²In July 2023, GEICO tendered payment in the amount of \$34,082.53 to Travelers Insurance Company ("Travelers") — the workers' compensation carrier for the Franklin Parish Police Jury — in connection with the Travelers workers' compensation lien. On December 19, 2023 (over two years after the accident and prior to filing the suit that is the basis of this action), Coleman claims to have filed a Form 1008 workers' compensation claim against his employer.

On May 23, 2024, Coleman, sought to join in Leteff's action by filing a petition in intervention to recover damages from Yocum's estate and GEICO for injuries he sustained in the accident. GEICO filed a peremptory exception of prescription on June 13, 2024, asserting that Coleman's lawsuit was facially prescribed because it was not filed within the one-year prescriptive period. A hearing on the matter was held on October 21, 2024, wherein Coleman argued that his lawsuit was timely because prescription had been interrupted. The district court granted GEICO's exception on March 27, 2025, providing written reasons and a signed judgment to this effect on September 18, 2025, dismissing Coleman's claims. It is from this judgment that Coleman appeals.

DISCUSSION

[1, 2] Liberative prescription is a mode of barring actions as a result of inaction for a period of time. La. C.C. art. 3447. The issue of prescription is raised by a peremptory exception. La. C.C.P. art. 927.² The standard of review of a judgment pertaining to an exception of prescription turns on whether evidence is introduced at the hearing of the exception. *Crowley v. Rojas*, 55,616 (La. App. 2 Cir. 5/22/24), 386 So. 3d 1243, *writ denied*, 24-00792 (La. 10/15/24), 394 So. 3d 822; *Mitchell v. Baton Rouge Orthopedic Clinic, L.L.C.*, 21-00061 (La. 10/10/21), 333 So. 3d 368. If no evidence is submitted at the hearing, the exception must be decided upon the facts alleged in the petition with all of the allegations accepted as true. *Id.* In that case, the reviewing court is simply assessing whether the trial court was legally correct in its finding. *Id.*

[3] Generally, the party who asserts the peremptory exception of prescription has the burden of proof. *In re Medical Review Panel of Heath*, 21-01367 (La. 6/29/22), 345 So. 3d 992; *Spott v. Otis Elevator Co.*, 601 So. 2d 1355 (La. 1992). However, the burden of proof shifts to the plaintiff when his petition appears prescribed on its face, and he contends that prescription was either suspended or interrupted. *Bryant v. Tokio Marine HCC*, 54,771 (La. App. 2 Cir. 11/16/22), 351 So. 3d 837; *Mitchell v. Baton Rouge Orthopedic Clinic, supra*; *Hogg v. Chevron USA, Inc.*, 09-2632 (La. 7/6/10), 45 So. 3d 991.

[4] In this case, the accident occurred November 29, 2021, and the one-year prescriptive period commenced to run from[*879] that date. Therefore, the time for filing a tort action would have prescribed on November 29, 2022. Coleman's petition for intervention was not filed until more than a year later, on May 23, 2024. Thus, the issue is whether prescription was interrupted.

⁴Coleman asserts that prescription was interrupted by two independent events. First, Coleman contends that his filing of Form 1008 to recover workers' compensation benefits from his employer interrupts prescription of his third-party tort claim against GEICO. Citing *Williams v. Sewerage & Water Bd.*, 611 So. 2d 1383, 1385 (La. 1993), Coleman notes that a timely workers' compensation suit against an employer will interrupt prescription against a solidarily liable third party. Coleman avers that his employer, Yocum's estate, and GEICO are solidary obligors, because both his workers' compensation claims and his tort action stem from the same automobile accident. In his remaining argument, Coleman asserts that the payment tendered by GEICO to Travelers in the amount of \$34,082.53 for reimbursement of workers' compensation benefits interrupted prescription because it was an acknowledgment of the debt owed to him as a result of the accident. He further asserts that an interruption of prescription based upon a tacit acknowledgment of employers would also interrupt prescription as to the injured employee.

[5] The interruption of prescription by suit against one solidary obligor is effective as to all solidary obligors. La. C.C. arts. 1799 and 3503. However, prescription may only be interrupted while the prescriptive period is accruing; once it has run, interruption can no longer occur. *Jackson v. Hicks*, 49-199 (La. App. 2 Cir. 8/13/14), 147 So. 3d 283, *Settoon Marine, Inc. v. Great Lakes Dredge & Dock Co.*, 95-0046 (La. App. 4 Cir. 6/7/95), 657 So. 2d 537.

[6-8] Acknowledgment of a debt or obligation interrupts prescription and erases the time that has accrued, with prescription commencing anew from ⁵the date of that interruption. *City of Shreveport v. Black*, 50,527 (La. App. 2 Cir. 4/20/16), 194 So. 3d 1132; La. C.C. art. 3466. Acknowledgment sufficient to interrupt prescription, may be express or tacit and takes several forms — in writing, by partial payment, or by payment of interest or pledge. *Flowers v. U.S. Fidelity & Guaranty Co. Inc.*, 381 So. 2d 378 (La. 1979). A tacit acknowledgement occurs when a debtor performs acts of reparation or indemnity, makes an unconditional offer or payment, or lulls the

creditor into believing that he will not contest liability. *Crain v. Pletka*, 35,636 (La. App. 2 Cir. 1/23/02), 806 So. 2d 950; *Waller v. Stuckey*, 613 So. 2d 643 (La. App. 2 Cir. 1993), *writ denied*, 618 So. 2d 409 (La.1993).

[9, 10] In the matter *sub judice*, every legal action taken by Coleman in connection with this case occurred *well after* the applicable prescriptive period had already run. The fundamental purpose of prescription is to protect defendants from stale claims that are untimely. The car accident occurred November 29, 2021, and so the time for filing an action would prescribe November 29, 2022. Coleman neglected to act in his own best interests until nearly three years after the fact. He claims to have filed his Form 1008 for his workers' compensation suit on December 19, 2023, and waited to file his petition in intervention on May 23, 2024. Jurisprudence has generally held that once prescription has run, a tort action is extinguished and cannot be revived.³**[*880]**

[11, 12] This court has held that acknowledgment of a debt prior to the time that the prescriptive period runs does not roll or otherwise interrupt the running of the prescriptive period unless acknowledgment shows specific intent to interrupt the prescriptive period. *Bahr v. Wood*, 507 So. 2d 4 (La. App. 2 Cir. 1987). Furthermore, in *Flowers v. U.S. Fidelity & Guaranty Co.*, 381 So. 2d 378 (La. 1979), the Louisiana Supreme Court explained:

The interruption of prescription has no effect beyond the specific right of the person of which the debtor makes acknowledgment... Legal interruption does not regularly transfer from one obligation or action to another. Moreover, legal prescription is personal and generally benefits only the person with whom it originates or whose right has been acknowledged.

Simply put, if liability is not admitted, the debt is not acknowledged. Here, payment was tendered to Travelers — not Coleman — for its workers' compensation lien. Receipt of this payment was *not* synonymous with acknowledging a debt owed to *Coleman*. Therefore, Coleman's workers' compensation suit and his tort suit have no bearing on one another.

CONCLUSION

[13] Every interruptive event alleged by Coleman happened more than two years after the case had prescribed. Notably, on November 4, 2024, this case was settled and dismissed on a joint motion of the original parties (Leteff, GEICO and the estate of Trebor Yocum). Coleman had the burden of proving that prescription was interrupted *before* it had accrued, and he failed to do so.

For the foregoing reasons, we affirm the district court's judgment sustaining GEICO's peremptory exception of prescription. Costs of this appeal are assessed to the appellant, Donald Coleman.

AFFIRMED.

1. Trebor Yocum passed away on May 13, 2022.
2. Delictual actions are subject to a liberative prescription of two years. This prescription commences to run from the day that injury or damage is sustained. La. C.C. art. 3493.1. (This is the law as it stands today. However, we use the law that was in effect at the time of the accident, which was La. C.C. art. 3492, which provided that personal injury claims are subject to a liberative prescription of one year.) Regardless, Coleman's actions were prescribed.
3. See *Lima v. Schmidt*, 595 So. 2d 624 (La. 1992).