

Louisiana Workers' Compensation Decisions

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Supreme Court

First Circuit

O'Bannon vs. Moriah Technologies, et al., (La. App. 1 Cir. 3/29/18) [EE – J. Cazalot; ER – C. Ieyoub; WCJ – Thompson]

INSURANCE COVERAGE, FULL FAITH AND CREDIT

Affirmed WCJ's grant of MSJ, finding that Texas Mutual Insurance Company (TMIC) policy did not provide coverage to employee or employer under the Louisiana Workers' Compensation Law, nor did it obligate the insurer to defend or reimburse the employer.

Employee, a Louisiana resident suffered a compensable injury in Louisiana while employed by a Texas corporation. He filed a disputed claim against the employer and TMIC as its workers' comp insurer. The employer cross-claimed TMIC for reimbursement of attorney fees incurred in the matter, along with any benefits paid to the employee. Following trial, the WCJ ruled in favor of the employee and against the employer, but dismissed both the employee's claim against TMIC and the employer's cross-claim for lack of subject matter jurisdiction.

The appellate court affirmed the judgment against the employer awarding benefits, but vacated and remanded the judgments regarding TMIC, "even though the insurance policy at issue might require the application of Texas law to determine coverage." On remand, TMIC filed a MSJ asserting that its policy did not provide coverage, nor did it require defense of or reimbursement to the employer. In support of the motion, the company submitted a Texas judgment to that effect. The WCJ agreed and rendered judgment (1) that the policy did not provide coverage for the accident; (2) granting full faith and credit to the Texas judgment; and (3) dismissed the claims against TMIC with prejudice.

On appeal, the court first considered TMIC's motion to supplement the record with a 14th JDC (Calcasieu Parish) judgment recognizing the earlier Texas judgment. The court denied the motion because the 14th JDC decision was not part of the record, but noted that the Texas judgment had already been submitted in support of the MSJ and was properly authenticated by affidavit. Turning to the effect of the Texas judgment though, the court noted that the Louisiana OWC has exclusive jurisdiction over all claims or disputes arising under the LWCA (sic), including disputes over insurance coverage. Thus, the WCJ was not

required to give full faith and credit to the Texas judgment, and the appellate court reversed that portion of the WCJ's decision.

Turning to the merits of the MSJ and the TMIC policy itself, the court cited established jurisprudence that where the parties to a contract stipulate to the state law governing the agreement, Louisiana's conflict of laws principles require that the stipulation be given effect in the absence of law or strong public policy to the contrary. In this instance, the TMIC policy stipulated that Texas law applied and the court found no contrary Louisiana law/policy. Applying the policy language, and because Louisiana was not included as an extra-territorial state in the policy, neither the employee nor the employer were entitled to coverage under the LWCL. Likewise, the employer was not entitled to a defense or reimbursement since the employee was not a "Texas employee" as described by Texas law.

Second Circuit

Third Circuit

Hodges vs. Golden Nuggett Lake Charles, LLC, (La. App. 3 Cir. 3/7/18) [EE – J. Morales; ER – L. Ostendorf; WCJ – Bushnell]

1208 FRAUD, CAUSATION, SEB/EARNING CAPACITY

Affirmed WCJ's decision awarding TTD, SEB, and medicals, as well as penalties and attorney fees, and rejecting 1208 fraud defense, but modified/capped SEB award to reflect claimant's demonstrated earning capacity and jobs approved by her physicians.

Claimant, a casino security guard, fainted and fell at work in January of 2015, striking her left shoulder, right leg, and head. Video showed her suffering what appeared to be a seizure after the fall. She was transported to the hospital, where CT scans indicated a subarachnoid hemorrhage in her brain. Thereafter, she treated with a number of physicians for injuries and aggravations of pre-existing injuries or conditions, including low back pain, right knee and leg pain, and depression that she claimed resulted from her fall.

The employer denied the claim, initially contending that the fainting spell was not a compensable accident, and subsequently asserting a 1208 fraud defense based on alleged misrepresentations in discovery, to a voc rehab consultant, in deposition, and to her treating physicians. Specifically, claimant allegedly failed to report prior complaints and treatment for left shoulder and low back pain, as well as a subsequent slip-and-fall accident resulting in injuries to her right ankle and knee, and her back. In addition, although she denied working after her accident, investigation showed she had worked for a staffing and security company from October of 2015 to May of 2016, when she resigned and began receiving Social Security disability benefits retroactive to December of 2011.

In response to the 1208 defense, claimant asserted that she suffered a brain injury which impacted her memory. She asserted that the brain injury was demonstrated by her own testimony and the testimony of family members, and by voc rehab testing reflecting a 3rd/4th grade educational level when she had graduated from high school and completed some college.

Following trial, the WCJ rejected the fraud defense and found that claimant's fall was a compensable accident. The court awarded TTD, SEB at \$0 earning capacity, and medical benefits, along with a \$2,000 penalty for failure to pay indemnity benefits, a \$2,000 penalty for failure to pay medicals, and attorney fees in the amount of \$25,000.

The court of appeal affirmed. Acknowledging that no physician had opined that the injury caused memory problems directly, the court nevertheless cited medical testimony that claimant suffered depression and other mental injuries as a result of the accident, and that her psychiatrist testified that depression can cause short-term memory deficits. The court concluded that the WCJ was not clearly wrong in finding that the Casino failed to prove the requisite fraudulent intent required under R.S. 23:1208.

Continuing, the appellate court agreed that regardless of the fainting episode, claimant's fall was a compensable accident. Given the divergence of medical opinions, the WCJ was not clearly wrong in finding that it caused her subarachnoid hemorrhage, rather than a blood clot or other cause suggested by defendant's experts. Likewise, the court found that the WCJ was reasonable in finding that the fall caused claimant's left shoulder and right knee pain, as well as her complaints of pain in her low back and pain and instability in her right leg, and an aggravation of her pre-existing depression.

Finally, the court affirmed the WCJ's award of penalties and attorney fees. It concluded that the initial denial of the claim based on no accident was unreasonable in light of jurisprudence to the contrary. However, the court did modify the WCJ's award of SEB at \$0 earning capacity, to reflect an earning capacity of \$150 per week based on claimant's average weekly earnings while she was actually employed after her accident. The court found claimant was no longer entitled to indemnity benefits after August of 2016, based on jobs identified by voc rehab and approved by her physicians.

Guillory vs. R&R Construction, et al., (La. App. 3 Cir. 3/14/18) [EE – M. Miller; ER – S. Comeaux; WCJ – Bushnell]

1201(G) PENALTIES AND ATTORNEY FEES/FAILURE TO TENDER SETTLEMENT/IMPERMISSIBLE CONDITION ON RECEIPT OF SETTLEMENT CHECK

Affirmed WCJ’s decision, granting penalties and attorney fee based on employer’s failure to tender settlement payments as agreed.

Employee suffered a compensable injury. Employer agreed to tender a lump sum to employee on or before a set date, and the agreement was approved by the WCJ on the record. Thereafter, the employer delivered a check three days after the agreed on date, which included language “that allegedly imposed impermissible conditions on Employee’s receipt of the settlement funds.” An additional check in payment of costs included in the agreement was delivered several days later with the same language.

Claimant’s attorney filed a motion to enforce the settlement agreement and for penalties and attorney fees. The WCJ found that the tender of the settlement payment was neither timely nor unconditional, and after an additional hearing, awarded penalties of \$54,733.06, and attorney fees of \$3,000, pursuant to R.S. 23:1201(G).

The appellate court rejected the employer’s assertion that the settlement was timely tendered, noting that the parties had agreed to and the WCJ had approved the specified date, and that no public policy precluded agreeing to a shorter time for payment than otherwise allowed by law. Further, the court agreed that boilerplate language on the checks requiring the employee to certify to certain things, e.g. no false claims, was beyond the agreement and imposed an impermissible condition on the payment.

The court rejected claimant’s assertion that the \$3,000 attorney fee was insufficient based on the amount of the penalty, but awarded an additional \$5,000 for work on appeal.

Fourth Circuit

Allen vs. Blind Pelican, (La. App. 4 Cir. 3/14/18) [EE - B. Sondes; ER - R. Paysse; WCJ – Johnson-Reid]

MOTION FOR SUMMARY JUDGMENT/REASONABLE TIME FOR DISCOVERY

Reversed WCJ’s grant of MSJ dismissing claim for death benefits due to a stroke/brain aneurysm.

Decedent, a 33 year old prep cook for the defendant employer, was found dead in the employer’s restroom. Autopsy showed the cause of death to be a stroke or brain

aneurysm. Claimant filed a 1008 on behalf of her minor child, seeking death benefits. The employer asserted *inter alia* that she lacked procedural capacity, and subsequently filed a MSJ contending that the claimant could not prove a compensable accident/injury under R.S. 23:1021(8)(e). Claimant opposed the motion, asserting that the employer had failed to answer discovery regarding the nature of the decedent's work for more than a year, until just one month before the MSJ hearing. In addition, the name of one of the decedent's co-workers was misspelled in the discovery responses, precluding claimant's attorney from locating the witness until just days before the hearing. Nonetheless, the WCJ denied claimant's request for a brief continuance and granted the motion, relying "at least in part" on the claimant's failure to prove her procedural capacity.

The appellate court reversed, noting defendant's "hampering of discovery efforts" and finding that the WCJ abused her discretion by rejecting claimant's request for a thirty-day continuance to complete discovery before the MSJ was considered.

Fifth Circuit

