

Louisiana Workers' Compensation Decisions

January 2018

By Patrick F. Robinson
PatrickRobinson@allengooch.com

Supreme Court

First Circuit

Hurst vs. Cirrus Allied, (La. App. 1 Cir. 1/8/18) [ER – Mark Riley; EE – Mike Parker; WCJ – Lanier]

MODIFICATION OF JUDGMENT, CAUSATION

Affirmed WCJ's decision terminating claimant's benefits based on her failure to prove that her ongoing complaints were related to her work accident.

Claimant with pre-existing DDD injured her low back in 2010, while assisting a patient at work. The parties entered into a consent judgment in 2012 providing for retroactive and ongoing medical and indemnity benefits. Thereafter, there was a break in payment after the insurer went into liquidation, until payments were assumed by the Kentucky Insurance Guaranty Association.

In 2014, claimant injured her low back due to a car accident. She settled the resulting claim without informing or obtaining permission from the employer or carrier. Around the same time, in July of 2014, she was diagnosed and began treatment for multiple sclerosis. In October of 2014, she sought ER treatment after bending over and feeling a "pop" followed by severe back pain. At that time, she denied having a similar injury in the past.

Thereafter, the employer and carrier moved to modify the prior consent judgment and terminate compensation, asserting claimant (1) was no longer disabled as a result of the 2010 accident; (2) forfeited her benefits under R.S. 23:1208 by receiving indemnity without seeking/complying with medical treatment recommendations; and (3) forfeited future benefits under R.S. 23:1102 by settling her 2014 automobile accident claim without the payor's consent. Claimant reconvened, contending that her MS was caused or aggravated by the 2010 work accident, and particularly, by the stress of the claim process/breaks in payment. She claimed PTD status due to her MS. Following trial, the WCJ granted the employer/carrier's motion to terminate benefits and dismissed claimant's reconventional demand.

The court of appeal affirmed. Reviewing the medical evidence, the court noted that in light of intervening events, any link between claimant's back complaints and the work accident "became less clear" after 2013. Further, since claimant had not assigned as error

the WCJ's finding of a change in circumstance for purposes of modification under R.S. 23:1308, the modification of the prior judgment was not before the court.

Turning to claimant's demand for PTD status based on her MS, the court noted that her doctor had only found it "plausible" that the mental stress associated with the workers' comp claim had aggravated her condition. Moreover, the claimant's burden was to prove her MS was causally related to the work accident rather than the claim process, a connection which was not evidenced in the record. Finding no manifest error, the court affirmed the WCJ's decision.

Hills v. LDH, 2017-1309 (La. App. 1 Cir. 1/5/18)

PRESCRIPTION/MEDICAL BENEFITS

Granted employer's writ application and reversed WCJ decision denying prescription exception.

The last payment of medical benefits was on September 23, 2013. Claimant filed her disputed claim on May 2, 2017. The WCJ denied employer's prescription exception regarding medical benefits, concluding that preparation and transmission of an MSA interrupted the three year time period. The court of appeal reversed, concluding that an MSA is not a "medical benefit" for purposes of 23:1209(C).

Second Circuit

Third Circuit

Broussard vs. Acadian Ambulance, (La. App. 3 Cir. 1/24/18) [EE – J. Barber; ER – K. Trahan; WCJ – Palermo]

CHANGE OF TREATING PHYSICIAN, NECESSITY OF PAIN MANAGEMENT, PENALTIES/ATTORNEY FEE

Affirmed WCJ's decision allowing change or orthopedist and ordering pain management, but reversed award of penalties and attorney fees.

Claimant suffered a compensable injury in 2012, when she tripped over a box at work. Her treating orthopedist ultimately performed surgeries on both of her hands. The employer paid medical and wage benefits, but terminated benefits after the second hand surgery based on the treating orthopedist's opinion that claimant had reached MMI. The employer also denied a request for pain management based on the treating orthopedist opinion that it was not necessary, and denied claimant's request to change her choice of orthopedist. Following trial, the WCJ rendered judgment in favor of claimant, authorizing

a change of treating orthopedist and pain management treatment, and awarding penalties and attorney fees.

The appellate court affirmed the authorization of pain management. The court noted that claimant continued to report pain in her wrists, and even though her orthopedist had released her he continued to prescribe pain medication. A court appointed IME opined that pain management treatment was medically necessary. It concluded that the trial court was not clearly wrong in finding the treatment was necessary.

Likewise, the court approved the change of claimant's choice of treating orthopedist. It found that her first choice or doctor had identified but not treated complaints of thumb pain. Since he had released her, the WCJ was not clearly wrong in finding that he had "basically refused to treat claimant further and effectively passed it off." Accordingly, claimant was entitled to a change orthopedist.

The court reversed the WCJ's award of penalties and attorney fees, and denied claimant's request for additional fees for work on appeal, concluding that the employer's reliance on the treating physician's opinion was reasonable.

Bailey vs. Veolia Environmental Services, (La. App. 3 Cir. 1/31/18) [EE – G. Flournoy; ER – M. Monroe; WCJ – Bushnell]

PENALTIES/UNTIMELY PAYMENT OF MEDICALS/EVIDENCE

Affirmed WCJ's judgment that claimant failed to prove untimely payment of pharmacy bills.

Claimant suffered a compensable, severe spinal injury in 2010. In 2016, he filed a disputed claim alleging non/untimely payment of medicals, and demanding penalties and attorney fees. Defendant's pretrial statement did not stipulate to any facts but listed only untimely payment of medicals as an issue. Claimant did not file a pretrial statement until after trial, and did not testify at trial. The only exhibits offered were pharmacy receipts with dates of payment hand written in. The WCJ found the evidence insufficient to prove untimely payment.

The appellate court affirmed. The court rejected defendant's position that claimant failed to prove employment and other fundamental bases of compensability, noting that the defendant's pretrial statement limited the issue to untimely payment of medicals. However, it agreed with defendant that the mere payment of the invoices was not an admission of liability for the bills. Since the record failed to show that the particular bills were compensable, the WCJ's decision was not clearly wrong.

Fourth Circuit

Jackson vs. Family Dollar Stores of Louisiana, (La. App. 4 Cir. 1/5/18) [EE – W. Mustian; EE – R. Richthoven, Jr.; WCJ – Reid-Johnson]

APPEAL BOND/DEVOLUTIVE APPEAL

Granted employee's motion to dismiss employer's devolutive appeal, and remanded to the WCJ to set the bond as required by R.S. 23:1310.5(C).

The WCJ rendered judgment awarding claimant benefits, penalties, and attorney fees. The employer ultimately filed a motion for devolutive appeal, which the WCJ granted. In the court of appeal, the claimant moved to dismiss the appeal, arguing that R.S. 23:1310.5(C) requires the setting and posting of an appeal bond for both suspensive and devolutive appeals.

The court of appeal agreed, but noted that the time for posting the bond does not commence until the appellant is notified of the amount set by the court. Since the WCJ had not set a bond amount, the appeal was dismissed as premature and remanded to the OWC to set the bond.

Fifth Circuit

