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LA: WAGES ONLY PARTIALLY EARNED WERE WAGES IN LIEU OF COMPENSATION THAT INTERRUPTED STATUTE OF LIMITATIONS

The issue in this case was whether the claim for TTD was timely filed. Claimant was a territory manager/outside salesperson, and was paid a salary plus commission.

She hurt her neck and back in a car wreck in February, 2014. She had work restrictions after the accident, but continued working. The only time she stopped working was after surgeries in August, 2015 and September, 2017.

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She used Paid Time Off (PTO) benefits to maintain her full wages after the 2015 surgery, before eventually returning to work. She again used PTO after the 2017 surgery, but her PTO expired and, thus, she sought indemnity benefits. Because her claim was more than three years after the work accident, the trial court granted the employer's summary judgment on statute of limitations grounds.

Claimant appealed. Her argument was that the claim was timely because she was continuously paid wages in lieu of compensation, all of which she did not earn, and this interrupted the statute. Claimant also argued that she was told she must use all her PTO before seeking benefits, which "lulled her into a false sense of security" so she would not file suit timely. The appellate court reversed and remanded the case to the trial court. The appeal court relied on claimant's testimony that whereas before the accident she worked 8-10 hours per day in the field traveling and seeing customers, she worked in the field only 4-6 hours per day after the accident, and some days exclusively from home. Yet, she was paid the same salary base. The court held that wages are considered in lieu of compensation when services rendered "are not commensurate with the wages paid, and the employee does not actually earn" all of the pay. (We expect this is a case you will see again in a future newsletter.) *Larocca v. Primesource Building Product*, 2019-1199 (La. App. 1 Cir. 7/8/20).

Attorney Spotlight



Caitlin B. Carrigan

Caitlin is a New Orleans native who has lived in the Gulf South region her whole life. After graduating from Louisiana State University, she obtained her law degree in 2011 from Loyola University College of Law in New Orleans, where she excelled in the nationally recognized Moot Court Program.

Caitlin's legal career began at an international maritime firm headquartered in New Orleans. She has since expanded her practice to include employment litigation in both state and federal courts. Specifically, she focuses on defending her clients against claims arising under the Longshore and Harbor Workers' Compensation Act, and its extensions, and the Louisiana Workers' Compensation Act.

Caitlin's substantial experience in all phases of litigation, including mediation and arbitration, and administrative hearings and trials, allows her to strategically advise her clients on a case by case basis.



HEAT EXHAUSTION WAS AN “ACCIDENT,” AND NOT A CARDIOVASCULAR EVENT

Claimant worked as a foreman for a contractor, and worked 60-70 hours per week. For many years, he had been prescribed Lisinopril for a congenital single kidney. The medication was not to control his blood pressure, but to preserve the function of his kidney. On May 20, 2017, he reported to work around 7:00 a.m. and performed his normal job activities, which consisted of walking the job site overseeing projects. Around 10:00 a.m., he passed out. He was treated on site and subsequently taken to a hospital, where he was diagnosed with dehydration and heat exhaustion, treated with fluids and released. Before returning to work, he was examined by a cardiologist and released with no restrictions. He returned to work, and again suffered a heat exhaustion event. Eventually, his primary doctor stated he could no longer work in the heat. He was then terminated from his job. Claimant found work with another company, but was unable to earn 90% of his AWW.

He filed suit for SEB, but the employer denied the claim, primarily on grounds that claimant never sustained a work “accident” by simply “passing out” one morning at work, which could have been caused by several different co-morbidities, and not his usual work on that day. The evidence showed that claimant suffered dehydration and heat exhaustion that day. The court found that heat exhaustion was a compensable “accident.” The employer then argued that the court erred in not applying the special burden of proof related to heart-related/cardiovascular claims. The employer argued that nothing in the evidence showed that claimant was performing any “extraordinary or unusual” work stress on the day of the accident and, thus, he did not carry his burden of proof.

The court of appeal found no error with the trial court ruling that claimant’s pre-existing condition was a kidney decision, not a heart condition, and an heat exhaustion event is not a cardiovascular event. *Woodard v. Chicago Bridge & Iron*, 2019-891 (La. App. 3 Cir. 7/22/20).



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