TAYLOR WELLONS POLITZ & DUHE

July 2021

LOUISIANA AND MISSISSIPPI WORKERS' COMP NEWSLETTER

RECENT CASES AND NEWS

EMPLOYER WAS NOT ARBITRARY AND CAPRICIOUS IN TERMINATING BENEFITS BASED ON IME REPORT

Claimant was injured in a forklift accident and TTD benefits were started. Several months later, and based on the opinion of an independent medical examiner (IME) appointed by the OWC-Medical Services Division that claimant was capable of returning to work without restrictions, Employer terminated TTD benefits. Claimant filed suit seeking reinstatement of TTD on grounds that the IME doctor was biased against him. The employer sought "safe harbor" and requested a preliminary determination hearing, which ultimately took place. At the hearing, the judge agreed that the IME was biased, ruled the IME report inadmissible, and ruled that benefits should be reinstated. Employer complied and issued back due benefits, along with a Form 1002. Although the benefits were timely reinstated after the hearing, and in the correct amount, there was an error on the Form 1002.

Thus, claimant filed a motion seeking penalties and fees based on the original decision to terminate benefits on the grounds that the Employer lost its "safe harbor" after the preliminary hearing. The OWC judge agreed that safe harbor was lost, but found that the Employer was not arbitrary and capricious in relying on the IME report ruled later ruled inadmissible. On appeal, the 3rd Circuit Court of Appeal agreed that the Employer was reasonable in relying on the IME report, and did not reach the issue of whether safe harbor can be retroactively lost simply due to an error in the Form 1002 even though benefits were timely paid in the correct amount. The 3rd Circuit distinguished between reliance on an IME versus a second medical opinion, noting that the IME in this particular matter issued a detailed report after reviewing medical records, taking an oral history, and conducting a full physical examination. *Martin v. Doerle Food Services, LLC*, 2021-94 (La. App. 3 Cir. 6/2/21).

Attorney Spotlight

Terri Collins

Terri Collins brings 32 years of extensive litigation experience to Taylor, Wellons, Politz & Duhe'. She is aggressive, responsive to her clients and passionate about her work. A native of the New Orleans area, Terri attended Louisiana State University, where she was active in the Student Bar Association and served as its vice president. After graduation, she served as the chairman of the Baton Rouge Bar Association's Young Lawyers Liaison Committee. Terri was also a founding member of the Dean Henry George McMahon chapter of the American Inns of Court.

INJURY WHILE IN ROUTE TO RIG PLATFORM COVERED BY THE LHWCA

Primarily at issue in this appeal was whether, in the light of *Pacific Operators Offshore, LLP v. Valladolid*, 565 U.S. 207 (2012) (establishing substantial-nexus test), an onshore injury while claimant was on his way to a rig platform on the Outer Continental Shelf ("OCS") is recoverable under the Longshore and Harbor Workers' Compensation Act ("LHWCA") as extended by the Outer Continental Shelf Lands Act ("OCSLA"). When injured, James Boudreaux was employed by Owensby & Kritikos, Inc., as an equipment-testing technician on platforms located on the OCS. His injury resulted from an automobile accident on his way to his work for Owensby on the OCS. Boudreaux sought benefits under LHWCA, as extended by OCSLA. An Administrative Law Judge ruled in his favor, and the Benefits Review Board affirmed. Applying the substantial-nexus test in Valladolid, the Fifth Circuit holds that Boudreaux's injury is covered under OCSLA. Among the facts relevant to its inquiry, the Court finds persuasive Boudreaux's being compensated by Owensby for both time and onshore mileage while traveling to and from the OCS; being on-the-job when he was injured; necessarily traveling to an intermediary pickup location to be transported from onshore to the OCS; and transporting his testing equipment in his vehicle. Thus, the Court denies Owensby's petition for review, and grants Boudreaux's request for reasonable attorney's fees incurred in defending against the petition. *Owensby and Kritikos, Inc. v. Boudreaux*, 19-60610 (5th Cir. 05/14/21).

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