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COURT RULES THAT CLAIMANT COMMITTED SIF FRAUD

Claimant had an extensive prior medical history, including a foot injury resulting in a reflex sympathetic dystrophy diagnosis for which he was still treating at the time of the new work accident at issue. Claimant also had a pre-existing upper leg injury causing chronic pain, a shoulder injury for which he underwent surgery, and a knee injury that was still causing pain up to three weeks before the subject work accident. Finally, he suffered from COPD, hypertension, bipolar disorder, depression, and ADHD. In his post-hire medical (SIF) questionnaire, claimant specifically denied having COPD, hypertension, bipolar disorder, depression, and ADHD. He did not respond at all to specific questions about prior work restrictions, his current medical condition, prior work accidents, and prior surgeries. However, he truthfully admitted that was under no restrictions when he filed out the questionnaire, and was under no current surgical recommendation for any condition. The Court held that all information that would have been disclosed by the claimant had he truthfully answered each and every question must be considered to determine if there is SIF fraud in violation of R.S. 23:1208.1. The Court found that claimant's selectivity in answering and not answering questions contained in the post-hire questionnaire demonstrated his intent to conceal his pre-existing condition, and prejudiced the employer who was deprived of the ability to make a SIF claim. Thus, the claimant forfeited his rights to benefits. *Spillman vs. Career Adventures, Inc.*, 54,054 (La. App. 2 Cir. 08/11/21).

RECENT CASES AND NEWS

**LOUISIANA AND MISSISSIPPI
WORKERS' COMP NEWSLETTER**



ADJUSTER DID NOT “LULL” CLAIMANT INTO NOT FILING SUIT TIMELY

Claimant was a Walgreens employee, hired in Louisiana in 2010. In 2014, she moved to Texas to be closer to family. In July of 2014, she was involved in a work accident and began receiving benefits under Texas workers' comp law. Benefits were terminated in October of 2015. Claimant then pursued litigation in Texas. In September 2016, a hearing was held by the Texas hearing officer who ruled that one of claimant's alleged injuries was not compensable, that she was at MMI, and that back pay for only several months was owed. Claimant appealed, and the Texas appeals panel affirmed the hearing officer's ruling. Then, in November of 2017, claimant filed a 1008 Disputed Claim in Louisiana seeking additional indemnity benefits and treatment. Walgreens sought dismissal of the suit on statute of limitations and jurisdictional grounds. The OWC judge denied all defenses and awarded benefits to claimant. Walgreens appealed. Claimant asserted that although her suit was not filed within the Louisiana statute of limitations period, her suit was timely because the claims adjuster misled her and "lulled her" into not filing the suit in LA timely. The adjuster never advised claimant of her option to choose Louisiana and incorrectly suggested to claimant that she was entitled to benefits only in Texas. The court of appeal reversed the OWC judge and dismissed the suit. Evidence presented at trial showed that claimant had in fact consulted a Louisiana lawyer while she was still pursuing her claim in Texas, but the attorney declined to take her case because it was pending in Texas. She was also represented by counsel in Texas. The court found that there was no legal requirement that claimant be explicitly notified by the employer/adjuster of a right to choose a jurisdiction when more than one is appropriate, and that even a misstatement of the law by an adjuster is not grounds to estop a defendant from disputing the timeliness of a claim. *Reese v. Sedgwick Claims Management Services*, 54,120-WCA (La. App. 2 Cir. 9/22/21).



APPEAL COURT AFFIRMS DISMISSAL, NOTING THAT THE FACTS SHOULD NOT BE “LIBERALLY INTERPRETED” IN FAVOR OF THE CLAIMANT

Claimant testified he had hopped on a forklift operated by a co-worker, who engaged in “donuts” and spins on the forklift. Claimant testified that after two rotations, he asked to get off and intended to resume work. However, after he took two steps on the ground, the co-worker performed another donut and knocked claimant to the ground and rolled over his leg. In contrast, the co-workers testified that claimant was laughing and slipped or flew off the forklift during another donut maneuver. The OWC Judge found the co-workers’ testimony more persuasive than claimant’s, specifically referring to claimant’s demeanor and “actions” in court. On appeal, claimant argued the OWC Judge erred by failing to liberally construe the Workers’ Compensation Act in his favor given the contradicting testimony. The Third Circuit Court of Appeal correctly cited the 2012 amendment to R.S. 12:1020.1, which provides in pertinent part:

(2) 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.

The court noted that while the statute itself is to be given liberal interpretation, questions of fact are not. Because this case involved questions of fact and not statutory construction, claimant was not entitled to a liberal interpretation, and the OWC Judge’s determination would stand. *Guidry v. Worknet and Gaienne Lumber Co.*, WCA 20-418 (La. App. 3 Cir. 8/11/21).

Attorney Spotlight



Chip Duhe

Chip Duhe was born and raised in Baton Rouge, Louisiana. Setting aside his aspirations to become a football coach, Chip obtained his undergraduate and law degree from Louisiana State University. Traveling back to his law review tenure, Chip began his focus exploring issues involving workers' compensation and general casualty. He has litigated hundreds of cases in every court in the state. His trial experience uniquely ranges from a straightforward workers' compensation case to complex litigation matters involving catastrophes at refineries along the Mississippi River. Today, Chip remains well-respected in all aspects of the law by the judges before whom he appears, his colleagues and the firm's clients. Because of his expertise in these areas and his personal skills, Chip was selected to become a mediator for MAPS throughout the state. In his spare time, Chip is best known for his tireless work as a basketball referee for the Baton Rouge Basketball Officials Association.

Chip is a frequent lecturer for various trade groups and is a member of the Baton Rouge, Louisiana state and American bar associations.



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The success we have seen is because of the way we built our practice. It's about more than routine strategies. It's about creative resolutions to difficult legal questions. It's about how we treat our clients and each other and how we work together to build the best possible defense for every single case. It's

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