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IMMIGRANTS TRANSPORTED ON A BUS AT THE EMPLOYER'S EXPENSE TO OBTAIN WORK VISAS TO ENTER THE U.S. WERE NOT IN COURSE AND SCOPE

The employer, a crawfish producer, regularly recruited immigrant workers from Mexico to work during the crawfish season. The employer would pay to transport the immigrants to the U.S. consulate in Mexico so the work visas could be processed. After work visas were processed, the employer would pay to transport them to the employer's premises in Louisiana to complete the application process and become legal employees. Each of the three claimants in this suit had worked for the employer in this fashion before.

RECENT CASES AND NEWS

LOUISIANA AND MISSISSIPPI WORKERS' COMP NEWSLETTER



On March 12, 2021, claimants were allegedly injured when the bus transporting them to the U.S. consulate in Monterrey, Mexico was rear-ended. The bus was owned and operated by a bus company, and the fare was paid by the employer. The issue was whether the claimants were in the course and scope of employment. The employer asserted that no employment relationship had been established, as the workers had not completed the hiring process. The workers' comp judge granted the employers motion for summary judgment and dismissed all claims. Generally, injuries sustained by an employee while traveling to and from work are not considered to have occurred within the course and scope of his employment, based on the theory that the employment relationship is suspended from the time the employee leaves his work to go home until he resumes his work. In affirming the trial court, the court of appeal concluded it was clear that the bus crash occurred in Mexico while the workers were traveling to obtain work visas to be able to enter the United States to work. The court distinguished cases wherein the claimants were already on the payroll traveling to work at the expense of the employer. The court additionally concluded that the record contained no other evidence indicating that an employer-employee relationship existed at the time of the accident, such as payment of wages. *Preciado v. Beaucoup Crawfish of Eunice and LA Restaurant Assoc.*, WCA 22-594 (La. App. 3 Circ. 02/02/23).



COURT AWARDS SEB IN HEARING LOSS CLAIM EVEN THOUGH CLAIMANT WORKED AN ADDITIONAL 15 YEARS WITH ANOTHER EMPLOYER AFTER LEAVING THE LOUD PAPER MILL JOB

This is another hearing loss case in which the court awarded supplemental earnings benefits (SEB) despite the hearing loss seemingly having no effect on Claimant's earnings. Specifically, the court awarded 104 weeks of SEB, medical benefits, \$8,000 penalties and \$15,000 in attorney's fees, which was increased to \$20,000 after appeal. In a case reported in one of our prior newsletters involving the same paper mill, the court awarded benefits, penalties and fees in a case where the claimant had retired from the workforce for reasons unrelated to any hearing loss. The court rejected the argument that Claimant's retirement precluded his entitlement to SEBs, because the employer failed to identify any suitable job available or offered to Claimant that would allow him to earn 90% of his wages given his hearing loss. The court noted that once Claimant's ENT restricted his work within NIOSH noise requirements, the basis for SEBs was completed and his retirement status was not relevant (except to limit his award to 104 weeks per the "retirement rule"). In this new case, the facts revealed that Claimant had worked in other employment after he left the paper mill in 2003 until he retired in 2018 due to a back injury. Employer argued that Claimant failed to produce evidence he was unable to perform any other job for which he was qualified that complied with his doctor's NIOSH recommended noise levels. Nonetheless, the Third Circuit found Claimant established a *prima facie* case of entitlement to SEBs and the burden shifted to Employer to prove otherwise via jobs offered or available, which the employer failed to do. *Hyatt v. Boise Cascade Corporation*, No. 22-411 (La. App. 3 Cir. 2/15/23).



CLAIMANT PROVED OCCURRENCE OF UNWITNESSED ACCIDENT THAT LED TO AMPUTATION OF HIS LEG DUE TO DIABETES COMPLICATIONS

Claimant was allegedly injured in an unwitnessed accident on March 18, 2020. Claimant testified that he was kneeling next to a portable man lift, when his right foot and ankle were compressed between a metal plate and concrete floor. Claimant notified his supervisor of the accident on that same date. Claimant continued to work that day and attempted to work for the next few days before his supervisor told him to take whatever time off work he needed to heal. Claimant had a history of diabetes. On March 26, 2020, Claimant was seen at an urgent care and was diagnosed with a non-displaced fracture. On May 20, 2020, Claimant's lower right leg was amputated due to the failure of his leg to heal and from a subsequent gangrenous infection, which the doctor related to the work accident. On May 28, 2020, the employer had Claimant write a detailed account of the work incident and subsequent events that led to the amputation. Approximately three months later, the employer reported the incident to its insurer, who denied the claim, and suit was filed. The insurer argued there was evidence that cast serious doubt or discredited Claimant's testimony, namely, testimony from co-employees that no one operates the man lift on one knee as Claimant stated and discrepancies in Claimant's medical records (which were explained by his treating physician). Claimant's testimony was corroborated by photos taken by his significant other after the incident showing a swollen foot and a scratch caused by the accident. The court ruled in favor of claimant, which was affirmed on appeal. *Clover v. Redfish Rentals, LLC*, WCA 22-470 (La. App. 3 Cir. 02/08/23).

APPEAL COURT REVERSES RULING IN CLAIMANT'S FAVOR BECAUSE MEDICAL OPINIONS CITED BY THE COMP JUDGE WERE UNRELIABLE

Claimant was a teacher. On January 16, 2019, claimant alleged injury attempting to stop a fight between students. She claimed she was struck by one of the students and was "repeatedly beaten from the back," with "blows to [her] head and face," causing her to fall forward and land on the floor. The school principal testified he watched security video of the incident and did not see any punch contact the claimant, and that claimant definitely did not hit the floor. A CT scan of her head was normal. She was diagnosed with a sprain, myalgia, and discharged. Eight days later, her family doctor diagnosed cervical, thoracic, and sacral muscular strain, left hip and upper arm muscular strain, and, notably, acute anxiety. He referred her to an orthopedist who diagnosed cervicgia and cervical sprain, and took her off work. On August 2, 2019, the orthopedist released claimant, and she returned to work. She then reported another alleged work injury 10 days after returning. She alleged she entered the ladies' restroom, went to open one of the stalls, but the door came off its hinges and struck her on the forehead. Claimant was diagnosed with a superficial laceration with no active bleeding. She was discharged in "good condition." Four days later, claimant returned to her orthopedist reporting being hit by the door, that it gave her a concussion and that she was having nightmares about returning to work. The orthopedist took her off work, but the doctor noted a "confusing history" regarding the two work incidents. She reported pain in her neck, left arm and shoulder, right wrist, and lower back, increasing with virtually any physical activity. A lumbar MRI was declared "normal," with some bulging at L3-4 and L5-S1, and annular bulging at C4-5, C5-6, and C6-7. Physical therapy and work restrictions were continued. The work comp judge noted the inconsistencies regarding the alleged accidents, but relied mostly on the medical evidence in ruling in claimant's favor regarding compensability and ongoing disability, and also awarded penalties and attorney's fees. The appeal court REVERSED, noting that the work comp judge failed to consider the patient history and other facts on which the medical experts based their opinions. The records supported none of the alarming conditions that claimant reported to her doctors. No medical evidence showed any diagnosis of concussion, though she repeatedly reported that to her treating physicians. The appellate court found that the opinions of the physicians after the bathroom stall incident were not reliable enough to support the comp judge's conclusion. The court noted other credibility problems as well, namely the claimant's unsupported version of the fight incident. Finally the court noted that there was overwhelming evidence that claimant's disability was psychological. The appellate court held that the comp judge was manifestly erroneous to use the medical records, which relied on the same unreliable reporting, to resolve the credibility disputes in the case. *Mayes v. Morehouse Parish School Board*, 54,796 (La. App. 2 Cir. 02/08/23).



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