

NOT DESIGNATED FOR PUBLICATION

FILED OCT 29 2002

ROBERT E. POOLE, SR.

NO. 02-CA-489

VERSUS

FIFTH CIRCUIT

TERRELL MUSGROVE SIDING & GUTTER

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE OFFICE OF WORKERS' COMPENSATION
DISTRICT 07, STATE OF LOUISIANA
NO. 99-04238
HONORABLE SYLVIA T. STEIB, JUDGE PRESIDING

OCTOBER 29, 2002

**WALTER J. ROTHSCHILD
JUDGE**

Panel composed of Judges Edward A. Dufresne, Jr., Sol Gothard
and Walter J. Rothschild

JOEL P. LOEFFELHOLZ
234 Loyola Avenue
Suite 900
New Orleans, Louisiana 70112

CHARLES C. HOLBROOK
Johnson, Stiltner & Rahman
2237 S. Acadian Thruway, Ste. 102
P.O. Box 98001
Baton Rouge, Louisiana 70898-8001

VACATED AND REMANDED

WJR
EAG
J

In this workers' compensation case, defendants appeal from a decision of the workers' compensation judge granting a new trial and altering its previous decision. For the reasons assigned herein, we reverse the ruling, reinstate the court's original ruling and remand the case to the office of workers' compensation.

Facts and Procedural History

On June 17, 1999, the claimant, Robert E. Poole, Sr., filed a disputed claim for compensation alleging that he sustained a work-related injury on June 9, 1997 while working for Terrell Musgrove Siding and Gutter. He alleged that wage benefits would be terminated or reduced on July 1, 1999. Trial was conducted on December 18, 2000, and by judgment rendered on February 7, 2001, the workers' compensation judge determined that the claimant was injured in the course and scope of his employment, that he was not totally and permanently disabled, that he was entitled to supplemental earnings benefits and to payment of all medical and related bills, and that he could return to work in a sedentary capacity.

On February 9, 2001, the claimant filed a motion and order for new trial. The court ordered a hearing, but the matter was continued without date. On July 19, 2001, counsel for claimant submitted a post-trial memorandum, and on August 17, 2001, the workers' compensation judge granted a new trial for reargument

only. On December 20, 2001, the workers' compensation judge issued a judgment finding that claimant was totally and permanently disabled. Thereafter, claimant filed a motion to compel payment of benefits and for penalties and attorney's fees. The record fails to show that this motion was ruled on by the workers' compensation judge, and defendants filed the present appeal on February 13, 2002. The claimant subsequently answered the appeal seeking an award of penalties and attorney's fees.

Discussion

Appellants, Terrell Musgrove Siding and Gutter and Louisiana Workers' Compensation Corporation, contend on appeal that the trial court was without authority to entertain a motion for new trial in this case. We agree, and we therefore pretermitt appellants' second argument that the worker's compensation judge manifestly erred in finding claimant to be totally and permanently disabled.

At the time of the final judgment in this matter rendered on February 7, 2001, La. R.S. 23:1310.5 provided in part as follows:

- B. The decision of the workers' compensation judge shall be final unless an appeal is made to the appropriate circuit court of appeal. An appeal which suspends the effect or execution of an appealable judgment or order must be filed within thirty days. An appeal which does not suspend the effect or execution of an appealable judgment or order must be filed within sixty days. The delay for filing an appeal commences to run on the day after the judgment was signed or on the day after the district office has mailed the notice of judgment as required by Louisiana Code of Civil Procedure Article 1913, whichever is later. **Motions for new trial shall not be entertained in disputes filed under this Chapter.**
(Emphasis added.)

Louisiana courts have upheld the provisions of this statute, finding that workers' compensation hearing officers do not have authority to substantively amend their original decision or to entertain a motion for new trial. See, Hogan v. G&J Pettit, 29030 (La. App. 2 Cir. 1/22/97), 687 So.2d 680, 681. Thus, while the

above-cited statute was effective, the workers' compensation judge had no authority, statutory or otherwise, to entertain a motion for new trial.

The original statute provided that motions for new trial shall be entertained. In 1995, the statute was amended by La. Acts, No. 348, effective June 16, 1995 to provide that motions for new trial shall not be entertained. La. R.S. 23:1310.5 was subsequently amended for the second time by La. Acts 2001, No. 361 to delete the word "not" in the final line of subsection B. The effective date of this amendment was August 15, 2001. This amendment changed the law to its pre-1995 status to allow motions for new trial in disputes over workers' compensation.

The claimant contends that the 2001 amendment to this statute has a retroactive application, and therefore is to be applied to the motion for new trial filed by claimant on February 9, 2001. The claimant contends that as he had a pending motion for new trial at the time of the amendment of the statute, the workers' compensation judge was within her statutory authority to entertain the motion. We do not agree.

The question presented here is whether claimant's motion for new trial, which was filed prior to the statutory amendments in 2001, should be governed by the amendment effective on August 15, 2001. The specific issue is whether the amendment applies retroactively.

Unless there is a legislative expression to the contrary, substantive laws apply prospectively only, and procedural and interpretive laws apply both prospectively and retroactively. La. Civ. Code art. 6. Substantive laws are those which establish new rules, rights, and duties or change existing ones. Interpretive laws, on the other hand, do not create new rules, but merely establish the meaning that the original statute had from the time of its enactment. St. Paul Fire & Marine Ins. Co. v. Smith, 609 So.2d 809, 817 (La. 1992). Thus, the interpretive statute may be given retroactive effect because it does not change, but merely clarifies,

pre-existing law. Id., Gulf Oil Corp. v. State Mineral Board, 317 So.2d 576, 591 (La. 1974).

In this case, we find that the 2001 amendment to the statute is a substantive law as it changed the existing right of the parties to bring a motion for new trial from a final ruling of the workers' compensation judge. We thus find no merit in the claimant's argument that the amendment has retroactive application.

In the interpretation of the 1995 amendment to this statute, Louisiana courts have held that the amendment applies to cases where the judgment was rendered and signed subsequent to the effective date of the amendment. Young v. Little Teche Farms, 96-217 (La. App. 3 Cir. 3/27/96), 671 So.2d 1109, 1110; Stelly v. Sunbelt Lodge, 96-224 (La. App. 3 Cir. 3/27/96), 671 So.2d 1108, 1109. In those cases, the courts relied on the date the judgment was rendered and signed to determine the applicability of the amendment.

The judgment in the present case was rendered and signed on February 7, 2001, over six months prior to the effective date of the 2001 amendment to the statute which became effective on August 15, 2001. We conclude that the 2001 amendment is therefore inapplicable to the February 7, 2001 ruling, and the workers' compensation judge had no authority to grant a motion for new trial from this ruling.

Decree

Accordingly, the ruling of the workers' compensation judge granting claimant's motion for new trial and the subsequent judgment rendered on December 20, 2001 are hereby vacated. The case is remanded to the workers' compensation judge for further proceedings consistent with this opinion.

The workers' compensation judge's first decision rendered on February 7, 2001 will be reinstated as a final, but appealable decision. La. C.C.P. arts.2082, 2083, and 2133. Notwithstanding our reinstatement of the first decision, we do not

transform that decision into an unappealable definitive decision, however, because the claimant sought, however improperly, to correct that decision below. The first decision of the workers' compensation judge is reinstated only as a final judgment, and on remand the workers' compensation judge is ordered to treat claimant's motion for new trial as a motion for appeal and to grant that appeal. See La. C.C.P. art. 2164 and McClelland v. State National Life Insurance, 94-2123 (La.11/18/94), 646 So.2d 309. See also, Hogan v. Pettit, 29,030 (La. App. 2 Cir. 1/22/97), 687 So.2d 680, 681.

Based on our decision herein reinstating the workers' compensation judge's first decision, we do not reach appellants' second argument on appeal regarding the determination made by the judge in the second decision. Additionally, we reject the claimant's answer to this appeal seeking penalties and attorney's fees. Each party shall bear its own costs of this appeal.

VACATED AND REMANDED



EDWARD A. DUFRESNE, JR.
CHIEF JUDGE

SOL GOTHARD
JAMES L. CANNELLA
THOMAS F. DALEY
MARION F. EDWARDS
SUSAN M. CHEHARDY
CLARENCE E. MCMANUS
WALTER J. ROTHSCHILD
JUDGES

Court of Appeal

FIFTH CIRCUIT

STATE OF LOUISIANA

101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054

PETER J. FITZGERALD, JR.
CLERK OF COURT

GENEVIEVE L. VERRETTE
CHIEF DEPUTY CLERK

GLYN RAE WAGUESPACK
FIRST DEPUTY CLERK

JERROLD B. PETERSON
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED OR DELIVERED THIS DAY OCTOBER 29, 2002 TO ALL COUNSEL OF RECORD AND TO ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Peter J. Fitzgerald, Jr.
PETER J. FITZGERALD, JR.
COURT OF COURT
Glyn Rae Waguespack
Jerrold B. Peterson

7002 0510 0004 3525 2707

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Mr. Joel P. Loeffelholz
Attorney at Law
234 Loyola Ave., Suite 900
New Orleans, LA 70112

Return F (Endorsement)
Restricted D (Endorsement)

Total Postage & Fees \$

Sent To
Street, Apt. No., or PO Box No. 02-CA-489
City, State, ZIP+4

PS Form 3800, January 2001 See Reverse for Instructions

7002 0510 0004 3525 2714

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Mr. Charles C. Holbrook
Attorney at Law
P.O. Box 98001
Baton Rouge, LA 70898-8001

Total Postage & Fees \$

Sent To
Street, Apt. No., or PO Box No. 02-CA-489
City, State, ZIP+4

PS Form 3800, January 2001 See Reverse for Instructions