

**MICHAELS STORE, INC.**

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**NO. 2001-CA-0655**

**VERSUS**

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**COURT OF APPEAL**

**TARA HART**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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APPEAL FROM  
THE OFFICE OF WORKERS' COMPENSATION  
NO. 2000-08065, DISTRICT "EIGHT"  
Honorable Clara E. Toombs, Workers' Compensation Judge

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**JOAN BERNARD ARMSTRONG**

**JUDGE**

\*\*\*\*\*

(Court composed of Judge Joan Bernard Armstrong, Judge Miriam G. Waltzer, and Judge David S. Gorbaty)

**GREGORY S. UNGER**  
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COUNSEL FOR PLAINTIFF/APPELLANT

**AFFIRMED.**

This is a workers' compensation case. The employer, Michaels Stores, Inc., initiated this action by filing with the office of Workers' Compensation a form LDOL-WC-1008 "Disputed Claim For Compensation." The employer alleged that it was paying compensation benefits but that, because the employee, Tara Hart, had refused to appear for an independent medical examination, she should be compelled to appear for a medical examination and her compensation benefits should be suspended and/or reduced. The Workers Compensation Judge ("WCJ") dismissed the employer's action as premature. The employer appeals. Because the issue presented by the employer has been decided adversely to the employer's position by another panel of this court in another case, we will affirm.

The WCJ dismissed the employer's action because the employer's form LDOL-WC-1008 did not contain any of the four allegations of La. R.S. 23:1314 (1)–(4). We have examined the employer's LDOL-WC-1008 form and verified that it does not contain any of the statutorily-required allegations and, in fact, the employer does not contend otherwise.

The employer argues that an employer who is paying compensation,

but wishes to compel a medical examination and/or suspend benefits pursuant to La. R.S. 23:1124, necessarily can never make the allegations required by La. R.S. 23:1314 (1) – (4) which allegations must involve an employer’s failure to meet its workers compensation obligations. Thus, the employer argues, the requirements of La. R.S. 23:1314 (1) – (4) should not be applied to employers’ LDOL- WC-1008 forms. We agree that La. R.S. 23:1314 is directed towards allegations of employees rather than employers. See H. Alston Johnston, III, 14 Louisiana Civil Law Treatise: Workers’ Compensation Law and Practice §383 (3<sup>rd</sup> ed. 1994). However, this court already has decided that La. R.S. 23:1314 applies to LDOL-WC-1008 forms filed by employers. Labor Ready Inc. v. Mark Lorick, No. 2000-C-1559 (La. App. 4<sup>th</sup> Cir. 9/6/2000) (copy attached hereto as an appendix), writ denied, 2000-2801 (La. 12/8/00), 776 So.2d 461.

Consequently, the WCJ was correct in dismissing the employer’s LDOL-WC-1008 form as premature. The employer makes a good point that employers should be able to file a LDOL-WC-1008 form in cases where an employee who is receiving benefits has allegedly failed to appear for a medical examination. However, that is something that must be dealt with by

the legislature amending the Workers' Compensation statute or the Supreme Court holding that La. R.S. 23:1314 does not apply to LDOL-WC-1008 forms filed by employers.

For the foregoing reasons, the judgment of the WCJ is affirmed.

**AFFIRMED.**