

**NOT DESIGNATED FOR PUBLICATION**

**QUEENA HILL** \* **NO. 2005-CA-0028**  
**VERSUS** \* **COURT OF APPEAL**  
**WALGREEN LOUISIANA CO.,** \* **FOURTH CIRCUIT**  
**INC. AND DAWN WATSON AS** \* **STATE OF LOUISIANA**  
**THE ADMINISTRATOR FOR** \*  
**THE LOUISIANA** \*  
**DEPARTMENT OF LABOR** \*  
\*  
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**APPEAL FROM**  
**ST. BERNARD 34TH JUDICIAL DISTRICT COURT**  
**NO. 97-643, DIVISION "C"**  
**Honorable Wayne Cresap, Judge**  
\* \* \* \* \*  
**Judge Patricia Rivet Murray**  
\* \* \* \* \*

(Court composed of Judge Patricia Rivet Murray, Judge James F. McKay, III, Judge Michael E. Kirby)

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**AFFIRMED IN PART; REVERSED IN PART,  
AND REMANDED**

This is an unemployment compensation case. The Administrator of the Office of Regulatory Services (“the Administrator”) appeals the trial court’s award of attorney’s fees to the claimant, Queena Hill.

**FACTUAL AND PROCEDURAL BACKGROUND**

On July 22, 2002, Ms. Hill was discharged from her employment with Walgreen Louisiana Company (“Walgreen”) for negligence and violation of policy due to an incident that occurred on July 1, 2002, involving a customer’s debit card. Thereafter, she applied to the Louisiana Department of Labor (“the Department”) for unemployment compensation benefits. The Department initially ruled in Ms. Hill’s favor. Walgreen appealed. On September 19, 2002, a hearing was conducted before Administrative Law Judge (“ALJ”). The ALJ reversed the Department’s initial determination and ordered that a disqualification be assessed against Ms. Hill as of July 22, 2002. Ms. Hill appealed to the Board of Review. On November 8, 2002, the Board dismissed the appeal because it was not timely filed within the statutory limit set forth in La. R.S. 23:1630. Ms. Hill then requested judicial review from the trial court pursuant to La. R.S. 23:1634.

On October 13, 2003, the trial court remanded the matter to the Board for consideration on the merits. On April 20, 2004, the Board on remand rendered a decision setting aside its original decision that dismissed the appeal and ordering that Ms. Hill be qualified to receive unemployment compensation benefits. Ms. Hill filed a motion to set hearing in the trial court, requesting that the trial court review and adopt the Board's decision. On October 29, 2004, the trial court heard the matter. On November 10, 2004, the trial court adopted the Board's decision qualifying Ms. Hill for unemployment compensation benefits. The trial court further ordered Walgreen to pay Ms. Hill \$250.00 in attorney's fees pursuant to La. R.S. 23:1692. The Administrator filed this appeal from the trial court's judgment.

### **DISCUSSION**

The sole issue raised on appeal is whether the trial court erred in awarding attorney's fees to Ms. Hill. The pertinent statutory provision is La. R.S. 23:1692, which in pertinent part provides:

*Any individual claiming benefits in any proceeding before the administrator or the board of review or their representatives or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for their services more than an amount approved by the administrator.*

La. R.S. 23:1692 (emphasis supplied).

The Administrator points out that pursuant to La. R.S. 23:1692, he exclusively is vested with the authority to fix the amount of attorney's fees a claimant's attorney is entitled to charge a claimant in an unemployment compensation matter. The Administrator additionally asserts that this statute does not give anyone, including the Administrator, authority to award attorney's fees; rather, it merely gives the Administrator the authority to adjust attorney's fees. Lastly, the Administrator contends that given the well-settled principle that attorney's fees are not recoverable unless provided for by statute or contract coupled with the lack of any provision for awarding attorney's fees in unemployment compensation cases, the trial court's award of attorney's fees against Walgreen was error.

Ms. Hill counters that La. R.S. 23:1692 does not preclude a trial court from awarding attorney's fees. She further counters that this statute only states that attorney's fees cannot be "more than an amount approved by the administrator."

The narrow issue presented in this case is the meaning of the provision in La. R.S. 23:1692 that "no such counsel or agents shall either charge or receive for their services more than an amount approved by the administrator." La. R.S. 23:1692. The scant jurisprudence construing this statutory provision simply holds that "[t]he administrator alone is vested by

law with authority to fix attorney's fees when the claimant is declared by the court to be entitled to benefits." *Dubois v. Louisiana Department of Labor, Office of Employment Sec.*, 427 So. 2d 645, 646 (La. App. 5<sup>th</sup> Cir. 1983). *See also Smith v. Gerace*, 339 So.2d 410, 413 (La. App. 1<sup>st</sup> Cir.1976)(noting the administrator must in the first instance approve attorney's fees and citing *Broussard v. Administrator, Division of Employment Security*, 121 So.2d 268, 271 (La. App. 1<sup>st</sup> Cir. 1960)). The jurisprudence, however, has not addressed the purpose of this provision.

Citing La. R.S. 23:1692 as well as a laundry listing of similar statutory provisions from other states, a commentator explains that these provisions are intended to impose limitations on attorney's fees that may be charged for representing claimants in unemployment compensation cases. Maurice Emsellem and Monica Halas, *Representation of Claimants at Unemployment Compensation Proceedings: Identifying Models and Proposed Solutions*, 29 U. Mich. J. L. Reform 289, 317 n. 107 (1996). We note that the Legislature has adopted similar type provisions regulating and limiting attorney's fees in workers' compensation cases. *See* La. R.S. 23:1141 (requiring workers' compensation judge review and approve claims for attorney's fees); La. R.S. 23:1143 (limiting attorney's fees to amount determined by workers' compensation judge). By analogy, we construe La.

R.S. 23:1692 as serving the sole purpose of vesting the Administrator with the exclusive authority to regulate and limit the attorney's fees in unemployment cases.

Given the narrow purpose for this statute and the absence of any other statutory provision authorizing an award of attorney's fees in this case, we find the trial court erred in awarding attorney's fees against Walgreen.

**DECREE**

For the foregoing reasons, the judgment of the trial court awarding attorney's fees is reversed. In all other respects, the judgment of the trial court is affirmed. This matter is remanded to the Board for further proceedings consistent with this opinion.

**AFFIRMED IN PART, REVERSED IN PART, AND  
REMANDED**