

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 CA 1532

ANGELA WILSON

VERSUS

ST. HELENA SCHOOL BOARD AND LUBA CASUALTY  
INSURANCE COMPANY

*DATE OF JUDGMENT:* JUN 03 2019

ON APPEAL FROM THE WORKERS COMPENSATION ADMINISTRATION,  
DISTRICT 6, NUMBER 1801292  
STATE OF LOUISIANA

HONORABLE ROBERT W. VARNADO, JR., OWC

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BEFORE: WELCH, CHUTZ, AND LANIER, JJ.

**Disposition: AFFIRMED.**

*Welch Jr. concurs in part and dissents in part with reasons assigned.*

**CHUTZ, J.**

Claimant-appellant, Angela Wilson, appeals the judgment of the Office of Workers' Compensation (OWC), sustaining a dilatory exception raising the objection of prematurity and dismissing, without prejudice, her claims for indemnity and medical benefits, as well as penalties, attorney fees, and judicial interest, against St. Helena School Board (SHSB) and its insurer LUBA Insurance Company (LUBA). We affirm.

**BACKGROUND**

On February 23, 2018, Wilson filed a disputed claim for compensation (Form 1008 disputed claim), naming SHSB and LUBA as defendants. She indicated that her occupation was “[t]eacher,” SHSB was her employer, and the part of her body injured was “low back.” Identifying the date of injury as April 28, 2017, Wilson described the accident and injury as follows: “On a field trip to Celebration Station and the roller coaster came loose.” Wilson noted that she reported the accident on April 28, 2017 to “Donna Jackson,” whose position with SHSB was “modified principal.” Wilson averred as bona fide disputes: no wages had been paid; no medical treatment had been authorized; and her entitlement to penalties, attorney fees, and judicial interest. Her Form 1008 disputed claim contained no other allegations. She left blank the portions of the form that allowed her to indicate her average weekly wage, the compensation rate, and a list of “the names, addresses, [and] telephone numbers of any witnesses.” The section entitled “MEDICAL BENEFITS,” which permitted a claimant to “[s]tate the names, addresses and telephone numbers of hospitals, clinics and doctors who have provided medical attention” was likewise left empty.

SHSB and LUBA responded to Wilson’s Form 1008 disputed claim on April 4, 2018, by filing a dilatory exception raising the objection of prematurity along with their answer to Wilson’s claims. In their allegations supporting the

prematurity exception, SHSB and LUBA recognized that Wilson had filed a Form 1008 formal claim for injuries arising out of an alleged incident while she was employed with SHSB. Noting that Wilson had not completed or signed a written incident report, SHSB and LUBA averred that she had not requested approval for medical evaluation or treatment. They also pleaded that since the alleged incident, they were unaware of Wilson having submitted or requested the initiation of weekly indemnity benefits supported by a medical slip of disability. As such, defendants asserted that her suit was premature. SHSB and LUBA also answered the suit, reiterating the same core allegations set out in the exception and adding multiple defenses including that she is not entitled to wage benefits for any period that she worked and was paid her full salary.

After a hearing, OWC sustained the exception of prematurity and dismissed Wilson's disputed claim for workers' compensation benefits without prejudice. This appeal followed.<sup>1</sup>

## DISCUSSION

The dilatory exception of prematurity is provided in La. C.C.P. art. 926. The exception of prematurity questions whether the cause of action has matured to the point where it is ripe for judicial determination. An action will be deemed premature when it is brought before the right to enforce it has accrued. La. C.C.P. art. 423. The exception raising the objection of prematurity is generally utilized in cases where the law has provided a procedure for a claimant to seek administrative relief before resorting to judicial action. The exceptor bears the burden of proving prematurity. *S. Framers of Louisiana, LLC v. Doctors Hosp. of Slidell*, 2015-1878 (La. App. 1st Cir. 8/31/16), 202 So.3d 1135, 1137.

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<sup>1</sup> A judgment sustaining a dilatory exception raising the objection of prematurity and dismissing the claim is a final, appealable judgment. *Willis v. Frozen Water, Inc.*, 2015-0900 (La. App. 1st Cir. 12/23/15), 2015 WL 9466625, \*2 n.1, (unpublished opinion), writ denied, 2016-0146 (La. 3/14/16), 189 So.3d 1069 (citing *Pinegar v. Harris*, 2008-1112 (La. App. 1st Cir. 6/12/09), 20 So.3d 1081, 1087-88; La. C.C.P. arts. 933A, 1915A(1), and 2083).

On appeal, pointing to La. R.S. 23:1314, Wilson maintains that OWC erred in sustaining the prematurity exception without first determining whether any benefits were owed. She buttresses her assertion with the language of La. R.S. 23:1314 to suggest that a claimant need only allege that indemnity benefits have not been paid, and with a denial by the employer, the matter is not premature.

Initially, we examine the salient provisions of La. R.S. 23:1314, which state:

A. The presentation and filing of the petition under R.S. 23:1310.3 shall be premature unless it is alleged in the petition that:

(1) The employee ... is not being or has not been paid, and the employer has refused to pay, the maximum percentage of wages to which the petitioner is entitled under this Chapter; or

(2) The employee has not been furnished the proper medical attention, or the employer or insurer has not paid for medical attention furnished; or ...

(4) The employer or insurer has not paid penalties or attorney's fees to which the employee or his dependent is entitled.

B. The petition shall be dismissed when the allegations in Subsection (A) of this Section are denied by the employer and are shown at a time fixed by the workers' compensation judge to be without reasonable cause or foundation in fact.

C. The workers' compensation judge shall determine whether the petition is premature and must be dismissed before proceeding with the hearing of the other issues involved with the claim.

D. Disputes over medical treatment pursuant to the medical treatment schedule shall be premature unless a decision of the medical director has been obtained in accordance with R.S. 23:1203.1(J).

Although Wilson suggests that SHSB and LUBA “[do] not allege that [they have] paid benefits and they deny each and every aspect of the claim,” our review of defendants' pleadings does not support that conclusion. In both their exception of prematurity and answer, SHSB and LUBA recognize that Wilson has submitted a Form 1008 disputed claim with OWC, but they neither admit nor deny the propriety of the allegations. On appeal, relative to Wilson's claim for indemnity benefits, SHSB and LUBA suggest they had insufficient information to either

admit or deny the facts in Wilson's Form 1008 disputed claim because she "never initiated a claim of any kind thus allowing for an occasion for [defendants] to either admit or deny compensability," before she filed the lawsuit. We agree with SHSB and LUBA that their pleadings neither admit nor deny the propriety of Wilson's allegations in the Form 1008 relative to her claim for indemnity benefits.

An answer to a lawsuit shall admit or deny the allegations of fact contained in each paragraph of the petition, and all such allegations, other than those as to the amount of damages, are admitted if not denied in the answer. La. C.C.P. art. 1004. Thus, having failed to deny the allegations, SHSB and LUBA have admitted the salient facts as set forth by Wilson in her Form 1008 disputed claim.

The first installment of compensation payable for temporary total disability or permanent total disability shall become due on the fourteenth day after the employer or insurer has knowledge of the injury, on which date all such compensation then due shall be paid. La. R.S. 23:1201B. Installment benefits payable shall become due on the fourteenth day after the employer or insurer has knowledge of the compensable supplemental earnings benefits (SEB) on which date all such compensation then due shall be paid. La. R.S. 23:1201C. See La. R.S. 23:1221(3). And installment benefits shall become due on the thirtieth day after the employer or insurer receives a medical report giving notice of the permanent partial disability on which date all such compensation then due shall be paid. La. R.S. 23:1201D. See La. R.S. 23:1221(4). Thus, under La. R.S. 23:1201, it is the employer's or insurer's knowledge of the injury or compensable SEB or its receipt of a medical report advising of a permanent partial disability that commences the duty to pay indemnity benefits.

Wilson alleged that she reported an accident to "modified principal" Donna Jackson. But it is undisputed that SHSB and LUBA had no knowledge of the injury or the compensable SEB, or that they were in receipt of a medical report giving

them notice of a permanent partial disability so as to initiate their duty to pay any installments of compensation for temporary or permanent total disability, SEB, or permanent partial disability to which Wilson may be entitled. Moreover, our review of the record establishes that Wilson included no facts in her Form 1008 disputed claim alleging SHSB's and LUBA's knowledge of her injury or her entitlement to SEB or receipt of a medical report indicating she had sustained a permanent partial disability. Even in her Form 1008 disputed claim, aside from identifying "low back" as the "[p]art(s) of [b]ody [i]njured," Wilson provided no details about her injury despite such information having been requested on the form. Accordingly, because she failed to make allegations consistent with Paragraph A(1) of La. R.S. 23:1314, OWC correctly sustained the exception of prematurity and dismissed her claim for indemnity benefits.

Medical benefits shall be paid within sixty days after the employer or insurer receives written notice thereof. La. R.S. 23:1201E(1). Wilson's Form 1008 disputed claim alleged that "[n]o medical treatment has been authorized" by SHSB or LUBA. And under La. C.C.P. art. 1004, defendants have admitted that they have not paid medical benefits. But it is undisputed that she did not submit a written request for medical benefits to SHSB or LUBA or otherwise notify either defendant of her demand for medical benefits so as to commence their obligation to pay. Moreover, our review of the record establishes that Wilson failed to make any allegations of fact in her Form 1008 disputed claim that a written notice of entitlement to medical benefits was provided to either SHSB or LUBA. Even in her Form 1008 disputed claim, she did not provide any information relative to "MEDICAL DATA" although the form elicited that information. Accordingly, because she failed to make allegations consistent with Paragraph A(2) of La. R.S. 23:1314, OWC correctly sustained the exception of prematurity and dismissed her claim for medical benefits without prejudice.

Because Wilson's Form 1008 disputed claim fails to allege sufficient facts consistent with either Paragraph A(1) or A(2) of La. R.S. 23:1314, she has failed to allege facts sufficient to support her entitlement to penalties, attorney fees, and judicial interest as required by Paragraph A(4) of La. R.S. 23:1314. Accordingly, OWC correctly sustained the exception of prematurity and dismissed her claim for penalties, attorney fees, or judicial interest.

**DECREE**

For these reasons, we affirm OWC's judgment, sustaining the dilatory exception of prematurity and dismissing the claims of Angela Wilson without prejudice.

**AFFIRMED.**

ANGELA WILSON

NUMBER: 2018 CA 1532

VERSUS

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COURT OF APPEAL

STATE OF LOUISIANA

*JEW* WELCH, J., concurs in part and dissents in part.

I respectfully concur in part and dissent in part with the majority opinion in this matter. While I agree with the majority's conclusion that the OWC correctly sustained the dilatory exception raising the objection of prematurity because Ms. Wilson, in her Form 1008 disputed claim, failed to make the factual allegations sufficient to comply with La. R.S. 23:1314(A)(1) or (2), and thus, failed to allege sufficient facts to support a claim for entitlement to penalties, attorney fees, and judicial interest pursuant to La. R.S. 23:1314(A)(4), I disagree with the majority's determination that Ms. Wilson's claims were properly dismissed without prejudice. I believe that Ms. Wilson should have been given the opportunity to amend her Form 1008 disputed claim to make the necessary factual allegations in accordance with La. R.S. 23:1314(A), and to thus, remove the grounds for the objection in accordance with La. C.C.P. art. 933(B).<sup>1</sup>

Thus, I respectfully concur in part and dissent in part.

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<sup>1</sup> C.f. Kidder v. Power Rig Drilling Co., Inc. 460 So.2d 769 (La. App. 3<sup>rd</sup> Cir. 1984) (generally where an objection of prematurity has been sustained, the suit should be dismissed without prejudice because the deficiency may not be cured by amendment of the pleadings since the action has yet to mature) However, in this case, the objection of prematurity was not sustained because Ms. Wilson's claims were not yet mature, but rather, because she failed to make the factual allegations necessary to comply with La. R.S. 23:1314(A) and thus, that defect can be cured by amendment of her pleading.