

SANDRA C. NORMAN

*

NO. 2004-CA-0797

VERSUS

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COURT OF APPEAL

**BELLSOUTH
TELECOMMUNICATIONS**

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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. 2001-4986, DISTRICT "EIGHT"
Honorable Gwendolyn F. Thompson, Workers' Compensation Judge

Judge Terri F. Love

(Court composed of Judge Terri F. Love, Judge Edwin A. Lombard, Judge
Roland L. Belsome)

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This is an appeal from the denial of workers' compensation benefits based on prescription. For the reasons that follow, we reverse and remand.

STATEMENT OF FACTS AND PROCEDURAL HISTORY:

Plaintiff/appellant, Sandra Norman (Norman), was a twenty-nine year employee of defendant/appellee, BellSouth Telecommunications (BellSouth), when she sustained a work-related injury. While at work on January 14, 2000, Norman was trapped in an elevator that became stuck between floors. She maintained that she injured her lower back and knees when she jumped down from the elevator, approximately three or four feet. Norman immediately reported the incident to her supervisor but she did not submit a claim for workers' compensation (Claim Form 1008) until July 9, 2001.

Norman sought medical treatment from her primary physician, Dr. William Laporte shortly after the accident. Dr. Laporte released Norman to return to work on February 12, 2000 and referred her to a neurologist, Dr. Leon Weisberg. Norman visited with Dr. Weisberg on February 14, 2000.

Dr. Weisberg noted tenderness in Norman's back and recommended that she see an orthopedic specialist. Norman began treating with Dr. Warren Bourgeois in March of 2000. Dr. Bourgeois recommended that Norman have surgery on both of her knees and her back. Arthroscopic surgery on her right knee was performed in May of 2000. The other surgeries have not been performed. Norman last saw Dr. Bourgeois in December of 2001. As of her deposition on April 29, 2002, Norman had not treated with any other physicians for her work-related injuries.

In response to the filing of Norman's worker's compensation claim, BellSouth filed a Motion for Summary Judgment on the basis that Norman's claim had prescribed. BellSouth argued that pursuant to La. R.S. 23:1209 (A), all claims for workers' compensation "shall be forever barred... unless within one year after the accident, a formal claim has been filed....:" The matter was brought before the Office of Workers' Compensation (OWC) on September 17, 2003, and was submitted on exhibits. Judgment was rendered on December 19, 2003, granting the Motion for Summary Judgment upon finding that Norman's workers' compensation claim had prescribed.

Norman submits that she delayed filing Claim Form 1008 due to the mistaken belief that her injury was being handled as a worker's compensation claim through BellSouth's workers' compensation carrier,

Kemper Insurance Company. However, Norman's claim was handled as short-term disability by Kemper National Services, Inc., the administrator of BellSouth's short-term disability insurance plan. Norman was paid short-term disability benefits off and on during her treatment but was never paid workers' compensation benefits. As she missed very little work due to her injury, she continued to receive her salary until her retirement in July of 2001. It also appears from the record that Norman's medical expenses were paid by her healthcare provider, United Healthcare.

In granting the Motion For Summary Judgment in favor of BellSouth, the OWC judge recognized that Norman had reason to be confused, particularly because she received correspondence from both Kemper Insurance Company regarding her workers' compensation claim and from Kemper National Services, Inc., regarding her short-term disability claim. In spite of the confusion, the OWC judge determined that Norman's case had prescribed. Specifically, the OWC judge stated:

Based on the evidence presented, it is easy to conclude that the claimant might have been confused and misled about the handling of her claim for short-term disability and workers' compensation.

However, the payment of short-term disability alone cannot interrupt prescription for indemnity.

Also, an omission or failure of BellSouth's workers' compensation division to fully investigate a worker's compensation claim does not interrupt prescription.

ARGUMENT:

On appeal, Norman raises the following assignments of error: 1) the trial court erred in granting BellSouth's Motion for Summary Judgment; 2) the trial court erred in finding that her case had prescribed; and 3) the trial court erred in dismissing her case with prejudice.

Norman argues that prescription on her workers' compensation claim was interrupted because she was led to believe that her claim was being handled under workers' compensation. Norman submits she reported the injury to BellSouth, she was assigned a workers' compensation case manager, and she was given a workers' compensation claim number from Kemper Insurance Company. Furthermore, Norman maintains that throughout her treatment, she forwarded all medical progress notes and medical reports to her workers' compensation case manager. Accordingly, Norman submits that BellSouth and/or their insurer lulled her into a false sense of security causing her not to file a formal workers' compensation claim until she was denied medical treatment in April of 2001.

DISCUSSION:

It is well settled that an employer and/or insurer who lulls the injured employee into a false sense of security, thus inducing forbearance in the prosecution of a compensation claim is estopped to plead prescription to the

injured employee's untimely suit. Landry v. Ferguson, 279 So.2d 185 (La.1973); Dupaquier v. City of New Orleans, 260 La. 728, 257 So.2d 385 (1972). In order to prove that tardiness in filing a claim was due to being lulled into a false sense of security, a workers' compensation claimant must show that words, actions, or inactions on the part of the employer caused forbearance. Lynn v. Berg Mechanical, Inc., 582 So.2d 902 (La. App. 2 Cir.1991); Keller v. Marathon Oil Co., 613 So.2d 795 (La. App. 5 Cir.1993).

In order for prescription to be interrupted in this manner, it is not necessary to show that the employer intentionally misled the claimant as to the nature of the benefits being paid or the time period available for asserting a claim. Millican v. General Motors Corp., 34,207 (La. App. 2 Cir. 11/1/00), 771 So.2d 234, 235; Price v. Gas and Well Operating Service, 267 So.2d 598 (La. App. 3 Cir.1972). However, it must be established that words, action, or inaction induced the claimant to withhold suit until the time for prescription had passed. Millican at 236; Brown v. Caddo Career Center, 28,111 (La. App. 2 Cir. 2/28/96), 669 So.2d 712, 714.

In Millican, interruption was found to have occurred because Mr. Millican believed he had filed a formal claim (though he had not) and that belief was fostered and encouraged by his employer's representative telling

him to "appeal" her decision denying him benefits. Thus, in Millican, affirmative statements were made which lulled the plaintiff into a false sense of security until after his claim had prescribed.

The court in Dupaquier, found that the plaintiff, after suffering a heart attack on the job, was led to believe that full sick leave benefits which he was receiving included workman's compensation and that a suit for workman's compensation would be premature. In overruling the City's plea of prescription, the Court stated: "[t]he purpose of the one year prescriptive period is to protect employers from the burdensome litigation of stale claims. When, however, the employer lulls the employee into a false sense of security, causing him to withhold suit until after the period has expired, the employer cannot invoke the time bar to defeat compensation."

In Wesley v. Claiborne Elec. Co-op., Inc., 446 So.2d 857, 860 (La. App. 2 Cir.1984), the court held that where the employee reasonably thought the sick pay benefits he was receiving during his disability were actually workers' compensation benefits, the employee was lulled into a false sense of security sufficient to suspend the running of prescription.

In keeping with the general intent of the Workers' Compensation Act, the jurisprudence has liberally construed the time limits for institution of a claim for benefits. Scott v. Walmart Stores, Inc. 03-0104 (La. App. 4 Cir.

7/2/03), 851 So. 2d 1210; Millican; See generally, 14 H. Alston Johnson, Louisiana Civil Law Treatise: Workers' Compensation Law and Practice § 384 (3d ed.1994). Thus, prescription statutes, including La. R.S. 23:1209 (A), are construed in favor of maintaining rather than barring actions. See, e.g., Taylor v. Liberty Mut. Ins. Co., 579 So.2d 443, 446 (La.1991).

In the present case, we find that Norman's argument is supported by the evidence presented to the OWC. Specifically, Norman received correspondence from Kemper Insurance Companies, dated January 13, 2000, explaining that the company was handling her workers' compensation claim and assigning her a claim number (447 128745). Norman thereafter received correspondence from Kemper National Services, informing her that the company was administering her short-term disability claim for BellSouth. Norman further introduced a letter from Kemper Insurance Companies to Dr. Bourgeois on January 26, 2001, requesting information from him with regard to Norman's workers' compensation claim (claim # 447 128745).

The OWC judge recognized that Norman was confused and misled by the consolidated administration of BellSouth's disability and workers' compensation plans through Kemper Insurance Companies and Kemper National Services, yet failed to find that prescription was interrupted. Although mindful that a hearing officer's findings are given great deference,

we find this ruling to be in error. To the contrary, we conclude that Norman was reasonably misled and lulled into a false sense of security sufficient to suspend the running of prescription

The evidence presented by Norman indicates that she received an affirmative assurance from Kemper Insurance Companies that a workers' compensation claim was initiated on her behalf. Moreover, at no time was Norman ever informed that workers' compensation had been denied or that her claim was being handled as a short-term disability claim instead of workers' compensation. Under the facts presented in this case, and considering the liberal rules of construction afforded the workmen's compensation statute, we find that prescription was interrupted.

CONCLUSION:

For the foregoing reasons, we reverse the judgment of the trial court and remand for further proceedings in accordance with this ruling.

REVERSED AND

REMANDED