

**WILDA HAND**

\*

**NO. 2004-CA-0845**

**VERSUS**

\*

**COURT OF APPEAL**

**THE CITY OF NEW ORLEANS  
(HEALTH DEPT.)**

\*

**FOURTH CIRCUIT**

\*

**STATE OF LOUISIANA**

\*

\*

\*\*\*\*\*

**MURRAY, JUDGE, DISSENTING WITH REASONS**

Under the reasoning the Louisiana Supreme Court enunciated in *Comeaux v. City of Crowley*, 2001-0032 (La. 7/3/01), 793 So. 2d 1215, the workers' compensation (WC) judge's finding, which the majority affirms, that Ms. Hand is not permanently totally disabled (PTD) is erroneous.

In *Comeaux*, the Court held that the analysis of PTD status should not be confined to the physical ingredient, *i.e.*, "disability in the medical or physical sense." *Comeaux*, 2001-0032 at p. 7, 793 So. 2d at 1219. Rather, other factors, especially a failed attempt at rehabilitation, should be considered. In this case, the WC judge expressly noted that it is undisputed "Defendant provided vocational rehabilitation which failed." Nonetheless, the WC judge refused to consider this factor in determining if Ms. Hand was PTD because she found *Comeaux* factually distinguishable. The

distinguishing factor, according to the WC judge, is that the employee in *Comeaux* had limited educational abilities; whereas, Ms. Hand “is highly intelligent and already well educated.” This distinction, in my opinion, ignores the reality that Ms. Hand’s education is in nursing, and it is undisputed that her work-related injury precludes her from ever returning to work as a nurse.

Given the WC’s judge’s factual finding that Ms. Hand has “permanent and totally disabling physical and chronic pain coupled with objective limitations caused by the accident” and considering the failed attempt at rehabilitation, I would find Ms. Hand satisfied the clear and convincing standard required for PTD. Accordingly, I would reverse the WC judge’s finding that Ms. Hand is not PTD.

