

RICHARD J. BORJA

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NO. 2015-CA-0435

VERSUS

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COURT OF APPEAL

FARA

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FOURTH CIRCUIT

ST. BERNARD PARISH

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STATE OF LOUISIANA

GOVERNMENT

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MCKAY, C.J., CONCURS IN PART AND DISSENTS IN PART

I respectfully dissent from the majority opinion in so far as it affirms the trial court's finding that Mr. Borja's claims under the heart and lung statute are prescribed. Mr. Borja listed occupational disease as an injury on the disputed claim form filed in 2004. Subsequently, Mr. Borja began receiving the maximum benefits allowed. As evidenced by the numerous letters sent by his attorney, Mr. Borja continuously claimed problems with his heart and lungs. Given the fact that he reported his occupational disease, he consistently informed defendant of his ongoing problems with his heart and lungs, his personal file contained records of these problems, and he was receiving maximum benefits, Mr. Borja had no reason to believe that his claim was disputed. According to La. R.S. 23:1209(2), where such payments have been made to an injured worker, the limitation for seeking total, permanent disability shall not take effect until the expiration of one year from the time of making the last payment. Mr. Borja's claim for total disability was filed within one year of the termination of SEB benefits, therefore it has not prescribed. In all other respects, I concur with the majority opinion.