

**KEITH MCELRATH**

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**NO. 2018-CA-0742**

**VERSUS**

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**COURT OF APPEAL**

**CORVEL CORPORATION  
AND NEW ORLEANS POLICE  
DEPARTMENT**

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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. 17-05779, DISTRICT "08"  
HONORABLE Catrice Johnson-Reid, The Office of Workers' Compensation

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**Judge Terri F. Love**

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(Court composed of Judge Terri F. Love, Judge Daniel L. Dysart, Judge Paula A. Brown)

**DYSART, J., CONCURS IN THE RESULT**

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**REVERSED AND REMANDED  
JANUARY 30, 2019**

This appeal arises from a dispute regarding the payment and timeliness of supplemental earnings benefits pursuant to workers' compensation laws. Plaintiff contends that his payments were insufficient and late. Plaintiff sought attorneys' fees and penalties. The third-party administrator of workers' compensation benefits filed an exception of no cause of action. After a hearing and accepting supplemental evidence, the workers' compensation court judge found that plaintiff was paid in full and timely. Thus, there was no cause of action entitling him to penalties and attorneys' fees.

An exception of no cause of action is based on whether, on the face of the petition, the law affords the plaintiff a remedy. After a hearing on the exception, the workers' compensation court ordered the third-party administrator to supplement the exception with proof of payment. No evidence may be introduced in support or opposition. Therefore, we find that the workers' compensation court erroneously considered supplemental evidence on the exception of no cause of action. Based on the face of the disputed claims for compensation, plaintiff stated a cause of action. Accordingly, the judgment is reversed and the matter remanded for further proceedings.

### ***FACTUAL BACKGROUND AND PROCEDURAL HISTORY***

Keith McElrath was a sergeant with the New Orleans Police Department (“NOPD”) when he was injured while in the course and scope of his employment on April 15, 2011. Mr. McElrath has received workers’ compensation benefits since the injury. Mr. McElrath returned to work at a lower rate of compensation. It is undisputed that Mr. McElrath is entitled to supplemental earnings benefits (“SEB”) for months that he does not earn ninety percent of his pre-injury wages.

In the beginning of the administration of Mr. McElrath’s workers’ compensation benefits, the NOPD’s third-party administrator of benefits was Hammerman & Gainer, Inc. (“HGI”). HGI calculated Mr. McElrath’s average weekly wage (“AWW”) as \$1,888.46, with a maximum monthly SEB amount of \$2,509.00. In July/August 2017, CorVel Corporation (“CorVel”) replaced HGI as the new third-party administrator. Upon taking over, CorVel discovered that HGI was making bi-weekly payments in contravention of La. R.S. 23:1201 and 23:1221. This allegedly led to an overpayment. CorVel then changed the payments to once a month, as required by the statutes.

In September 2017, Mr. McElrath filed a Disputed Claim for Compensation contending that his wage benefits were terminated or reduced on July 2017. He alleged that he had not received his SEB benefits since July 2017, and sought penalties, interest, costs, and attorney fees. In the answer filed by the NOPD and CorVel, they averred that Mr. McElrath received \$627.25 a week from July 28, 2017, to September 24, 2017, and that “[t]he majority of Claimant’s SEB payments since April 4, 2015 have exceeded the maximum compensation rate applicable for his injury.” In February 2018, Mr. McElrath filed an Amended Disputed Claim for Compensation contending that his AWW was incorrect, as it should be \$1,900.00.

NOPD and CorVel filed an Exception of No Cause of Action and noted that Mr. McElrath failed to object to \$1,888.46 as his AWW since 2015. After an opposition was filed, the workers' compensation court held a hearing and granted NOPD and CorVel ten days to supplement their exception with proof of payment. NOPD and CorVel supplemented with the information regarding Mr. McElrath's SEB payments. The workers' compensation court issued a judgment and amended judgment granting the Exception of No Cause of Action and dismissing Mr. McElrath's September 15, 2017 and February 5, 2018 Disputed Claims for Compensations with prejudice. Mr. McElrath's appeal followed.

#### ***NO CAUSE OF ACTION***

The exception of no cause of action is preemptory in nature. La. C.C.P. art. 927. "An exception of no cause of action questions whether the law extends a remedy to anyone under the factual allegations of the petition." *Engine 22, LLC v. Land & Structure, LLC*, 16-0664, p. 3 (La. App. 4 Cir. 4/5/17), 220 So. 3d 1, 4. "No evidence may be introduced at any time to support or controvert the objection that the petition fails to state a cause of action." La. C.C.P. art. 931. The court must except "each well-pleaded fact" on the face of the petition as true. *Engine 22*, 16-0664, p. 3, 220 So. 3d at 4. "Appellate courts conduct a *de novo* review of a trial court's ruling granting an exception of no cause of action as the exception presents questions of law." *Engine 22*, 16-0664, p. 4, 220 So. 3d at 4.

The record before us reflects that the workers' compensation court judge requested that NOPD and CorVel supplement the record with proof that Mr. McElrath's SEBs were timely paid. The workers' compensation court reasoned, "I mean, because I think it would resolve it." However, "these sources of information may not be considered on an exception of no cause of action." *Gravois v.*

*Helicopter Charter, Ltd.*, 416 So. 2d 609, 610-11 (La. App. 4th Cir. 1982). The workers' compensation court was not permitted to try the merits of Mr. McElrath's claims. The workers' compensation court judge went beyond the scope of an exception of no cause of action by requesting the admission of evidence to be supplemented after the hearing. We find this contravenes the precepts of an exception of no cause of action. See *Am. Creosote Co. v. Springer*, 257 La. 116, 121, 241 So. 2d 510, 512 (La. 1970).

“An exception of no cause of action should only be granted when it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim which would entitle him to relief.” *Moses v. Moses*, 15-0140, p. 4 (La. App. 4 Cir. 8/5/15), 174 So. 3d 227, 230. Mr. McElrath asserted in his Disputed Claims of Compensation that he was not paid accurately or timely. Accepting these allegations as true, Mr. McElrath stated a cause of action because it is undisputed that he is entitled to the SEBs. As such, the workers' compensation court erred by granting the exception. Like this Court in *Gravois*, we reverse the judgment of the workers' compensation court granting NOPD's and CorVel's Exception of No Cause of Action and dismissing Mr. McElrath's claims. We remand the matter for further proceedings.

#### ***DECREE***

For the above-mentioned reasons, we find that the workers' compensation court judge improperly admitted evidence to support NOPD's and CorVel's Exception of No Cause of Action. Mr. McElrath stated a cause of action based on the allegations contained in his Disputed Claims for Compensation. Accordingly, the judgment is reversed and the matter remanded for further proceedings.

**REVERSED AND REMANDED**