

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

22-42

MICHAEL BOUDREAUX

VERSUS

TAKE 5, LLC

**APPEAL FROM THE
OFFICE OF WORKERS' COMPENSATION – # 4
PARISH OF LAFAYETTE, NO. 20-04639
PAULA MURPHY, WORKERS' COMPENSATION JUDGE**

**ELIZABETH A. PICKETT
JUDGE**

ON REHEARING

Court composed of Elizabeth A. Pickett, Van H. Kyzar, and Candyce G. Perret,
Judges.

REHEARING GRANTED.

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PICKETT, J.

We granted rehearing in this case to reconsider our denial of Mr. Boudreaux's request for attorney fees. We denied his request because the record did not include an answer requesting attorney fees. Mr. Boudreaux asserted in his motion for rehearing that he had filed an answer with the Office of Workers' Compensation, not with this court. The Office of Workers' Compensation prepared a supplement to the record which includes Mr. Boudreaux's answer wherein he requested an award of additional attorney fees for work performed on appeal. The defendants filed their motion for suspensive appeal on September 17, 2021, and the return date was November 15, 2021. Mr. Boudreaux filed his answer on November 14, 2021.

Louisiana Code Civil Procedure art. 2133(A) provides, in pertinent part:

An appellee shall not be obliged to answer the appeal unless he desires to have the judgment modified, revised, or reversed in part or unless he demands damages against the appellant. In such cases, he must file an answer to the appeal, stating the relief demanded, not later than fifteen days after the return day or the lodging of the record whichever is later.

In *Succession of Poole*, 15-1317 (La.App. 1 Cir. 10/28/16), 213 So.3d 18, the court noted that La.Code Civ.P. art. 2133 does not designate in which court the answer to an appeal must be filed and the only requirement stated in Article 2133(A) is that the answer be filed "not later than fifteen days after the return day or lodging of the record whichever is later." Mr. Boudreaux filed his answer before the return date; therefore, it was timely filed. Accordingly, it is properly before this court. *See also Med. Rev. Panel for Bush*, 20-468 (La.App. 4 Cir. 6/2/21), ___ So.3d ___, *aff'd in part; rev'd in part on other grounds*, 21-954 (La. 5/13/22), 339 So.3d 1118.

The workers' compensation judge awarded Mr. Boudreaux penalties and attorney fees which we affirmed. Having considered Mr. Boudreaux's motion, we award him \$5,000 for attorney fees incurred with this appeal.

DISPOSITION

The motion for rehearing filed by Michael Boudreaux is granted. Our original opinion is amended to award Michael Boudreaux \$5,000 for attorney fees incurred with this appeal.

REHEARING GRANTED.