

# From The Bench

*legal news of interest*

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**Q. Will an injured worker's false statements to obtain mileage reimbursement cause him to forfeit his rights to all benefits?**

**a. Yes.**

## Misrepresentation of Mileage Reimbursement Causes Forfeiture of all Workers' Compensation Benefits

*by Kevin S. Frederick*

Jack Duplessis, a former St. Bernard Parish Police Jury Sanitation Department truck driver, injured his knee during the course and scope of his employment. Mr. Duplessis' workers' compensation disability and medical benefits began in 1991. Those benefits continued until 1999 when Travelers Casualty & Surety Company, the police jury's insurer, became suspicious of mileage reimbursement reports submitted by Duplessis.

During 1999, Duplessis submitted mileage reports requesting reimbursement for 4,354 miles. Travelers hired an investigator to verify the distances which Duplessis claimed to have traveled. Duplessis had overstated the mileage traveled by 3,239.8 miles.

Armed with this evidence, Travelers filed a claim alleging Duplessis violated Section 1208 of the Workers' Compensation statute, commonly referred to as the "fraud statute."<sup>1</sup> Travelers claimed Duplessis willfully violated the statute through the submission of the false mileage reports. Further, Travelers sought an order from the court finding Duplessis had forfeited his rights to all workers' compensation benefits as a result of his misrepresentation of the mileage reimbursement requests.

Duplessis opposed Travelers' claim contending he did not intentionally or willfully misrepresent the mileage. At trial, the hearing officer found Duplessis' testimony incredible regarding the mileage discrepancies and found he had misrepresented the mileage on the reimbursement reports. However, the hearing officer did not grant Travelers all the relief sought.

The hearing officer found Duplessis violated the fraud statute. Due to his fraudulent activity, Duplessis was ordered to forfeit all payment for mileage benefits he claimed, and the matter was referred to the Office of Workers' Compensation Fraud Section. However, the hearing officer did not order Duplessis to forfeit his rights to all other workers' compensation benefits concluding that the forfeiture of all workers' compensation benefits was too harsh under the circumstances.<sup>2</sup> The Court of Appeal affirmed and held a claimant who has misrepresented his mileage expenses should not be disqualified from receiving disability benefits.<sup>3</sup>

The majority opinion written by Justice Johnson recognized the Supreme Court had never decided the issue of whether a claimant who fraudulently claims reimbursement for mileage forfeits his right to compensation benefits. However, the court recognized numerous Louisiana Courts of Appeal had addressed the issue.<sup>4</sup> Furthermore, the Supreme Court recognized there was a split between the Courts of Appeal as to whether a worker's willful misrepresentation concerning mileage reimbursement resulted in his forfeiture of all benefits.



The Fourth Circuit, prior to its decision in *St. Bernard Parish Police Jury*, had determined in *Chenault v. Storehouse Furniture* that misrepresentations of mileage expenses should not disqualify a claimant from receiving disability benefits.<sup>5</sup> However, the Second Circuit in *Heckel Logging, Inc. v. Pruitt* held a worker's willful misrepresentation of mileage reimbursement subjected him to disqualification from receiving benefits.<sup>6</sup> The Supreme Court also recognized the Third Circuit had an internal split as a result of the conflicting decisions in *Ledet v. Burger King/Sydran* and *Johnson v. Basic Industries, Inc.*<sup>7</sup>

Relying upon its previous pronouncement in *Resweber v. Haroil Construction Company*,<sup>8</sup> the Supreme Court reversed the hearing officer and Fourth Circuit Court of Appeal and found Duplessis' right to compensation benefits were forfeited. Significantly, the opinion states the fraud statute is "clear and unambiguous and as such will be applied as written."<sup>9</sup> The Court explained "once it is determined that a claimant has willfully made a false statement for the purposes of receiving any benefit or payment, the plain language of the (fraud) statute mandates that the 'right to compensation benefits' under the Workers' Compensation Act are forfeited."<sup>10</sup>

Justice Weimer concurred in the result finding the statute to be clear and unambiguous. However, he signaled his agreement with the hearing officer's statement that such a result is a harsh penalty. In dissent, Chief Justice Calogero said the fraud statute is ambiguous and argued the Supreme Court's past liberal construction of the Workers' Compensation Act, in favor of the injured worker dictated an affirmation of the hearing officer. Finally, he suggested if the majority decision was correct, "the legislature should reconsider whether the workers' compensation statutory reform should extend this far."<sup>11</sup>

<sup>1</sup> LSA - R.S. 23:1208.

<sup>2</sup> *St. Bernard Parish Police Jury v. Duplessis*, 02-0632 (La. 12/4/02), p. 4; 2002 WL 31716171.

<sup>3</sup> *St. Bernard Parish Police Jury v. Duplessis*, 00-2667 (La.App. 4 Cir. 1/30/02); 809 So.2d 479, writ granted 02-0632 (La. 5/24/02); 816 So.2d 293.

<sup>4</sup> *Chenault v. Storehouse Furniture*, 97-1242 (La.App. 4 Cir. 1/28/98); 706 So.2d 1060, writ denied, 98-0364 (La. 3/27/98); 716 So.2d 889; *Ledet v. Burger King/Sydran* 99-1380 (La.App. 3 Cir. 4/26/00); 763 So.2d 27, writ denied, 00-1512 (La.App. 6/30/00); 766 So.2d 546; *Johnson v. Basic Industries, Inc.* 97-1136 (La.App. 3 Cir. 4/15/98); 711 So.2d 843, writ denied, 98-1358 (La. 6/26/98); 719 So.2d 1292; and *Heckel v. Pruitt* 33,314 (La.App. 2 Cir. 5/10/00); 759 So.2d 1044.

<sup>5</sup> *Chenault v. Storehouse Furniture*, *supra*.

<sup>6</sup> *Heckel Logging, Inc. v. Pruitt*, *supra*.

<sup>7</sup> See *Ledet v. Burger King/Sydran*, *supra* holding a worker only forfeited his right to mileage reimbursement when he misrepresented his mileage reimbursement report, and compare with *Johnson v. Basic Industries, Inc.*, *supra* holding a worker's misrepresentation on a mileage reimbursement report resulted in the forfeiture of her benefits.

<sup>8</sup> 94-2708 (La.App. 9/5/95); 660 So.2d 7

<sup>9</sup> *St. Bernard Parish Police Jury v. Duplessis*, at p. 8, citing *Resweber v. Haroil Construction Company*, at p. 12.

<sup>10</sup> *St. Bernard Parish Police Jury v. Duplessis*, at p. 5.

<sup>11</sup> *St. Bernard Parish Police Jury v. Duplessis*, at p. 7.

## Torts Immunity for Vocational Rehabilitation Counselors

The First Circuit's decision in *Brown v. Adair*<sup>1</sup> that a vocational rehabilitation counselor was immune from an injured worker's tort suit because of the exclusivity provisions of the Workers' Compensation Act is currently under review by the Supreme Court as writs have been granted.<sup>2</sup> The worker claimed the counselor provided "sham rehabilitation" on behalf of the insurer and employer and thus was liable for malpractice. The Supreme Court's decision may have a significant impact on the future of vocational rehabilitation services in worker's compensation.

<sup>1</sup> 01-1120 (La. App. 1 Cir. 6/21/02); 822 So.2d 52.

<sup>2</sup> 02-2028 (La. 11/8/02); 828 So.2d 1123.

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