

From The Bench

legal news of interest

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Louisiana Supreme Court Resolves Conflicts on Multiple Penalties in Workers' Compensation Cases

by Katherine M. Loos

In *Fontenot v. Reddell Vidrine Water District*, consolidated with *Haynes v. Williams Fence and Aluminum*,¹ the Louisiana Supreme Court ruled on two important Louisiana workers' compensation issues. First, whether *LSA-R.S. 23:1201 (F)* provides multiple penalties for multiple violations regarding the payment of compensation and medical benefits claims. Second, whether *LSA-R.S. 23:1221 (3) (c) (i)* or *LSA-R.S. 23:1226 (B) (2)* governs the locality where a vocational consultant should focus his efforts in returning the injured worker to gainful employment.

Multiple Penalties

LSA-R.S. 23:1201 (F) provides, in part:

Failure to provide payment in accordance with this Section shall result in the assessment of a penalty in an amount equal to 12% of any unpaid compensation or medical benefits or \$50.00 per calendar day, whichever is greater, for each day in which any and all compensation or medical benefits remain unpaid, together with reasonable attorney fees for each disputed claim; however, the fifty dollars per calendar day penalty shall not exceed a maximum of two thousand dollars in the aggregate for any claim.

In *Fontenot*, the defendants relied upon the statute's language regarding "a penalty," use of the word "claim," and the phrase that the penalty should not exceed \$2,000 "in the aggregate for any claim." Defendants maintained that this language in the statute allowed for only one penalty for indemnity and one penalty for medical. The defendants further argued that since this is a penal statute, it must be strictly construed.

The Louisiana Supreme Court observed the underlying reason for the imposition of penalties and attorneys' fees in the workers' compensation arena is to combat the indifference by employers and insurers toward injured workers.² The court further noted multiple penalties will address the recalcitrant employer or insurer and will encourage employers and their workers' compensation insurers to honor their continuing obligation to the injured worker. "[T]o conclude otherwise would dilute the deterrent effect of these statutory provisions, which are not intended to make the worker 'whole' but rather to discourage specific conduct on the part of the employer."

The Louisiana Supreme Court held *LSA-R.S. 23:1201 (F)* provides multiple penalties for multiple violations of compensation and medical benefits claims. The court explained without such an understanding of the statute, there would be nothing to leverage the employer or its insurer to comply with their statutory obligation to the injured worker.

Q. Does the Louisiana Workers' Compensation Statute provide for multiple penalties for multiple violations of compensation and medical benefit claims?

a. Yes.

Q. Under the workers' compensation statute, does the locality of the employer or the employee determine where a vocational rehabilitation counselor should focus his efforts in returning an injured worker to gainful employment?

a. A rehabilitation counselor should focus his efforts on the employee's geographic area when attempting to return an injured worker to gainful employment.



Locality: Vocational Rehabilitation

Haynes asked the Louisiana Supreme Court to address the issue of locality in determining where a vocational rehabilitation consultant should focus his job search for an injured employee. Haynes suffered a work-related injury while working at a small aluminum siding and fence company near Pineville, Louisiana. After orthoscopic surgery to repair a serious wrist injury, a vocational rehabilitation consultant was hired to provide services to Haynes. The employee met twice with the rehabilitation consultant in the Pineville area.

Approximately one year after the accident, the employer sent a letter to Haynes offering him a light duty job at his place of business in Pineville. Counsel for the employee wrote to the employer advising Haynes was unavailable for a light duty job in Pineville as he had relocated to the Breaux Bridge area to receive assistance from his family. Haynes asked the employer to concentrate the search for job locations within a reasonable geographic area of Breaux Bridge. Relying upon the provisions of *LSA-R.S. 23:1221(3)(c)(i)*, the employer declined to search for jobs for Haynes in the Breaux Bridge area and closed its vocational rehabilitation file.

LSA-R.S. 23:1221(3)(c)(i) provides for purposes of determining supplemental earning benefits it is appropriate to consider employment that is “proven available” to the employee in the employee’s or employer’s community or reasonable geographic region. However, *LSA-R.S. 23:1226(B)(2)* states for purpose of rehabilitation services “whenever possible, employment in the worker’s local job pool must be considered and selected prior to consideration of employment in a worker’s statewide job pool.”³

The Louisiana Supreme Court explained in *Fontenot* the goal of rehabilitation services is to return a disabled worker to work as soon as possible after the injury occurs. The Supreme Court found that because of the passage of time and financial circumstances requiring the employee to relocate to a significant distance from his place of former employment, the vocational rehabilitation consultant should have examined the job pool in the claimant’s geographic area.

¹ 2002-0439, 836 So.2d 14 (La. 1/14/03).

² See e.g., *Williams v. Rush Masonry, Inc.*, 98-2271 (La. 6/29/99), 737 So.2d 41; *Sharbono v. Steve Lang & Son Loggers*, 97-0110 (La. 7/1/97), 696 So.2d 1382.

³ *LSA-R.S. 23:1226(B)(2)*.



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Recent Decision on Choice of Law

In *Viola v. Estate of Williams*,¹ the United States District Court for the Middle District of Louisiana held Louisiana law governed the interpretation of an automobile liability policy where the accident occurred in Louisiana, the victim and beneficiaries were Louisiana residents, and the tortfeasor was working and residing in Louisiana at the time of the accident, despite the fact the policy was written to provide coverage for a vehicle primarily housed in Texas and the tortfeasor was a Texas domiciliary.

¹ 223 F.Supp.2d 766 (M.D. La. 2002).



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