

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2002 CA 1712

BARBER BROTHERS CONTRACTING COMPANY, L.L.C.

VERSUS

JOHN E. MORGAN

**JUDGMENT RENDERED ON MAY 9, 2003**



Appealed from District 6  
Office of Workers' Compensation Administration  
in and for the State of Louisiana

Docket No. 00-06699

Honorable Robert W. Varnado, Jr., Workers' Compensation Judge

\* \* \* \* \*

Michael L. Hebert  
Baton Rouge, LA

Attorney for Appellant  
Defendant  
John E. Morgan

David T. Butler, Jr.  
Baton Rouge, LA

Attorney for Appellant  
Plaintiff  
Barber Brothers Contracting  
Company

Panel composed of Judges FRANK FOIL,  
PAGE McCLENDON and WILLIAM F. KLINE, JR.

Judge William F. Kline, Jr., Retired, serving Pro Tempore by special  
appointment of the Louisiana Supreme Court.

FOIL, JUDGE.

In this workers' compensation case, the employer and employee both appeal. The employer, Barber Brothers Contracting Company, LLC, challenges the workers' compensation judge's determinations that: (1) John Morgan, the employee, sustained a work-related accident; (2) Mr. Morgan was temporarily, totally disabled; and (3) Barber Brothers continues to be liable for medical treatment and rehabilitation associated with Mr. Morgan's injury. In his appeal, Mr. Morgan contends the workers' compensation judge erred in reducing his weekly indemnity benefits and in failing to order Barber Brothers to pay all court costs. He also seeks an award of attorney fees for legal services provided on appeal.

### **DISCUSSION**

Whether an employee has established a work-related accident, whether he is entitled to temporary total disability benefits, as well as the duration of his disability, are factual determinations subject to the manifest error or clearly wrong standard of appellate review. **Franklin v. Georgia-Pacific Port Hudson Division**, 01-1854 (La. App. 1 Cir. 9/27/02), 835 So.2d 592, 594; **Collins v. Family Dollar Stores, Inc.**, 99-0622 (La. App. 1 Cir. 5/12/00), 760 So.2d 1210, 1214, writs denied, 00-2356, 00-2363 (La. 11/13/00), 773 So.2d 727; **Williams v. Wal-Mart Stores, Inc.**, 00-0863 (La. App. 4 Cir. 5/16/01), 787 So.2d 1134, 1137. A workers' compensation judge's finding that an employee has refused to accept necessary rehabilitation, warranting a reduction in benefits under La. R.S. 23:1226(E), is also a factual determination. **Ricaud v. Holloway Sportswear, Inc.**, 98-1422 (La. App. 3 Cir. 5/26/99), 741 So.2d 124, 129, writs denied, 99-1822, 99-1882 (La. 10/1/99), 748 So.2d 454, 455. Thus, based on this applicable standard of review, and after a thorough review of the record, we find no manifest error in the workers' compensation judge's determination regarding these issues. We adopt his reasons for judgment as our own and attach a copy to this opinion.

Regarding the allocation of court costs, La. R.S. 23:1317(B) provides the allocation of such lies within the workers' compensation judge's discretion and can be reversed only upon a showing of an abuse of that discretion. **Boleware v. City of Bogalusa**, 01-1014 (La. App. 1 Cir. 12/20/02), 837 So.2d 71, 75; **Washington v. Lyons Specialty Company**, 96-0263 (La. App. 1 Cir. 11/8/96), 683 So.2d 367, 381, writ denied, 96-2944 (La. 1/31/97), 687 So.2d 408. In this case, the workers' compensation judge ordered that each party be responsible for his respective costs. Given that neither party prevailed fully on the merits, we find no abuse of the workers' compensation judge's discretion in the assessment of costs.

Finally, Mr. Morgan requests that we award him attorney fees for defending this appeal. Although we may award damages for frivolous appeal under La. C.C.P. art. 2164, we find Barber Brother's appeal was not frivolous. Accordingly, we decline to award attorney fees to Mr. Morgan. See King v. Gulf Coast Construction, Inc., 94-1019 (La. App. 4 Cir. 12/28/94), 648 So.2d 498, 500.

### **CONCLUSION**

For the foregoing reasons, the workers' compensation judgment is **AFFIRMED**. Costs of this appeal are to be borne equally by Mr. Morgan and Barber Brothers.

**AFFIRMED.**

OFFICE OF WORKERS' COMPENSATION

STATE OF LOUISIANA

JOHN E. MORGAN

VERSUS

NO. 00-06699

BARBER BROTHERS CONTRACTING

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REASONS FOR JUDGMENT taken before the

Honorable Robert W. Varnado, Jr., Judge Presiding,

District 6, Office of Workers' Compensation, State of

Louisiana, in Covington, Louisiana.

REPORTED BY:

Marsha M. Donnelly, CCR



1 computer school in Hammond. Every attempt to  
2 accommodate him was made. An occupational therapist  
3 was retained to work with Morgan and to make  
4 suggestions for implementation and modification of his  
5 work station. This included a private area with  
6 specialized equipment. Nevertheless, Morgan's  
7 participation dropped off.

8 Other efforts by the employer included offers  
9 of sedentary and modified light-duty positions.  
10 Morgan's motivation and desire to return to the work  
11 force is low. Consequently, given the totality of  
12 evidence, the Court finds Morgan's weekly indemnity  
13 benefits are reduced as of the date of signing judgment  
14 pursuant to Louisiana Revised Statute 23:1226(E) for  
15 failure to cooperate with vocational rehabilitation  
16 efforts but also to provide needed incentive.

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