

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 1739

WALTER GARNER

VERSUS

CARO FOODS, INC.

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**On Appeal from the 17th Judicial District Court
Parish of Lafourche, Louisiana
Docket No. 94976, Division "A"
Honorable John E. LeBlanc, Judge Presiding**

**Joseph J. Weigand, Jr.
Houma, LA**

**Attorney for
Plaintiff-Appellant
Walter Garner**

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**Attorney for
Defendant-Appellee
Caro Foods, Inc.**

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

Judgment rendered September 20, 2006

McCleendon, J. concurs

PARRO, J.

Walter Garner (Garner) filed a petition for damages in district court, alleging that he had been terminated from his employment with Caro Foods, Inc. (Caro), in violation of LSA-R.S. 23:1361, based on the filing of his claim for workers' compensation following a work-related injury that occurred on December 21, 2001.

Louisiana Revised Statute 23:1361(B) provides:

No person shall discharge an employee from employment because of said employee having asserted a claim for benefits under the provisions of this Chapter or under the law of any state or of the United States. Nothing in this Chapter shall prohibit an employer from discharging an employee who because of injury can no longer perform the duties of his employment.

The following three-prong test is utilized in determining whether section 1361 has been violated: (1) discharge, (2) assertion of a workers' compensation claim, and (3) a causal connection between the discharge and the assertion of a claim for benefits. See Moore v. McDermott, Inc., 494 So.2d 1159 (La. 1986). With the first two prongs being satisfied, the district court found that the evidence did not show a causal connection between the filing of the claim and the discharge.¹ Thus, Garner's claim for damages for violation of LSA-R.S. 23:1361 was dismissed.

Garner appealed, contending that Caro's 30-day leave of absence policy discriminated against workers' compensation employees with disabilities in excess of 30 days. However, the alleged discriminatory nature of Caro's 30-day leave of absence policy against workers' compensation employees was not raised in Garner's petition. Furthermore, the claim for damages as set forth in his petition was based on an alleged violation of LSA-R.S. 23:1361(B), and it was this cause of action that the district court dismissed. Certainly, the remedy set forth in LSA-R.S. 23:1361(C) for violation of section 1361(B) would not be available absent a showing of such a violation. Moreover, the discharge of an employee who because of injury can no longer perform the duties

¹ After reviewing the record in its entirety, together with the district court's thorough oral reasons for judgment, we conclude that this finding is reasonably supported by the record and not manifestly erroneous.

of his employment is not precluded by the workers' compensation law. LSA-R.S. 23:1361(B).

Finding no merit to Garner's argument, we affirm the judgment in accordance with Uniform Court of Appeal Rule 2-16.2(A)(5), (6), and (8). Costs of this appeal are assessed to Walter Garner.

AFFIRMED.