

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 1191

ANGELA MALONE-WATSON

VERSUS

STRATEGIC RESTAURANTS

Judgment Rendered: JUN 11 2015

* * * * *

On Appeal from the
Office of Workers' Compensation, District 5
In and for the Parish of East Baton Rouge
State of Louisiana
No. 13-02466

The Honorable Jason Ourso, Workers' Compensation Judge Presiding

* * * * *

Kathleen M. Wilson
Baton Rouge, LA

Attorney for Plaintiff/Appellant
Angela M. Watson

Goeffrey A. Mitchell
Christian B. Bogart

Attorneys for Defendants/Appellees
Broadspire and Strategic Restaurants

Ryan M. Malone
Metairie, LA

* * * * *

BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

McDonald, J. concurs.

Crain, J concurs in the result and assigns reasons

HOLDRIDGE, J.

In this workers' compensation matter, employee/claimant, Angela Malone-Watson, appeals a judgment rendered in favor of employer/defendant, Strategic Restaurants Acquisition Company, LLC, and its third-party administrator, Broadspire (collectively, "Strategic") that held Mrs. Watson forfeited her right to workers' compensation benefits under La. R.S. 23:1208 due to her willful false statements made in order to recover workers' compensation benefits. For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

At issue in this workers' compensation case is whether the claimant, Mrs. Watson, willfully made false statements and representations for the purpose of obtaining benefits. Mrs. Watson filed her claim for workers' compensation benefits with the Office of Workers' Compensation Administration, against Strategic. She claims she was injured on January 25, 2013, while working as an employee at the Burger King restaurant located on Coursey Boulevard in Baton Rouge, Louisiana. Mrs. Watson asserts that a co-worker left a bread tray in the walkway and she tripped over it. She filed a claim for compensation on April 10, 2013, for the alleged injury. According to the workers' compensation form, she claimed she sustained injuries to her left ankle, both knees, back, hip, and strained muscles in her left arm as a result of her trip and fall accident.

Strategic moved for summary judgment, submitting as evidence Mrs. Watson's deposition testimony and compiled video surveillance recordings, as well as other documentation. The Workers' Compensation Judge ("WCJ") granted summary judgment on March, 14, 2014, in Strategic's favor and dismissed Mrs. Watson's claim. Mrs. Watson now appeals the summary judgment rendered against her.

STANDARD OF REVIEW

An appellate court reviews a WCJ's decision to grant a motion for summary judgment *de novo*, using the same criteria that govern the WCJ's consideration of whether summary judgment is appropriate. **Newman v. Richard Price Construction**, 2002-0995 (La. App. 1st Cir. 8/8/03), 859 So.2d 136, 139. A claim under La. R.S. 23:1208 is appropriate for resolution by summary judgment. **Morris v. Textron Marine & Land Sys., Inc.**, 2014-0293 (La. App. 1st Cir. 9/24/14), 155 So.3d 21, 23, writ denied, 2014-2223 (La. 1/9/15), 157 So.3d 1108.¹

In **Bourque v. Transit Mix**, 2014-1588 (La. 12/8/14), 153 So.3d 419, 420 (per curiam) the Louisiana Supreme Court noted that the technical rules of evidence and procedure are relaxed in the context of workers' compensation hearings citing La. R.S. 23:1317(A) and **Taylor v. Tommie's Gaming**, 2004-2254 (La. 5/24/05), 902 So.2d 380, 383. Further, Louisiana Code of Civil Procedure Article 966(F)(2) provides that:

Evidence cited in and attached to the motion for summary judgment or memorandum filed by an adverse party is deemed admitted for purposes of the motion for summary judgment unless excluded in response to an objection made in accordance with Subparagraph (3) of this Paragraph. Only evidence admitted for purposes of the motion for summary judgment may be considered by the court in its ruling on the motion.

Since Mrs. Watson made no objection to any evidence cited in or attached to the motion for summary judgment filed by Strategic, all evidence presented by Strategic was deemed admitted. Thus, the video surveillance recordings, which were filed with the motion for summary judgment, may be considered by both the

¹ Under Louisiana Code of Civil Procedure Article 966(F)(2) and the decision of the supreme court in **Bourque v. Transit Mix**, 2014-1588 (La. 12/8/14), 153 So.3d 419, 420, evidence other than pleadings, depositions, answers to interrogatories, admissions, and affidavits may be admitted (or deemed admitted) in summary judgment proceedings. Since other evidence, such as the video surveillance recordings in this case, may be admitted in such summary judgment proceedings, the WCJ is called upon to make credibility determinations as to the sufficiency of the evidence in deciding the motion for summary judgment. Because of these factual determinations made by the WCJ in the summary judgment proceeding, it is questionable whether the review by the appellate court should be a *de novo* review or a review using the manifest error standard. However, since the result in this case would be the same, the decision as to the appropriate standard in certain summary judgment cases is left for another day.

WCJ and this court. **Bourque** held that evidence attached to defendant's motion for summary judgment was properly admitted in a motion for summary judgment proceeding before the WCJ. Therefore, the Court of Appeal should consider that evidence on review.

ALLEGED VIOLATION OF LA. R.S. 23:1208

In her one assignment of error, Mrs. Watson urges that the [WCJ] erred in finding that video surveillance of [her] operating a motor vehicle and using her left arm constituted conclusive proof that [she] willfully made false statements or willful representations for the specific purpose of obtaining Workers' Compensation benefits. Louisiana Revised Statute 23:1208(A) provides:

It shall be unlawful for any person, for the purpose of obtaining or defeating any benefit or payment under the provisions of this Chapter, either for himself or for any other person, to willfully make a false statement or representation.

Louisiana Revised Statute 23:1208 applies to any false statement or misrepresentation, including one concerning a prior injury, made specifically for the purpose of obtaining workers' compensation benefits, and therefore, generally becomes applicable at the time of an employee's accident or claim. **Resweber v. Haroil Construction Company**, 94-2708, 94-3138 (La. 9/5/95), 660 So.2d 7, 9. This broadly worded statute encompasses false statements or misrepresentations made to anyone, including the employer, physicians or insurers, when made willfully or deliberately for the purpose of obtaining benefits. **Resweber**, 660 So.2d at 9.

An employee who violates La. R.S. 23:1208 shall forfeit any right to workers' compensation benefits. La. R.S. 23:1208(E). The three requirements for the forfeiture of benefits under Section 1208 are: (1) there is a false statement or representation; (2) it is willfully made; and, (3) it is made for the purpose of

obtaining or defeating any benefit or payment. **Resweber**, 660 So.2d at 11. The statutory forfeiture of benefits is a harsh remedy and must be strictly construed. **Leonard v. James Industrial Constructors**, 2003-0040 (La. App. 1st Cir. 5/14/04), 879 So.2d 724, 730, writ denied, 2004-1447 (La. 9/24/04), 882 So.2d 1139. In such cases, the WCJ must make a determination based on the record whether a statement or representation was willfully made to obtain benefits and to defraud the workers' compensation system. See **Jim Walter Homes, Inc. v. Prine**, 2001-0116 (La. App. 1st Cir. 2/15/02), 808 So.2d 818, 824. The relationship between the false statement and the pending claim will be probative in determining whether the statement was made willfully for the purpose of obtaining benefits. **Slater v. Mid-South Extrusion**, 43,343 (La. App. 2nd Cir. 8/13/08), 989 So.2d 252, 256.

On appeal, Mrs. Watson argues that the WCJ erred in concluding she is no longer entitled to workers' compensation benefits. Mrs. Watson contends she is still suffering from injuries she incurred from a fall while working at the Burger King restaurant on January 25, 2013. However, Mrs. Watson presented no evidence other than her own testimony regarding her physical condition and/or limitations and the extent of her injuries, and her need for continued medical treatment for her work-related injury.

Strategic, in opposition to Mrs. Watson's claim, contends that she forfeited her workers' compensation benefits because she willfully misrepresented the extent of the injuries she suffered, the limitations of her activities, and her ability to perform the job duties of her pre-accident employment solely for the purpose of obtaining benefits. In support of this argument, Strategic submitted a compilation of video surveillance recordings showing Mrs. Watson on multiple dates before and after she gave deposition testimony and no objection was raised. The video

surveillance recordings shows Mrs. Watson going about her daily life and performing a wide range of activities that she denied she could perform, including driving a car, walking without assistance, bending from the waist, and the regular use of her left arm, hand, and knees. “[S]urveillance videotape may form the basis of a forfeiture under [section 1208] if it directly contradicts the claimant’s statements.” **Franklin v. HealthSouth**, 41,458 (La. App. 2nd Cir. 9/20/06), 940 So.2d 83, 87. In her deposition taken approximately seven months after the accident, Mrs. Watson testified repeatedly about the severity of her condition, the physical limitations she suffered as a result of the fall and the high level of pain she continued to experience from her injury. She specifically described the pain in her left arm on a scale of one to ten as, “an 8 or 9 now.” She explained “I don’t carry nothing heavier [than] a loaf of bread or maybe a cup” When asked if she drives, Mrs. Watson responded, “I don’t drive ... because I’m scared my knee is going to give out.” However, Mrs. Watson’s deposition testimony was contradicted by the video surveillance recordings, which showed her on multiple occasions driving and using her left arm.

After reviewing all of the evidence, the WCJ ruled that Mrs. Watson forfeited any and all entitlement to workers’ compensation benefits because she made false statements and misrepresentations for the purpose of obtaining workers’ compensation benefits in violation of La. R.S. 23:1208. This court agrees with the finding that Mrs. Watson’s exaggeration of her symptoms and false statements were willful fraudulent actions and in violation of La. R.S. 23:1208.

CONCLUSION

After a thorough review of the record, exhibits, and jurisprudence, we conclude that Strategic Restaurants Acquisition Company, LLC, and its third-party

administrator, Broadspire proved through properly admitted video surveillance recordings that Mrs. Watson willfully misrepresented her symptoms, thereby triggering the forfeiture statute. Therefore, we affirm the judgment of the WCJ. All costs of this appeal are assessed against Angela Malone-Watson.

AFFIRMED.

ANGELA MALONE-WATSON

STATE OF LOUISIANA

VERSUS

COURT OF APPEAL

STRATEGIC RESTAURANTS

FIRST CIRCUIT

NO. 2014 CA 1191

 **CRAIN, J., concurring.**

I agree that Strategic proved its entitlement to summary judgment and that the judgment should be affirmed. I write separately to clarify the summary judgment standard and applicable standard of review, and to expressly disagree with the comments made in Footnote 1.

I find no basis for interpreting Louisiana Code of Civil Procedure article 966F(2) to authorize credibility determinations in deciding motions for summary judgment, as is suggested in Footnote 1. After its amendment by Acts 2013, Number 391, Section 1, Article 966F(2) pertinently provides that “[e]vidence cited in and attached to the motion for summary judgment or memorandum filed by an adverse party is deemed admitted for purposes of the motion for summary judgment unless excluded in response to an objection made in accordance with Subparagraph (3) of this Paragraph.” It provides only that the described attachments will be admitted for purposes of the motion without an appropriate objection. The amendment did not otherwise change the summary judgment standard, and it is axiomatic that in deciding motions for summary judgment courts cannot make credibility determinations. *See, e.g., Hutchinson v. Knights of Columbus, Council No. 5747*, 03-1533 (La. 2/20/04), 866 So. 2d 228, 234. Further, appellate review of summary judgments is, without question, *de novo*. *See Davis v. Canadian Nat. Ry.*, 13-2959 (La. 4/17/14), 137 So. 3d 11, 13.

A forfeiture claim under Louisiana Revised Statute 23:1208 is appropriate for resolution by way of summary judgment. *See Morris v. Textron Marine and*

Land Systems, Inc., 14-0293 (La. App. 1 Cir. 9/24/14), 155 So. 3d 21, 23, *writ denied*, 14-2223 (La. 1/9/15), 157 So. 3d 1108; *Johnson v. Pinnergy, Ltd.*, 46,188 (La. App. 2 Cir. 4/13/11), 63 So. 3d 302; *Edwards v. Southeastern Freight Lines, Inc.*, 14-871 (La. App. 3 Cir. 2/4/15), 158 So. 3d 227, 237; *Louisiana-I Gaming v. Rogers*, 10-1050 (La. App. 5 Cir. 9/27/11), 76 So. 3d 81, 82, *writ denied*, 11-2789 (La. 2/17/12), 82 So. 3d 291. A party moving for summary judgment and seeking forfeiture of benefits has the burden of establishing that no material facts are in dispute and that under the undisputed facts, the claimant willfully made false statements and representations for the purpose of obtaining workers' compensation benefits in violation of Louisiana Revised Statute 23:1208. *See Revere v. Dolgencorp, Inc.*, 04-1758 (La. App. 1 Cir. 9/23/05), 923 So. 2d 101, 104. Inherent in the resolution of any forfeiture case is a determination of whether the false representation was willfully made. If the evidence presented does not undisputedly establish that false representations were willfully made, then summary judgment is not appropriate. *Revere*, 923 So. 2d at 107. The amendment to Article 966 regarding the evidence to be considered did not change this.

In this case, Strategic offered evidence including video surveillance footage, to which Ms. Watson offered no objection. Pursuant to Article 966F(2), then, the evidence was deemed admitted for purposes of the motion. After considering the relevant evidence *de novo*, I agree that Strategic met its burden of proof on the motion and Ms. Watson failed to present evidence to show that there existed a material fact in dispute so as to preclude summary judgment.