

INSIDE

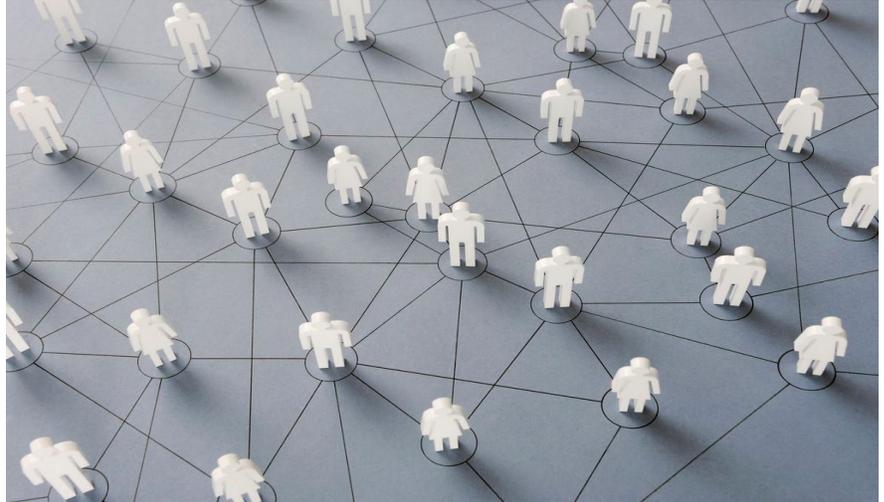
Recent Caselaw

When does a claimant's right to P&A vest?

Workers' Comp Fraud Series
 Part 3.

News

Doctor accepts illegal kickbacks for dispensing pain cream; gets 4 years in prison



Recent Caselaw

Wilson Senegal v. Kerrville Tours, Inc., et al (Third Circuit)

Opinion - The underlying accidents in this matter occurred in 1997. The matter went to trial, and on February 14, 2001, claimant was awarded workers' compensation benefits, including \$350 per week in wage benefits. In April, 2021, claimant filed a motion for penalties and attorneys' fees for failure to pay weekly benefits and 11 failures to pay for other benefits, including mileage. The motion went before the workers' compensation judge, who issued a ruling on February 11, 2022 awarding Claimant \$8,000 in penalties (the statutory maximum) and \$8,500 in attorneys' fees. Claimant appealed, asserting that the trial court erred by capping the penalties awarded at \$8,000 and in limiting the attorney fee award to \$8,500.

The Court noted that La. R.S. 23:1201(F) was amended in 2003, and limited the total amount of penalties available under Section F to \$8,000 at any one hearing. Further, jurisprudence regarding penalties and attorneys' fees is clear that "the provisions of the statute in effect at the time of the withholding of benefits control the award of penalties and attorneys' fees."

The Court concluded that Claimant's right to penalties did not vest at the time of his injuries in 1997, but upon the statutory violations by the employer and insurer, which occurred from 2012 to 2019. During this period, the statute limited the amount of penalties available to the Claimant to \$8,000, so the Court rejected this assignment of error.

In practice, if the laws on assessments of penalties and attorneys' fees are amended, the law as it is in effect at the time of any violations will determine the availability of penalties and attorneys' fees to a Claimant. Put another way, the right to penalties and attorneys' fees vests in the claimant at the time of the violation, not at the time of the injury. For this reason, it is important to keep up with changes in the law, especially as they pertain to assessments of penalties and attorneys' fees.

Quick Bites

Max Comp Rate: \$771.00

Min Comp Rate: \$206.00

Mileage: \$0.655 / mile

Links:

[LA Workforce Commission](#)

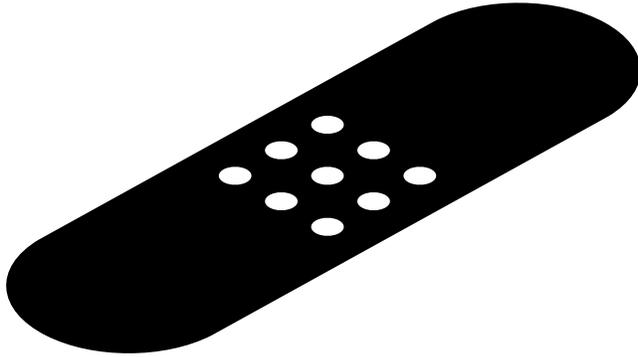
[1002 Form](#)

[1007 First Report Form](#)

[1008 Disputed Claim](#)

[1011 Settlement](#)

[1015 IME](#)



Workers' Comp Fraud

Part 3 - What does "willfully" mean?

To be disqualified from workers' compensation benefits under the Louisiana Workers' Comp Fraud Statute, i.e., La. R.S. 23:1208, the employee must **"willfully"** make a "false statement or representation" for the purpose of obtaining workers' compensation benefits. What does it mean to "willfully" make a false statement or representation? Read on to find out.

Section 1208 does not penalize *any* false statement, but only those willfully made for the purpose of obtaining benefits.ⁱ Louisiana jurisprudence defines willful as "proceeding from a conscious motion of the will; voluntary; knowingly; deliberate; intending the result which actually comes to pass; designed; intentional; purposeful; not accidental or involuntary."ⁱⁱ Importantly, false statements which are inconsequential may indicate that the statement was not willfully made for the purpose of obtaining benefits.ⁱⁱⁱ

In *Rodriguez*, *supra*, the claimant made false statements about his prior anxiety and heart related conditions. Though he was not making claims for anxiety or heart related conditions, the court determined that he was attempting to bolster his other injury claims by stating they caused additional anxiety and heart related issues. As such, the court determined that his false statements were made "willfully" for the purpose of obtaining benefits.

In *Hypolite*,^{iv} claimant told his doctors that he was experiencing 10/10 pain, despite surveillance video showing him walking, crouching and bending - activities his physicians said he should not be able to do if his complaints of pain were genuine. Due to the "obviousness of the discrepancy" of claimant's complaints versus his actions, the court determined that willfully made statements to defraud his employer and obtain workers' compensation benefits. Forfeiture was upheld.

In practice, if a claimant makes a false statement or representation *for the express purpose of obtaining benefits*, it is almost always made willfully. Inconsequential or irrelevant false statements tend to not be made willfully for the purpose of obtaining benefits and won't support claims of fraud.

If you have any cases where workers' comp fraud is suspected, contact the attorneys at Leake & Andersson for an opinion.

Client Successes

Settlement - The Injured employee, a 49-year-old who was injured in 2011, and suffered from extensive injuries to his neck and back, asserted a claim for Permanent and Total Disability Benefits. He was a fairly high wage earner, so the future exposure on the PTD claim was substantial. The claim was settled at a mediation on extremely favorable terms and conditions.

Work Comp News

An Alexandria, La. physician, Robert C. Smith, has been sentenced to 48 months in prison, three years' supervised release and a \$800,000+ fine for his role in a scheme involving pain cream and patches provided to workers' compensation claimants. Inflated bills were sent to payors on the worker's comp claims and the manufacturer sent kickbacks to the doctor. The company paid the doctor 50-55% of profits collected from billing the insurers and other payors. Mr. Smith admitted to making more than \$650,000 from the scheme. Dr. Smith also did not have the proper licensure to dispense the medications from his clinic, as required by La. Law. Charges included conspiracy to commit healthcare fraud, wire fraud, and to violate the Federal anti-kickback laws. Dr. Smith had previously plead guilty to these charges.

About the Author

Lee M. LeBouef



Lee M. LeBouef is Partner at Leake & Andersson, LLP in New Orleans, Louisiana. Lee graduated from the Paul M. Hebert Law Center - Louisiana State University in 2015. He began his law practice handling mostly small construction disputes for contractors, subcontractors, and homeowners. Since 2017, he has practiced primarily in Louisiana Workers' Compensation defense, handling simple and complex cases for employers, insurers, and third-party administrators, including subrogation. Lee was recently promoted to Partner at the beginning of 2023. Lee is a member of the Louisiana Bar Association's Insurance, Tort, Workers' Compensation and Admiralty Section. He is also a member of ALFA International's Workers' Compensation Practice Group and is active on the Steering Committee. Last year, Lee attended the Workers' Compensation Institute Conference in Orlando and the National Workers' Compensation and Disability Conference in Las Vegas.

If you have any questions about Louisiana Workers' Compensation, please contact Lee at your convenience.

T: (504)585-7500

F: (504)585-7775

E: llebouef@leakeandersson.com

1100 Poydras Street, Suite 1700
New Orleans, LA 70163

W: <https://www.leakeandersson.com/lattorney/lee-lebouef/>

LinkedIn: <https://www.linkedin.com/in/leelebouef/>

ⁱ Richard v. Quality Constr. & Prod., LLC, 2018-965 (La. App. 3 Cir. 6/5/19), 275 So. 3d 328, 335, writ denied, 2019-01101 (La. 10/8/19), 280 So. 3d 591

ⁱⁱ Gaines v. Pinecrest Supports & Servs. Ctr., 2016-105 (La. App. 3 Cir. 7/6/16), 316 So. 3d 1022, 1026, writ denied, 2016-1500 (La. 11/15/16), 209 So. 3d 781

ⁱⁱⁱ Rodriguez v. Nola Motor Club, L.L.C., 19-447 (La. App. 5 Cir. 10/5/20), 304 So. 3d 147, 149, writ denied, 2020-01432 (La. 2/17/21), 310 So. 3d 1154

^{iv} Hypolite v. Louisiana Workers' Comp. Corp., 2016-387 (La. App. 3 Cir. 11/2/16), 206 So. 3d 255, 258