

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 0611

ANDRE P. GUIDRY

VERSUS

SHAW MAINTENANCE, INC.

Judgment Rendered: December 21, 2011

Appealed from the
Office of Workers' Compensation, District 5
Parish of St. Tammany
State of Louisiana
Case No. 09-09140

The Honorable Pamela A. Moses-Laramore, Judge Presiding

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Counsel for Plaintiff/Appellee
Andre P. Guidry

BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

GAIDRY, J.

In this workers' compensation suit, the defendant-employer appeals a trial court judgment in favor of the injured former employee. For the following reasons, we amend the amount of indemnity benefits awarded, affirm the judgment as amended, and remand for reconsideration and articulation of the basis of the attorney fee award.

FACTS AND PROCEDURAL HISTORY

On June 7, 2009, Andre Guidry was working in the course and scope of his employment as a pipefitter for the Shaw Group ("Shaw") when he fell off of a scaffold and swung by his harness, striking the left side of his body on the scaffolding. After climbing down, he talked to Shaw's safety coordinator, Don Jannise, and told him that he was fine but a little sore and wanted to go home and try to "shake it off." Mr. Jannise gave Mr. Guidry his card with his cell phone number and told him to call him if he had any problems.

Mr. Guidry went back to work the next morning and told Mr. Jannise that he had been unable to sleep the night before due to the pain and that he wanted to see a doctor. Mr. Jannise took him to the Med-Aid walk-in medical clinic, where he was examined by a doctor, x-rayed, and released to return to work, with the doctor's suggestion that he should work indoors. Although Shaw offered him a position working inside in the fabrication shop, Mr. Guidry told Mr. Jannise that he wanted to go home and try to rest because he had been unable to sleep the night before. Mr. Guidry wrote down his account of the accident at Mr. Jannise's request, but Mr. Jannise told him that he would handle the rest of the paperwork.

Mr. Guidry reported to work the next morning, June 9, 2009, but after working for a few hours in the fabrication shop, he left because wearing a hard hat hurt his head.

On June 10, Mr. Guidry told Mr. Jannise that he needed to get prescription medication for pain, so Mr. Jannise brought him back to the Med-Aid clinic. After waiting more than an hour to see the doctor, Mr. Guidry became combative when the doctor told him he wanted to do a CT scan before writing a prescription,¹ and he left without being examined.

When Mr. Guidry did not return to work after leaving Med-Aid, Mr. Jannise called him and offered to bring him to have a CT scan. Mr. Guidry agreed, and Mr. Jannise brought him to Bluebonnet Imaging Center on June 12, 2009 for a CT scan. Mr. Jannise spoke to Mr. Guidry later that same day to inform him that his CT scan was normal.

At this time, Mr. Guidry told Mr. Jannise that he was going to go see his own doctor, but did not tell Mr. Jannise the name of the doctor he planned to see. Mr. Jannise told Mr. Guidry that he had a right to see his own doctor, but did not offer to provide him with a choice of physician form.

Mr. Guidry went to see his choice of physician, Dr. L.H. Boulet, Jr., on June 13, 2009. Mr. Guidry paid out-of-pocket for his treatment with Dr. Boulet. Dr. Boulet sent Mr. Guidry to have another CT scan to rule out an orbital fracture; this scan was also negative. Dr. Boulet diagnosed Mr. Guidry with post-concussion headaches and contusions. Dr. Boulet took Mr. Guidry off of work at his first visit on June 13, 2009, although Mr. Guidry did not give this work slip to Shaw.

¹ Mr. Guidry is a recovering alcoholic and drug addict.

Mr. Guidry's attorney sent a letter to Shaw on June 25, 2009, notifying them that Dr. Boulet had declared Mr. Guidry unable to return to work and requesting reimbursement for the medical expenses incurred in his treatment with Dr. Boulet.

Upon notification that Dr. Boulet found Mr. Guidry to be disabled from working, which conflicted with the opinion of the first doctor who saw Mr. Guidry after the accident, Shaw arranged for Mr. Guidry to see a neurologist, Dr. Neal Smith. Dr. Smith examined Mr. Guidry on July 28, 2009 and diagnosed him with a mild concussion and possible post-concussive syndrome with headaches, memory difficulty, change in personality, and dizziness. Dr. Smith prescribed Inderal for Mr. Guidry's headaches, but could not give him anything for pain because he is a recovering alcoholic and drug addict. Mr. Guidry returned on his own to see Dr. Smith on August 11, 2009. At that visit, he reported that he was getting no relief from the headaches with the Inderal. Dr. Smith took him off of Inderal, but explained to him that there was nothing else he could do to manage his headache pain because of his drug problem. Dr. Smith did not believe Mr. Guidry was in severe pain and saw nothing on examination which would prevent him from working if he was motivated to do so.

On August 17, 2009, Mr. Guidry went back to work as a pipefitter for a different employer doing the same work he did for Shaw. Up until the day he returned to work, Dr. Boulet found him to be unable to work. However, Dr. Boulet released Mr. Guidry to work at his request because Mr. Guidry needed the money.

Mr. Guidry filed a disputed claim for compensation on October 28, 2009, requesting wage benefits, medical treatment, his choice of orthopedist

and neurologist, and attorney fees and penalties for arbitrary and capricious behavior.

Mr. Guidry did not receive medical treatment again until he was involved in an automobile accident on January 22, 2010. After that accident, he complained of neck and back pain.

After a trial on the merits, judgment was rendered in favor of Mr. Guidry and against Shaw. The workers' compensation judge ("WCJ") found: Mr. Guidry's head and left side injuries sustained in the workplace accident resulted in a disabling condition by June 9, 2009; Mr. Guidry's subsequent motor vehicle accident did not aggravate the head injuries sustained in his workplace accident; Mr. Guidry's head injury is the only injury sustained in the workplace accident that requires further medical treatment; and Mr. Guidry did not violate La. R.S. 23:1208. The WCJ awarded temporary total disability (TTD) benefits to Mr. Guidry from June 9, 2009 until August 14, 2009 at \$546.00 per week, totaling \$5,187.00, plus interest. The WCJ also found that Mr. Guidry received approval from Shaw to treat with his choice of physician, Dr. Boulet, and awarded \$2,457.54 for all of Mr. Guidry's treatment with Dr. Boulet, including prescriptions, plus interest. Mr. Guidry was also awarded his choice of neurologist and pain management physician for the treatment of his head injury. Three penalties in the amount of \$2,000.00 each, plus interest, were awarded for Shaw's refusal to recognize Mr. Guidry's right to choose his own neurologist, for Shaw's failure to reasonably controvert the claim for indemnity benefits, and for Shaw's arbitrary and capricious denial of medical treatment for Mr. Guidry's head injury. Mr. Guidry was also awarded attorney fees in the amount of \$15,000.00 and costs of \$616.39, plus interest.

Shaw has appealed, assigning the following errors:

1. The WCJ erred in awarding TTD benefits from June 9, 2009 until August 14, 2009 at \$546.00 per week.
2. The WCJ erred in ruling that Mr. Guidry received approval from Shaw to treat with Dr. Boulet.
3. The WCJ erred in ruling that Mr. Guidry is entitled to payment of medical expenses from his treatment with Dr. Boulet.
4. The WCJ erred in ruling that Mr. Guidry is entitled to his choice of neurologist and pain management physician.
5. The WCJ erred in awarding penalties for Shaw's refusal to recognize Mr. Guidry's choice of neurologist.
6. The WCJ erred in awarding penalties for Shaw's failure to reasonably controvert the claim for indemnity benefits.
7. The WCJ erred in awarding penalties for Shaw's arbitrary and capricious denial of medical treatment for his head injuries.
8. The WCJ erred in awarding \$15,000.00 in attorney fees.
9. The WCJ erred in ruling that Mr. Guidry's subsequent motor vehicle accident did not aggravate his head injury sustained in the workplace accident.

DISCUSSION

In a workers' compensation case, the appellate court's review of factual findings is governed by the manifest error-clearly wrong standard. A WCJ's determinations as to whether a claimant's testimony is credible and whether the claimant has discharged his burden of proof are factual determinations which will not be disturbed upon review in the absence of manifest error or unless clearly wrong. *Clausen v. D.A.G.G. Construction*, 01-0077, p. 3-4 (La.App. 1 Cir. 2/15/02), 807 So.2d 1199, 1202, writ denied, 02-0824 (La. 5/24/02), 816 So.2d 851.

Temporary Total Disability

Shaw argues on appeal that Mr. Guidry did not prove by clear and convincing evidence, as required by La. R.S. 23:1221(1)(c), that he was

temporarily and totally disabled, and therefore he is not entitled to TTD benefits.

Louisiana Revised Statutes 23:1221(1)(c) provides as follows for payment of compensation for TTD:

. . . [W]henver the employee is not engaged in any employment or self-employment . . . , compensation for temporary total disability shall be awarded only if the employee proves by clear and convincing evidence, unaided by any presumption of disability, that the employee is physically unable to engage in any employment or self-employment, regardless of the nature or character of the employment or self-employment, including but not limited to any and all odd-lot employment, sheltered employment, or employment while working in any pain, notwithstanding the location or availability of any such employment or self-employment.

“Clear and convincing evidence” has been defined as an intermediate standard falling somewhere between the ordinary “preponderance of the evidence” civil standard and the “beyond a reasonable doubt” criminal standard. To prove a matter by clear and convincing evidence means to demonstrate that the existence of a disputed fact is highly probable, in other words, much more probable than not. *Riker v. Popeye's Fried Chicken*, 09-0527 p. 5 (La.App. 1 Cir. 10/23/09), 29 So.3d 516, 521, writ denied, 09-2776 (La. 2/26/10), 28 So.3d 279. Also, proof by clear and convincing evidence requires objective medical evidence of the disabling condition causing the claimant's inability to engage in any employment. A trier of fact's belief in a claimant's self-serving testimony alone is insufficient. A claimant must provide objective, expert testimony as to his medical condition, symptoms, pain, and treatment, in addition to personal testimony, in order to meet this standard. *Riker*, 09-0527 at pp. 5-6, 29 So.3d at 521.

The finding of disability within the framework of the workers' compensation law is a legal rather than a purely medical determination. Therefore, the question of disability must be determined by reference to the

totality of the evidence, including both lay and medical testimony. The question of disability is ultimately a question of fact, which cannot be reversed in the absence of manifest error. *Riker*, 09-0527 at p. 6, 29 So.3d at 521.

In applying the manifest error-clearly wrong standard, the appellate court's determination is not whether the trier of fact was right or wrong, but whether the trier of fact's conclusion was a reasonable one. *Banks v. Industrial Roofing & Sheet Metal Works, Inc.*, 96-2840, p. 7 (La. 7/1/97), 696 So.2d 551, 556. Thus, "[if] the [factfinder's] findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently." *Sistler v. Liberty Mutual Insurance Co.*, 558 So.2d 1106, 1112 (La. 1990). Consequently, when there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous. *Bolton v. B E & K Construction*, 2001-0486, p. 7 (La.App. 1 Cir. 6/21/02), 822 So.2d 29, 35.

Mr. Guidry testified that he did not resume working on the day of the accident because he wanted to go home and try to "shake it off." The doctor he saw at the Med-Aid clinic on June 8, 2009, the day after the accident, released him to return to work with the suggestion that he work inside; however, Mr. Guidry did not report to work that day because he wanted to go home and rest. He attempted to work in the tool room (an indoor accommodation offered to him by Shaw) on June 9, 2009, but went home after about three hours because wearing a hard hat hurt his head. He did not return to work again. Dr. Boulet restricted him from working effective June 13, 2009, although Mr. Guidry did not contact Shaw to inform them of this. As of June 23, 2009, correspondence between Shaw and their workers'

compensation carrier stated that they had received no notice of a doctor restricting Mr. Guidry from working. Shaw first became aware that Dr. Boulet had restricted Mr. Guidry from working on June 25, 2009. Dr. Boulet testified that he disagreed with the decision of the doctor who saw Mr. Guidry on the day after the accident to release Mr. Guidry to work, because Mr. Guidry was still having headaches and he would have gotten a CT scan to rule out a subdural hematoma or epidural hematoma before allowing him to return to work.² Dr. Boulet went on to say that he released Mr. Guidry to return to work in August, despite the fact that Mr. Guidry claimed to have no improvement in his headaches, because Mr. Guidry told him he needed the money, and Dr. Boulet had no concerns in doing so. Dr. Smith, the neurologist, testified that he did not believe Mr. Guidry was incapable of working when he saw him on July 28, 2009. Mr. Guidry testified at trial that he was unable to perform his job at Shaw after the accident, even with the accommodations offered by Shaw, due to his headaches. He went on to explain that at the time of the accident, he had some money saved and did not have to work. However, when he ran out of money, he did not contact Shaw to see about going back to work for them because he assumed they would not rehire him because he had a lawyer, so he took a position at a different employer, doing the same job he had done for Shaw before the accident, at a higher wage. A representative from Mr. Guidry's new employer testified that he had no knowledge of Mr. Guidry having headaches, needing ongoing medical treatment, or being unable to perform any job duties when he was hired.

The WCJ found that as a result of the June 7, 2009 workplace accident, Mr. Guidry was disabled from June 9, 2009 through August 14,

² Mr. Guidry had CT scans on June 12 and June 25, both of which were normal.

2009. The WCJ noted that although the Med-Aid clinic doctor who saw Mr. Guidry on June 8, 2009 cleared him to return to work, Dr. Boulet restricted Mr. Guidry from working at his first visit on June 9, 2009. Although Dr. Boulet did testify in his deposition that his first visit with Mr. Guidry was on June 9, 2009, it appears that this was an error. The medical records and other testimony establish that Dr. Boulet first saw Mr. Guidry and restricted him from working on June 13, 2009.

While we may have weighed the evidence differently had we been the trier of fact, the WCJ's choice in accepting Dr. Boulet's opinion that Mr. Guidry was unable to work due to the injuries he sustained in the accident, as well as Mr. Guidry's own testimony that he was unable to work, was not manifestly erroneous. However, since the WCJ based the calculations of Mr. Guidry's TTD benefits on Dr. Boulet's mistaken testimony that he took Mr. Guidry off of work on June 9, we will recalculate the TTD benefits owed. The correct starting date for Mr. Guidry's TTD benefits was June 13, 2009, the date Dr. Boulet took him off of work. June 13, 2009 through August 14, 2009 is nine weeks, so the correct amount of TTD benefits is \$4,914.00.

Expenses of Treatment with Dr. Boulet

In the next assignment of error, Shaw argues that it did not approve treatment with Dr. Boulet, and therefore is not responsible for the payment of the expenses of Mr. Guidry's treatment with Dr. Boulet which exceed the \$750.00 it already paid.

Louisiana Revised Statutes 23:1203(A) provides that an employer shall "furnish all necessary drugs, supplies, hospital care and services, medical and surgical treatment, and any nonmedical treatment recognized by the laws of this state as legal. . . ." However, La. R.S. 23:1142(B) limits an

employer's liability for non-emergency medical treatment to \$750.00 where the employee did not first seek to have the treatment authorized by the employer.

The WCJ concluded that Mr. Jannise did authorize treatment with Dr. Boulet on behalf of Shaw when, in response to Mr. Guidry's statement that he was going to go see his own doctor, he told Mr. Guidry that he had a right to do so. Mr. Jannise did not instruct Mr. Guidry that there were any additional steps he needed to take in order to have his treatment authorized. A review of the record reveals that a reasonable factual basis for this finding by the WCJ exists, and therefore we cannot say that the WCJ's finding was clearly wrong.

Shaw further argues that Mr. Guidry offered no evidence or testimony to prove that the medical expenses listed in Plaintiff's Exhibit #2 were outstanding expenses related to the work accident. This is incorrect. Mr. Guidry identified the receipts in the exhibit at trial and testified that those were expenses incurred as a result of his on-the-job accident at Shaw and that he had paid for those out of his pocket. This assignment of error is without merit.

Choice of Physicians

Shaw contends that the WCJ erred in awarding Mr. Guidry his choice of neurologist because Mr. Guidry consented to treatment with Shaw's choice of neurologist, Dr. Smith, by returning to see him for a follow-up visit after the initial visit scheduled by Shaw.

Louisiana Revised Statutes 23:1121 provides, in pertinent part:

B. (1) The employee shall have the right to select one treating physician in any field or specialty. The employee shall have a right to the type of summary proceeding provided for in R.S. 23:1124(B), when denied his right to an initial physician of choice. After his initial choice the employee shall obtain prior

consent from the employer or his workers' compensation carrier for a change of treating physician within that same field or specialty. The employee, however, is not required to obtain approval for change to a treating physician in another field or specialty.

(2)(a) If the employee is treated by any physician to whom he is not specifically directed by the employer or insurer, that physician shall be regarded as his choice of treating physician.

(b) When the employee is specifically directed to a physician by the employer or insurer, that physician may also be deemed as the employee's choice of physician, if the employee has received written notice of his right to select one treating physician in any field or specialty, and then chooses to select the employer's referral as his treating specialist after the initial medical examination as signified by his signature on a choice of physician form. The notice required by this Subparagraph shall be on a choice of physician form promulgated by the director of the office of workers' compensation and shall contain the notice of the employee's rights provided under R.S. 23:1121(B)(1). Such form shall be provided to the employee either in person or by certified mail.

Shaw has not cited any authority for its position that Mr. Guidry's act of returning to see Dr. Smith one time after the initial visit scheduled by Shaw results in Dr. Smith being deemed Mr. Guidry's choice of neurologist, and no assertion has been made that Mr. Guidry received written notice of his right to select a treating physician and subsequently chose Dr. Smith. Thus, Shaw's argument that Dr. Smith was Mr. Guidry's choice of neurologist must fail.

Shaw also argues that any additional treatment by a neurologist would be unreasonable and unnecessary. The WCJ made a finding of fact that Mr. Guidry was still suffering headaches caused by the work accident at Shaw and that those headaches still required treatment. Dr. Boulet testified that he would recommend that Mr. Guidry see a neurologist for his continuing symptoms. We cannot say that the trial court erred in ordering that Mr. Guidry be allowed to see his choice of neurologist.

Shaw also argues that the WCJ erred in awarding Mr. Guidry treatment with his choice of pain management physician because Mr. Guidry did not request treatment with a pain management physician, and also because pain management is not reasonable or necessary since Mr. Guidry is at maximum medical improvement and has not been referred to a pain management physician by either Dr. Boulet or Dr. Smith.

Although Shaw argues that Mr. Guidry has reached maximum medical improvement and has not been referred to a pain management physician by Dr. Boulet or Dr. Smith, the WCJ found that Mr. Guidry still required treatment for his headaches, and Dr. Smith testified that he would recommend that Mr. Guidry go to a pain management clinic for the treatment of his chronic pain because of his addiction issues. Furthermore, while it is true that Mr. Guidry requested treatment with his choice of neurologist and orthopedist in his disputed claim for compensation, it was not until after Mr. Guidry made this request that Dr. Smith, the only neurologist who had seen Mr. Guidry, testified that he believed that a referral to a pain management clinic would be more appropriate due to Mr. Guidry's addiction issues. Therefore, we find no error in the WCJ's ruling that Mr. Guidry was entitled to seek treatment from a pain management physician for his chronic pain.

Penalties and Attorney Fees

Shaw next argues that the WCJ erred in assessing penalties for its failure to recognize Mr. Guidry's choice of neurologist, its failure to reasonably controvert the claim for indemnity benefits, and its arbitrary and capricious denial of medical treatment for his head injury.

Louisiana Revised Statutes 23:1201(F) provides for the award of penalties and attorney fees in workers' compensation cases as follows:

Failure to provide payment in accordance with this Section or failure to consent to the employee's request to select a treating physician or change physicians when such consent is required by R.S. 23:1121 shall result in the assessment of a penalty in an amount up to the greater of twelve percent of any unpaid compensation or medical benefits, or fifty dollars per calendar day for each day in which any and all compensation or medical benefits remain unpaid or such consent is withheld, 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. The maximum amount of penalties which may be imposed at a hearing on the merits regardless of the number of penalties which might be imposed under this Section is eight thousand dollars. An award of penalties and attorney fees at any hearing on the merits shall be res judicata as to any and all claims for which penalties may be imposed under this Section which precedes the date of the hearing. Penalties shall be assessed in the following manner:

(1) Such penalty and attorney fees shall be assessed against either the employer or the insurer, depending upon fault. No workers' compensation insurance policy shall provide that these sums shall be paid by the insurer if the workers' compensation judge determines that the penalty and attorney fees are to be paid by the employer rather than the insurer.

(2) This Subsection shall not apply if the claim is reasonably controverted or if such nonpayment results from conditions over which the employer or insurer had no control.

A WCJ's determination of whether an employer or insurer should be cast with penalties and attorney fees is a question of fact subject to the manifest error/clearly wrong standard of review. *Frith v. Riverwood, Inc.*, 04-1086 p. 12 (La.App. 1 Cir. 1/19/05), 892 So.2d 7, 15.

Shaw's argument that it should not be assessed with any penalties is based upon its assertion that any failure to approve a physician or reasonably controvert the claim for indemnity benefits, or any denial of medical treatment was the fault of the workers' compensation carrier, who was not a party to the suit, and not Shaw. As noted by the trial court, Mr. Guidry's only contact with regard to his injuries was with Mr. Jannise at Shaw. There was no testimony that Mr. Jannise or anyone else ever supplied Mr. Guidry

with any information to contact a workers' compensation carrier. Mr. Guidry testified that when Mr. Jannise asked him to write down his account of the accident, he asked Mr. Jannise what paperwork he needed to fill out, and Mr. Jannise responded that he would handle all of that. Mr. Jannise also testified that he told Mr. Guidry that he needed to go through him before talking to a doctor. Finally, Mr. Guidry testified that some time after he saw Dr. Boulet, he contacted Mr. Jannise about getting reimbursed for his treatment with Dr. Boulet, and Mr. Jannise told him to send him the bills and he would think about paying them. Although Shaw's workers' compensation carrier did become involved with the denial of Mr. Guidry's claims at some point, given the control exercised by Shaw over Mr. Guidry's claim, we cannot say the WCJ was manifestly erroneous in concluding that Shaw's fault necessitated the assessment of penalties.

Regarding the \$15,000.00 award of attorney fees, Shaw argues that any attorney fee award should be limited to twenty percent of the total award, pursuant to La. R.S. 23:1141. However, La. R.S. 23:1201(I) provides that the provisions of La. R.S. 23:1141 limiting the amount of attorney fees shall not apply to cases where the employer or insurer is found liable for attorney fees under this Section. Therefore, the WCJ was not limited by the provisions of La. R.S. 23:1141, but was merely required to make an award of attorney fees which was "reasonable."

In a workers' compensation case, the WCJ is allowed to call upon its own experience and expertise in determining the amount of time and effort that a lawyer has put into the preparation of a case. *Bacon v. Transport Service Company*, 01-1913, p. 6 (La.App. 1 Cir. 10/2/02), 836 So.2d 158, 162. The factors to be considered in the imposition of an award for attorney fees in workers' compensation cases include the degree of skill and work

involved in the case, the amount of the claim, the amount recovered, and the amount of time devoted to the case. *Id.* However, when the fee is based upon the work performed outside the presence of the WCJ and not clearly determinable from the record of the proceedings, the WCJ should require evidence supporting these factors in determining a reasonable attorney fees. *Smith v. Phillip Morris, U.S.A.*, 02-0103 pp. 10-11 (La.App. 1 Cir. 12/20/02), 858 So.2d 443, 450.

Shaw argues on appeal that the \$15,000.00 attorney fee awarded in this case was excessive because it greatly exceeds the degree of skill and work involved in the case, the amount of the claim, the amount recovered, and the amount of time devoted to the case. Shaw pointed out that only three depositions were taken, only one set of discovery requests was propounded (by Shaw), Mr. Guidry's attorney admitted only five exhibits at trial, the trial lasted only three hours, and Mr. Guidry's attorney called no witnesses other than Mr. Guidry. Mr. Guidry's attorney responded in brief that he spent a significant amount of hours prosecuting the case. However, Mr. Guidry's attorney did not offer any evidence as to how much time he devoted to the handling of the claim, and the WCJ did not articulate on what basis she made the award. Because the WCJ did not articulate which of the *Bacon* factors set forth above were considered in awarding attorney fees, and because Mr. Guidry's attorney did not offer evidence substantiating the hours he worked on this case, the facts in this case do not support an award of \$15,000.00, and we cannot review the appropriateness of the award. We therefore remand for the basis and amount of award to be reconsidered and articulated without the taking of additional evidence. *See, Smith v. Phillip Morris, U.S.A.*, 02-0103 pp. 10-11 (La.App. 1 Cir. 12/20/02), 858 So.2d 443, 450.

Mr. Guidry's Subsequent Accident

Shaw's final assignment of error alleged that the WCJ erred in ruling that Mr. Guidry's subsequent motor vehicle accident did not aggravate his workplace injury.

Mr. Guidry testified that he did not stop seeking treatment for his headaches several months before the motor vehicle accident because he felt better; rather, he stopped treating because nothing was helping him and he could no longer afford to pay the doctors out-of-pocket. Dr. Boulet attributed Mr. Guidry's headaches to the post-concussion syndrome caused by his workplace accident. Shaw offered no medical evidence proving that Mr. Guidry's chronic headache pain was caused by his subsequent motor vehicle accident. Based on the evidence, we cannot say that the WCJ erred in finding that Mr. Guidry's headaches were the result of his workplace accident, rather than the subsequent motor vehicle accident. This assignment of error is without merit.

CONCLUSION

For the above reasons, the judgment in this case is amended to correct the amount of indemnity benefits awarded from \$5,187.00 to \$4,914.00. The matter is remanded for the sole purpose of the WCJ reconsidering and articulating the basis and amount of attorney fee award without the taking of additional evidence. In all other respects, the judgment is affirmed.

**AMENDED IN PART; AFFIRMED AS AMENDED; AND
REMANDED WITH INSTRUCTIONS.**