

COURT OF APPEAL  
STATE OF LOUISIANA

FIRST CIRCUIT

2008 CA 0100

JOHN MAGEE

VERSUS

JOE N. MILES & SONS, INC.

Judgment rendered: JUN - 6 2008

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On Appeal from the  
Office of Workers' Compensation Administration  
District 6,  
Parish of St. Tammany, State of Louisiana  
Case Number 07-02636  
The Honorable Elizabeth A. Warren, Judge Presiding

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John Magee

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Counsel for Defendant/Appellee  
Joe N. Miles & Sons, Inc.

BEFORE: PARRO, KUHN AND DOWNING, JJ.

*Parro, J., concurs.*  
*Kuhn J. concurs*

*Parro*

**DOWNING, J.**

John Magee appeals a judgment rendered in Workers' Compensation Court (WCC) that dismissed his claim for benefits related to a back injury he allegedly incurred while working for Joe N. Miles & Sons, Inc. He also appeals the judgment's dismissal pursuant to the forfeiture statute, La. R.S. 23:1208.1, of a claim for benefits based on an alleged neck and left shoulder injury. For the following reasons we affirm the WCC judgment.

Mr. Magee was performing his duties with a stick-stacking machine when his hand was pulled into a machinery belt, resulting in the loss of one finger and serious injury to another finger. The damage claims for the hand injuries were settled and are not subject to this appeal. He also claimed, however, that he injured his back, neck and shoulder during his encounter with the stick-stacking machine. Mr. Magee did not report this injury to his employer at the time of the incident.

At the time he was hired, on the second injury fund questionnaire, he did not disclose that he had spinal surgery from an injury he incurred in 1997 when a tree limb fell on his vehicle. He did disclose, however, a surgery to his abdomen for a gunshot wound that he incurred in 1977. The WCC held that Mr. Magee's failure to disclose his prior neck surgery constituted a violation of La. R.S. 23:1208.1.

There were many inconsistencies in Mr. Magee's testimony, and the inaccurate questionnaire speaks for itself. It is inexplicable that Mr. Magee would answer "yes," acknowledging that he had a prior surgery, and explain the details of that incident which occurred nearly thirty years before, and not mention the more recent neck surgery.

After considering the evidence as a whole and after a thorough review of the record, we conclude that the WCC was not manifestly erroneous in denying Mr. Magee benefits because of his failure to meet his burden of proof and because of his violation of La. R.S. 23:1208.1. Accordingly, we affirm the WCC's judgment

in accordance with Uniform Rules-Courts of Appeal, Rule 2-16.1B. The cost of this appeal is assessed against John Magee.

**AFFIRMED**