

SUPREME COURT OF LOUISIANA

NO. 97-C-0397

JERRY D. CLARK

V.

MRS. FIELDS COOKIES

Calogero, C.J. dissenting

This case involves a plaintiff who apparently sustained severe spinal injuries--compression fractures and disabling spondylolisthesis--when he fell from a ladder while taking store inventory. In recognition of the severity of that injury, he received weekly temporary total disability payments for approximately 25 months. The reason why these benefits were terminated was his failure to attend an independent medical examination, which he was unable to attend because he was incarcerated at the time. The law tells him that during any period of incarceration his right to compensation benefits is forfeited and that his right to claim compensation benefits shall resume only after his release from incarceration. Within five months of his release from prison, he filed this claim with the compensation office. Now, this Court tells him that he should have and could have filed a claim while in jail within twelve months of receipt of his last compensation payment and that this was necessary in order to preserve his claim upon his release. According to this Court, such an interpretation is necessary to protect the employer against stale claims. In my view, such a holding is neither just nor legal, for the following reasons.

My review of the legislative history and the plain wording of LSA-RS 23:1201.4 convinces me that prescription in the instant case was suspended during the period of the plaintiff's incarceration. As I read the statute, it is intended to encompass both the situation addressed by the majority, where the employee who is receiving benefits prior to incarceration forfeits that right while incarcerated only to have it resume upon his release and, additionally, the situation where it is necessary for the employee to file a claim for benefits--either because those benefits were terminated while the employee was incarcerated, as in plaintiff Clark's case, or because the employee had yet to file a claim before he was

imprisoned. When payments are in fact being made and the employee is thereafter incarcerated, the suspension of prescription is not implicated because the receipt of compensation benefits is merely forfeited during incarceration and is to resume upon the employee's release from prison. In such a case, there is no dispute between the employee and the employer which would impose on the plaintiff the burden of filing a claim to suspend prescription. And only if payments are not resumed upon release will it become necessary for the employee to file suit. However, prescription is implicated when it is necessary for an incarcerated employee to file a claim either to receive outset compensation benefits or to re-establish entitlement to benefits that have been terminated for a reason other than the employee's incarceration. The statute states in its last sentence, "After release from incarceration, the employee's right to *claim* compensation benefits shall resume." Unlike the first sentence of the statute, which speaks to forfeiture of compensation benefits while incarcerated, this last sentence addresses the right to claim benefits, for it states that this right resumes upon the employee's release. For this right to *resume* upon release, it must have been unavailable, or suspended, during the period of incarceration.

The legislative history of the statute supports this proposition as well. Prior to its enactment, the first two versions of the statute did not include the word "claim" in the last sentence. Instead, that sentence merely stated, "After release from incarceration, the employee's right to compensation shall resume...." The Legislature's decision to insert the word "claim" into this last sentence in the enacted version, when it had been omitted in the two previous drafts, is most instructional with respect to the statute's interpretation. In my view, this change in the enacted version of the statute is indicative of the Legislature's intent to withhold from the incarcerated employee both the right to receive *and* the right to make a claim for compensation benefits.

Consequently, these reasons, as well as the fundamental precept that the provisions of the Worker's Compensation Act are to be liberally construed in favor of the claimant, *See Bynum v. Capital City Press, Inc.* 93-1395 (La. 7/2/96), 676 So.2d 582; *Daugherty v. Domino's Pizza*, 95-1394 (La. 5/21/96), 674 So.2d 947, support the conclusion that prescription was suspended during the plaintiff's incarceration. In my view, prescription did not commence when Clark's benefits were terminated (for his failure to attend the independent medical examination), but rather it commenced on the date of his release from jail, because only then did his right to claim benefits resume. As the plaintiff filed this claim five months after his release from prison, his claim had not prescribed.

