SUPREME COURT OF LOUISIANA

No. 95-C-1395

JACQUELYN M. BYNUM

Versus

CAPITAL CITY PRESS, INC.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL
FIRST CIRCUIT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

JOHNSON, J. Dissenting

I respectfully dissent. The majority has chosen to follow the same flawed conclusions reached by the hearing officer for the Office of Workers' Compensation. Dr. Wilbert McClay's letter dated 16 September 88, indicated that it was his "impression" and not diagnosis, that claimant's disability was due to occupational disease. This information should not have lead the hearing officer to conclude that claimant's condition was related to her occupation because the letter further stated that additional testing needed to be done.

This court has abandoned Williams v. Public Grain Elevator of New Orleans, Inc., 417 So. 2d 398 (La. App. 4th Cir. 1982), writ not considered, 442 So. 2d 160 (La. 1982), where the court ruled that the diagnosis of occupational disease, requires expert testimony. The court opined "Needless to say, not all diseases suffered by working individuals are occupational diseases and the diagnosis of a disease as an occupational disease requires expert testimony."[1]

In a recent decision involving this same issue of prescription, the second circuit court of

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[1] Id. at 399.

appeal decided to follow the rule of Williams, supra in the case of Perkins v. Asplundh Tree Expert Co., 650 So. 2d 1198 (La. App. 2 Cir. 1995). In Perkins the court stated that:

"Few outside the medical profession, however, are competent to say that recurring symptoms are symptoms of a particular disease, much less of an occupational disease within the meaning of w.c. law... the occupational disease, not the symptoms of the disease and not the disability resulting from the disease, '"manifests"' itself when a medical doctor squarely diagnoses the worker as having an occupational disease within the w.c. law."[2]

Our jurisprudence is such that worker's compensation laws must be given liberal interpretation in favor of workers. See Harold v. La Belle Maison Apartments, 643 So. 2d 752, 94-0889 (La. 1994); Allen v. City of Shreveport, 637 So. 2d 123, 93-2989 (La. 1993); Campbell v. Fidelity & Casualty Co. of New York, 339 So. 2d 339 (La. 1976). We abandon the general rationale behind workers' compensation laws if we overrule Williams and Perkins.

Not many individuals outside the medical field are competent to detect an occupational disease within the meaning of Louisiana workers' compensation laws. While an intelligent person can "suspect" what his/her condition might be, it is unreasonable to hold in this case that the legislature would expect a person who lacks scientific expertise to "know" he has a disease, especially where a medical expert opined that further tests needed to be done before he could reach a conclusion. Accordingly, I must dissent.

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[2] Perkins at 1200.