

SUPREME COURT OF LOUISIANA

97-C-0397

JERRY D. CLARK

versus

MRS. FIELDS COOKIES

KNOLL, J., dissenting.

For the reasons assigned by Chief Justice Calogero, and for the additional reasons assigned below, I respectfully dissent.

Initially, I find that the word “forfeiture” in the statute is ambiguously used. According to Blacks Law Dictionary, “forfeiture” is a “loss of some right or property as a penalty for some illegal act.” However, the claimant in this case did not do anything under the Worker’s Compensation Act to forfeit his benefits, nor were the benefits forfeited as a penalty because the claimant committed a criminal act. The legislature “forfeited” his benefits only during his period of incarceration not because he broke the law, *but because he does not need benefits while incarcerated.*

Upon a claimant’s release from incarceration, his “right to claim compensation benefits *shall resume.*” La.R.S. 23:1201.4. While the act does not specifically mention suspension of prescription, it is apparent that the legislature intended a suspension to occur. Otherwise, a claimant would have a right without a remedy, i.e., he could file a claim, but he could not collect any benefits.

Obviously, the right to file a claim for benefits that one cannot receive is a vain

and useless task. Although the majority opinion holds that there is nothing in the statute to preclude an inmate from filing a compensation claim, the disadvantages of incarceration accompanied by the fact that there is no remedy to be obtained other than the interruption of prescription make filing such claims a practical impossibility.

As noted by the majority opinion, the purpose of prescriptive periods is to enable an employer to gauge potential liability, to prevent suits based on stale claims, and to establish a conclusively presumptive period for waiver of a claim. None of those purposes are served in the instant case. Here, the defendant had acquiesced that claimant was entitled to benefits, and paid TTD benefits for *no less than two years*. Defendant had already determined that it was liable for the claim, and had made this decision on current and conclusive evidence available at that time. By paying benefits to the claimant, defendant had made the issue of waiver of the claim moot.

The unique nature of the worker's compensation dispute as an "open ended" inquiry created a windfall for the employer in the instant case. Not only was the employer able to avoid payment of benefits to the incarcerated claimant, but the employer was able to begin anew the tolling of prescription on a claim for which it had already accepted liability. In my view, the legislature intended no such windfall to inure to the benefit of employers at the expense of the claimant, who, but for his temporary incarceration is entitled to worker's compensation benefits.

I would therefore hold that the tolling of prescription on an otherwise valid worker's compensation claim is suspended while that worker's benefits are suspended due to his incarceration. I therefore respectfully dissent from the majority opinion.

