

SUPREME COURT OF LOUISIANA

No. 98-C-3150

LONNIE J. FALGOUT

VERSUS

DEALERS TRUCK EQUIPMENT CO.

MARCUS, J. (dissenting)

The issue in this case is whether plaintiff's claim for modification of workers' compensation benefits is prescribed. The majority holds that it is not. I disagree.

In 1994 plaintiff accepted a court approved lump sum settlement for workers' compensation benefits in connection with a knee injury sustained in 1990. In 1997, three years after receipt of the last benefit payment, plaintiff filed a workers' compensation claim seeking to have his weekly benefits modified. The trial judge and the court of appeal found that plaintiff had one year from the date of the last benefit payment to file a claim for modification. Both courts held that the one year prescriptive period set forth in La. R.S. 23:1209 applies to requests for modification made pursuant to La. R.S. 23:1310.8. In my view, this was the correct interpretation of the law.

The version of La. R.S. 23:1310.8 in effect at the time of plaintiff's injury and at the time of receipt of the last benefit payment permitted a claimant to seek modification of former findings and orders. However, the section on modifications did not itself stipulate a specific period of limitations for such claims. In 1999, La. R.S. 23:1310.8 was amended to expressly provide that a claim for modification of a former award is subject to the prescriptive limitations established in the Act's general prescription provision, La. R.S. 23:1209.<sup>1</sup> In my view, this amendment was no more than a

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<sup>1</sup> La. Acts. 323 (1999).

clarification of existing law. Thus, whether or not the amended version of the statute is applied to this case, the result is the same.

In Lacour v. Hilti Corporation, (La. 5/18/99), 309 So. 2d 283, we noted that the Workers' Compensation Act must be viewed as a symmetrical whole. In that case we held that the prescriptive period stipulated in La. R.S. 23:1209 applies to claims for occupational disease, even though the section on occupational disease itself is silent on a period of limitations. Likewise in this case, even though the section of the Act addressing modification of a prior claim is silent as to prescription, it does not follow that such claims are imprescriptible. Rather, we should look to the fountainhead prescriptive provision of the Act for the appropriate period of limitations. La. R.S. 23:1209 provides that where workers' compensation payments have been made:

. . . **in any case**, the limitation shall not take effect until the expiration of one year from the time of making the last payment. . . (emphasis added).

In my view, the time for applying for modification of benefits expires one year after the date of last payment. Moreover, that is the view that was espoused by this court in Landreneau v. Liberty Mutual Insurance Co., 309 So. 2d 283 (La. 1975), albeit in dicta. In Landreneau we recognized that if modifications could be made without any period of limitations, claimants would be able to relitigate benefits years after payments had ceased and judgments had been satisfied. We concluded that employers are protected from stale claims by the prescriptive period in La. R.S. 23:1209. There is no reason to depart from that reasoning in this case. Plaintiff's claim for modification of benefits came too late and is prescribed.

For the foregoing reasons, I respectfully dissent.