

SUPREME COURT OF LOUISIANA

NO. 95-C-1387

HILLIARD J. MATTHEWS

versus

FARLEY INDUSTRIES

consolidated with

NO. 95-C-1796

LANA S. MARTIN

versus

TEXACO, INC.

**ON WRIT OF REVIEW TO THE COURTS OF APPEAL,
FIRST AND THIRD CIRCUITS, STATE OF LOUISIANA**

WATSON, Justice.

In these consolidated cases, the First and Third Circuits rendered conflicting opinions on the question of whether a worker's compensation claimant can seek modification of an adverse judgment denying further benefits.

FACTS

Hilliard J. Matthews

Hilliard J. Matthews, an employee of Martin Mills, Incorporated, developed a painful condition in his right wrist. Matthews was diagnosed as having de Quervain's disease and underwent surgery. Benefits were paid from May 2, 1990, until June 21, 1991 (with a four-month interruption). After benefits were terminated, Matthews' attorney filed a claim for compensation. Judgment was rendered against Matthews denying, with prejudice, any further benefits. The court of appeal affirmed that judgment. Matthews filed for modification of the adverse judgment based on a change in circumstances. The hearing officer concluded that res judicata barred Matthews' claim. The court of appeal reversed and remanded. *Matthews v. Farley Industries*, 95-49 (La. App. 3 Cir. 5/3/95), 657 So.2d 191. A writ was granted to consider whether Matthews has a viable claim for modification of the adverse judgment under R.S. 23:1310.8(B). *Matthews v. Farley Industries*, 95-1387 (La. 10/6/95), 661 So.2d 454.

Lana Martin

Lana Martin injured her right knee on April 10, 1989, and received worker's compensation benefits from her employer, Texaco, Inc., until April 17, 1991. After her benefits were terminated, Martin filed a compensation claim. The hearing officer

determined that plaintiff was not disabled after April 17, 1991, and dismissed her suit with prejudice. The court of appeal affirmed. While the appeal was pending, plaintiff alleged that the weakened right knee caused her to fall and injure her left knee. Plaintiff filed a motion for modification of the judgment based upon a change of circumstances. The hearing officer dismissed the motion. The court of appeal affirmed the dismissal and granted Texaco's exception of no cause of action, holding that only a compensation award can be modified under R.S. 23:1310.8(B). *Martin v. Texaco*, 94-2412 (La. App. 1 Cir. 5/5/95), 655 So.2d 549. A writ was granted to consider the conflict with the Third Circuit. *Martin v. Texaco*, 95-1796 (La. 10/6/95), 661 So.2d 455.

LAW

Prior to 1990, modification of worker's compensation judgments was governed by R.S. 23:1331(C) which provided:

C. At any time after six months after rendition of a judgment of compensation by the district court or at any time after six months from the date of the acceptance by the parties of the recommendation of the director under R.S. 23:1310.1, the director shall review the same upon the application of either party for a modification thereof and shall issue a recommendation pursuant to R.S. 23:1310.1.

Disotell v. Wadsworth Golf Const. Co., 500 So.2d 371 (La. 1987), interpreted R.S. 23:1331(C). *Disotell* held that acceptance of the director's recommendation did not preclude a claimant from seeking modification.

R.S. 23:1310.8 now provides:

A. (1) The power and jurisdiction of the hearing officer over each case shall be continuing and he may, upon application by a party and after a contradictory hearing, make such modifications or changes with respect to former findings or orders relating thereto if, in his opinion, it may be justified, including the right to require physical examinations as provided for in R.S. 23:1123, provided, that upon petition filed by the employer or insurance carrier, and the injured employee, or other person entitled to compensation under the Worker's Compensation Act, a hearing officer shall have jurisdiction to consider the proposition of whether or not a final settlement may be had between the parties presenting such petition, subject to the provisions of law relating to settlements in worker's compensation cases.

(2) The hearing officer may have a full hearing on the petition, and take testimony of physicians and others relating to the permanency or probable permanency of the injury, and take such other testimony relevant to the subject matter of such petition as the hearing officer may require. The hearing officer may consider such petition and dismiss the same without a hearing if in his judgment the same shall not be set for a hearing.

(3) The expenses of such hearing or investigation, including necessary medical examinations, shall be paid by the employer or insurance carrier, and such expenses may be included in the final award. If the hearing officer decides it is in the best interest of both parties to said petition that a final award be made, a decision shall be rendered accordingly and the hearing officer may make an award that shall be final as to the rights of all parties to said petition and thereafter the hearing officer shall have no jurisdiction over any claim for the injury or any results arising from same. If the hearing officer should decide the case should not be finally settled at the time of the hearing, the petition shall be dismissed without prejudice to either

party, and the hearing officer shall have the same jurisdiction over the matter as if said petition had not been filed.

B. Upon the application of any party in interest, on the ground of a change in conditions, the hearing officer may, after a contradictory hearing, review any award, and, on such review, may make an award ending, diminishing, or increasing the compensation previously awarded, subject to the maximum or minimum provided in the Worker's Compensation Act, and shall state his conclusions of fact and rulings of law, and the director shall immediately send to the parties a copy of the award.

C. This Section shall not apply to the calculation of the monthly benefit amount pursuant to R.S. 23:1221(3).

CONCLUSION

The former statute allowed modification of a compensation judgment or the director's recommendation. The current statute uses the word "award." Under Section B, the hearing officer may review any award and end, diminish or increase the compensation previously awarded. The language clearly requires a prior award of compensation.

Neither Lana Martin nor Hilliard Matthews received an award of compensation. Both claimants' suits were dismissed with prejudice by their respective hearing officers. Both adverse judgments were affirmed. The judgments became final adjudications. Since no awards were made, the hearing officers lacked jurisdiction to end, diminish or increase the compensation previously awarded.

For the foregoing reasons, the judgment in *Matthews v. Farley Industries*, 95-49 (La. App. 3 Cir. 5/3/95), 657 So.2d 191, is reversed. Hilliard J. Matthews' claim for modification of the adverse trial court judgment is dismissed with prejudice.

REVERSED AND RENDERED.

For the foregoing reasons, the judgment in *Martin v. Texaco*, 94-2412 (La. App. 1 Cir. 5/5/95), 655 So.2d 549, is affirmed.

AFFIRMED.