

DONNELL BROWN	*	NO. 2026-CA-0092
VERSUS	*	COURT OF APPEAL
CREATIVE RISK SOLUTIONS	*	FOURTH CIRCUIT
AND GALLO MECHANICAL,	*	STATE OF LOUISIANA
LLC		

APPEAL FROM
THE OFFICE OF WORKERS' COMPENSATION
NO. 22-03693, DISTRICT “08”
Honorable Abril L. Baloney

Judge Monique G. Morial

(Court composed of Judge Sandra Cabrina Jenkins, Judge Rachael D. Johnson,
Judge Monique G. Morial)

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PRO SE PLAINTIFF/APPELLANT

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AFFIRMED
AUGUST 31, 2026

Claimant-Appellant, Donnell Brown, appeals the June 24, 2024 Office of Worker’s Compensation (OWC) judgment dismissing his Disputed Claim for Compensation against his employer, Gallo Mechanical, LLC (hereinafter “Gallo”) and its administrator, Creative Risk Solutions, LLC (collectively “Defendants”). For the following reasons, we affirm.

Factual and Procedural Background

This is a worker’s compensation case. On December 8, 2021, Claimant sustained a crush-type injury to his left middle finger while repairing pipes in the course and scope of his employment with Gallo. On July 11, 2022, Claimant filed a Disputed Claim for Compensation against Defendants seeking temporary total disability (“TTD”) benefits, penalties, and attorney fees for Defendants’ alleged improper termination of his indemnity benefits and refusal to authorize related medical treatment. Defendants filed an Answer to the claim, admitting that Claimant was injured in the course and scope of his employment; however,

Defendants asserted that Claimant had been medically released to return to work and, further, had been offered light duty work that Claimant refused.

On March 27, 2024, the matter proceeded to trial. At trial, the parties stipulated that: (1) Claimant was involved in a work-related accident on December 8, 2021 while in the course and scope of his employment; (2) Claimant's average weekly wage (AWW) is \$1228.00 with a corresponding weekly compensation rate of \$743.00 per week; and (3) Claimant was released to regular work duty on January 10, 2022.

Claimant proceeded to trial pro se.¹ Claimant testified that, immediately following the accident, he went to an Ochsner Occupational Health facility for treatment and was instructed that he could return to work. He testified that he returned to work after the accident but was in pain and eventually stopped working on March 9, 2022. On March 18, 2022, he again returned to work using only his left hand for one day, but only worked from 6:30 a.m. to 9 a.m. and did not return. Claimant testified that he collected unemployment benefits from May to December 2022. He stated that he thereafter worked briefly for a temp agency beginning in January 2023, when his unemployment benefits expired.

The medical records introduced into evidence reflect that Claimant treated at Ochsner Occupational Health facility on December 8, 2021, for a finger injury. He returned on January 10, 2022, and was instructed to continue to work regular duty

¹ On May 11, 2023, Claimant's counsel withdrew as counsel of record. On September 26, 2023, new counsel enrolled but subsequently withdrew on December 19, 2023.

and to follow-up in five weeks. He returned on February 15, 2022, and was instructed to “protect wound while at work as needed.”

On March 8, 2022, Claimant reported to East Jefferson Emergency room for finger pain related to his work-related injury. He was prescribed pain medication and instructed to follow up with hand specialist Dr. Kelly Babineaux. An X-ray taken on that date reflected no fracture, subluxation, or dislocation. On March 15, 2022, Claimant returned to Ochsner Occupational Health and was treated by a Dr. Saeed for his finger injury with a new complaint of finger neuropathy. Claimant was instructed to limit use of his left hand and arm pending an “MRI to be scheduled once authorized,” and to follow-up with the clinic in 7-10 days. Dr. Saeed recommended restricted use of the left hand pending performance and results of the recommended MRI. Dr. Saeed did not instruct Claimant that he was disabled or unable to return to work.

On March 24, 2022, Claimant underwent an MRI of his left finger, which revealed tenosynovitis and osteoarthritis but no fracture, edema, or dislocation. The records do not indicate that Claimant ever returned to Dr. Saeed following the MRI as instructed.

On May 24, 2022, Claimant followed up with Dr. Babineaux who diagnosed him with complex regional pain syndrome (“CRPS”). Dr. Babineaux instructed Claimant that he had no work restrictions as to his dominant arm, but restrictions of “limited or minimal use” of his left arm at that time. On August 22, 2022, Claimant was again treated for his left finger injury and related CRPS. At that

time, he was referred to pain management and hand therapy. The records reflect he was discharged from hand therapy for “plateau/poor effort.”

Claimant introduced into evidence a single-page document from a chiropractor’s office stating that Claimant could not work from March 22, 2022 to May 22, 2022. However, there is no medical documentation establishing any causal connection between Claimant’s work injury and the alleged disability- in other words, there is no report from the chiropractor to state when or why Claimant was evaluated by the chiropractor or to link the alleged inability to work to his December 8, 2021 work injury.

Defendants introduced into evidence the medical records and deposition testimony of Dr. Claude Williams with Southern Orthopaedic Specialists. Dr. Williams testified that he examined Claimant on December 5, 2022, and noted full active range of motion in both wrists, no atrophy swelling or deformity of the left hand, but did note left hand guarding. Concerning Dr. Babineaux’s CRPS diagnosis, Dr. Williams testified that it is very uncommon, but not impossible, for a patient to develop CRPS from a finger crushing injury. He testified to his opinion that, at the time of his December 5, 2022 evaluation, Claimant more likely than not did not have CRPS.

Dr. Williams opined that the MRI findings of osteoarthritis and any abnormal findings from the MRI were more likely than not unrelated to the finger injury at issue. Ultimately, Dr. Williams opined that Claimant sustained a contusion and laceration of the left middle finger. He further opined that the

contusion and laceration is blunt trauma to the finger, that had completely resolved. Dr. Williams concluded that it was more likely than not that Claimant could have returned to regular work duty as of January 10, 2022.

Defendants introduced into evidence the deposition testimony and Second Medical Opinion (“SMO”) report prepared by Dr. Barton Wax, a Board-Certified Orthopedic Surgeon with Jefferson Orthopedic Clinic.² Dr. Wax agreed that CRPS resulting from a finger injury is extremely rare and that, at the time of the August 9, 2023 exam, Claimant showed no objective signs of CRPS. He opined that, even had Claimant previously suffered from CRPS, he observed no signs of it at the time of his subsequent exam.

Dr. Wax noted some inconsistencies in Claimant’s exam and opined that Claimant’s exam suggested “symptom magnification.”³ Concerning Claimant’s subsequent treatment by a chiropractor, Dr. Wax testified to his opinion that a chiropractor would not be the appropriate provider to treat an acute finger injury. Dr. Wax further concluded that Claimant could return to work with no restrictions.

² Claimant initially refused to undergo an SMO. On February 10, 2023, Defendants filed a motion to compel Claimant to undergo a second medical opinion (SMO), alleging that Claimant failed to appear at an SMO medical appointment and that Defendants forfeited a \$3,000 advanced fee for Claimant’s failure to appear. On April 11, 2023, the OWC granted Defendants’ motion to compel and ordered that Claimant appear for an SMO.

On May 9, 2023, Defendants filed a “Motion to Dismiss Worker’s Compensation suit for Failure to Comply with Judgement Ordering Claimant Submit to a Second Medical Opinion Examination, Seek Reimbursement of Medical Costs, and Assess Legal Costs and Fees.” On June 21, 2023, the OWC denied Defendants’ motion to dismiss but ordered Claimant again to submit to an SMO and ordered Claimant to reimburse Defendants \$3,000.00 in medical expenses and \$875.00 in attorney fees, deferring payment of those fees and costs until resolution of the litigation.

³ Dr. Wax testified that after he examined Claimant, he observed Claimant return to his parked car in the parking lot. At that time, Dr. Wax observed Claimant remove his left hand brace, throw it into the car, open the door with his left hand and drive away with his left hand on the steering wheel.

Defendants called Mr. Justin Morgan, the safety director for Gallo, as a witness. Mr. Morgan testified that he was informed of the accident at issue shortly thereafter and followed Claimant's progress, coordinating payment of medical payments for Claimant's treatment immediately following the accident. Mr. Morgan testified that he spoke by telephone with Claimant's treating physician, Dr. Saeed, immediately after Claimant's March 15, 2022 appointment. He testified that Dr. Saeed suggested that Claimant be put on light duty work while awaiting the results of an MRI.

Mr. Morgan testified that he offered Claimant a position, with the same pay, consistent with Dr. Saeed's recommendations. Defendants introduced into evidence a March 22, 2022 letter that Gallo sent to Claimant offering light duty work in compliance with Dr. Saeed's recommendations. Mr. Morgan testified that Claimant did not accept light duty work and did not return to work after March 18, 2022.

Mr. Morgan testified that a nurse case manager with Creative Risk Solutions ("CRS") was assigned to Claimant's case. Mr. Morgan learned through the CRS case manager that Claimant refused to sign a choice of physician form when requested. Mr. Morgan testified that his decision to terminate Claimant's benefits was the result of Claimant's failure to submit a Choice of Physician Form, failure to attend multiple SMO appointments and other scheduled treating physician appointments, and his failure to cooperate with the nurse case manager and adjuster for his claim.

Defendants introduced into evidence a “Separation Notice” indicating that Claimant’s employment was involuntarily terminated on April 18, 2022. That document indicates that Claimant’s last date worked was March 18, 2022.

The OWC took the matter under advisement and requested post-trial briefs. On June 24, 2024, the OWC issued a written judgment, dismissing Claimant’s Disputed Claim for Compensation. The OWC found that “Claimant failed to establish that he is unable to engage in any employment, that Claimant is statutorily barred from receiving TTD benefits during any period that he received unemployment benefits, and that Claimant failed to establish that Employer was arbitrary and capricious when it terminated benefits in April 2022.” This timely appeal followed.

DISCUSSION

On appeal, Claimant contends that the OWC erred in (1) failing to award reinstatement of his indemnity benefits; (2) failing to award penalties and attorney fees under La. R.S. 23:1201 for Defendants’ arbitrary and capricious actions in terminating his benefits; and (3) failing to recognize his retaliatory discharge claim pursuant to La. R.S. 23:1361.

Assignments of Error One and Two

On appeal, Claimant contends that the OWC erred in failing to reinstate his temporary total disability benefits (“TTD benefits”). Relatedly, Claimant complains that the OWC erred in failing to award penalties and attorney fees under

La. R.S. 23:1201 for Defendants' arbitrary and capricious action in terminating his benefits.

Termination of Indemnity Benefits

This Court has set forth a claimant's burden to prove entitlement to TTD as follows:

To prove entitlement to temporary total disability benefits, an employee must prove by "clear and convincing evidence, unaided by the presumption of disability, that the employee is physically unable to engage in any employment or self-employment, regardless of the nature or character of the work, including but not limited to employment while working in pain." La. R.S. 23:1221(1)(c); *See also Williams*, 07–0464, p. 3, 996 So.2d at 293. The burden of proof by clear and convincing evidence "means to demonstrate that the existence of a disputed fact is much more probable than its nonexistence." *Hall v. MacPapers, Inc.*, 11–1548, p. 5–6 (La.App. 4 Cir. 5/30/12), 95 So.3d 1131, 1135 (quoting *Molinere v. Vinson Guard Service, Inc.*, 05–0116, p. 5 (La. App. 4 Cir. 7/13/05), 914 So.2d 566, 571). Also, to carry the burden of proving disability by clear and convincing evidence, the employee must present "objective medical evidence" of the disabling injury. *Duplessis v. Tulane University Medical Center*, 10–0267, p. 3 (La. App. 4 Cir. 8/25/10), 47 So.3d 992, 995. "Stated otherwise, to satisfy the elevated burden of proving by clear and convincing evidence, the jurisprudence recognizes that the claimant must introduce medical evidence of a disability." *Id.*; *See also Williams*, 07–0464, p. 3, 996 So.2d at 293–294; *Jackson v. Sysco Food Services*, 05–1304, p. 2 (La.App. 4 Cir. 6/7/06), 934 So.2d 191, 193; *Daniel v. New Orleans Pub. Serv.*, 02–2427, p. 6 (La. App. 4 Cir. 12/3/03), 861 So.2d 721, 726.

"Disability can be proven by medical and lay testimony. The trial court must weigh all the evidence, medical and lay, in order to determine if the claimant has met his or her burden." *Bailey v. Smelser Oil & Gas, Inc.*, 620 So.2d 277, 280 (La.1993); *Jackson*, 05–1304, p. 2, 934 So.2d at 193 (plaintiff failed to meet her burden of proof that she was physically unable to perform any type of employment).

Gaines v. Home Care Sols., LLC, 15-0895, pp. 14-15 (La. App. 4 Cir. 4/6/16), 192 So.3d 794, 803–04.

Thus, a claimant seeking TTD benefits must prove that he is unable to engage in any employment. “A claimant who can perform light duty work is not entitled to TTD benefits.” *Hall*, 11-1548, p. 6, 95 So.3d at 1135. Moreover, the OWC’s factual findings as to whether a claimant is entitled to indemnity benefits are subject to the manifest error or clearly wrong standard of appellate review. *Id.*, 11-1548, p. 4, 95 So.3d at 1134.

At trial, the OWC questioned Claimant during his testimony, “do you have any evidence that speaks specifically to the nature and extent of your injury?” Claimant responded, “No, ma’am I don’t.” The parties stipulated that Claimant was released to work without restrictions on January 10, 2022. Thereafter, Claimant was placed on restricted duty as to his left hand and arm, for a finite period of time, and Defendants put forth evidence to show that light duty employment was offered. The record demonstrates that Claimant refused to return to light duty work.

Claimant’s argument before this Court suggests that he is under the impression that as long as he is under the care of a medical provider and not employed, that he should be entitled to benefits. The law however requires that, for a claimant to be eligible to collect TTD benefits, Claimant bears the burden to put forth specific medical testimony or evidence demonstrating that he is unable to work in any capacity and that such disability is causally related to the work injury at issue in litigation. The record reflects that Claimant put forth no medical evidence to demonstrate any disability attributable to his work-related injury that

would render him unable to engage in any type of employment and entitle him to TTD benefits.⁴ Thus, we find no error in the OWC's failure to reinstate Claimant's benefits. This assignment of error lacks merit.

Penalties and Attorney Fees

On appeal, Claimant contends that the OWC erred in failing to award Claimant penalties and attorney fees under La. R.S. 23:1201 for Defendants' arbitrary and capricious actions in discontinuing benefits.

La. R.S. 23:1201(F) provides for the assessment of penalties and attorney fees for a Defendant's failure to pay benefits. La. R.S. 23:1201(I) provides for an increased assessment of penalties and attorney fees where the OWC makes a factual determination that the employer-defendant's actions in discontinuing benefits were arbitrary and capricious. However, La. R.S. 23:1201(F)(2) instructs that such penalties awarded under La. R.S. 23:1201 "shall not apply if the claim is reasonably controverted...."

"Although the Worker's Compensation Act is to be liberally construed in regard to benefits, penal statutes are to be strictly construed." *Hall, Inc.*, 11-1548, pp. 12-13, 95 So.3d at 1139. Moreover, the OWC's determination as to whether penalties and attorney fees should be assessed against an employer for its actions in terminating or discontinuing indemnity benefits is a question of fact and shall not

⁴ Although Claimant did not address supplemental earning benefits (SEBs) in brief to this Court, we further find that the record contains no testimony or evidence to prove that he is unable to earn 90% of his pre-injury wages. "Under the provisions of La. R.S. 23:1221(3)(a), an employee is entitled to receive SEB benefits if the employee sustains a work-related injury that results in an inability to earn 90% or more of the average pre-injury wage." *Hall*, 11-1548, p. 10, 95 So.3d at 1138. The initial burden is on the claimant to prove the inability to earn that amount. *Id.* Thus, Claimant failed to meet his burden to prove that he would be entitled to any SEB benefits.

be disturbed absent manifest error. *Id.*, 11-1548, p. 13, 95 So.3d at 1139. In determining the factual issue of whether an employer's actions are arbitrary and capricious, the manifest error standard of review is applied, and the crucial inquiry is "whether the employer can articulate an objective reason for discontinuing benefits at the time it took the action." *Irving v. Transit Mgmt. of Se. Louisiana, Inc.*, 10-0360, p. 5 (La. App. 4 Cir. 7/20/10), 44 So.3d 796, 799-800 (quoting *Frith v. Riverwood*, 04-1086, p. 12 (La. 1/19/05), 892 So.2d 7, 15).

As stated above, Claimant failed to meet his burden to prove any work-related injury affecting his ability to engage in any employment. For a brief period of time, Claimant was instructed to restrict use of his left arm and to return to essentially "light duty" work pending results of an MRI. Defendants put forth evidence to show that Gallo offered Claimant light duty employment for Claimant's same pre-injury pay. Moreover, Claimant acknowledged that in January 2023, after the expiration of his unemployment benefits, he sought employment through a temporary employment agency. Claimant failed to present any medical or expert evidence to demonstrate his alleged complete inability to work was a result of the December 8, 2021 injury at issue.

Mr. Morgan testified at trial that the following factors demonstrated Claimant would not cooperate with the worker's compensation process and ultimately led to the decision to terminate Claimant's indemnity benefits: (1) Claimant's failure to report to work after light-duty employment was offered for the same pay; (2) Claimant's failure to attend multiple SMO and scheduled treating

physicians' appointments; and (3) Claimant's refusal to sign a Choice of Physician form as requested.

Based on the lack of evidence in the record on appeal to demonstrate that Claimant was unable to engage in any employment, and based on our upholding the OWC's determination that Claimant failed to meet his burden to prove he was entitled to any indemnity benefits, we cannot find that the OWC was manifestly erroneous in its judgment declining to award penalties or attorney fees against Defendants under La. R.S. 23:1201. This assignment of error lacks merit.

Assignment of Error Three

Retaliatory Discharge Claim

On appeal, Claimant raises the argument that he was improperly terminated while receiving benefits and under a medical disability. Claimant asserts that Defendants' actions in terminating him after his injury support a retaliatory discharge claim for penalties and attorney fees under La. R.S. 23:1361. That provision provides that an employer shall not discharge an employee because of the employee's filing or reporting of a worker's compensation benefits claim. The statute further provides:

Any person who has been denied employment or discharged from employment in violation of the provisions of this Section shall be entitled to recover from the employer or prospective employer who has violated the provisions of this Section a civil penalty which shall be the equivalent of the amount the employee would have earned but for the discrimination based upon the starting salary of the position sought or the earnings of the employee at the time of the discharge, as the case may be, but not more than one year's earnings, together with reasonable attorney's fees and court costs.

La. R.S. 23:1361(C).

On appeal, Claimant asks this Court to impose a civil penalty and fees against Defendants under the provisions of La. R.S. 23:1361. Claimant did not assert this claim for retaliatory discharge at the lower court level before the OWC. As a general rule, this court will not consider an issue raised for the first time before us which was not pleaded, urged, or addressed in the court below. *Johnson v. Orleans Par. Sch. Bd.*, 05-1038, p. 6 (La. App. 4 Cir. 5/3/06), 932 So.2d 687, 691.⁵ Accordingly, we decline to consider Claimant’s assignment of error related to a retaliatory discharge claim.

DECREE

For the reasons provided herein, the June 24, 2024 judgment of the OWC is affirmed.

AFFIRMED

⁵This Court has recently stated that “Rule 1-3 of the Uniform Rules of the Courts of Appeal provides, in pertinent part, that “[t]he Courts of Appeal shall review issues that were submitted to the trial court and that are contained in specifications or assignments of error, unless the interest of justice requires otherwise.” Under that rule, “in general, issues not argued before the trial court for decision will not be considered for the first time on appeal, unless the interest of justice clearly requires otherwise.” *Reissland v. Valluzzo Companies, LLC*, 25-0379, p. 25 (La. App. 4 Cir. 12/29/25), --- So.3d---, 2025 WL 3754077, *writ denied*, 26-00184 (La. 5/12/26), 430 So. 3d 1084 (citing *Clavo v. Fara Ins. Serv.*, 18-0727, p. 7 (La. App. 4 Cir. 1/30/19), 363 So.3d 286, 291). This exception applies when constitutional or due process rights have been violated or a clear deprivation of rights is established. Such does not apply in this case.