

# alert

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## **EMPLOYEE FILING BOTH CIVIL AND COMPENSATION CLAIMS AGAINST EMPLOYER DID NOT VIOLATE EXCLUSIVITY**

Prior to January, 2003, Regina Reed performed certain volunteer tasks for Harris Farms. Nelda Harris, d/b/a Harris Farms, wished Regina to be compensated for her work and made Regina a part-time employee. Ronald Reed, the husband, was also the plaintiff's supervisor, as well as the overall manager of Harris Farms. Ronald would turn in Regina's hours each week and Regina was compensated by Harris. Regina stated that she continued to volunteer for Harris Farms doing small jobs without being paid.

On May 16, 2003, Ronald called plaintiff three times asking her to deliver tools to Terry Reed because the vehicle Terry was driving was disabled and needed to be fixed. Ronald and Terry were planting crops for Harris Farms and were trying to beat the oncoming rain. Plaintiff was wearing "dress" rather than work clothes and driving her personal vehicle rather than the Harris truck as she began the trip. After beginning her journey, the plaintiff reached the crest of a hill when she ran into Ronald's farm implement, which was too wide and

extended into the plaintiff's lane. Plaintiff suffered severe injuries and underwent hospital and rehabilitation care.

One month after the accident, plaintiff gave a recorded statement to the investigator for Country Companies, the Harris' insurance company. In that statement, the plaintiff stated that the trip was a part of her work for Harris. (It should be noted that the plaintiff and Ronald subsequently testified that the plaintiff was not working that day but was scheduled to be off for personal commitments.) Harris began paying the plaintiff workers' compensation benefits. On December 23, 2003, plaintiff called the workers' compensation adjustor stating that she expected to be released for work. She did not return to work at that time and in February, 2004 plaintiff requested Country Companies to reinstate the TTD benefits. When the benefits were not immediately reinstated, she again called the adjustor who agreed to look into the matter.

On February 10, 2005, just two months prior to the expiration of the civil limitations statute, the plaintiff filed a civil case against Ronald Reed, as well as against the executor of the estate of Nelda Harris. On April 15, 2005, defendant filed a motion to dismiss. On July 29, 2005, the court

denied the defendant's motion. At that time the plaintiff had not filed a compensation claim with the Industrial Commission. However, on April 16, 2007, the plaintiff did file an Industrial Commission Application, presumably to satisfy the filing requirement of being within two years from the last payment of compensation.

Perhaps encouraged by her success in giving life to the workers' compensation claim, on June 16, 2007, the plaintiff's attorney called the Harris defense attorney requesting Country Companies to pay medical expenses for surgery recommended by the plaintiff's doctor. In October, 2007, plaintiff's attorney called the defense attorney twice requesting payment for the surgery and the reimbursement for medication. On October 11, 2007, TTD benefits were reinstated after the surgery. On February 11, 2008, after having been released from surgical care, plaintiff dismissed her workers' compensation claim.

On July 25, 2008, defendants filed a motion to dismiss the civil case, which motion was now granted. One could speculate that the dismissal may have been based on the fact that an application had now been filed with the Industrial Commission.

The court noted that the issue which should be addressed in all exclusivity cases would be as follows:

*1) What constitutes the receipt of compensation under the Act? or*

*2) At what point has a plaintiff taken the express position that the injury is*

*compensable under the Act so that he or she is barred from taking the mutually exclusive position that the injury was intentional?*

In the instant case, the court made references to two prior appellate court decisions and one Illinois Supreme Court decision.

1) *Copass v. Illinois Power.* Plaintiff's husband was killed in a job-related explosion. Immediate payments were sent to the widow with information explaining her entitlement under the Act. The widow later filed a civil action alleging an intentional tort.

HELD. The acceptance of these "uninitiated" and "unsolicited" payments was not sufficient to be considered an election.

2) *Wren v. Reddick.* Volunteer firefighters were injured while riding on a fire truck. Workers' compensation benefits were paid voluntarily. Nevertheless, the firefighters filed a negligence action against the fire district, the driver of the truck and the driver of the other vehicle. Plaintiff later filed claims for workers' compensation, just prior to the expiration of the statute.

HELD. The acceptance of unsolicited workers' compensation benefits did not bar the negligence claim and did not forfeit the right to sue for negligence because of the filing of a workers' compensation claim.

3) *Fregeau v. Gillespie.* This Illinois Supreme Court case involved a plaintiff who allegedly had been struck by a co-worker and now filed a civil suit against

the co-worker. The plaintiff had previously filed a claim against the employer under the Workers' Compensation Act. The appellate court found that the Workers' Compensation Act did not preclude plaintiff from bringing an intentional tort action against the coworker.

HELD. The supreme court held that the Workers' Compensation Act remained the plaintiff's exclusive remedy and that he could not bring a civil action against his coworker. The court stated:

*While an employee, out of caution or uncertainty, may file a common law action against an employer, though he has already filed a workers' compensation claim, he cannot recover in both actions because the decision of the Act 'was to serve as a substitute for an employee's common law right of action and not as a supplement to it.'*

Finally, in *Fregeau* the supreme court said "we add that to permit the bringing of the common law action in the face of the fact that relevant statutory penalties are provided for in the Workers' Compensation Act would invite an indefinite prolonging of litigation and a risk of double recovery that the legislature sought to avoid by enacting the compensation system to replace common law remedies."

**EDITOR'S NOTE:** Was the plaintiff in *Reed* merely a "cautious" plaintiff who received "voluntary" payments? The opinion acknowledges that the conflict was "due in

large part to plaintiff's initial statement to the insurance company." It fails to note the importance of the plaintiff's statement. On the basis of plaintiff's acknowledgment that the trip was part of her work with Harris, Country Companies, the workers' compensation carrier, began paying compensation benefits which must have amounted to six figures. Was not this statement a solicitation for benefits? If, at that point, Country had not begun paying benefits, would it have been subject to severe penalties under the Act? When plaintiff called to announce that she was released for work, did not that constitute a realization that she had been receiving TTD benefits under the Workers' Compensation Act? When she called to request reinstatement of TTD, did that not constitute a "solicitation for benefits?" After the civil case was filed, did not plaintiff's attorney request additional medical and surgical benefits, which was certainly a "solicitation?" Did not the dismissal of the workers' compensation filing immediately thereafter constitute an acknowledgment that she had received all of the workers' compensation benefits requested?

Based on the *Reed* opinion, it would seem that nothing but a settlement contract could have prevented the plaintiff from proceeding with the civil action, particularly, if the civil action was filed before the workers' compensation claim at the Industrial Commission.

*Reed v. Richard White, et al*,  
No. 5-08-0446, decided January 12, 2010.

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