

KEITH THOMAS NOYA	*	NO. 2026-CA-0116
VERSUS	*	COURT OF APPEAL
CITY OF NEW ORLEANS	*	FOURTH CIRCUIT
	*	STATE OF LOUISIANA

APPEAL FROM
THE OFFICE OF WORKERS’ COMPENSATION
NO. 22-05268, DISTRICT “08”
HONORABLE Catrice Johnson-Reid, The Office of Workers’ Compensation

JUDGE SANDRA CABRINA JENKINS

(Court composed of Judge Joy Cossich Lobrano, Judge Sandra Cabrina Jenkins,
Judge Dale N. Atkins)

LOBRANO, J., CONCURS IN THE RESULTS
ATKINS, J. CONCURS IN THE RESULT

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AFFIRMED
OCTOBER 19, 2026

SCJ

This is a workers' compensation matter. The City of New Orleans, New Orleans Fire Department ("City"), appeals the August 1, 2025 judgment of the workers' compensation judge ("WCJ") in favor of the claimant, Keith Noya ("Mr. Noya"). The WCJ ruled that the City was arbitrary and capricious in terminating Mr. Noya's indemnity and medical benefits, and ordered Mr. Noya's benefits be reinstated from November 1, 2022, at zero earning capacity in the amount of \$649 per week and awarded \$3,351.53 for out-of-pocket medical expenses. The WCJ also found that Mr. Noya was entitled to penalties in the amount of \$4,000.00 and attorney's fees in the amount of \$4,000.00. For the reasons that follow, we affirm the August 1, 2025 judgment.

FACTS AND PROCEDURAL HISTORY

Mr. Noya was employed as a firefighter for approximately thirty years. On December 12, 2015, Mr. Noya injured his back, shoulder, knee and neck when he slipped in water while fighting a fire. The City began paying Mr. Noya indemnity benefits on December 20, 2015.

Mr. Noya's treating physician was Dr. Patrick Waring ("Dr. Waring"), while the City selected Dr. Chad Domangue ("Dr. Domangue") as its physician of choice pursuant to La. R.S. 23:1121. Dr. Domangue evaluated Mr. Noya on several occasions and issued medical reports.

In his November 24, 2020 report, Dr. Domangue diagnosed lumbar facet syndrome/lumbar spondylosis. He found no acute pathology or neurological abnormalities and concluded that additional rhizotomy procedures were not justified as treatment for the work-related injury. He further opined that Mr. Noya had reached maximum medical improvement.

In light of the dispute concerning Mr. Noya's medical condition and disability status. The City requested an independent medical examination pursuant to La. R.S. 23:1123. On May 6, 2022, Office of Workers' Compensation ("OWC") appointed Dr. Andrew Todd ("Dr. Todd").

On September 26, 2022, Mr. Noya, through his attorney, received a Form 1002,¹ notifying him of controversion of medical benefits. Thereafter, on October 31, 2022, Mr. Noya received another Form 1002, noting that his indemnity benefits were terminated. Mr. Noya filed a Form 1008-Disputed Claim for Compensation with the OWC.

A one-day trial was held on September 25, 2024. The parties stipulated the following:

1. That claimant, Keith Thomas Noya, was an employee of the City of New Orleans and in the course and scope of his employment on December 12, 2015.
2. That claimant, Keith Thomas Noya, suffered an on the job incident on December 12, 2015.

¹ The Form 1002 is a "Notice of payment modification, suspension, termination or controversion of compensation or medical benefits."

3. That claimant, Keith Thomas Noya, had an average weekly [wage] on December 12, 2015[,] of \$973.50.
4. That following the incident of December 12, 2015, indemnity benefits were paid to claimant, Keith Thomas Noya, from December 20, 2015, to October 31, 2022, when supplemental earnings benefits [(“SEB”)] were terminated.
5. That Dr. Andrew Todd was appointed by the OWC pursuant to [La. R.S.] 23:1123.
6. That all reasonable and related medical bills were paid in accordance with the Louisiana Fee Schedule through October 31, 2022.
7. That indemnity and medical benefits were terminated via Form 1002 dated October 31, 2022, and at the time of termination of indemnity benefits, the claimant, Keith Thomas Noya, was being paid SEB benefits at the [temporary total disability] rate.

Subsequent to trial, the WCJ took the matter under advisement and ordered each party to submit a post-trial memorandum. On May 14, 2025, the WCJ issued a judgment that held that the City acted arbitrarily and capricious in terminating Mr. Noya’s medical treatment and indemnity benefits. Mr. Noya moved to amend the May 14, 2025 judgment for the purpose of clarifying decretal language. On August 1, 2025, the WCJ granted the motion and amended the May 14, 2025 judgment to reflect:

[]IT IS ORDERED ADJUDGED AND DECREED that there be judgment herein in favor of Keith Noya and against The City of New Orleans awarding [SEB] from November 1, 2022[,] at zero earning capacity in the amount of \$649 per week, with credit for all compensation paid from that date, together with legal interest from date of judicial demand and for all costs of these proceedings;

IT IS FURTHER ORDERED AND DECREED that there be judgment herein in favor of Keith Noya and against the City of New Orleans in the amount of THREE THOUSAND THREE HUNDRED FIFTY ONE (\$3,351.53) AND 53/100THS DOLLARS, together with legal interest from date of judicial demand, representing out of pocket medical expenses;

IT IS FURTHER ORDERED AND DECREED that there be judgment herein in favor of Keith Noya and against the City of New

Orleans awarding penalties in the amount of FOUR THOUSAND (\$4,000) DOLLARS and awarding attorney's fees in the amount of FOUR THOUSAND (\$4,000) DOLLARS, together with legal interest from date of judicial demand[.]

The City appeal follows.

STANDARD OF REVIEW

“In workers’ compensation cases, appellate courts apply the manifest error, or clearly wrong, standard of review to factual findings by the [OWC].” *Lentz v. City of New Orleans, Police Dep’t*, 2022-0500, p. 4 (La. App. 4 Cir. 12/15/22), 353 So.3d 1060, 1064 (citing *Matthews v. Big Easy Janitorial, L.L.C.*, 2022-0164, p. 5 (La. App. 4 Cir. 8/10/22), 346 So.3d 325, 330). “The OWC’s findings ‘as to whether the worker’s testimony is credible and whether the worker has carried his burden of proof are factual determinations that may not be disturbed on review absent a showing of manifest error.’” *Singleton v. Dillard Univ.*, 2023-0053, p. 5 (La. App. 4 Cir. 10/4/23), 382 So. 3d 902, 906 (quoting *Duran v. Turner Indus. Grp., LLC*, 2011-0210, p. 4 (La. App. 4 Cir. 7/20/11), 70 So.3d 1074, 1076). “This standard of review acknowledges that the trial courts are more appropriately equipped to weigh the credibility of live witnesses and upholds the unique functions of the trial and appellate courts.” *Matthews*, 2022-0164, p. 6, 346 So.3d at 331 (citing *Stobart v. State through Dep’t of Transp. and Dev.*, 617 So.2d 880, 883 (La. 1993)).

DISCUSSION

The City assigns seven errors for review,² which we summarize as follows:

² The City’s assignments of error are:

1. The court erred in finding that claimant’s continuing back injury and related problems were causally related to the December 12, 2015 work accident.
2. The court erred in ordering reinstatement of indemnity and medical benefits retroactive to October 31, 2022, at the rate of \$649.00 per week.

1. The trial court erred in finding that Mr. Noya's ongoing back problems were causally related to the December 12, 2015 work accident and in reinstating indemnity benefits at \$649 a week, retroactive to October 31, 2022, ordering continuing medical coverage and \$3,513.53 in past-due medical benefits.
2. The trial court erred in finding the termination arbitrary and capricious, awarding penalties and attorney's fees, and in its handling of costs and judicial interest.
3. The trial court erred in not finding that the City pled La. R.S. 23:1221(3).
4. The trial court erred in denying the motion for new trial.

Reinstatement of Benefits

The City argues that the WCJ erred in finding that Mr. Noya's continuing back injury was related to the December 12, 2015 accident and, as a result, erred in reinstating Mr. Noya's indemnity benefits and medical coverage. The City asserts that Mr. Noya's condition is no longer related to the incident and relies on Dr. Todd's opinion that Mr. Noya has reached maximum medical improvement and has returned to his pre-injury status. Mr. Noya counters that Dr. Todd's opinion went beyond the scope of La. R.S. 23:1123 and that he based his opinion on causation.

Dr. Todd was appointed under La. R.S. 23:1123, which provides:

If any dispute arises as to the condition of the employee, or the employee's capacity to work, the assistant secretary, upon application

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3. The court erred in finding that the City remained responsible for continued medical coverage and for \$33,515.53 in past-due medical benefits following termination of benefits on October 31, 2022.
 4. The court erred in finding that the City acted arbitrarily and capriciously in terminating indemnity and medical benefits and in awarding penalties and attorney fees.
 5. The court erred in awarding claimant all costs associated with the litigation and judicial interest.
 6. The court erred in failing to find that the City had properly pleaded the limitations contained in La. R.S. 23:1221(3) as an affirmative defense.
 7. The court erred in denying the City's motion for new trial, as the judgment was contrary to the law and evidence presented at trial and the grounds asserted in the motion warranted a new trial on the merits.

of any party, shall order an additional medical opinion regarding an examination of the employee to be made by a medical practitioner selected and appointed by the assistant secretary. The medical examiner shall report his conclusions from the examination to the assistant secretary and to the parties and such report shall be prima facie evidence of the facts therein stated in any subsequent proceedings under this Chapter.

When there are disputes in medical opinions, “a trier of fact is required to weigh the testimony of all medical witnesses.” *Leidelmeijen v. Ferncrest Manor Nursing Home Luba Workers’ Comp.*, 2015-1216, p. 25 (La. App. 4 Cir. 3/16/16), 191 So.3d 38, 54 (citation omitted). “[A] workers’ compensation judge ‘is required to weigh the testimony of all medical witnesses’ and ‘must evaluate all of the evidence presented in making a decision as to the claimant’s condition.’” *Safford v. New Orleans Fire Dep’t*, 2023-0495, p. 36 (La. App. 4 Cir. 2/1/24), 384 So.3d 909, 934 (quoting *Bell v. Mid City Printers, Inc.*, 2010-0818, pp. 10-11 (La. App. 4 Cir. 12/22/10), 54 So.3d 1226, 1234). “In determining the weight to give the opinion of an [independent medical examiner (“IME”)], the workers’ compensation judge can consider, in pertinent part, that physician’s opportunity to observe the patient and any other relevant factors.” *Id.* (citing *Bell*, 2010-0818, p. 11, 54 So.3d at 1234).

Here, Dr. Waring opined that Mr. Noya’s current pain and need for treatment is due to the work injury. Dr. Waring also opined that Mr. Noya has a permanent impairment of the lumbar spine and is not capable of returning to work as a firefighter. Conversely, Dr. Domangue opined that Mr. Noya’s imaging revealed chronic degenerative changes, which are attributable to his age. Dr. Domangue opined that Mr. Noya has reached maximum medical improvement.

Pursuant to La. R.S. 23:1123, Dr. Todd was tasked with providing an independent medical examination to address the condition of the employee and/or the capacity to return to work. Dr. Todd opined that Mr. Noya most likely had

preexisting facet arthropathy that became symptomatic as a result of the work injury. Dr. Todd further opined that Mr. Noya reached maximum medical improvement, any acute injury Mr. Noya sustained resolved long ago, and what remains is a chronic condition. Additionally, Dr. Todd provided that Mr. Noya's ongoing pain is not related to his work injury.

At the September 25, 2024 hearing, Mr. Noya testified that, while working a fire, he entered a bathroom where water covered the floor. Mr. Noya provided that his boots slipped, throwing his leg out, and he fell onto his right knee, struck his right shoulder on the tub, and his back was "wrenched" or twisted. He identified the injuries as right shoulder, right leg/knee, and back. Mr. Noya denied having any back problems or treatment before the accident, other than occasional discomfort when lifting something heavy while working a fire.

The WCJ evaluated the evidence and weighed the conflicting medical opinions regarding the cause and extent of Mr. Noya's continuing back condition. We agree with Mr. Noya that Dr. Todd's opinion on causation exceeded the scope of La. R.S. 23:1123, which directs the IME to address the employee's condition and capacity to work. In any event, the IME's report is prima facie evidence, not conclusive evidence. While Dr. Todd opined that Mr. Noya's ongoing pain was unrelated to the work accident, the WCJ was not required to accept that opinion over the contrary opinion of Dr. Waring or the other evidence presented.

Additionally, it is undisputed that Mr. Noya had an employment-related injury and treated with Dr. Waring consistently after the December 12, 2015 accident. Dr. Waring had a greater opportunity to observe Mr. Noya's condition over time than the physicians who examined him, and the WCJ was entitled to give the treating physician's opinion greater weight on that basis.

As such, we do not find that the WCJ erred in finding that Mr. Noya's injury was causally related to the work accident and reinstated Mr. Noya's benefits. Although a claimant must demonstrate that his employment somehow caused or contributed to the disability, he need not establish the exact cause. *Lee v. Smitty's Supply, Inc.*, 2024-0460, p. 6 (La. App. 1 Cir. 12/20/24), 404 So.3d 916, 924; *see also Connor v. Jones Bros. Enters.*, 606 So.2d 996, 1001 (La. App. 4th Cir. 1992). Accordingly, we find no merit in this assignment of error.

Penalties and Attorney's Fees

The City argues that the WCJ erred in finding that it acted arbitrarily and capriciously in the handling of Mr. Noya's claim. The City asserts that it relied upon findings of two separate doctors in this matter.

"The determination of whether the employer's action in terminating benefits was arbitrary and capricious is a factual one subject to the manifest error standard of review." *Cembell Indus., Inc. v. Smith*, 2024-0348, pp. 21-22 (La. App. 4 Cir. 2/11/25), 414 So.3d 661, 676, *writ denied*, 2025-00447 (La. 6/17/25), 411 So.3d 632

Louisiana Revised Statutes 23:1201(I) provides in relevant part:

Any employer or insurer who at any time discontinues payment of claims due and arising under this Chapter, when such discontinuance is found to be arbitrary, capricious, or without probable cause, shall be subject to the payment of a penalty not to exceed eight thousand dollars and a reasonable attorney fee for the prosecution and collection of such claims.

"[P]enalties and attorney[']s fees in workers' compensation cases are essentially penal in nature, being imposed to discourage indifference and undesirable conduct by employers and insurers." *Lentz*, 2022-0500, p. 9, 353 So.3d at 1067 (quoting *Iberia Med. Ctr. v. Ward*, 2009-2705, pp. 18-19 (La. 11/30/10),

53 So.3d 421, 433-34). Moreover, “penal statutes are to be strictly construed.” *Id.* (quoting *Iberia*, 2009-2705, p. 19, 53 So.3d at 434).

In determining whether an employer acted arbitrarily and capriciously in a workers’ compensation matter:

Courts must evaluate “whether the employer or his insurer engaged in a nonfrivolous legal dispute or possessed factual and/or medical information to reasonably counter the factual and medical information presented by the claimant throughout the time he refused to pay all or part of the benefits allegedly owed.” *Brown v. Texas-LA Cartage, Inc.*, 98-1063, p. 9 (La. 12/1/98), 721 So. 2d 885, 890. Employers must have “some valid reason or evidence upon which to base his denial of benefits.” *Id.* Stated another way, employers must possess an “articulable and objective reason to deny benefits at the time it took action.” *Authement [v. Shappert Eng’g]*, [20]02-1631, p. 11, [La. 2/25/03,] 840 So. 2d [1181,] 1188 (citing *Williams v. Rush Masonry, Inc.*, 98-2271 (La. 6/29/99), 737 So. 2d 41, 46).

Id. at pp. 9-10, 353 So.3d at 1067 (quoting *Matthews*, 2022-0164, pp. 18-19, 346 So.3d at 337).

In the instant matter, the Form 1002 dated October 31, 2022, provided that Mr. Noya’s benefits were terminated because “[o]ngoing disability no longer related to on the job accident. Claimant is at pre-injury status as indicated by OWC [a]ppointed IME, Dr. Todd.” The City’s claims adjuster, Robert Drake (“Mr. Drake”), testified that the form was issued because Mr. Noya’s medical treatment would not be related to the work injury. Mr. Drake stated that, in comparing the differing physician opinions, he gave the most weight to Dr. Todd’s opinion.

As provided above, Dr. Todd was appointed to address Mr. Noya’s condition and/or his capacity to return to work, and he exceeded that scope by opining that Mr. Noya’s ongoing pain is not related to the work injury. The termination thus rested principally on a causation opinion that La. R.S. 23:1123 did not contemplate. The City also had contrary medical information from Dr. Waring,

who attributed Mr. Noya's ongoing condition to the work injury, and the record does not show that the City articulated a reason for discounting that opinion.

In light of the information, we cannot conclude that the WCJ erred in awarding attorney's fees and penalties to Mr. Noya.

Affirmative Defense

The City argues that La. R.S. 23:1221(3) was properly pled in its answer and the WCJ erred in not considering it. We disagree.

Louisiana Code of Civil Procedure Article 1005 requires that affirmative defenses be specifically pled in the answer. "Generally, an affirmative defense must be pleaded or it is waived." *Fin & Feather, LLC v. Plaquemines Par. Gov't*, 2016-0256, p. 7 (La. App. 4 Cir. 9/28/16), 202 So.3d 1028, 1033 (quoting *Allvend, Inc. v. Payphone Comm'ns Co.*, 2000-0661, p. 6 (La. App. 4 Cir. 5/23/01), 804 So.2d 27, 30). When a defendant fails to plead an affirmative defense, it may not offer proof on it. *Davis v. Nola Home Constr., L.L.C.*, 2016-1274, p. 9 (La. App. 4 Cir. 6/14/17), 222 So.3d 833, 841 (citing *Dixie Sav. & Loan Ass'n v. Pitre*, 99-154, p. 24 (La. App. 5 Cir. 7/27/99), 751 So.2d 911, 924).

The City relies on La. R.S. 23:1221(3)(d), which provides in relevant part that the right to SEB terminates "[w]hen the employee retires; however, the period during which supplemental earnings benefits may be payable shall not be less than one hundred four weeks." La. R.S. 23:1221(3)(d)(iii).

In its answer, the City pled "[e]mployer claims all rights to any credits/offsets against compensation benefits for the amounts earned by the employee and/or which the employee is capable of earning pursuant to La. R.S. 23:1221(3), as well as to any and all credits which may be due to the employer pursuant to La. R.S. 23:1223 through 1225." However, the OWC Compensation

Hearing Rule 6007 requires that trial issues be listed in the pretrial statement. The pretrial statement shall include “issues to be litigated.” At the time of this OWC proceeding, this part of Rule 6007 stated: “[a]mendments to the pretrial statement shall only be by written motion and permitted only for good cause shown. No new issues shall be raised except by written order of the judge for good cause or upon mutual agreement of the parties.” La. Admin. Code tit. 40, Pt. I, § 6007(B).

The WCJ found that the City’s pretrial statement did not list the retirement defense as an issue for decision and did not mention the effect of Mr. Noya’s retirement on his entitlement to SEB. Additionally, the City never moved to amend the pretrial statement.

We find that the City abandoned its defense by omitting it from the pretrial statement and then failing to follow the amendment procedure that Rule 6007(B) requires. Mr. Noya had no notice that he would need to address it at trial, and the WCJ and the parties tried the case on the issues the pretrial statement identified.

Therefore, we do not find that the WCJ erred in declining to consider the retirement defense. This assignment of error lacks merit.

Motion for New Trial

The City contends that the WCJ erred in denying its motion for new trial. The City argues that the judgment is contrary to the law and the evidence present at trial.

A new trial shall also be granted “[w]hen the party has discovered, since the trial, evidence important to the cause, which he could not, with due diligence, have obtained before or during the trial.” La. C.C.P. art. 1972(2). “A new trial may be granted in any case if there is good ground therefor, except as otherwise provided by law.” La. C.C.P. art. 1973. “An appellate court reviews a trial court’s ruling on

a motion for new trial under an abuse of discretion standard.” *George Kellett & Sons, Inc. v. Lucas & Sons Builders*, 2023-0186, pp. 5-6 (La. App. 4. Cir. 11/28/23) 377 So.3d 1247, 1251 (citing *FIE, LLC v. New Jax Condo Ass’n, Inc.*, 2016-0843, 2017-0423, p. 22 (La. App. 4 Cir. 2/21/18), 241 So.3d 372, 391). “A party seeking a new trial on the basis of newly discovered evidence must demonstrate that ‘it has done all that is reasonable to lead to timely discovery of the evidence.’” *Bd. of Comm’rs of Port of New Orleans v. Pilko & Assocs.* 2019-0624, 0625, p. 8 (La. App. 4 Cir. 2/12/20), 292 So.3d 956, 961 (quoting *Show & Tell of New Orleans, L.L.C. v. Fellowship Missionary Baptist Church*, 2015-0068, p. 19 (La. App. 4 Cir. 6/24/15), 171 So.3d 1136, 1146).

Based on our examination of the record and the City’s failure to demonstrate newly discovered evidence, we find no basis to conclude that the WCJ’s judgment is contrary to the law or the evidence. Thus, we find no abuse of discretion in the WCJ’s ruling denying the motion for new trial.

Mr. Noya’s Request for Additional Attorney’s Fees

Mr. Noya attempted to answer this appeal by including a section in his brief identified as “Answer to Appeal: Increase In Attorney’s Fees”. Mr. Noya sought an additional two thousand five hundred dollars (\$2,500.00) in attorney’s fees to cover the cost of his counsel’s work in opposing the City’s appeal.

Louisiana Code of Civil Procedure Article 2133(A) provides in relevant part that “[a]n appellee shall not be obliged to answer the appeal unless he desires to have the judgment modified, revised, or reversed in part or unless he demands damages against the appellant. In such cases, he must file an answer to the appeal, stating the relief demanded. . . .” “[T]he proper method for requesting attorney’s fees is by doing so in an answer to the appeal and ‘[a]n assertion in a brief cannot

serve as an answer to appeal.”” *Safford*, 2023-0495, p. 42, 384 So.3d at 938 (quoting *Clover v. Redfish Rentals, Inc.*, 2022-470, p. 17 (La. App. 3 Cir. 2/2/23), 357 So.3d 522, 532).

In light of Mr. Noya requesting attorney’s fees in his appellate brief, he did not comply with the correct procedure by filing an answer to the appeal. Accordingly, we deny Mr. Noya’s request for an additional two thousand five hundred dollars (\$2,500.00) in attorney’s fees for defending this appeal.

CONCLUSION

For the foregoing reasons, we affirm the August 1, 2025 judgment.

AFFIRMED