

VIRDIS MACKEL

VERSUS

U-HAUL CO. OF LOUISIANA

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NO. 2025-CA-0864

COURT OF APPEAL

FOURTH CIRCUIT

STATE OF LOUISIANA

APPEAL FROM

THE OFFICE OF WORKERS’ COMPENSATION

NO. 22-02759, DISTRICT “08”

Honorable Catrice Johnson-Reid, The Office of Workers’ Compensation

Judge Nakisha Ervin-Knott

(Court composed of Judge Tiffany Gautier Chase, Judge Rachael D. Johnson, Judge Nakisha Ervin-Knott)

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AFFIRMED

June 9, 2026

NEK
TGC
RDJ

U-Haul Company of Louisiana (“U-Haul”) appeals the Office of Workers’ Compensation’s (“OWC”) March 28, 2024 judgment finding in favor of the claimant, Viridis Mackel (“Mr. Mackel”) and awarding penalties and attorney’s fees against it. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Mr. Mackel worked as a manager for U-Haul at one of its facilities located in Gretna, Louisiana. On November 24, 2020, Mr. Mackel was assisting a customer who was upset about charges related to her rental. When Mr. Mackel confirmed that he could not issue her a refund, the customer became irate and ordered her boyfriend to assault Mr. Mackel. In compliance, the boyfriend punched Mr. Mackel in the face, knocking him down and causing him to hit his head on the concrete. The blow shattered Mr. Mackel’s glasses, which cut his left eye and face. When Mr. Mackel recovered, he observed the boyfriend reaching for a gun. Mr. Mackel was able to retrieve his own gun from his vehicle and make his way inside the U-Haul facility. Once inside, he locked down the facility, only to realize the customer from earlier had snuck inside with him. Mr. Mackel engaged in a struggle with the customer as she attempted to get into her vehicle and leave. Ultimately,

the police arrived and arrested the customer; however, the boyfriend who assaulted Mr. Mackel escaped, and Mr. Mackel never learned if the police caught his assailant.

As a result of the assault, Mr. Mackel sustained multiple physical and mental injuries. Most notably, he was diagnosed with Post-Traumatic Stress Disorder (“PTSD”). Mr. Mackel was unable to return to work due to his PTSD and began treating with Dr. John MacGregor, a psychiatrist. Throughout his therapy sessions with Dr. MacGregor, Mr. Mackel repeatedly told Dr. MacGregor that he was scared to leave his home. Dr. MacGregor recommended a method of treatment called exposure therapy, wherein he encouraged Mr. Mackel to leave his home at increased distances and times.

While still treating for his PTSD, U-Haul began investigating Mr. Mackel and discovered that he was driving his girlfriend to work at the same U-Haul facility where the assault had occurred. In further investigating, U-Haul also found that Mr. Mackel had made various inaccurate statements to Dr. MacGregor regarding his ability to leave his house and his past military service. On September 22, 2022, shortly after taking Mr. Mackel’s deposition, U-Haul discontinued Mr. Mackel’s worker’s compensation benefits, including the medical benefits that allowed him to treat with Dr. MacGregor. U-Haul maintained that Mr. Mackel violated La. R.S. 23:1208 by repeatedly making false statements to Dr. MacGregor in order to continue receiving workers’ compensation benefits.

The parties appeared before the OWC for a bench trial on September 7, 2023. At the conclusion of the trial, the OWC took the matter under advisement. On March 28, 2024, the OWC issued a judgment in favor of Mr. Mackel and

against U-Haul, specifically finding that U-Haul acted arbitrarily and capriciously in denying Mr. Mackel's workers' compensation claim. This appeal followed.

ASSIGNMENTS OF ERROR

U-Haul asserts the following assignments of error on appeal:

1. The OWC erred in failing to find that Mr. Mackel violated La. R.S. 23:1208;
and
2. The OWC erred in assessing penalties and attorney's fees against it.

DISCUSSION

Assignment of Error No. 1: Whether the OWC erred in failing to find that Mr. Mackel violated La. R.S. 23:1208

U-Haul first argues that the OWC erred in failing to find that Mr. Mackel violated La. R.S. 23:1208 by making numerous false statements to his treating psychiatrist about his capacity to leave the house, his ability to drive to the scene of the assault, and his prior military service.

Louisiana Revised Statutes 23:1208¹ makes it unlawful for a claimant to willfully make false statements or representations to obtain workers' compensation benefits, and any claimant that violates the statute forfeits his rights to any benefits. *Hebert v. Fresh Market, Inc.*, 2019-0412, p. 19 (La. App. 4 Cir. 9/18/19), 280 So. 3d 756, 770-71 (citations omitted). Whether a claimant has violated this statute requires a factual determination that the appellate court reviews for manifest error. *See id.* Under the manifest error standard, the appellate court cannot set aside the

¹ Louisiana Revised Statutes 23:1208 reads, in pertinent part, as follows:

A. It shall be unlawful for any person, for the purpose of obtaining or defeating any benefit or payment under the provisions of this Chapter, either for himself or for any other person, to willfully make a false statement or representation.

...

E. Any employee violating this Section shall, upon determination by workers' compensation judge, forfeit any right to compensation benefits under this Chapter.

lower court's finding of fact unless the finding is clearly wrong. *Stobart v. State through Dep't of Transp. and Dev.*, 617 So. 2d 880, 882 (La. 1993) (citing generally *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989)). The standard requires the appellate court to review the record in its entirety and determine whether a reasonable, factual basis for the lower court's finding exists in the record. *See id.* If so, then the finding is not clearly wrong, and the lower court's ruling is not manifestly erroneous.

“Fraud-forfeiture under La. R.S. 23:1208 is a harsh remedy and as such must be strictly construed.” *Cembell Indus., Inc. v. Smith*, 2024-0348, p. 13 (La. App. 4 Cir. 2/11/25), 414 So. 3d 661, 671, *writ denied*, 2025-00447 (La. 6/17/25), 411 So. 3d 632 (quoting *Life Flight of New Orleans v. Homrighausen*, 2005-2538, p. 4 (La. App. 1 Cir. 12/28/06), 952 So.2d 45, 50) (internal quotations omitted). Thus, in order to disqualify a claimant from workers' compensation benefits, the employer bears the burden of proving the following: (1) the claimant made a false statement or representation; (2) the claimant willfully made the false statement or representation; and (3) the claimant made the false statement or representation for the purpose of obtaining workers' compensation benefits. *Baker v. Harrah's*, 2015-0229, p. 32 (La. App. 4 Cir. 3/9/16), 190 So. 3d 379, 399 (citing *Resweber v. Haroil Constr. Co.*, 1994-2708, 1994-3138, p. 7 (La. 9/5/95), 660 So. 2d 7, 12).

There is no dispute that Mr. Mackel made some misstatements throughout the course of his treatment. The issue pertinent to this appeal is whether those misstatements were willfully made for the purpose of receiving workers' compensation benefits. “Willful” means that the inaccurate statements were made knowingly and deliberately with the intention that a desired result would come to pass. *See Cembell*, 2024-0348, p. 13, 414 So. 3d at 671 (citation omitted).

Therefore, mere inadvertent or inconsequential statements will not trigger penalties under La. R.S. 23:1208. *Spence v. Excelsior Endeavors & Dev., Inc.*, 2012-0616, p. 6 (La. App. 4 Cir. 10/17/12), 125 So. 3d 464, 468.

The OWC judge issued detailed reasons for judgment. In those reasons, the OWC judge specifically found Mr. Mackel to be credible, including his explanation for his misstatements. She also found that his representations to Dr. MacGregor about his military service were inconsequential because Dr. MacGregor did not consider that history when diagnosing Mr. Mackel. Moreover, she found that Mr. Mackel's misstatements about his ability to leave the house were not made with the intention to deceive because Dr. MacGregor encouraged Mr. Mackel to leave his home as part of his treatment. Finally, the OWC judge noted that two of U-Haul's doctors agreed with Dr. MacGregor's PTSD diagnosis, and neither of the two found that Mr. Mackel was malingering.

As noted earlier, we must determine whether a reasonable factual basis exists in the record for the OWC's finding. *Stobart*, 617 So. 2d at 882. If a reasonable basis does exist, this Court cannot disturb the OWC's judgment. *Id.* Further, if there are two permissible views of the evidence submitted, then the OWC's finding is not manifestly erroneous and must be upheld. *Id.* at 883. With these principles in mind, we turn to the record to determine whether the evidence supports the OWC's judgment.

The OWC had the benefit of hearing Mr. Mackel's testimony at trial. Therein, Mr. Mackel affirmed that he has never intentionally been untruthful about his PTSD symptoms or activities for the purpose of receiving workers' compensation benefits. During his testimony, Mr. Mackel clarified that while he had expressed being unable to leave his house, he did not consider driving in the

car as leaving the house. Rather, he meant that he did not leave his home and go into public. Mr. Mackel asserted that he kept guns in his car to protect himself and feel safe. Although he admitted to driving his girlfriend to and from the U-Haul facility, Mr. Mackel explained that he only drove her when he felt able to do so, and he did decline to drive her on occasion. Furthermore, Mr. Mackel admitted to stepping inside the U-Haul facility at times, but he had experienced anxiety when doing so.

The deposition of Dr. MacGregor was introduced into evidence at trial. In that deposition, Dr. MacGregor testified that PTSD was a hard condition to treat. Throughout the course of Dr. MacGregor's treatment of Mr. Mackel, Mr. Mackel would often experience some improvement and then regress after experiencing a triggering event. Dr. MacGregor noted that memory loss was a common symptom in PTSD patients, and patients often gave him differing accounts of the same event. Although Mr. Mackel consistently told Dr. MacGregor he was afraid to leave the house, Dr. MacGregor was aware he did leave sometimes. Additionally, Dr. MacGregor testified that he did not know that Mr. Mackel was driving his girlfriend to the U-Haul facility multiple times a week, but he explained that Mr. Mackel's actions were not necessarily contrary to what Mr. Mackel told him in their sessions. While Dr. MacGregor did testify that Mr. Mackel lying about his military experience was significant, he did not say what impact that would have had on his treatment plan.

Dr. Susan Andrews, who performed a neuropsychological evaluation of Mr. Mackel, authored a report that both parties introduced into evidence. In her report, she agreed that Mr. Mackel suffered from PTSD and that, while his results from the evaluation were confusing, he was not faking his symptoms. Rather, she

concluded that Mr. Mackel alternated between good and bad days as a result of his PTSD and depression. She strongly recommended that Mr. Mackel continue his treatment with Dr. MacGregor without interruption.

U-Haul employed both Drs. Kevin Bianchini and Richard Roniger to evaluate Mr. Mackel, and their reports were entered into evidence.² Dr. Bianchini performed a neuropsychological evaluation of Mr. Mackel. In his report, Dr. Bianchini agreed with Dr. MacGregor's PTSD diagnosis and found that Mr. Mackel's psychological problems were complicating his physical recovery. Dr. Bianchini disagreed with Dr. MacGregor's plan to eliminate Mr. Mackel's anxiety before approving his return to work, noting that this was an unrealistic plan and was actually prolonging Mr. Mackel's disability. Rather, Dr. Bianchini recommended that Mr. Mackel return to work in a different setting. Notably, Dr. Bianchini did not find that Mr. Mackel was malingering. Dr. Roniger performed a psychiatric evaluation of Mr. Mackel. Overall, he concurred with Dr. MacGregor's PTSD diagnosis, but he disagreed with Dr. MacGregor's approach to treatment. Instead, he found that a return to a modified work environment, as suggested by Dr. Bianchini, would help with Mr. Mackel's recovery.

U-Haul also hired Dr. Chad Domangue to author a Second Medical Opinion, which was entered into evidence. The opinion questions Mr. Mackel's reporting of his symptoms and suggests that Mr. Mackel was malingering for litigation purposes. Dr. Domangue is the only doctor that questioned Mr. Mackel's credibility.

Based on the above, we find that the record does support the OWC's judgment. There is an abundance of evidence to support the position that, although

² Dr. Roniger also testified at trial.

Mr. Mackel made some inaccurate statements, he did not do so willfully with the intent to receive workers' compensation benefits. Outside of Dr. Domangue's report, there is no evidence showing Mr. Mackel had fraudulent intentions. The OWC judge had the opportunity to listen to Mr. Mackel at trial, and she deemed him credible. After considering all the evidence together, we do not find the OWC's evaluation to be unreasonable. *See Greenblatt v. Sewerage & Water Bd. of New Orleans*, 2019-0694, p. 4 (La. App. 4 Cir. 12/20/19), 287 So. 3d 763, 766-67 (quotation omitted) ("[W]here two permissible views of the evidence exist, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong, even if the reviewing court would have decided the case differently."). Therefore, we uphold the OWC's ruling on this issue.

Assignment of Error No. 2: Whether the OWC erred in assessing penalties and attorney's fees against U-Haul

U-Haul also appeals the OWC's award of penalties and attorney's fees against it. As the OWC's decision to impose penalties involves a factual finding, we similarly review this issue for manifest error.

Louisiana Revised Statute 23:1201(I) provides that an employer who arbitrarily, capriciously, or without probable cause discontinues the payment of a claim shall be subject to a penalty and reasonable attorney's fees. An employer acts arbitrarily, capriciously, or without probable cause when it fails to present a valid reason or evidence for the discontinuation. *See Shubert v. City of New Orleans*, 2024-0686, p. 12 (La. App. 4 Cir. 3/28/25), 414 So. 3d 891, 900 (quoting *Lentz v. City of New Orleans*, 2022-0500, pp. 9-10 (La. App. 4 Cir. 12/15/22), 353 So. 3d 1060, 1067). In this case, U-Haul failed to present evidence explaining its justification for discontinuing Mr. Mackel's benefits. The evidence shows that four

of the five doctors who saw Mr. Mackel agreed that he suffered from PTSD and would benefit from further treatment. Two of those evaluating doctors were hired by U-Haul, and they concurred that Mr. Mackel should continue treatment. Despite this, and against the findings of multiple doctors, U-Haul discontinued Mr. Mackel's benefits. Thus, we do not find the OWC's ruling to be manifestly erroneous.

DECREE

For the foregoing reasons, we affirm the OWC's judgment.

AFFIRMED



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NOTICE OF JUDGMENT AND
CERTIFICATE OF MAILING

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN E-MAILED ON THIS DAY **06/09/2026** TO THE TRIAL JUDGE, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

JIW/jpm

JUSTIN I. WOODS
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2025-CA-0864

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