

**24-cv-1492 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

**JOSEPH PITRE**

**CASE NO. 6:24-CV-01492**

**VERSUS**

**JUDGE ROBERT R.  
SUMMERHAYS**

**GRAND ISLE SHIPYARD LLC**

**MAGISTRATE JUDGE CAROL B.  
WHITEHURST**

**REPORT AND RECOMMENDATION**

Before the Court is the Motion to Dismiss filed by Defendant, Grand Isle Shipyard, LLC (“GIS”). (Rec. Doc. 11). Plaintiff opposed the motion (Rec. Doc. 14). The motion was referred to the undersigned magistrate judge for review, report, and recommendation in accordance with the provisions of 28 U.S.C. §636 and the standing orders of this Court. Considering the evidence, the law, and the arguments of the parties, and for the reasons explained below, the Court recommends that GIS’s motion be granted.

**Factual Background**

Plaintiff filed this suit in state court against his former employer, GIS, asserting retaliatory and wrongful termination. (Rec. Doc. 1-1). He alleges that while employed as an electrician, he was injured while working offshore. (¶3). He filed a claim for compensation under the Longshore and Harbor Workers Compensation

Act (“LHWCA”) in November 2023, pursuant to which, he alleges, GIS has paid temporary total disability payments and for his medical care. (¶4). In April 2024, he received a separation notice from the Louisiana Workforce Commission advising that he had been terminated from GIS for failure to comply with the Family and Medical Leave Act (FMLA). Plaintiff contends the stated reason for his termination is improper because his circumstances were governed by LHWCA, not FMLA. (¶5). Upon being cleared to return to work without restrictions, Plaintiff alleges that GIS refused to reinstate him and that his termination was retaliatory and otherwise improper under La. R.S. 23:1361. GIS removed the case to this Court and now moves to dismiss Plaintiff’s claim under La. R.S. 23:1361 as preempted by the LHWCA.

### **Law and Analysis**

#### **I. Rule 12(b)(6) Standard**

The defendant may challenge the complaint for failing to state a claim by filing a motion to dismiss under F.R.C.P. Rule 12(b)(6). When considering a motion to dismiss for failure to state a claim, the district court must limit itself to the contents of the pleadings, including any attachments and exhibits thereto. *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5<sup>th</sup> Cir.2000); *U.S. ex rel. Riley v. St. Luke's Episcopal Hosp.*, 355 F.3d 370, 375 (5<sup>th</sup> Cir.2004). The court must accept all well-pleaded facts as true and view them in the light most favorable to the plaintiff. *In re*

*Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5<sup>th</sup> Cir.2007). Conclusory allegations and unwarranted deductions of fact are not accepted as true. *Kaiser Aluminum & Chemical Sales v. Avondale Shipyards*, 677 F.2d 1045, 1050 (5<sup>th</sup> Cir. 1982); *Collins v. Morgan Stanley*, 224 F.3d at 498. The law does “not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974 (2007). The allegations must be sufficient “to raise a right to relief above the speculative level,” and “the pleading must contain something more ...than...a statement of facts that merely creates a suspicion [of] a legally cognizable right of action.” *Id.* at 555 (quoting 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1216, pp. 235-36 (3d ed. 2004)).

## **II. Whether the LHWCA preempts La. R.S. 23:1361.**

Both LHWCA and Louisiana workers’ compensation law provide remedies for retaliatory discharge. Compare 33 U.S.C. § 948a and La. R.S. 23:1361, both of which prohibit an employer from discharging an employee because of his having asserted a claim for benefits. Once an injured employee elects benefits under the LHWCA, he is bound by the Act’s provisions, though, in certain cases, the state court may have concurrent jurisdiction. *Hetzel v. Bethlehem Steel Corp.*, 50 F.3d 360, 367 (5th Cir. 1995).

In a factually and legally similar case, the Fifth Circuit held that a worker injured while working in the outer Continental Shelf who has elected benefits under the LHWCA may not pursue a retaliatory discharge claim under La. R.S. 23:1361. *LeSassier v. Chevron USA, Inc.*, 776 F.2d 506, 509 (5th Cir. 1985). Because §948a and La. R.S. 23:1361 provide the same remedy, the LHWCA is superior and therefore preempts the state provision. *Id.* at 508-509.

Plaintiff relies on contrary Louisiana cases, including *Thompson v. Teledyne Movable Offshore, Inc.*, 419 So. 2d 822, 826 (La. 1982), which held a state court may exercise concurrent jurisdiction over worker compensation claims arising on the outer Continental Shelf, and *Hebert v. Mid S. Controls & Servs., Inc.*, 96-378 (La. App. 3 Cir. 10/9/96), 688 So. 2d 1171, 1175, *writ denied*, 96-2708 (La. 2/21/97), 688 So. 2d 523, recognizing that “federal court decisions are in complete conflict with the decision of the Louisiana Supreme Court.”

This Court is bound by Fifth Circuit jurisprudence, *LeSassier*, which explicitly rejected the Louisiana Supreme Court’s reasoning in *Thompson*. *LeSassier*, 776 F.2d at 509. See also *Ravencraft v. Sundowners Offshore Servs., Inc.*, No. CIV.A. 97-3572, 1998 WL 246699, at \*2 (E.D. La. May 14, 1998) (applying *LeSassier* and dismissing the plaintiff’s state law retaliatory discharge claim where, as in this case, the plaintiff was injured on a platform on the outer Continental

Shelf)<sup>1</sup>. Absent precedential jurisprudence holding otherwise, the Court finds that Plaintiff's retaliatory discharge claim under La. R.S. 23:1361 is preempted by 33 U.S.C. §948a and must be dismissed without prejudice to Plaintiff's right to pursue his claim through the proper administrative procedures under §948a.

### **Conclusion**

For the foregoing reasons, the Court recommends that Grand Isle Shipyard LLC's Motion to Dismiss (Rec. Doc. 11) be granted and that Plaintiff's claim be dismissed without prejudice to his right to pursue a claim under 33 U.S.C. §948a.

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), parties aggrieved by this recommendation have fourteen days from service of this report and recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within fourteen days after being served with of a copy of any objections or responses to the district judge at the time of filing.

Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in the report and recommendation within

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<sup>1</sup> *LeSassier* recognizes a unique class of cases in which a plaintiff was injured onshore, but, by virtue of his work, may pursue a LHWCA claim. *LeSassier, supra*. See also discussion in *Barrosse v. Huntington Ingalls, Inc.*, 70 F.4th 315, 319 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 557, 217 L. Ed. 2d 296 (2024). Like *LeSassier*, the instant case is not a "twilight zone" case in which the state and federal courts have concurrent jurisdiction.

fourteen days following the date of its service, or within the time frame authorized by Fed. R. Civ. P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the district court, except upon grounds of plain error. See *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5<sup>th</sup> Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. §636(b)(1).

THUS DONE in Chambers, Lafayette, Louisiana on this 7<sup>th</sup> day of January, 2025.

A handwritten signature in black ink, appearing to read "Carol B. Whitehurst", written over a horizontal line.

CAROL B. WHITEHURST  
UNITED STATES MAGISTRATE JUDGE