



**ARTHUR FELICE, PLAINTIFF v. INGRAM BARGE COMPANY, DEFENDANT**

**CIVIL ACTION NO. 5:00CV-163-R**

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF  
KENTUCKY, PADUCAH DIVISION**

*2000 U.S. Dist. LEXIS 21507; 2001 AMC 782*

**November 3, 2000, Decided**

**November 6, 2000, Entered**

**DISPOSITION:** [\*1] Plaintiff's motion for maintenance and cure was granted. Plaintiff's motion for attorney's fees was denied. Plaintiff's motion for expedited hearing was dismissed as moot.

**COUNSEL:** For ARTHUR FELICE, plaintiff: Dennis M. O'Bryan, O'Bryan, Baun, & Cohen, John E. Drumm, Birmingham, MI.

For INGRAM BARGE COMPANY, defendant: William E. Pinkston, Paducah, KY.

**JUDGES:** Thomas B. Russell, Judge, United States District Court.

**OPINION BY:** Thomas B. Russell

**OPINION**

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court on Plaintiff Arthur Felice's ("Felice") motion for retroactive and future payment of maintenance and cure, attorney's fees and expedited hearing (dkt # 6). For the reasons stated below, the Court **GRANTS** Plaintiff's motion for maintenance and cure and **DENIES** his motion for attorney's fees.

**BACKGROUND**

Felice was in the service of Defendant Ingram Barge Company's ("Ingram") M/V David K. Wilson on December 1, 1999, when he witnessed another crew member fall into the river and drown. Ingram gave all crew members of the M/V David K. Wilson several days off from work following the incident presumably to grieve for their lost crewman. Felice returned to the service of the M/V David [\*2] K. Wilson on December 9, 1999, but left on December 12, 1999 to care for his child. Felice completed three more voyages for Ingram, but terminated the last voyage early on February 6, 2000, because he believed his wife was going to burn down his house. He formally left the employ of Ingram on February 28, 2000 for unstated reasons.

Felice began receiving psychological treatment for post traumatic stress disorder ("PTSD") on February 21, 2000. Felice states this diagnosis stems from his viewing of the drowning and subsequent recovery of the body of his fellow crewman on December 1, 1999. Felice also avers the PTSD diagnosis explains his erratic behavior on the job during January and February of 2000 as well as his abrupt termination of employment with Ingram. Felice is currently undergoing psychological counseling, and is receiving psychiatric medications for his PTSD.

Ingram had its claims manager interview Felice shortly after the December 1, 1999 incident. The claims

manager indicates that during the interview, Felice appeared calm, lucid, and seemingly unaffected by the drowning of his crewmate. The claims manager also states that Felice reported no mental trauma or emotional [\*3] difficulties as a result of viewing the incident. Ingram also states that it received no notice of Felice's mental difficulties until April of 2000, when it was contacted by Felice's attorney.

Felice now seeks an award of maintenance and cure, alleging that his current illness arose while in the service of the M/V David K. Wilson. Ingram denies these common law payments are due since the illness did not "manifest" itself while Felice was aboard ship.

#### STANDARD

Maintenance refers to a shipowner's obligation to provide a mariner with food and lodging if he becomes injured or falls ill while in service of the ship, while cure alludes to the duty to provide necessary medical care and attention. See *Al-Zawhari v. American S.S. Co.*, 871 F.2d 585, 586 n.1 (6th Cir. 1989). "A shipowner must pay maintenance and cure for any illness or injury which occurred, was aggravated, or manifested itself while the seaman was in the ship's service." *Stevens v. McGinnis, Inc.*, 82 F.3d 1353, 1357-58 (6th Cir. 1996). A shipowner must pay maintenance and cure "even though the shipowner is not at fault, and regardless of whether the seaman's employment caused the injury [\*4] or illness." *Id.*, at 1357. "A shipowner is liable to pay maintenance and cure to the point of maximum cure, that is, when the seaman's affliction is cured or declared to be permanent." *Blainey v. American S.S. Co.*, 990 F.2d 885, 887 (6th Cir. 1993). Thus, to "recover for maintenance and cure, a plaintiff need only show that (1) he was working as a seaman, (2) he became ill or injured while in the vessel's service, and (3) he lost wages or incurred expenditures relating to treatment of the illness or injury." *West v. Midland Enterprises, Inc.*, 227 F.3d 613, 2000 U.S. App. LEXIS 23198, 2000 WL 1335715 (6th Cir. 2000) at \* 3. Finally, the Supreme Court has admonished that when evaluating a claim for maintenance and cure, a district court should consider that "the shipowner's liability for maintenance and cure [is] among the most pervasive of all, and that it [is] not to be defeated by restrictive distinctions or narrowly defined. When there are ambiguities or doubts, they are resolved in favor of the seaman." *Vaughan v. Atkinson*, 369 U.S. 527, 532, 82 S. Ct. 997, 1000, 8 L. Ed. 2d 88 (1962)(internal citations

and quotation [\*5] marks omitted).

As to attorney's fees, those can be awarded if the "shipowner was callous and recalcitrant in its willful and persistent refusal to pay maintenance and cure which was plainly owed." *Stevens*, 82 F.3d at 1360 (citing *Vaughan*, 369 U.S. at 530-31, 82 S. Ct., at 1000). A shipowner must engage in egregious conduct "exhibiting wanton and intentional disregard of a seaman's rights" to warrant the award of attorney's fees. *Breese v. AWI, Inc.*, 823 F.2d 100, 103 (5th Cir. 1987)(quoting *Harper v. Zapata Off-Shore Co.*, 741 F.2d 87, 88 (5th Cir. 1984)). Such conduct includes "laxness in investigating a claim that would have been found to have merit" and a conduct that warrants a "finding that the employer had 'no reasonable excuse' for its refusal" to pay maintenance and cure. *Id.* (quoting *Holmes v. J. Ray McDermott & Co.*, 734 F.2d 1110, 1118 (5th Cir. 1984)).

#### DISCUSSION

There is nothing in the record of this case to indicate that Felice is not entitled to maintenance and cure. It appears he was of fit mental and physical health prior to the accident which occurred on December 1, 1999. After [\*6] the accident, he began suffering mental difficulties and had problems in performing his job adequately. He alleges he suffered from sleeping difficulties, flashbacks, fear of the incident recurring while on the job, and angry outbursts. He has presented the Court with medical evidence supporting these claims.

Ingram has not demonstrated any medical evidence to refute that presented by Felice. Its only evidence consists of an affidavit from its claims manager, based on observations which occurred immediately following the December 1, 1999, accident. The Court notes that the mental injury cases relating to maintenance and cure involve injuries which took some time to manifest themselves. See *West*, 227 F.3d 613 *Stevens, supra* and *Spellman v. American Barge Line Company, Inc.*, 176 F.2d 716 (3d Cir. 1949). Moreover, a shipowner has the duty to seek medical advice before denying maintenance and cure. See *Breese*, 823 F.2d at 104. Therefore, the affidavit is insufficient to refute the medical evidence presented by the Plaintiff.

However, the Court agrees with Ingram that there is insufficient evidence to warrant the award of attorney's [\*7] fees in this case. Felice apparently did not contact Ingram regarding his mental problems until after seeking

the assistance of counsel. There is evidence in the record to suggest that Ingram has faced some difficulty in obtaining the necessary medical documentation from Felice to fully evaluate his claims. The Court cannot say Ingram was so "callous and recalcitrant" to warrant the award of attorney's fees. *Stevens, 82 F.3d at 1360.*

An appropriate order shall issue.

This is the 3 day of November, 2000.

Thomas B. Russell, Judge

United States District Court

**ORDER**

This matter having come before the Court on Plaintiff's motion for maintenance and cure, attorney's fees, and an expedited hearing (dkt # 6), the Defendant having responded and the Court otherwise being sufficiently advised,

**IT IS ORDERED:**

Plaintiff's motion for maintenance and cure is **GRANTED**. The Defendant is directed to begin paying maintenance and cure by December 15, 2000. The Plaintiff and Defendant are directed to confer regarding the appropriate amount of maintenance and cure, and each party is directed to provide the other with all necessary medical and other evidence necessary [\*8] to determine such amount by November 30, 2000.

Plaintiff's motion for attorney's fees is **DENIED**.

Plaintiff's motion for an expedited hearing is dismissed as **MOOT**.

Entered this 3 day of November, 2000.

Thomas B. Russell, Judge

United States District Court