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CYNTHIA L. MERLINI'S CASE.

15-P-847

APPEALS COURT OF MASSACHUSETTS

89 Mass. App. Ct. 1130; 2016 Mass. App. Unpub. LEXIS 656

June 29, 2016, Entered

NOTICE: SUMMARY DECISIONS ISSUED BY THE APPEALS COURT PURSUANT TO ITS *RULE 1:28*, AS AMENDED BY 73 MASS. APP. CT. 1001 (2009), ARE PRIMARILY DIRECTED TO THE PARTIES AND, THEREFORE, MAY NOT FULLY ADDRESS THE FACTS OF THE CASE OR THE PANEL'S DECISIONAL RATIONALE. MOREOVER, SUCH DECISIONS ARE NOT CIRCULATED TO THE ENTIRE COURT AND, THEREFORE, REPRESENT ONLY THE VIEWS OF THE PANEL THAT DECIDED THE CASE. A SUMMARY DECISION PURSUANT TO *RULE 1:28* ISSUED AFTER FEBRUARY 25, 2008, MAY BE CITED FOR ITS PERSUASIVE VALUE BUT, BECAUSE OF THE LIMITATIONS NOTED ABOVE, NOT AS BINDING PRECEDENT. SEE *CHACE V. CURRAN*, 71 MASS. APP. CT. 258, 260 N.4, 881 N.E.2d 792 (2008).

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JUDGES: Grainger, Sullivan & Henry, JJ.

OPINION

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The employee, Cynthia Merlini, appeals from a decision of the reviewing board of the Department of Industrial Accidents (board) reversing an administrative judge's decision ordering the Massachusetts Workers' Compensation Trust Fund (trust fund) to pay her workers' compensation benefits. We affirm.

Background. The employee, a United States citizen and Massachusetts resident, was a locally-engaged staff member for the Consulate General of Canada (Consulate) in Boston. In January, 2009, she was injured while working at the Consulate and filed a claim for workers' compensation in Canada. The Canadian government paid the employee workers' compensation benefits from March, 2009, until October, 2009, when it discontinued the benefits and ordered her to return to work. The employee did not elect to appeal the discontinuation of her benefits in Canada; instead she filed the present claim against the trust fund in Massachusetts asserting her entitlement to workers' compensation payments from the trust fund pursuant to *G. L. c. 152, § 65(2)(e)*.

Discussion. The employee argues that Canada paid her workers' compensation by mistake and that the board

misinterpreted the Canadian Government Employees Compensation Act (GECA) to disqualify the claim she submitted to the trust fund. Accordingly, she argues that the trust fund is required to pay her benefits pursuant to *G. L. c. 152, § 65(2)(e)(i)*. This interpretation of GECA depends upon an overly restrictive view of the statute. Moreover, this interpretation of § 65(2)(e)(i) is inconsistent with the guidance of the Supreme Judicial Court and the plain language of the statute. See *CNA Ins. Cos. v. Sliski*, 433 Mass. 491, 498 n.8, 744 N.E.2d 634 (2001).¹

1 In *Sliski*, the court interpreted the 1991 amendments to § 65 as an attempt to "narrow[] the Trust Fund's obligation to pay benefits to employees of uninsured employers."

The trust fund was established pursuant to *G. L. c. 152, § 65*, as amended by St. 1991, c. 398, § 85. Section 65(2)(e)(i) provides that a person seeking workers' compensation benefits from the trust fund is entitled to such benefits only if "the claimant is not entitled to workers' compensation benefits *in any other jurisdiction*" (emphasis supplied).

The question at the heart of this appeal is whether the employee is entitled to benefits under Canadian law. GECA defines an "employee" subject to the statute as "any person in the service of Her Majesty who is paid a direct wage or salary by or on behalf of Her Majesty." GECA § 2. The parties do not dispute that Merlini is an employee under GECA. Rather, the employee contends that payment of workers' compensation to her was discretionary under Canadian law. This misreads GECA's statutory scheme.

GECA applies "in respect of an accident occurring . . . within or outside Canada." GECA § 3(2). Section 4 then states: "Subject to this Act, compensation *shall* be paid to (a) an employee who (i) is caused personal injury by an accident arising out of and in the course of his employment." GECA § 4(1)(a)(i) (emphasis supplied). Section 7 of GECA addresses locally-engaged staff such as the employee. This section permits the Canadian government two options regarding the manner in which compensation required by § 4 is to be paid to locally-engaged staff. See GECA § 7.² In jurisdictions that do not require that payments be made to a specific fund, such as Massachusetts, § 7(2) provides that "[t]he [m]inister may, with the approval of the [t]reasury [b]oard, award compensation in such amount and in such manner as he deems fit to (a) an employee locally engaged outside Canada who (i) is caused personal injury by an accident arising out of and in the course of [her] employment," i.e., make payments directly to the injured employee. GECA § 7(2)(a)(i).

2 Specifically, in foreign jurisdictions where "payments are made to a fund out of which compensation is paid to [injured employees and their dependents] there may, with the approval of the [t]reasury [b]oard, be paid to that fund, [out of the Canadian revenue fund], such payments [for the injured] employee as may be deemed necessary." GECA § 7(1). This fund would then disperse the benefits to the injured employee, rather than, as was the case here, the Canadian government paying the injured employee directly.

Here, the board properly found that the Canadian government does not have discretion whether to pay workers' compensation benefits as the employee claims, because § 7 of GECA addresses only the manner in which compensation is paid, not whether an employee is entitled to such benefits.

A plain reading of GECA demonstrates that the employee was entitled to workers' compensation under § 4(1) because she was "an employee who [was] caused personal injury by an accident arising out of and in the course of [her] employment at the Consulate." GECA § 4(1)(a)(i). Section 7(1) does not apply to the employee in this case because Canada is not required by Massachusetts, or any other State in the United States, to pay into a workers' compensation trust fund. Section 7(2) provides, however, that workers' compensation may be paid directly by the Consulate or the agency overseeing the Consulate, the Department of Foreign Affairs and International Trade. GECA § 7(2). Indeed, the employee received workers'+ compensation benefits from Canada for six months.

Because of our disposition, we need not address whether the Canadian government is subject to the jurisdiction of the Commonwealth or whether the Consulate was an "uninsured employer" in violation of *G. L. c. 152*.

Decision of reviewing board affirmed.

By the Court (Grainger, Sullivan & Henry, JJ.³),

3 The panelists are listed in order of seniority.

Entered: June 29, 2016.