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Lang v. Municipal Employees' Retirement System of R.I., 222 A.3d 912 (R.I. 2019)

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Workers' Compensation. *Lang v. Municipal Employees' Retirement System of R.I.*, 222 A.3d 912 (R.I. 2019). The Workers' Compensation Court (WCC) has jurisdiction over appeals by parties who had applied for accidental disability retirement allowance and were subsequently denied. Further, occupational cancer is considered a compensable injury, as determined by the WCC's interpretation of Rhode Island General Laws section 28-34-2(33) with the date of disability determined under section 28-34-6. Finally, the Rhode Island Supreme Court inferred the General Assembly's intent that a firefighter must first prove an occupational cancer exists before receiving occupational cancer benefits, interpreting that there is no conclusive presumption that all cancer in firefighters is considered occupational.

FACTS AND TRAVEL

In 1996, Petitioner Kevin Lang (Lang) began his career as a firefighter for the City of Cranston.¹ He had a long and successful career until September 2012 when his colon cancer diagnosis suddenly ended his time with the fire department.² Following this diagnosis, the City of Cranston "placed him on injured-on-duty status," in accord with R.I. General Law section 45-19-1.³ This allowed Lang to receive salary benefits from the City.⁴ In January 2014, Lang applied for accidental disability benefits pursuant to section 45-21.2-9, and, in July 2015, the Retirement Board of the Municipal Employees Retirement System of Rhode Island (the Board) denied his application after Lang could not prove that his cancer arose out of his job as a firefighter.⁵ Lang then appealed the decision to the Workers' Compensation Court (WCC). It is critical to note that the Board notified him of his ability to appeal only to

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1. *Lang v. Mun. Emps. Ret. Sys. of R.I.*, 222 A.3d 912, 914 (R.I. 2019).
 2. *Id.*
 3. *Id.*
 4. *Id.*
 5. *Id.*

the Rhode Island Superior Court, but Lang chose to appeal to the WCC, claiming that section 45-21.2-9(f) gave the Workers' Compensation Court subject matter jurisdiction.⁶

The Municipal Employees' Retirement System of Rhode Island (the Respondent) filed a motion to dismiss Lang's appeal, claiming that the WCC lacked subject matter jurisdiction and that his claim should be filed in the Superior Court, as they originally suggested.⁷ That motion was swiftly denied by the trial judge.⁸

Lang filed a motion for summary judgment in the WCC, asserting that section 45-19.1-1 offered the complete presumption that all cancers contracted by firefighters are related to their employment.⁹ Petitioner included three affidavits from Lang, Raymond Chaquette, M.D. (Lang's oncologist), and the Chief of the Cranston Fire Department, which served to establish Lang's long employment as a firefighter, his cancer diagnosis, and his placement on injured-on-duty status.¹⁰ Among other records, reports from five physicians noted that Lang was permanently disabled but the physicians could not conclusively state that Lang's cancer resulted from his employment.¹¹

In a written decision, the trial court judge reversed the Board's determination and stated that section 45-19.1-1(b) "creates a conclusive presumption that all cancer in firefighters . . . arises out of and in the course of their employment" and granted Lang accidental disability retirement benefits.¹² The Respondent appealed to the Appellate Division. The Appellate Division affirmed the trial judge's ruling that the WCC had subject matter jurisdiction to hear the claim regarding whether section 45-19.1-1 created a total presumption that a cancer diagnosis in firefighters arises out of and in the course of their employment.¹³ The Respondent sought reversal of the WCC decree, contending the WCC did not have subject matter jurisdiction and the above listed

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at 913.

chapter of the general laws did not allow for the presumption that all cancer in firefighters arises out of their employment.¹⁴ The Respondent filed a writ of certiorari, which the Rhode Island Supreme Court granted.¹⁵

ANALYSIS AND HOLDING

A review of certiorari is “limited to an examination of the record to determine if an error of law has been committed.”¹⁶ On review, the record should be inspected beyond just searching for judicial error(s) to identify any legally competent evidence to “support findings of the hearing of justice.”¹⁷ The Supreme Court performed a review of the questions of statutory interpretation *de novo*, allowing the Court to give effect to the “purpose of the act as intended by the legislature.”¹⁸ Justice Indeglia further explained that “when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings,” but when the language is ambiguous, the Court turns to “well-established maxims of statutory construction” to determine legislative intent.¹⁹ Finally, the Court noted that it would not construe a statute in a way that reaches an absurd result.²⁰

Under this standard of review, the Supreme Court analyzed several statutory provisions relating to this case.²¹

A. *Relevant Statutes*

Because the Court was tasked with determining the interplay between several statutory provisions, the Court provided an overview of the relevant statutes. First, section 45-19-1 generally grants salary benefits to firefighters injured on duty.²² Subsection

14. *Id.*

15. *Id.* at 914.

16. *Id.* at 914–15 (quoting *Plante v. Stack*, 109 A.3d 846, 853 (R.I. 2015)).

17. *Id.* at 915 (quoting *Plante*, 109 A.3d at 853).

18. *Id.* (quoting *Bluedog Capital Partners, L.L.C. v. Murphy*, 206 A.3d 694, 699 (R.I. 2019)).

19. *Id.* (quoting *In re B.H.*, 194 A.3d 260, 264 (R.I. 2018)).

20. *Id.* (quoting *In re B.H.*, 194 A.3d at 264).

21. *Id.*

22. *Id.*

(j) was created to provide an amendment clarifying that any person receiving such benefits should apply for an accidental disability retirement allowance within eighteen months of injury at the risk of losing their injured-on-duty benefits should they neglect that obligation.²³ Subsection two of section 45-19-1(j) clarifies that injured-on-duty payments will terminate in the event that the WCC, in a final ruling, allows accidental disability payments.²⁴ Next, section 45-21.2-9 provides the aforementioned accidental disability retirement allowance benefits to firefighters who are in need due to a mental or physical injury sustained while in the line of duty.²⁵ An amendment to this statute, subsection (f), provides that if a party is “aggrieved by the determination of the retirement board pursuant to § 45-19-1,” that party may appeal to the Rhode Island WCC.²⁶ Finally, section 45-19.1—“Cancer Benefits for Fire Fighters”—provides certain benefits to firefighters diagnosed with a “disabling occupational cancer.”²⁷

B. *Subject Matter Jurisdiction*

In reviewing whether the WCC had subject matter jurisdiction,²⁸ the Court conducted a *de novo* review.²⁹ Respondent raised three arguments supporting his claim that the WCC did not have subject matter jurisdiction to hear the appeals.³⁰ First, Respondent argued that the Appellate Division of the WCC “erred when it affirmed the trial [j]udge’s determination” that the WCC had subject matter jurisdiction because the unambiguous language in section 45-21.2-9 allows the WCC jurisdiction when the Board has made a determination pursuant to section 45-19-1 only, whereas here, the Board’s decision was based on section

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* (quoting 45 R.I. GEN. LAWS § 45-21.2-9).

27. *Id.* at 916 (quoting 45 R.I. GEN. LAWS § 45-19.1-3(a)).

28. A challenge to subject matter jurisdiction questions the “very power of the court to hear the case” and is reviewed *de novo*. *Id.* (quoting *Sullivan v. Coventry Mun. Emps’ Ret. Plan*, 203 A.3d 483, 487 (R.I. 2019)).

29. *Id.* (quoting *Sullivan*, 203 A.3d at 487).

30. *Id.*

45-21.2-9.³¹ The Court rejected Respondent's argument.³² The Court determined that the WCC had jurisdiction over the appeals rendered by the Board, so long as the appeal was filed pursuant to the time mandate in section 45-19-1(j), as was the intent of the General Assembly.³³ The Court stated the statute must not be construed so literally as to result in absurdities or a defeating purpose of the enactment.³⁴ The Court further explained that to accept Respondent's argument would be tantamount to determining that the General Assembly created an appeal opportunity that would have no effect because the "board will never render a decision pursuant to § 45-19-1."³⁵ The Court found that this would result in an absurd result that would contradict the General Assembly's intent.³⁶ Furthermore, the Court interpreted the General Assembly's intent so as to give the WCC jurisdiction over appeals by parties who applied for an accidental disability retirement allowance and were denied by the board by pointing to section 45-19-1(j) to reveal that the statute is unambiguous in instructing a person to apply for such allowance from the state under section 45-21.2-9, and to await the Board's decision, which they may appeal pursuant to section 45-21.2-9(f), not section 45-19-1.³⁷ Finally, the Court pointed to section 28-30-1(a), which "grants the WCC jurisdiction that may be necessary to carry out its duties," into which appeals would fall.³⁸

Second, the Respondent argued that the WCC lacked jurisdiction because *occupational cancer* and *injury* are different, and occupational cancer is not an injury within the meaning of section 45-21.2-9.³⁹ The Respondent claimed that section 45-21.2-9(a) provides accidental disability retirement allowance for injury but section 45-21.2-9(f) allows such allowance for occupational cancer and states that, if the General Assembly

31. *Id.*

32. *See id.* (quoting *O'Connell v. Walmsley*, 156 A.3d 422, 428 (R.I. 2007)).

33. *See id.* at 917.

34. *See id.*

35. *See id.* at 916.

36. *Id.*

37. *See id.* at 917 (quoting § 45-19-1(j)(2)).

38. *Id.* (citing *O'Connell v. Walmsley*, 156 A.3d 422, 426 (R.I. 2007)).

39. *Id.*

intended the two to be the same, they would have written it as such.⁴⁰ The Court rejected the Respondent's argument and determined that the General Assembly intended occupational cancer to be considered an injury for the purposes of WCC appeal provisions.⁴¹ The Court noted that the Respondent was not *wrong* in the assertion that the relevant statutory sections do provide allowance for injury and occupational cancer separately, however the Court stated section 45-21.2-9(e) provides that an applicant is entitled to "all of the benefits provided for" in the chapter.⁴² The Court reasoned that this interpretation allows an applicant with occupational cancer to receive the benefits reserved for an "injured" applicant.⁴³ The Court found further support for its interpretation in section 28-35-11, which provides that "all questions arising under . . . Rhode Island general law § 45-21.2-9 shall . . . be determined by the Workers' Compensation Court."⁴⁴ With no language that unequivocally states that appeals concerning occupational cancer are to be treated differently, the Court concluded that the General Assembly "intended to provide the WCC with jurisdiction."⁴⁵

Third, the Respondent argued that the WCC erred in identifying cancer as an occupational disease and in considering the date of diagnosis the date of injury.⁴⁶ The Respondent looked to section 45-21.2-9(j) and claimed the WCC was only granted authority to use "case-management procedures and dispute-resolution processes, but not its substantive law, in determining an appeal."⁴⁷ The Court, again, rejected this argument concluding that it is a far too rigid and hyper-technical interpretation of the statute.⁴⁸ The Court reasoned that the aforementioned statute requires that all proceedings within the WCC must be filed

40. *Id.*

41. *Id.* at 918.

42. *Id.* at 917 (quoting § 45-21.2-9(e)).

43. *See id.*

44. *Id.* at 917–18 (quoting 28 R.I. GEN. LAWS § 28-35-11).

45. *See id.* at 918.

46. *Id.*

47. *Id.*

48. *Id.* (citing *In re B.H.*, 194 A.3d 260, 264 (R.I. 2018); *O'Connell v. Walmsley*, 156 A.3d 422, 428 (R.I. 2007)).

pursuant to the statute and are subject to the provisions of chapters 29-38.⁴⁹ However, the statute “contains no limiting language” that the General Assembly could have included had that been their intention and, therefore, the Court construed the General Assembly’s intent to be that appeals filed with the WCC pursuant to section 45-21.2-9(j) are “not limited to case-management procedures only.”⁵⁰ Therefore, the WCC had properly ensured its jurisdiction and properly determined that occupational cancer is a compensable injury with the date of injury as the date of diagnosis, according to sections 28-34-2(33) and 28-34-6, respectively.⁵¹ Consequently, the Court affirmed the decree that the WCC had jurisdiction to hear the Petitioner’s appeal.⁵²

C. *Conclusive Presumption*

Regarding conclusive presumption, the Respondent argued that the WCC “erred when it determined that § 45-19.1-1 creates a conclusive presumption that any diagnosis of cancer among firefighters is an “occupational cancer.”⁵³ The Respondent asserted that the General Assembly did not intend to create a conclusive presumption because there is no language expressly creating such presumption, as seen in other statutes.⁵⁴ Furthermore, the Respondent maintained that the phrase “occupational cancer” would be redundant and meaningless, and the General Assembly has elsewhere created presumptions for health impairments of firefighters and assigned that duty to municipalities.⁵⁵ The Court agreed with the Respondent’s argument, holding that section 45-19.1 does not contain a conclusive presumption that all cancers in firefighters are occupational cancers.⁵⁶ The Court determined that, in order to show that a firefighter is unable to perform his or her duties because of an occupational cancer, as required by section 45-19.1-3, the firefighter must prove a causal connection between

49. *Id.* (quoting § 45-21.2-9(j)(2)).

50. *See id.*

51. *Id.*

52. *Id.*

53. *Id.* at 919.

54. *Id.*

55. *Id.*

56. *Id.* at 922.

the disease and his or her employment as a firefighter.⁵⁷ The Court explained that this means the cancer must have arisen out of the Respondent's employment via exposure to poisons, toxins, chemical substances, smoke,⁵⁸ or other harsh conditions that many firefighters are exposed to, according to section 45-19.1-1(a).⁵⁹ The Court further reasoned that by specifically defining "occupational cancer" in section 45-19.1-2(d) and requiring a firefighter to prove his or her cancer arose out of the employment, the General Assembly had no intention of creating a conclusive presumption.⁶⁰ In staying consistent with the promise not to construe a statute to reach an absurd result, the Court recognized that the language in section 45-19.1-1 does not create a conclusive presumption and that interpreting it to do so would render the statutory definition of "occupational cancer" meaningless, which would be an absurd result.⁶¹

Finally, the Respondent argued that reliance on the holding in *City of East Providence v. International Association of Firefighters Local 850 (IAF Local 850)*, 982 A.2d 1281 (R.I. 2009) was misplaced.⁶² The Court agreed with the Respondent's argument on this point.⁶³ The Court reasoned that the Court's task in *IAF Local 850* was not to provide an interpretation of section 45-19.1, but rather "to determine whether the arbitrator exceeded his authority by rendering an irrational decision," and, therefore, the Court's holding did not determine what type of cancer a firefighter would have to prove in order to receive occupational cancer disability benefits.⁶⁴ Finally, the Court drew the distinction that in the present case, the Court had to address the interpretation of chapter 19.1 on *de novo* review.⁶⁵

57. *See id.* at 921.

58. *Id.* (citing § 45-19.1-2(d)).

59. *Id.*

60. *See id.*

61. *See id.*

62. *Id.* at 919.

63. *Id.*

64. *See id.* at 920 (citing *Providence v. Int'l Assoc. of Firefighters Local 850*, 982 A.2d 1281, 1285 (R.I. 2009)).

65. *Id.*

D. Justice Robinson's Concurrence

Justice Robinson concurred with the conclusion reached by the majority and its interpretation of the relevant statutory provisions.⁶⁶ Justice Robinson wrote separately, however, to reiterate his belief that “there are occasions when it is important for the General Assembly to speak with stark clarity when it wishes to enact into law a provision that represents a departure from the usual.”⁶⁷ Justice Robinson argued that the Court is required to look at what the statute actually says rather than to speculate about the intent of the legislators.⁶⁸ Accordingly, Justice Robinson stated the General Assembly must be particularly clear as to its intent so that the Court can properly apply the statute to the case at hand.⁶⁹

E. Justice Flaherty's Opinion: Concurring in Part, Dissenting in Part

Justice Flaherty concurred in part and dissented in part, stating that he was in complete agreement with the majority on the jurisdictional issue.⁷⁰ However, Justice Flaherty disagreed with the majority's conclusion on the conclusive presumption, arguing that the statutory framework *does* provide that a diagnosis of cancer entitles a firefighter to an accidental disability pension.⁷¹ Justice Flaherty asserted that section 45-19.101(a) unambiguously expresses the General Assembly's intent to have a conclusive presumption that all cancer in firefighters is caused by the toxins and dangerous working conditions they are exposed to in the course of their employment.⁷² By discussing the effects of exposure to dangerous toxins as including slowly manifested cancers, Justice Flaherty argued, the General Assembly must have intended for cancer in firefighters to be presumed as arising from their employment.⁷³ Justice Flaherty reasoned that section 45-19.1-1(b)

66. *Id.* at 926 (Robinson, J., dissenting).

67. *Id.*

68. *Id.*

69. *Id.* at 927.

70. *Id.* at 922 (Flaherty, J., concurring in part, dissenting in part).

71. *Id.*

72. *See id.* at 923.

73. *See id.*

serves as evidence of the General Assembly's intent to create the presumption that cancer in firefighters arose out of their employment where it provides that "the General Assembly finds and declares that all of the previously stated conditions exist and arise out of or in the course of their employment," which serves as evidence of the General Assembly's intent to create the presumption that cancer in firefighters arose out of their employment.⁷⁴ Furthermore, Justice Flaherty argued that the majority, although attempting to distance itself from the language in *IAF Local 850*, fell short of that goal because the Court held that section 45-19.1 was clear and unambiguous and the arbitrator did not exceed his authority.⁷⁵

COMMENTARY

In the case at hand, the Rhode Island Supreme Court acknowledged the importance of properly interpreting the General Assembly's legislative intent, doing so *de novo*.⁷⁶ As such, the Court spent ample time reviewing and discussing its processes in coming to the interpretation that it did for each relevant statutory provision.⁷⁷ Further, the Court remained committed to avoiding an absurd result in any interpretation of statutory language.⁷⁸ In doing so, the Court set out to find a balance between proper interpretation of statutory language and a fair application of the statutes to both parties. The Court made an impressive effort to take care to review every relevant statutory provision and to understand the process by which an appeal of the Retirement Board of the Municipal Employees' Retirement System of Rhode Island decisions must be handled. By reviewing each statutory provision as necessary, the Court determined that Lang properly appealed to the Workers' Compensation Court, holding that the WCC had subject matter jurisdiction pursuant to the General Assembly's intent.⁷⁹

74. *See id.*

75. *Id.* at 925.

76. *See id.* at 915.

77. *Id.*

78. *See id.* at 916.

79. *See id.* at 922.

Regarding the presumption that all cancers in firefighters are caused by a firefighter's employment, the Court determined that there was no such presumption.⁸⁰ However, the dissenting opinion brings to light an important consideration—that one statutory provision, section 45-19.1-1(b), states that any previously stated condition (cancer included) arises out of the course of a firefighter's employment.⁸¹ Although the majority did not agree, this disagreement highlights the importance of balancing a strict and rigid reading of the statute with the apparent legislative intent of the General Assembly.

By holding that the WCC had jurisdiction, the Supreme Court removed any doubt that future appeals could be heard by the WCC. Additionally, the Supreme Court made it very clear that firefighters, in order to receive accidental disability retirement allowance due to a cancer diagnosis, must be able to prove that their cancer diagnosis arose out of their employment as a firefighter.⁸² This is a strict standard. However, the majority decision did not state by what standard of proof or by what means a firefighter could prove such connection, which could pose challenges for future petitioners.

CONCLUSION

The Rhode Island Supreme Court held that the Workers' Compensation Court had jurisdiction to hear the Petitioner's appeal and affirmed the trial court's decision in relevant part.⁸³ However, the Court held that section 45-19.1 contains no conclusive presumption that all cancer in firefighters is an "occupational cancer."⁸⁴ Therefore, the Court reversed the trial court's decision

80. *Id.*

81. *See id.* at 923.

82. *See id.* at 921.

83. *Id.* at 922.

84. *Id.* The Rhode Island legislature recently amended the statute at issue in this survey to clarify that "[i]f any type of cancer is found in a firefighter, then it is conclusively presumed to be an occupational cancer arising out of their employment as firefighters." *See* 45 R.I. GEN. LAWS § 45-19.1-4.

in regard to the conclusive presumption that all cancer in firefighters is occupational cancer.

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