

Siena v. Orange County Fire Rescue/Ccmsi

Court of Appeal of Florida, First District

October 25, 2023, Decided

No. 1D2022-0958

Reporter

2023 Fla. App. LEXIS 7293 *

CHRISTY SIENA, Appellant, v. ORANGE COUNTY
FIRE RESCUE/CCMSI, Appellees.

Notice: NOT FINAL UNTIL DISPOSITION OF ANY
TIMELY AND AUTHORIZED MOTION UNDER FLA. R.
APP. P. 9.330 OR 9.331.

Prior History: [*1] On appeal from an order of the
Office of the Judges of Compensation Claims. Neal P.
Pitts, Judge. Date of Accident: May 11, 2021.

Counsel: Geoffrey Bichler and Kristine Callagy of
Bichler & Longo, PLLC, Maitland, and Michael J. Winer
of Winer Law Group, Tampa, for Appellant.

Karen J. Cullen of Broussard, Cullen & Eldridge, P.A.,
Orlando, for Appellee.

Kimberly L. Marshall, Cassidy M. Perdue, and Katie B.
Privett of Florida Department of Financial Services
Office of the General Counsel, Tallahassee, for Amicus
Department of Financial Services.

Judges: WINOKUR, J. OSTERHAUS, C.J., and RAY,
J., concur.

Opinion by: WINOKUR

Opinion

WINOKUR, J.

In this appeal we consider whether receipt of medical,
indemnity, and death benefits through section 112.1816,
Florida Statutes, bars receipt of death benefits under
section 440.16, Florida Statutes. We conclude that it
does not and set aside the order below.

Christy Siena is the widow of Eric Siena, a firefighter
who died of brain cancer. Eric Siena was diagnosed on
April 23, 2020, and requested and received benefits
under subsection 112.1816(2), Florida Statutes (medical
care and a \$25,000 payment). He died on May 11,

2021.

Thereafter, Siena sought death benefits under both
chapter 112—specifically, sections 112.191(2)(a) and
112.1816(4)(c)—and chapter 440, the Workers'
Compensation Law. The Employer/Carrier (E/C) paid
the chapter [*2] 112 death benefit but not the chapter
440 death benefit.

When the chapter 440 claim came before the Judge of
Compensation Claims (JCC), the parties narrowed the
issues to whether pursuit of benefits under section
112.1816 is "the sole remedy," and (conversely)
whether receipt of death benefits through paragraph
112.1816(4)(c) automatically entitles a claimant to death
benefits under chapter 440. The JCC declined to reach
the second issue based on his decision on the first
issue. After a detailed analysis of the applicable
statutes, the JCC ruled that chapter 440 death benefits
were barred on grounds that the Sienas had elected
their remedy by accepting chapter 112 benefits. The
JCC explained that his ruling was "limited to the
stipulated facts that include" both Eric and Christy
Siena's receipt of chapter 112 benefits.¹

This issue comes down to our interpretation of section
112.1816(2). Not only clear, unambiguous statutory
language, but also its context, is a "primary determinant
of meaning." See *Tiburcio v. Hillsborough Cnty. Sheriff's
Off./Com. Risk Mgmt., Inc.*, 347 So. 3d 59, 62 (Fla. 1st
DCA 2022), *reh'g denied* (Sept. 28, 2022) (quoting
Antonin Scalia & Bryan A. Garner, *Reading Law: The
Interpretation of Legal Texts* 56, 167 (2012)). To
understand the context, we look to sections 112.1816
and 112.191(2), which include provisions relating to
firefighters, and 440.16(1), which is [*3] part of the
Workers' Compensation Law. The firefighter provisions
read in pertinent part as follows:

(1) [Definitions].

(2) Upon a diagnosis of cancer, a firefighter is

¹ The JCC left open whether a firefighter can waive his or her
dependents' cause of action for chapter 440 death benefits.
Given our holding here, we need not address that question.

entitled to the following benefits, as an alternative to pursuing workers' compensation benefits under chapter 440, if the firefighter has been employed by his or her employer for at least 5 continuous years, has not used tobacco products for at least the preceding 5 years, and has not been employed in any other position in the preceding 5 years which is proven to create a higher risk for any cancer:

(a) Cancer treatment covered within an employer-sponsored health plan or through a group health insurance trust fund. The employer must timely reimburse the firefighter for any out-of-pocket deductible, copayment, or coinsurance costs incurred due to the treatment of cancer.

(b) A one-time cash payout of \$25,000, upon the firefighter's initial diagnosis of cancer.

If the firefighter elects to continue coverage in the employer-sponsored health plan or group health insurance trust fund after he or she terminates employment, the benefits specified in paragraphs (a) and (b) must be made available by the former employer of a firefighter for 10 [*4] years following the date on which the firefighter terminates employment so long as the firefighter otherwise met the criteria specified in this subsection when he or she terminated employment and was not subsequently employed as a firefighter following that date. For purposes of determining leave time and employee retention policies, the employer must consider a firefighter's cancer diagnosis as an injury or illness incurred in the line of duty.

(3) [Retirement benefits].

(4). . . .

(c) Firefighters who die as a result of cancer or circumstances that arise out of the treatment of cancer are considered to have died in the manner as described in s. 112.191(2)(a), and all of the benefits arising out of such death are available to the deceased firefighter's beneficiary.

(5) [Stating that employer bears costs].

(6) [Delegation of rulemaking authority].

§ 112.1816, Fla. Stat.

(a) The sum of \$75,000 must be paid as provided in this section when a firefighter, while engaged in the performance of his or her firefighter duties, is accidentally killed or receives accidental bodily injury which subsequently results in the loss of the firefighter's life, provided that such killing is not the result of suicide and that such bodily injury is [*5] not intentionally self-inflicted.

(b) [Additional sum when killed while training or

protecting life or property].

(c) [Higher sum when killed by another's unlawful or intentional act including arson].

(d) [Permitting designation of beneficiary].

(e) Such payments, pursuant to paragraphs (a), (b), and (c), are in addition to any workers' compensation or retirement plan benefits and are exempt from the claims and demands of creditors of such firefighter.

§ 112.191(2), Fla. Stat. The applicable Workers' Compensation Law provision reads as follows:

If death results from the accident within 1 year thereafter or follows continuous disability and results from the accident within 5 years thereafter, the employer shall pay:

(a) [Funeral expenses].

(b) Compensation, in addition to the above, in the following percentages of the average weekly wages to the following persons entitled thereto on account of dependency upon the deceased, and in the following order of preference, subject to the limitation provided in subparagraph 2., but such compensation shall be subject to the limits provided in s. 440.12(2) [capping disability compensation at statewide average weekly wage], shall not exceed \$150,000, and may be less than, but shall not exceed, for all dependents [*6] or persons entitled to compensation, 66 2/3 or 66.67 percent of the average wage:

1. To the spouse

§ 440.16(1), Fla. Stat.

The E/C and JCC read subsection 112.1816(2)'s phrase "as an alternative to pursuing workers' compensation benefits under chapter 440" as barring Siena's claim to the workers' compensation death benefit in section 440.16. Siena, on the other hand, argues that the phrases "all of the benefits arising out of such death are available to the deceased firefighter's beneficiary" from paragraph 112.1816(4)(c) and "in addition to any workers' compensation" from paragraph 112.191(2)(e) must mean that she can still seek the workers' compensation death benefit.

We find that the context of all three of those statutory provisions leads to the conclusion that the phrase in section 112.1816(2) "as an alternative to pursuing workers' compensation benefits under chapter 440" applies only to benefits relating to those set forth in that subsection. In other words, the phrase applies only to benefits available "[u]pon diagnosis of cancer" and not to death benefits available elsewhere in chapter 112,

nor to chapter 440 death benefits. We reach this conclusion because subsection (2) is the only provision that explicitly permits firefighters—not their dependents or beneficiaries—to claim medical treatment (for the firefighter) [*7] and a one-time cash payout (to the firefighter) upon diagnosis.

Moreover, because the right to death benefits is in paragraph 112.191(2)(a), it is modified by its ensuing paragraph 112.191(2)(e), which plainly states that "[s]uch payments" are "in addition to," that is, not in lieu of or barring claims for, "any workers' compensation."²

In any event, upon the injured worker's death subsection 112.1816(2) no longer applies. At that point, the applicable laws are paragraph 112.1816(4)(c), which reads "all of the benefits arising out of such death are available to the deceased firefighter's beneficiary," and subsection 112.191(2), with its required payment of death benefits of \$75,000 "in addition to any workers' compensation." Both quoted phrases clearly contemplate receipt of chapter 440 death benefits. Accordingly, we reject the conclusion that receipt of benefits under section 112.1816(2) precluded the other benefits at issue here.

ORDER VACATED.

OSTERHAUS, C.J., and RAY, J., concur.

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² Paragraph 112.1816(4)(c)'s phrase "all of the benefits arising out of such death are available to the deceased firefighter's beneficiary" cannot be read to limit payment of death benefits to the designated beneficiary referenced in paragraph 112.191(2)(d) because paragraph 112.191(2)(d) itself also permits payment to others if the firefighter has not designated a beneficiary. Indeed, the phrase "all of the benefits arising out of such death are available to the deceased firefighter's beneficiary" might instead serve to expand potential recipients of section 440.16 death benefits to beneficiaries under section 112.191 who are not among the recipients contemplated in section 440.16 (although we do not decide that today).