

NUMBER 03-187

COURT OF APPEAL, THIRD CIRCUIT

STATE OF LOUISIANA

SCARLET CHRISTINE ADAMS

Plaintiff - Appellant

Versus

TEMPLE INLAND, LA

Defendant - Appellee

On appeal from the Office of Workers Compensation, District 3 [No. 01-6875], for the Parish of Calcasieu, State of Louisiana; the Honorable Charlotte L. Bushnell, Workers' Compensation Judge, presiding.

Woodard, J., concurring.

While I find that *Partin v. Merchants & Farmers Bank*¹ mandates that we dismiss Ms. Adams' claim, I respectfully disagree with our supreme court's interpretation, in that case, of the legislature's intent in La.R.S. 23:1021 (7)(b), which, expressly, makes a mental/mental injury compensable.

As the supreme court recognizes in *Partin*, before 1989, the Workers' Compensation laws did not, specifically, address mental/mental claims. Nonetheless, some lower courts had considered them to be compensable. However, other lower courts had found that the workers' compensation laws did not encompass such claims. Thus, attempting to remedy the split in these courts, the legislature added an express provision concerning mental/mental claims. As originally drafted, the provision, eliminated mental/mental claims from the scope of the workers' compensation laws.² It read:

¹01-1560 (La. 3/11/02), 810 So.2d 1118.

²*See Id.*

(b) **Mental injury caused by mental stress.** Mental injury or illness resulting from work-related stress shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this Chapter.

However, the legislature did not adopt the provision as written. Instead, the Senate added the following to it:

unless the mental injury was the result of a sudden, unexpected, and extraordinary stress related to the employment and is demonstrated by clear and convincing evidence.³

(Emphasis added.)

Notwithstanding, in *Partin*,⁴ the supreme court interpreted, the final version as if it did not contain the italicized language, below:

Mental injury or illness resulting from work-related stress shall not be considered a personal injury *by accident arising out of and in the course of employment* and is not compensable pursuant to this Chapter, unless the mental injury was the result of a sudden, unexpected, and extraordinary stress related to the employment and is demonstrated by clear and convincing evidence.⁵

Specifically, the supreme court found that the amending “unless” clause referred, only, to “injury,” not to the entire clause that preceded it—“by accident arising out of and in the course of employment.” It reasoned that this language was but a remnant of the proposed bill which eliminated mental/mental claims, altogether.⁶ Thus, it construed the language, not in light of its surrounding statutory text but, rather, in light of a *proposed* provision that failed to garner enough votes to become law. In doing so, it adopted a construction of La.R.S. 23:1021(7)(b) that renders the clause “by accident arising out of and in the course of employment,” superfluous, because, in effect, its interpretation disregards this language. In doing so, it violates well-settled rules of statutory interpretation.

³*See Id.*

⁴*Id.*

⁵La.R.S. 23:1021(7)(b).

⁶*Partin*, 810 So.2d 1118.

Rules of statutory interpretation require “courts [to] give effect to *all* parts of a statute, and not adopt a construction making any part superfluous or meaningless, if that result can be avoided.”⁷ “Statutory interpretation commences with the language of the statute and progresses with the assumption that *each* statutory term has a particular, non-superfluous meaning.”⁸ (Emphasis added.)

If the legislature intended *Partin’s* interpretation, it, easily, could have eliminated “by accident arising out of and in the course of employment” from the amendment or worded it “unless *the accident causes* mental injury that was the result of a sudden” Since it did neither, I believe we must presume that it intended for the “unless” clause to refer to the entire preceding clause which covers *accident*, as well as injury.

This makes sense, given that the “unless” clause contains language which parallels La.R.S. 1031(a)’s requirement of “accident arising out of and in the course of employment” but redefines the “accident” requirement so that it is germane to this section’s special type of injury. Specifically, regarding *physical* injuries, the legislature defines “accident” in La.R.S. 1021(1) as “an *unexpected* or *unforeseen actual, identifiable, precipitous event* happening *suddenly* or *violently*,” while for a mental injury, it parallels this language in (7)(b) with “*sudden, unexpected* and *extraordinary stress*.” These latter adjectives do not describe the mental injury, itself; rather, they describe the stress or the *cause* of the mental injury. In other words, just as “accident” and the adjectives used in its definition in La.R.S. 1021(1) do not refer to the injury, itself, but, rather, to the cause of the injury, so do the adjectives that describe the stress refer to the *cause* of the injury, not the injury, itself. While (7)(b) does not use the word “*cause*,” it is obvious that this is what it means when it states mental injury that “*results from....*,” which implies *cause*.

Simply, the meaning of (7)(b) is logically discerned by changing it from a negative statement to a positive one which, essentially, deems that there has been a work related accident and a compensable injury when the mental injury resulted from

⁷*First Nat’l Bank of Boston v. Beckwith Mach. Co.*, 94-2065, p. 8 (La. 2/20/95), 650 So.2d 1148, 1153 (citing *Dore v. Tugwell*, 228 La. 807, 84 So.2d 199, 204 (1955)).

⁸*State v. Joshlin*, 99-1004, p. 5 (La. 1/19/00), 752 So.2d 834, 837 (citing *Bailey v. United States*, 516 U.S. 137, 145-46, 116 S.Ct. 501 (1995)).

“a sudden, unexpected, and extraordinary stress related to the employment and is demonstrated by clear and convincing evidence.” (Emphasis added)

Basically, the legislature incorporated 1031's requirements into those for (7)(b) claims, using language in (7)(b) that is more applicable to mental injuries caused by mental stress than is the language used to define “accident” for a physical injury. Thus, this indicates that our legislature intended for the analysis of a compensable mental/mental injury to be completely contained within (7)(b)'s borders and, thus, for our analysis to end once a plaintiff meets those requirements. A further indication of (7)(b)'s intended self-sufficiency is that the legislature, also, delineates within that provision a special burden of proof for a mental injury. On the contrary, *Partin*'s splintered approach regarding a mental/mental injury requires a plaintiff to prove causation twice. Namely, a plaintiff must prove “accident,” a *causation* element under 1031(a), *in addition to* (7)(b)'s *causation* element, even though the legislature intended the latter to be a substitute for that in 1031.

By the legislature's establishment of a worker's compensable mental/mental claim, albeit in limited circumstances, surely, it intended for Ms. Adams' situation to constitute such a circumstance, given the foul behavior of her co-workers towards her and the prodigious distress, which she proved their behavior caused. Nevertheless, given *Partin*, I am constrained from giving her relief.