UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 296

September Term, 2014

LISA D. BOLOGNINO

v.

LEMEK LLC d/b/a PANERA BREAD AND SELECTIVE WAY INSURANCE COMPANY

Krauser, C.J.
Meredith,
Arthur,

JJ.

Opinion by Krauser, C. J.

Filed: November 24, 2015

The question presented by this appeal is whether appellant, Lisa Bolognino, is entitled to receive workers' compensation benefits for injuries she suffered, from a slip-and-fall, that occurred shortly after she left an off-site holiday party held by her employer, appellee, Lemek, LLC, d/b/a Panera Bread ("Panera").

Although the Workers' Compensation Commission ("Commission") found that her injuries arose "out of and in the course of" her employment, and thus the medical bills for those injuries were to be paid by her employer, the Circuit Court for Carroll County disagreed, holding that she was not entitled to such benefits under the "going and coming rule." From that decision, Bolognino noted this appeal, raising three questions for our review, which are reducible to one, and that is: whether the circuit court erred in holding that, under the "going and coming rule," Bolognino's injuries "did not arise out of or in the course of" her employment and thus she could not receive workers' compensation benefits for those injuries.

Because we conclude that the "special errand" exception to the "going and coming rule" grants her the benefits she would otherwise be denied by that rule, we reverse the circuit court's order and remand with directions to confirm the Commission's December 16th order.[1]

[1]To avoid any ambiguity, which might arise because the Commission issued three different orders in this matter, we refer to the order, at issue in this appeal, by its date of issuance.

Background

Lisa D. Bolognino was employed by Panera as a general manager of one of its restaurants. During the period of her employment, Panera held, on January 27, 2013, its annual "Manager's Holiday Party" for its general managers and assistant managers in a suite at M&T Bank Stadium in Baltimore City.

In arranging that affair, Panera entered into a contract with the Maryland Stadium Authority, which owns M&T Bank Stadium, and ARAMARK Sports and Entertainment Services, LLC ("ARAMARK"), the concessionaire for the Stadium Authority. That contract granted Panera a license to use the "North Club Lounge" for its annual holiday party, which was to take place from 7:00 p.m. until 11:00 p.m. on January 27, 2013. It also provided, among other things, that the Stadium Authority would make available to Panera, for parking by its managers and invitees, "Lot B," a parking lot owned by the Stadium Authority and located across the street from M&T Bank Stadium.

Three weeks before the party, Panera's "Marketing Manager" sent to all managers, which of course included Bolognino, a "save-the-date" e-mail, informing them of the time, date, and location of the party; soliciting "any pictures taken in the past year" in their restaurants for a slide show to be presented at that party; and finally, requesting that everyone submit an "RSVP" by a certain date. Although attendance at the party was not mandatory, Panera, in the Commissioner's words, "strongly suggested" that its general managers and

assistant managers be there. Indeed, not only did Panera provide, without charge, all of the food, beverages, and amenities for that party, but an award was to be given, on that occasion, to the general manager and assistant manager of the year.

Then, six days before its party, Panera sent to each general manager a sign that was to be placed on the doors of the restaurants, in the event that all managers at a particular store chose to attend the party, notifying customers of the following: "We will be closing at 7 pm on Sunday, January 27th. We will resume regular hours on Monday, January 28th. Thank you, Panera Bread." Four days later and just two days before the party, Panera's marketing manager sent another e-mail to all its managers, instructing them to park in "Lot B" and providing them with a map to assist them in locating that lot.

On the day of the party, Bolognino placed, on the door of her restaurant, the sign sent to her by Panera. The sign notified the public that the restaurant would close early that evening. Then, as directed by Panera, she closed the restaurant at 7:00 p.m., whereupon she and all of her assistant managers left for the party. When she arrived at M&T Bank Stadium, she parked her vehicle in Lot B, as instructed by Panera.

During the party, Bolognino engaged in "shop talk[]" with other Panera employees. The party, she would later explain, was an opportunity to meet and greet other managers, whom she had not seen "for a while." Such contact, she believed, was "good for business."

When the party ended at 11:00 p.m., Bolognino began to walk back to Lot B, where her car was parked. After crossing Hamburg Street, she stepped onto a curb.[2] As she did, she slipped and fell on black ice, fracturing her left leg and ankle. Co-workers then transported her to University of Maryland Medical Center, where she later underwent surgery to repair her fractures.

While recovering from her fall, Bolognino filed a claim for workers' compensation benefits, a claim that was ultimately opposed by Panera and its workers' compensation insurer, Selective Way Insurance Company ("Insurer"), appellee, on the ground that Bolognino's injuries did not arise out of and in the course of her employment. The Commission, however, disagreed and entered a "Compensation Order," dated June 18, 2013, declaring that Bolognino was eligible for workers' compensation benefits because she had sustained an accidental personal injury arising "out of and in the course of" her employment and that her resultant disability was "the result of the accidental injury." While the order established Bolognino's average weekly wage and ordered that Panera and its Insurer pay her "causally related medical bills," it stated that she had "sustained no compensable lost time."

The parties subsequently requested that the Commission revise its order. Specifically, Bolognino asked the Commission to reconsider its finding that she had sustained no compensable lost time, while Panera requested that the Commission recompute the amount

[2]The curb's precise location is not indicated in the record.

of her average weekly wage. Denying Bolognino's request but granting Panera's, the Commission issued a revised "Compensation Order," dated July 10, 2013, that rescinded the June 18th order and established a higher average weekly wage, but, in all other respects, was identical to the June 18th order. In other words, the revised order still required that Bolognino's medical bills be paid by appellees.

The order, of course, left both sides dissatisfied with the Commission's decision. Consequently, Bolognino filed a petition for judicial review in the Circuit Court for Carroll County, contending that the Commission had erred in finding that she had sustained no compensable lost time, and Panera filed a cross-petition, claiming that the Commission had erred but only as to its finding that Bolognino's injuries arose out of and in the course of her employment. When cross-motions for summary judgment were filed by the parties, the circuit court held that the Commission had erred in addressing whether Bolognino had sustained any compensable lost time and declined to address whether her injuries had arisen out of and in the course of her employment.

Subsequently, in response to the circuit court's ruling, the Commission issued a third "Compensation Order," dated December 16, 2013 (the "December 16th order"), which did not depart from the July 10th order other than to rescind the previous order and to omit any reference to compensable lost time. Challenging that order, Panera filed a petition for judicial review in the circuit court. Following a trial, that court held that, under the "going

and coming rule," Bolognino's injuries had not arisen "out of or in the course of" her employment and, accordingly, reversed the Commission's December 16th order. From that decision, Bolognino noted this appeal.

Discussion

I.

Bolognino contends that the Commission correctly held that, because she suffered her injuries while attending the "Manager's Holiday Party," which, she asserts, was "a work-related recreational event." She has a compensable claim under the Maryland Workers' Compensation Act. Consequently, the circuit court erred in reversing the Commission's December 16th order. In support of that contention, Bolognino principally relies upon *Sica v. Retail Credit Co.*, 245 Md. 606 (1967). There, the Court of Appeals held that Sica, an employee of the Retail Credit Company, had a compensable claim for injuries he sustained in a diving accident at an off-premises company picnic. Bolognino asserts that, as she, like Sica, suffered her injuries at an employer-sponsored social event, she has, in accordance with the holding in that case, a compensable claim. Then, turning to the circuit court's rationale for depriving her of workers' compensation benefits, that, under the "going and coming rule," her "injuries did not arise out of or in the course of" her employment and therefore are not compensable, Bolognino responds that the circumstances of her injuries invoke the "premises" exception to that rule and thus those injuries are compensable.

Although we agree with Bolognino that *Sica* applies to the instant case, we disagree with her as to the applicability of the "premises" exception to the circumstances of her injuries. But that difference of opinion does her claim no harm. That is because we conclude that another exception to the "going and coming rule," the "special errand" exception, does govern the outcome of this case, and that exception renders her claim compensable.

II.

Under the Maryland Workers' Compensation Act, a covered employee is entitled to compensation from her employer for an "accidental personal injury," Md. Code (1991, 2008 Repl. Vol.), Labor and Employment Article ("LE"), § 9-501(a)(1), which includes "an accidental injury that arises out of and in the course of employment[.]" LE § 9-101(b)(1). Because "getting to work is considered to be an employee's own responsibility and ordinarily does not involve advancing the employer's interests," the general rule is that "injuries the employee incurs by going to or coming from work are not compensable under the act because they do not arise out of and in the course of employment." *Bd. of Cty. Comm'rs for Frederick Cty. v. Vache*, 349 Md. 526, 531-32 (1998).

"This general rule," known as the "going and coming rule," has "four exceptions," namely, the "premises" exception, the "proximity" exception, the "special errand" exception, and an exception "where the employer furnishes the employee free transportation to and from work[.]" *Id.* at 532 (citation and quotation omitted). In our view, the "special errand"

exception, which applies where an employee is injured while traveling "to or from work in performing a special mission or errand for the employer," *Alitalia Linee Aeree Italiane v. Tornillo*, 329 Md. 40, 44 (1993), controls the outcome of the instant case.

This exception has been deployed where an employee was injured while traveling to or from a company-sponsored event, which was held at a place other than the employer's premises. As noted by a leading treatise on workers' compensation law:

> In a number of cases involving parties and picnics, the injury occurred in the course of the going and coming journey, and a different rule has emerged in the two categories of cases. In the office party cases, the going and coming journey off the employer's premises has ordinarily been held to be outside the course of employment, **but in the picnic cases, the usual holding**, sometimes without much discussion of the specific question, **treats an injury during the going and coming journey the same as one during the actual outing;** it if would have been covered had it occurred during the picnic itself, it is covered during the trip to and from the site; if it would not have been covered during the actual event—being, for example, essentially an employee-sponsored affair—it will not be covered during the trip. **What seems to have happened is that** the office party cases have been handled under the basic premises rule, whereas **the picnic cases, involving typically an unusual trip to a place other than the employer's premises, have been assimilated to the special errand cases, with the entire episode being deemed covered including the going and coming journey.**

2 Lex K. Larson, *Larson's Workers' Compensation* § 22.04[3][c] ("*Larson*"), at 28-29 (2015 Matthew Bender, Rev. Ed.) (emphasis added) (footnotes omitted).

In sum, when off-site "company-sponsored social events" are "sufficiently"

work-related so as to be "incidents of employment," injuries that arise while a claimant is either going to or coming from that event fall within the "special errand" exception to the "going and coming rule," as we noted in *Coats and Clark's Sales Corp. v. Stewart*, 39 Md. App. 10, 14 (1978). In that case, we addressed this very issue. The question presented by that case was "whether an employee's self-contained trip to a grocery store, to obtain food for a baby sitter needed to enable him to attend a company-sponsored social event, [was] a special errand or mission." *Id.* at 14. Agreeing with courts in other jurisdictions, which "have held such trips to be special errands or missions if the event itself was sufficiently work related to be an incident of employment," *id.* at 14 (citing 1 Larson, *Workmen's Compensation Law*, § 22.23 at 5-84 to 5-85 (1972)), we concluded that, as it was clear "that the company-sponsored dinner party" was, itself, "sufficiently work related to be an incident of employment," the trip at issue was a special errand. *Id.* at 17. Accordingly, we held that the employee's injury sustained during such a trip was "one sustained in the course of his employment" and was therefore compensable under the Workers' Compensation Act. *Id.* With the foregoing textual and decisional authorities in mind, we turn to the question of whether Panera's "Manager's Holiday Party" was "sufficiently work related to be an incident of employment" to fall within the "special errand" exception to the "going and coming rule." *Id.*

III.

To begin with, it is clear that the instant case implicates "an unusual trip to a place other than the employer's premises" and therefore falls into what *Larson* terms "the picnic cases." 2 *Larson*, *supra*, § 22.04[3][c], at 28-29. Accordingly, we shall, as *Larson* advises, treat Bolognino's injuries, which occurred "during the going and coming journey," the same as injuries that occurred at the actual company party or, to be more specific, as if they had occurred in the suite at M&T Bank Stadium, to determine whether her injuries are compensable. *Id.* § 22.04[3][c], at 28; *see Coats and Clark's*, 39 Md. App. at 14.

To assist in resolving the compensability question, we turn again to *Sica*, *supra*, 245 Md. 606, which addressed the same question under similar circumstances. The claimant in that case, Vincent Sica, was a claims investigator employed by Retail Credit Company ("Retail Credit"). *Id.* at 609. Retail Credit, whose offices were in Baltimore, held an annual picnic at a beach resort near Annapolis. "The picnic was arranged by a committee of employees, with the authorization of the employer's management." *Id.* at 609. Moreover, "[a]ll the expenses of the picnic were paid by the employer, but the employees provided their own transportation," at their expense. *Id.* at 610.

A month or two before that event, a "poster announcing the picnic was installed in the employer's office where everyone could see it." *Id.* "Attendance was entirely voluntary, but the employer's manager and assistant manager addressed the employees several times, urging

them to come." *Id.* According to a manager employed by Retail Credit, the picnic was a "renewal friendship type of thing" and, consistent with that theme, "no business was transacted" and "no speeches were made" during the picnic. *Id.* Instead, the attendees played softball; swam, either in the pool or in the Chesapeake Bay; ate a "lunch provided by the employer"; and amused themselves in the casino. *Id.* at 610, 620.

Although the "poster put on the employer's premises stated that the picnic was to be 11 A.M.-6 P.M.-Bay Ridge Beach Casino Room," the admission ticket, purchased by the employer and provided to each attendee, permitted its holder access to the resort until closing time at 9:00 p.m. *Id.* at 619-20. At about 7:30 p.m., after most of the attendees had left, Sica and a friend went for a swim in the bay. *Id.* at 610, 620. At that time, the swimming area of the bay was enclosed by a wire mesh fence attached to pilings, one of which Sica climbed to the top of and then dove into the five-foot-deep water. *Id.* at 611. When Sica plunged into the shallow water, he "struck his head on the bottom, broke his neck, and, as a result of the accident," became "permanently and totally disabled." *Id.*

The Court of Appeals held that Sica had sustained his disabling injury arising "out of and in the course of his employment." *Id.* at 621. In reaching that conclusion, the Court relied upon an earlier version of the *Larson* treatise, which set forth a test for determining, as the Court put it, *id.* at 613, "whether social activities are sufficiently work-related so as to be an incident of employment." That test provided:

> "§ 22.00 Recreational or social activities are within the course of employment when
>
> (1) They occur on the premises during a lunch or recreation period as a regular incident of the employment; or
>
> (2) The employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or
>
> (3) The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life."

Sica, 245 Md. at 613 (quoting 1 Larson, *Workmen's Compensation*, § 22.00). (We further observe that the current version of *Larson* contains the same test. 2 *Larson*, *supra*, § 22.01, at 2.)

In its analysis, the *Sica* Court examined then-recent decisions of the highest courts of Massachusetts, New York, and New Jersey, which it found "particularly apposite." *Id.* at 613. One of those decisions, *Ricciardi v. Damar Products Co.*, 211 A.2d 347 (N.J. 1965), is particularly relevant to the issue before us. There, the Supreme Court of New Jersey addressed not only whether an employer-sponsored picnic was "sufficiently work-related so as to be an incident of employment," *Sica*, 245 Md. at 613, but delved into the question whether, as here, the "going and coming rule" precludes recovery of workers' compensation benefits for an injury sustained during the employee's journey home.

In *Ricciardi*, the petitioner sought compensation, under the New Jersey Workmen's Compensation Law, for the death of his wife, who died in an automobile accident while returning home from an employer-sponsored picnic. *Id.* at 349. In that case, the "company paid about 98 percent of the expenses of the picnic, the union contributing the balance," and the "picnic was held on a non-working day." *Id.* Moreover, "[n]o one was required to attend, but management wanted a good turnout and the employee committee formed with management's approval urged all employees to attend." *Id.* Finally, the "president of the company spoke at the picnic and awarded some six or seven savings bonds for perfect attendance during the first half of the year." *Id.*

Declaring that it was "clear" that "the picnic was sponsored by the employer in part at least to further its own interests," the New Jersey Supreme Court concluded that the employer should "bear the risk of injuries incidental to that company event." *Id.* Moreover, because "the fatal accident occurred on the trip home," the New Jersey court addressed whether compensation was precluded by the "going and coming rule." It determined that it was not, holding that the "special errand" exception applied, given that "the employer could not achieve the business aim of the outing unless the employees reached the picnic scene." *Id.* at 350.

In the instant case, as in *Sica* and *Ricciardi*, the "Manager's Holiday Party" was sponsored and paid for by the employer, Panera, which encouraged managers to attend by

allowing them to close their stores early, notifying the public with signs prepared at the direction of company management, and by presenting awards on that occasion. As in both *Sica* and *Ricciardi*, attendance at Panera's holiday party was not mandatory, but it is clear that the actions taken by company management were intended to encourage as many to attend as possible and that those intentions were largely fulfilled, given that thirty-seven of Panera's fifty-two stores closed early for the event, and eighty-six percent of its managers and assistant managers attended the party.

As in both *Sica* and *Ricciardi*, Panera's party was intended to promote good will among the attendees and provide networking opportunities for them. *See Sica*, 245 Md. at 618 (noting that picnic "brought together employees who saw each other much less than in the ordinary work of a factory" and drawing "clear" inference that "the occasion promoted the enthusiasm which was a necessary element in the employer's service business"); *see also Ricciardi*, 211 A.2d at 249 (observing that employer sponsored recreational event "for the purpose of maintaining or improving relations with and among employees" and that employees' attendance served "employer's business aim").

Panera clearly derived, from its Holiday Party, "substantial direct benefit," a benefit "beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life." *Sica*, 245 Md. at 613 (citation and quotation omitted); *see also Ricciardi*, 211 A.2d at 349. We therefore conclude that the Manager's

Holiday Party was "sufficiently work-related so as to be an incident of" Bolognino's employment. *Sica*, 245 Md. at 613.

Moreover, that Bolognino sustained her injuries during the journey home does not render her injuries as having arisen outside the course of her employment. *Coats and Clark's*, *supra*, 39 Md. App. at 14-17; *see also Ricciardi*, 211 A.2d at 350. Consistent with the holdings of *Sica* and *Coats and Clark's*, as well as the guidance provided by *Ricciardi*, we conclude that the Commission correctly held that Bolognino sustained injuries that arose "out of and in the course of [her] employment" and that the circuit court erred in overturning that decision.

JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY REVERSED; CASE REMANDED WITH DIRECTIONS TO CONFIRM COMMISSION'S ORDER OF DECEMBER 16, 2013; COSTS TO BE PAID BY APPELLEES.