

ROBERTO J. REAS., PETITIONER, VS. NLRC, EVIC HUMAN RESOURCE MANAGEMENT, EVIC HUMAN RESOURCE MANAGEMENT LTD. CYPRUS AND MA. VICTORIA C. NICOLAS., RESPONDENTS.

Ponente: GAERLAN, S.H., J.

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GAERLAN, S.H., J.:

Before us is a petition for certiorari[1] under Rules 65 of the Rules of Court seeking to nullify and set aside the Decision[2], Resolution[3] and Order[4] (promulgated on 28 September 2012, 29 November 2012 and 28 December 2012, respectively) of the National Labor Relations Commission (NLRC) in NLRC LAC No. 02-000193-12-OFW. In the assailed Decision, the NLRC affirmed in toto the Decision[5] (dated 22 December 2011) of the Labor Arbiter Catalino R. Laderas dismissing the petitioner's claim for disability benefits, sickness allowance, OFW-Medical expenses, damages and attorney's fees. On the other hand, the questioned Resolution is a denial of the Motion for Reconsideration filed by herein petitioner, while the assailed Order is a correction of the questioned Resolution as to who filed the denied Motion for Reconsideration.

FACTS

Roberto J. Reas (petitioner), after being found fit for sea duty, was deployed on 18 January 2010 by the respondent agency as a Chief Cook on board the MV Lark. Under his POEA contract, his duration of employment was ten months with a basic monthly salary of US \$632.00[6].

Private respondent Evic Human Resource Management is the local agency which deployed the petitioner on board MV Lark, with its responsible officer, private respondent Ma. Victoria C. Nicolas; while private respondent Evic Human Resource Management Ltd., Cyprus is the principal employer abroad.

Petitioner alleges that on or about 25 May 2010, while the vessel was in Philadelphia, USA and being loaded with supplies and provisions needed for the galley deck store, a frozen pig carcass, weighing 60 kilos, fell on the his chest and upper arm. He instantly fell on the floor and was under extreme pain. The accident was reported to the ship captain.

On 14 June 2010, petitioner was brought to the Internal Medicine Specialists, Inc. (IMS) in Norfolk, Virginia, USA upon Captain Kaluzhny Vitaliy's request for medical attendance. In a medical report[7] issued on the same day, petitioner was diagnosed to suffer Chest Wall & L Shoulder contusion and tendocitis. It was recommended that he be repatriated because he was no longer fit for services. Based on the said findings, petitioner was disembarked on 5 July 2010 in Italy and arrived on 6 July 2010 in the Philippines.

After he reported to respondent agency, he was referred to the company-designated doctors in Ygeia Medical Center on 2 August 2010. He was advised by an orthopedic surgeon to undergo MRI the next day. Based on the MRI findings[8] there was no soft tissue mass and muscle edema or strain and there was no fracture/ subluxation.

On the other hand, based on petitioner's EMG[9], there is an abnormal EMG-NCV study due to findings of a local median neuropathy at the level of both wrists compatible with a mild carpal tunnel syndrome. A concomitant

beginning C7, C8 root irritation is also seen and that no widespread neuropathy was noted. On his ultrasound report[10], hematoma was considered.

In a progress report[11] made by the company-designated doctor, Dr. Maria Lourdes A. Quetulio of the Ygeia Medical Center, Inc., dated 5 October 2010, it was recommended that the petitioner undergo a Muscle Tear Repair due to its diagnosis of a bicep muscle tear and left arm mild carpal tunnel syndrome.

Petitioner underwent excision of mass and exploration of the left arm with repair of the muscle tear and the mass found on petitioner's arm was diagnosed as Lipoma based on the surgical pathology report[12]. He was advised by the company-designated doctor to undergo 6 sessions of physical therapy.

On 10 February 2011, petitioner filed a complaint for total and permanent disability benefits before the Arbitration Branch of the NLRC. On 22 December 2011, the Honorable Labor Arbiter Catalino R. Laderas rendered a Decision[13], to wit:

“WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the above-entitled case for lack of merit.

SO ORDERED.”

Aggrieved, petitioner appealed from the ruling of the Labor Arbiter. Unfortunately, the NLRC dismissed his appeal and affirmed the decision of the Labor Arbiter.

Still unsatisfied, the petitioner moved for reconsideration but the same was denied.

On 28 December 2012, respondent NLRC issued the assailed Order correcting their error as to who filed the motion for reconsideration, to wit:

“On November 14, 2012, complainant-appellant through counsel filed a motion seeking for reconsideration of Our Decision dated September 28, 2012, affirming the decision of Labor Arbiter en toto, dismissing complainant's claim for disability benefits for lack of merit.

After thoroughly and judiciously evaluating the contentions raised by the movant in their motion for reconsideration, We find no cogent reason or justification to modify, alter or reverse Our findings and conclusions in the decision sought to be reconsidered, as the arguments raised in their motion are substantially the same assertions earlier raised and have been discussed in the assailed Decision.

WHEREFORE, premises considered, complainant's Motion for Reconsideration is hereby DENIED.”

SO ORDERED”

Hence, the present Petition for Certiorari are anchored on the following assignment of errors[14]

ISSUES

I. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LOSS OF JURISDICTION, IN ERRONEOUSLY RULING THAT PETITIONER IS NOT TOTALLY AND PERMANENTLY DISABLED DESPITE MEDICAL EVIDENCE TO THE CONTRARY.

II. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN RELYING ON THE ALLEGATION MADE BY RESPONDENTS THAT PETITIONER ABANDONED HIS TREATMENT WITHOUT CONSIDERING THE OTHER EVIDENCE ON RECORD.

THE COURT'S RULING

Petitioner avers that despite his operation and the physical therapy he was undergoing from the time he consulted

the company-designated doctor on 02 August 2010 to February 2011, he is still unwell. A period of seven months or 210 days has passed but the company-designated doctor has failed to make an assessment on the degree of his disability or whether he is fit to work. He alleges that the private respondents are given a 120-day limitation for their company-designated doctors to declare either he is fit to work or issue a disability assessment[15]. The fact that he is still unwell despite a lapse of seven months or 210 days, and has not gained employment makes his disability total and permanent.

Petitioner disagrees with the respondents that he abandoned his treatment. He claims that he religiously went to his medical examinations and consultations with the company-designated doctor, as shown by the medical and progress reports[16] attached in his Position Paper.

On the other hand, private respondents, in its comment[17], insists that the petitioner failed to present evidence that he is permanently and totally disabled. They allege that the facts of the circumstances should be taken into consideration in giving the maximum disability benefits under the 120 day rule, as the benefits provided therein are not automatic.

Moreover, private respondents claim that since the petitioner abandoned his treatment, their company-designated doctor cannot fully assess him and his medical condition now is caused by his willful neglect of his medical treatment[18]. They presented the 5 January 2011 medical report[19] of Dr. Quetulio recommending an additional six sessions of physical therapy for the petitioner. Also, in Dr. Quetulio's 18 May 2011 affidavit[20], she stated that the operation of the petitioner was delayed due to his fasting blood sugar that was markedly elevated. According to Dr. Quetulio, the petitioner would have been declared fit to work had he underwent the recommended treatment.

Additionally, private respondents allege that during petitioner's treatment, he was already paid sickness allowance amounting to Php 159,544.54, as shown by the check vouchers[21] they attached in their position paper. They claim that the amount they have spent on him have exceeded the amount required to cover the 120 days illness allowance. Also, since the petitioner did not present an opinion from a medical expert, there is no basis of awarding him disability benefits.

We find no merit in the petition.

We must stress that the factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, i.e., the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion[22]. Moreover, judicial review of labor cases does not go beyond the evaluation of the sufficiency of evidence upon which its labor officials' findings rest[23].

Entitlement to disability benefits by seamen on overseas work is a matter governed not only by medical findings but by law and contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, Department Order No. 4, series of 2000 of the Department of Labor and Employment (the POEA Standard Employment Contract) and the parties' CBA bind the seaman and his employer to each other[24].

Article 192(c)(1)[25] of the Labor Code together with Rule X, Section 2[26] of the Rules and Regulations implementing Book IV of the Labor Code must be read in conjunction with Section 20 (3)[27] of the POEA Standard Contract.

As elucidated by the Supreme Court in *Jesus Vergara vs. Hammonia Maritime Services, Inc., et.al.*[28],

“As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.”(emphasis supplied)

Applying the above provisions hand in hand, a temporary total disability becomes permanent when declared by the company-designated doctor or upon the expiration of the maximum 240-day medical treatment period without the required declaration of fitness to work or assessment of a permanent disability.

Although petitioner claims in his petition that 7 months or 210 days has passed and the company-designated doctor has not made an assessment[29], the same is within the allowable maximum 240-day medical treatment.

Moreover, the seafarer is not automatically entitled to 120 or 240 days worth of sickness wages. If the company-designated doctor declares he is fit for duty, then the employer's duty to pay sickness wages ends and he is entitled to his former position. Otherwise, the employer's obligation to pay sickness wages ends and he is obliged to pay the corresponding disability benefits if the seafarer is declared permanently disabled[30].

It is undisputed that the petitioner's sickness was sustained during his term of employment and the private respondents have been faithful in providing the proper medical attention required by the petitioner. As noted by the Labor Arbiter Catalino Laderas in his 22 December 2011 Decision, complainant underwent a total of 10 sessions of physical therapy but his surgery was delayed because he refused to admit he was diabetic, a fact which was noted by Dr. Quetulio when complainant's fasting blood sugar was markedly elevated[31]. This delay in treatment is not the private respondents' fault.

Further, based on petitioner's own evidence, in a 1 February 2011 medical abstract[32] issued by Dr. Quetulio, he is still undergoing physical therapy. According to the same doctors' 18 May 2011 affidavit, after petitioner's visit to the Ygeia Medical Center on 7 February 2011, he did not report back to the center, instead, he filed a complaint. She stated that petitioner could have been declared fit had he continued with the treatment recommended to him.

Considering the petitioner is still undergoing his physical therapy treatments, the company-designated doctor cannot be faulted in not issuing a declaration of whether he is already fit to work or assess his degree of disability. Petitioner did not continue his treatment. Instead of honoring his appointment, he filed a complaint before the NLRC.

As held by the Supreme Court in the case *C.F. Sharp Crew Management, Inc. vs. Taok*[33]:

“More importantly, Taok prevented the company-designated physician from determining his fitness or unfitness for sea duty when he did not return on October 18, 2006 for re-evaluation. Thus, Taok’s attempt to convince this Court to put weight on the findings of his doctors-of-choice will not prosper given his failure to comply with the procedure prescribed by the POEA-SEC.” (emphasis supplied)

Likewise, the Supreme Court held in *Magsaysay Maritime Corporation and/or Westfal-Larsen and Co., A/S vs. NLRC and Capoy*[34]

Very obviously, Capoy's case suffers from the same infirmities committed by Taok in the cited case, when he presented Dr. Sabado's certification to the LA without going through the procedure under the POEA-SEC. Capoy, needless to say, prevented Dr. Salvador from determining his fitness or unfitness for sea duty when he did not return on April 6, 2006 for re-evaluation.(emphasis supplied)

We agree with the NLRC that due to the petitioner's failure to continue his medical treatment, his claim for permanent disability benefit must fail. Due to his non-appearance to his medical treatments, the doctor was prevented from issuing the assessment. He unduly exposed himself to dangers that could have alleviated his injury[35].

The NLRC correctly held that petitioner's claim for reimbursement of sickness allowance and medical expenses are denied as the private respondents have provided sickness allowance based on the check vouchers they have presented and the medical treatment they have provided.

We find that public respondent NLRC did not commit grave abuse of discretion in denying the petitioner's claim. Factual findings of the NLRC, particularly when they coincide with those of the Labor Arbiter and if supported by substantial evidence, are accorded respect and even finality by this Court[36].

WHEREFORE, premises considered, the petition is hereby DENIED and the 28 September 2012 Decision , 29 November 2012 Resolution and 28 December 2012 Order of the National Labor Relations Commission in NLRC LAC No. 02-000193-12-OFW, are hereby AFFIRMED.

SO ORDERED.

Pizarro, N.B., Chairperson and [*]Galapate-Laguilles, Z.T., JJ., concur.

[*] Acting Junior Member, per Office Order No. 1-15-ABR, dated January 20, 2015

[1] With a Motion to Allow Petitioner to Litigate as an Indigent or a Pauper-Litigant, Rollo pages 3-141

[2] Rollo, pages 119-127

[3] Rollo, pages 134-135

[4] Rollo, pages 136-137

[5] Rollo, pages 96- 105

[6] Rollo, page 68

[7] Rollo, page 40

[8] Rollo, page 41

[9] Rollo, page 42

[10] Rollo, pages 43-44

[11] Rollo, page 45

[12] Rollo, page 46

[13] Supra Note no. 5

[14] Rollo, page 10-11

[15] Rollo, page 15 quoting *Oriental Shipmanagement vs. Bastol*, GR. No. 186289, June 29, 2010

[16] Rollo, pages 41-46

[17] Rollo, page 143-170

[18] Rollo, page 144

[19] Rollo, page 77

[20] Rollo, page 78

[21] Rollo, page 79-81

[22] *Prince Transport, Inc. vs. Diosdado Garcia, et al.*, GR.No. 167291, January 12, 2011

[23] *La Union Cement Workers Union vs. NLRC, et.al.*, GR>No. 174261, January 30, 2009

[24] *Jesus Vergara vs. Hammonia Maritime Services, Inc., et.al.*, GR.No. 172933, October 6, 2008

[25] Article 192(c)(1) of the Labor Code provides that:

x x x The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules; x x x

[26] Rule X, Section 2 of the Rules and Regulations implementing Book IV of the Labor Code – states:

Period of entitlement. (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

[27] Section 20 (3): Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

[28] *Supra*, note no. 24

[29] Rollo, page 16

[30] *C.F. Sharp Crew Management, Inc., vs. Joel Taok*, G.R. No. 193679, July 18, 2012

[31] Rollo, page 99

[32] Rollo, page 47

[33] *Supra* Note no. 29

[34] GR No. 191903, June 19, 2013

[35] Page 104

[36] *Ariel Tres Reyes vs. Maxim's Tea House and Jocelyn Poon*, GR.No. 140853, February 27, 2003

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