

FELIPE U. ERESE, CLAIMANT-APPELLANT, VS. EMPLOYEES COMPENSATION COMMISSION, GSIS METRO MANILA, APPELLEE.

G.R. No. L-45662. August 20, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review filed in forma pauperis seeking the reversal of the decision of the Employees Compensation Commission (ECC) through the Government Service Insurance System (GSIS), which denied the petitioner's claim for disability compensation under Presidential Decree No. 626.

Felipe U. Erese filed a claim for disability compensation under Presidential Decree No. 626 with the GSIS in 1976. In a letter dated December 2, 1976, the GSIS through Domingo N. Garcia, the Assistant General Manager of the Medicare and Employment Compensation Department denied his application for benefits on the ground that his ailments, Inguinal Hernia, Error of Refraction, Central Retinopathy and Chronic Otitis Media, are not occupational diseases nor has he substantially proven that said ailments directly resulted from his occupation as Supervising Prison Guard.

In his petition for review, Erese alleges that:

- (a) He was appointed Prison Guard-Foreman on December 4, 1951 and was a member of the second batch assigned for duty to the Nafco Abaca Project, later known as the Kapalong Sub-Colony, Davao City;
- (b) As such prison guard, he had the additional duty, as foreman or officer-in-charge, of escorting about 50 to 120 working prisoners from and to their place of work which is about 5 to 15 kilometers from their place of confinement;
- (c) Considering the distance they had to walk, they were exposed to the elements of sun and rain especially during the clearing of the vast forest in the said colony in preparation for the planting of rice, corn and abaca and by reason of insufficient rest and sleep, Erese contracted and suffered inguinal hernia, defect on the right and left ears, weakening of the eyes, high blood pressure, rheumatism, arthritis which caused him to go on sick leaves most of the time;
- (d) On October 1, 1956, as per Directive No. 255, SS. 1956, Erese was transferred for duty and for medical treatment to the National Bureau of Prisons (NBP), Muntinlupa, Rizal. He was also assigned to escort prisoners within Manila and the nearby provinces;
- (e) Sometime in 1958, as a result of the numerous prison riots staged by malefactors and hardened inmates, all guard keepers including Erese were ordered to render red alert duties. And because of these, they experienced exhaustion and irregular mealtimes and suffered gastro-enteritis, peptic ulcers, high blood pressure, hernia, weakening of the eyes and general weakening of the body;
- (f) On October 4, 1973, per Mission Order No. 340, Erese was assigned and designated incharge of escorting two hundred (200) prisoners from the NBP, Muntinlupa, Rizal to Sablayan Penal Colony;

(g) On October 21, 1973, per Administrative Order No. 376, Erese was again incharge of escorting one hundred (100) prisoners for colony assignment to Sablayan Penal Colony. There being no pier, they had to wade to the Kalachuchi Beach for about 50 meters clinging only to a rope. And because of the strong and big waves, Erese was thrown upside down, filling his ears and eyes with sea water. As a result, blood came out of his ear;

(h) On October 6, 1973, on another escort trip to Sablayan, they were met by a strong typhoon. They experienced rain, strong winds, insufficient food, lack of sleep and rest, slept overnight with wet clothes as a result of crossing streams, rivers and mud. Erese alleged to have become sickly and pale; thus, aggravating his hernia, eyes and ears, rheumatism, high blood pressure and arthritis;

(i) Upon arrival at Muntinlupa, Rizal, he was operated on for his hernia and was treated for his eyes and ears by prison doctors and doctors from the Tamesis Clinic and Philippine Veterans Hospital; and

(j) He was placed under the partial and total disability list and applied for disability compensation under PD No. 626.

Despite the allegations made in the petition and after a careful perusal of the records of the case, we are constrained to agree with the Employees Compensation Commission in denying the claim of petitioner Erese.

We conclude that under PD No. 626, Erese's ailments could not be classified as occupational diseases. And the ailments not being included in the listing of occupational diseases, Erese regrettably failed to substantially prove that they arose out of his employment as prison guard —

"Inguinal Hernia is the protrusion of a loop of an organ or tissue thru an abnormal opening into the inguinal canal. It is caused by a congenital weakness of the abdominal fascia and muscles covering the inguinal openings.

Error of Refraction is the inability of the eye to focus the image of objects exactly upon the retina resulting to blurred vision. It may be either congenital, hereditary or a physiologic change.

Macular Retinopathy is characterized by retinal changes with small hemorrhages in the macular area. This may be hereditary or due to senile and arteriosclerotic diseases.

Otitis Media, on the other hand, is chronic infection of the middle ear."

According to the Employees Compensation Commission Rules and Regulations, for an illness to be compensable, it must be established —

"(1) That the illness is definitely accepted as an occupational disease; or

"(2) That the illness is caused by the employment subject to proof by the employee that the risk of contracting the same is increased by working conditions."

Erese's ailments could not necessarily and directly have been the result of the risks and hazards of his occupation as prison guard. Hence the ailments may not be considered occupational. And in the absence of proof, we could not conceive or arrive at a logical explanation or probability that they arose out of his employment.

Erese asserts that the demands of his employment caused him physical strain and exhaustion, to lose sleep and rest. He states that insufficient food and exposure to the elements of sun and rain made his body generally weakened thus rendering him vulnerable to diseases. Erese's argument that such illnesses are compensable is premised on the doctrine of presumption of compensability. Under the former law, when an illness supervened during the course of employment, there was a presumption that the same arose out of or at least was aggravated in the course of employment (*Mesina v. Republic*, 90 SCRA 488). However, as laid down in the case of *Armeña v.*

Employees' Compensation Commission (122 SCRA 851), the doctrine was deliberately repealed and, therefore, abandoned under the Employees' Compensation Act. This was clearly explained by Justice Ramon C. Aquino in the case of *Sulit v. Employees' Compensation Commission* (98 SCRA 483) where it was stated:

"Those radical innovations, the presumption of compensability and the rule on aggravation of illness, which favor the employee, paved the way for the latitudinarian or expansive application of the Workmen's Compensation Law in favor of the employee or worker.

'It now appears that after the government had experimented for more than twenty years with such employee-oriented application of the law, the lawmaker found the result to be unsatisfactory because it destroyed the parity or balance between the competing interests of employer and employee with respect to workmen's compensation. The balance was tilted unduly in favor of the workmen.

"Hence, to restore a sensible equilibrium between the employer's obligation to pay workmen's compensation and the employee's right to receive reparation for work-connected death or disability, the old law was jettisoned and in its place we have the employees' compensation and date insurance fund in the Labor Code, as amended.

As correctly observed by the learned Government Corporate Counsel, Manuel M. Lazaro, the Labor Code abolished the presumption of compensability and the rule on aggravation of illness caused by the nature of the employment. This Court is powerless to apply those rules under the Labor Code (Resolution of

March 8, 1978 in L-47008, *Ibañez v. Workmen's Compensation Commission*)."

We have tried hard to find some factual basis for applying the Workmen's Compensation Act in this case to enable us to decide in favor of the petitioner but our efforts have proved in vain. In the case of *Corales v. Employees' Compensation Commission* (88 SCRA 547), this Court ruled:

"Article 294, Title III (Transitory and Final Provisions) of the New Labor Code provides that all actions and claims accruing prior to the effectivity of this code shall be determined in accordance with the laws in force at the time of their accrual and under the third paragraph of Article 292, Title II (Prescription of Offenses and Claims), workmen's compensation claims accruing prior to the effectivity of this Code and during the period from November 1, 1974 up to December 31, 1974 shall be processed and adjudicated in accordance with the laws and rules at the time their causes of action accrued."

After a painstaking review of the records of the case, nowhere does it appear that Erese contracted his diseases or ailments before January 1, 1975. There are no medical findings, reports, affidavits, evidence, or any indication that Erese was suffering from any pain or discomfort prior to the effectivity of the Labor Code which by liberal interpretation may have worked in his favor. The records disclose that Erese was treated for the first time for his hernia and the defect in the eyes and ears only on January 10, 1976. His medical history, according to the examining doctor was "not remarkable" indicating or meaning that no unusual sickness, pain, or treatment had been experienced or undertaken in the past which would have continued to his present ailments. The sick leaves which petitioner alleged he obtained unfortunately fail to substantiate or justify the claim that they were caused by his present ailments for which he is seeking compensation.

As aptly stated in the *Armeña* case:

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"x x x It would be delving in the realm of pure conjecture to rule that the last mentioned disease accrued, or was aggravated by ailments that supervened prior to January 1, 1975."

With regards to the defect of the petitioner's eyes and ears, it cannot be concluded that the same arose out of his employment. The hazards of his employment were not that peculiar as would have naturally caused the defect.

There is no dispute that the ailments fall under the Employees' Compensation Act which requires substantial proof that such ailments arose out of his employment. Unfortunately, Erese failed to present any convincing proofs. What is clear is that these defects are ailments to which mankind in general is exposed or afflicted, irregardless of the nature of his work.

As for hernia, the case of *Bonilla v. Workmen's Compensation Commission* (13 SCRA 748) lays down the conditions for this ailment to be compensable. These have also been adopted by the Employees Compensation Commission in ECC Resolution No. 432, dated July 20, 1977, to wit:

- That the hernia is of recent origin.
- That its appearance was accompanied by pain, discoloration, and evidence of a tearing of the tissues.
- That it was immediately preceded by some strain out of and in the course of employment.
- That a protrusion or mass appeared in the area immediately following the alleged strain. (Occupational Diseases by Johnstone, W. B. Saunders Co., 1942, pp. 421-424)."

The Court in the aforecited *Bonilla* case held that:

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"x x x the hernia and the nature of the work of Perfecto Bonilla have no causal relationship; and that the eventual hernia operation was done not because it was aggravated as a result of the alleged strain in the course of his employment but because of the progressive enlargement during the long span of 10 years of the preformed sac filled with intestine or omentum which kept on exerting gradual pressure upon the weakening abdominal rings, fascia and muscles."

In the case of Erese, it may similarly be opined that his hernia is long-standing and not of recent origin. As this Court previously ruled in *Bonilla*:

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"x x x Significantly, during that interregnum, claimant did not make any complaint nor did he ever bring to the attention of the employer's physician that he was suffering from that sickness. This long silence has given rise to the impression that the recurrence of the sickness was not really due to the nature of the work of the claimant but simply to ordinary causes that come forth because of daily wear and tear of the human body as a concomitant result of his work in the shop of the company."

This Court has always endeavored to uphold the interests of labor vis-a-vis the concerns of management. However, much as we sympathize with the plight of claimant-appellant Erese, we are constrained to deny his claim for want of substantial proof to show that his ailments were contracted during his employment.

WHEREFORE, we hold that the decision appealed from should be, as it is, hereby, **AFFIRMED**.

SO ORDERED.

Aquino, Concepcion, Jr., Melencio-Herrera, Plana, Escolin, Relova, De La Fuente, Cuevas, Alampay, and Patajo, JJ., concur.

Makasiar, C.J., see dissent.

Teehankee and Abad Santos, JJ., no part.

DISSENTING OPINION

MAKASIAR, C.J.:

The majority opinion ruthlessly ignores established law and jurisprudence previously invoked in similar cases and totally disregards the constitutional guarantee on social justice and the Labor Code provision which directs the resolution of all doubts in favor of labor.

The instant case should have been evaluated and resolved in the light of Our previous resolutions particularly those rendered in the mother case of *Corales vs. ECC* dated March 15, 1982 and in *Corales* and other seven cases against ECC dated November 29, 1983 considering that petitioner Erese initially contracted his multiple ailments even before October 1, 1956, the first time he was treated at the National Penitentiary.

In the aforecited resolutions, We ruled with finality that where the cause of action (inception of sickness) accrued during the effectivity of the superseded Workmen's Compensation Act or before the applicability of the New Labor Code, and the corresponding claim for compensation is filed after the New Labor Code's effectivity, then the consideration of and decision on such claim should be governed by the former compensation law. If only to serve as a reminder of the repeated and endless pronouncements already subscribed to by this Court, the fact is that the presumption of compensability was the very essence of the old compensation scheme. In Our resolution of November 29, 1983 in the *Corales* and other similar cases, We reiterated certain pertinent clarifications which We stressed in Our resolution of March 15, 1982, thus:

"In Our February 27, 1979 extended resolution, We stressed that the substantive provisions applicable to his claim are those of the old workmen's compensation law and not those of the New Labor Code on employees' compensation, because of the following considerations: (1) the cause of action accrued as early as September, 1965, hence during the effectivity of the Workmen's Compensation Act, as amended; (2) the time limitation in Article 292 of the Labor Code — which requires that workmen's compensation claims accruing prior to the New Labor Code shall be filed with the appropriate regional offices of the Department of Labor not later than March 31, 1975, otherwise, they shall forever be barred — does not apply to petitioner who filed his claim on August 4, 1975 with the Government Service Insurance System; because of the controlling jurisprudence under the old law that the prescriptive period for claims which accrued under the Workmen's Compensation Act, as amended, is ten [10] years, it being a right founded on statute and, as such, is considered a vested right; (3) the provisions of the New Labor Code on Employees' Compensation, Book IV, Title II, apply only to injury, sickness, disability or death accruing on or after January 1, 1975 (Art. 208); and more precise is Section 1(c) of Rule III of the Amended Rules on Employees' Compensation, which declares that only injury or sickness that accrued on or after January 1, 1975 and the resulting disability or death shall be compensable under the rules; and (4) the filing by petitioner of the claim with the GSIS, instead of with the appropriate regional office of the Department of Labor does not militate against the claim; because the filing of a claim in an office that has no authority to act on it can be treated as having been filed with the appropriate agency as long as it is filed within the period allowed by law [*Pobre vs. WCC*, 77 SCRA 315-320, May 31, 1977]; and Art. 294, Title II (Transitory and Final Provisions) of the New Labor Code provides that all actions and claims accruing prior to the effectivity of this Code shall be determined in accordance with the laws in force at the time of their accrual and under the third paragraph of Article 292, Title II (Prescription of Offenses and Claims), workmen's compensation claims accruing prior to the effectivity of this Code and during the period from November 1, 1974 up to December 31, 1974 shall be processed and adjudicated in accordance with the laws and rules at the time their causes of action arose."

The following series of events should have been seriously considered before a negative conclusion was made. It must be noted that petitioner entered the service on December 4, 1951. On October 1, 1956 or five years

thereafter, his multiple ailments became manifest. For the next twelve years or so, he determinedly served the government in spite of said illnesses until he had to be declared disabled.

As prison guard with the added duty of foreman, petitioner would escort 50 to 120 working prisoners to and from their place of work (Kapalong Sub-Colony in Davao City), the distance of which was about an average of 10 kilometers from the prison quarters. Within the succeeding 5 years when petitioner escorted prisoners in the aforesaid manner, the prisoners would also clear forests in the colony for cultivation purposes, thus exposing all of them to the elements. Either by reason of or aggravated by the above working conditions, petitioner contracted hernia, high-blood pressure, arthritis, defective ears and weakened eyes. In the nature of his job, it was normal practice for the escort-guard to eat and survive on the same food which was provided for the prisoners. Within the limited allotment for food, nutrition was thus out of the question.

After his initial treatment on October 1, 1956 at the National Penitentiary in Muntinlupa, he should have been grounded for recuperation, but he was not. He was assigned the tedious job of escorting prisoners around Manila and nearby provinces. Then during the several riots in 1958 at the penitentiary, petitioner became involved in red alert duties which meant round-the-clock guarding and irregular meals. He was thus afflicted with gastro-enteritis, peptic ulcers and general debility in addition to his original ailments. Still suffering from these numerous ailments, petitioner was directed on October 4, 1973 to escort 200 prisoners from Muntinlupa to Sablayan Penal Colony. On October 21, 1973, petitioner was again assigned to take charge of escorting 100 prisoners to the same colony. It was in this particular assignment that petitioner performed his job beyond the call of duty, so to speak. For lack of a pier leading to Sablayan Penal Colony, the ward-prisoners and he had to swim through sea water to Kalachuchi Beach for about 50 meters with only a rope to cling to and to keep them afloat. Due to the pressure of sea water, blood came out of his defective ears.

In another escort trip to the said penal colony, on October 6, 1973, he and the prisoners had to survive a strong typhoon. Aside from encountering bad weather conditions, they had insufficient food, inadequate sleep, and had to carry on with wet clothes. By then, petitioner's health turned for the worse. Upon his return to Muntinlupa, he was already so seriously ill that he had to undergo an operation for hernia and be treated for his ailing ears and eyes. After these, he was already declared disabled.

Very patently, therefore, petitioner contracted the various ailments after his entry into the service in 1951. He worked under tedious, hazardous and subhuman conditions — performing his duties beyond what normally and prudently was expected of him — that of walking long distances, exposing himself to the elements and swimming in deep waters just so he could bring prisoners to their places of confinement and work. Even as he was already afflicted with hernia and other serious diseases, he was still given tough assignments, which he performed without any complaints. He could have requested for easier assignments by staying put in the New Bilibid Prisons, where he could have been treated continuously and could have fully recovered. But he nevertheless bravely obeyed the directive issued to him even if it meant sacrificing his deteriorated body. Petitioner, in his own small and unproclaimed way, showed loyalty to the service which, nowadays, is a rarity among government employees particularly among those who have not experienced rising from the ranks or climbing the ladder of hierarchical positions.

Evidently and indubitably, petitioner's claim falls within the coverage of the old compensation scheme. Thus, in the case of *Alabat vs. WCC* (L-43942, Sept. 30, 1978, 85 SCRA 468) where a public school teacher had hernia and high blood pressure, We ruled:

"It is a fact that the complainant contracted his illnesses during his employment with the Department of Education and Culture. Under Section 44 of the Workmen's Compensation Act, there is a presumption that the said illnesses were caused or at least aggravated by his work as teacher. The respondent, Department of

Education and Culture, has failed to rebut the presumption."

In my separate concurring opinion in the aforementioned case, I emphatically declared thus:

"I concur with the additional opinion that the respondent employer should likewise be directed to provide the complainant with such medical, surgical and hospital services as well as appliances and supplies as the nature of his disability and the progress of his recovery may require and which will promote his early restoration to the maximum level of his physical capacity. It is my consistent view that the provisions of Sec. 13 of the Workmen's Compensation Act, as amended, confer such right on the disabled employee, whether his disability is temporary or permanent. This is in compliance with the social justice guarantee of both the 1935 and 1973 Constitutions and in obedience to the directive of Article 4 of the New Labor Code that 'all doubts in the implementation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor,' which is a restatement of existing jurisprudence as well as Article 1702 of the New Civil Code. To limit such right to a temporary disabled employee would inflict gross injustice on those permanently disabled, who still need to be relieved from the pain, trauma, social ostracism or humiliation generated by such permanent disability."

In the much later case of *Olbes vs. WCC* (L-43309, Oct. 23, 1982, 117 SCRA 887) where petitioner's claim for compensation benefits was allowed based on the finding that his indirect hernia was work-connected, We ruled:

"In finding that petitioner-claimant had not presented other proof to substantiate his claim aside from the physician's report, said Commission acted drastically without giving any thought to the underlying philosophy behind compensation claims. It even capitalized on the aforesaid report when it decided against compensability of petitioner's illness. Having relied solely on the physician's report, the Commission irresponsibly ignored certain decisive facts which petitioner has established and which have not been refuted by respondent. There is no showing whatsoever that respondent attempted to disprove the same. Thus, petitioner was employed, as laborer by respondent company when he initially contracted indirect hernia on July 25, 1969. More importantly, respondent had knowledge of petitioner's illness through notice given to Manuel Go and such knowledge was confirmed by the fact that respondent defrayed the hospitalization and medical expenses of petitioner (per Notice of Injury or Sickness and Claim for Compensation, p. 47, WCC rec.). How can respondent now refuse petitioner's claim for benefits which arose from an ailment for which it previously afforded hospitalization and medical expenses? Simple logic, even common sense, would dictate that the presumption of compensability should more than ever, favor herein petitioner."

WE are now actually confronted with hard facts, not merely legality, nor presumptions, nor the resolution of doubts. Petitioner had been sick even before 1956 (when he was initially treated at Muntinglupa) and yet, he consistently performed his duties as prison guard beyond normal working conditions — to the point of sacrificing his health — until finally, he could not anymore hang on to his job when he was declared partially and totally disabled. What and how much more proof of human endurance could We still demand from a lowly prison guard who had already been disabled just so he may be allowed some compensation benefits? This is not simply a case of legality or technicality; it is a matter of a Christian conscience and compassion. Tongue-in-cheek or left-handed expressions of sympathy alone will not assuage the pitiful condition, much less boost the morale, of petitioner. He is only claiming for compensation benefits, not a dole-out. Must We turn our backs now and simply say: "We are sorry for you but we cannot help you." The inhumanity of the majority decision is matched only by its hypocrisy.

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