

**FIDEL GUEVARRA, CLAIMANT-APPELLANT, VS. WORKMEN'S
COMPENSATION COMMISSION AND CITY OF MANILA,
(DEPARTMENT OF PUBLIC SERVICES), RESPONDENT-APPELLEE.**

G.R. No. L-43195. November 27, 1986

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the decision of the Workmen's Compensation Commission rendered on February 18, 1976 in RO-4-WC Case No. 167450, affirming the order dated September 30, 1975 of WCC Regional Office No. 4 which dismissed the claim of disability compensation benefits of herein petitioner Guevarra.

The records show that petitioner Fidel Guevarra was employed in the respondent City of Manila and assigned at the Department of Public Services as a garbage collector sometime in 1949 up to January 31, 1972 when he retired from the government service under R.A. 1616, at the age of 47, by reason of his physical disability due to pulmonary tuberculosis. His duties as a garbage collector in said department consisted primarily of loading and unloading of garbage or trash in the garbage truck and other allied activities. The nature of his work entailed travelling to different places to collect garbage and in the process exposed himself to the heat of the sun, dust, and bad weather.

As early as 1969, it was discovered that he was suffering from P.T.B. minimal and Asthmatic Bronchial as shown by the Physician's Report of Dr. Tomas Josef, stating that the petitioner was examined by him in 1969 and has been under his care since then; that the last time he administered treatment to the petitioner was in January, 1975; and that the illness of the petitioner arose out of and was aggravated in the course of his employment with the respondent employer (Rollo, p. 15). Moreover, the Physician's Report executed on February 20, 1972 by Dr. Romeo P. Pira reveals that petitioner was suffering from P.T.B., moderately advanced; that petitioner was first administered treatment by him on July 16, 1969 while the last treatment was on February 20, 1972; that the illness was directly caused, and aggravated by his employment; that petitioner complained of chest and back pains and had recurrent cough and fever; that on one occasion, he vomitted blood in his sputum while in the clinic; that he was advised to have a chest X-ray and continuous bed rest (Rollo, p. 19). It appears that on or about January 29, 1975, petitioner had an X-ray examination which showed P.T.B. minimal but this was largely due to continuous medication. However, his service record does not indicate that he stopped working by reason of disability. In short, he left the service for no stated reason. (Rollo, p. 7).

Subsequent to his retirement, petitioner filed a notice of injury or sickness and claim for compensation on March 31, 1975 with the WCC Regional Office No. 4, Department of Labor (WCC record, p. 20).

On June 16, 1975, respondent employer City of Manila received a letter dated June 3, 1975 from Danila L. Reynante, Assistant Chief of Section, Workmen's Compensation Section, containing a copy of the claim for compensation of herein petitioner and required it to submit the employer's report of accident or sickness

containing its controversion (WCC record, p. 18).

On July 3, 1975, respondent City of Manila, through Augusto O. Casibang, Chief, Miscellaneous Division, filed its notice dated July 2, 1975 that it controverts the claim for disability benefit of herein petitioner for lack of work connection (WCC record, p. 16).

On August 18, 1975, the claim of herein petitioner docketed as R04-WCU Case No. 167450 was set for hearing on September 9, 1975 at 2:00 p.m. before Referee Celso C. Ladera (WCC record, p. 14).

On September 30, 1975, Regional Office No. 4, Workmen's Compensation Unit, Department of Labor, Manila, through Referee Celso C. Ladera, issued an order dismissing petitioner's claim for compensation as follows:

"ORDER

"When this case was called for hearing, the claimant failed to appear despite due notice. The record of this case shows that the claimant was alleged having been treated in 1969 but the X-ray report of the Philippine Society dated February 5, 1975 shows that he was examined on his alleged illness only on January 29, 1975.

IN VIEW OF THE FOREGOING, the instant case is hereby considered DISMISSED.

SO ORDERED.

Manila, Philippines, September 30, 1975" (Rollo, p. 16)

Petitioner filed on January 26, 1976 a motion for reconsideration of the order of dismissal dated September 30, 1975 (Rollo, p. 21) which was denied by Referee Celso C. Ladera.

On February 18, 1976, the respondent Workmen's Compensation Commission rendered a decision affirming the order of dismissal of the referee, stating that:

"The claimant was a laborer with the respondent for a weekly remuneration of P70.00. On February 1, 1972, he stopped working at the age of 47.

It is stated in the unverified physician's report that the claimant was a patient Dr. Tomas Josef from 1969'... to 1970 up to present' of asthmatic bronchial and PTB, minimal infiltration. The records, however, reveal that only on January 29, 1975, had he an X-ray examination by which he was found with the following:

'Right Hemithorax: Minimal infiltration; fibro-exudative,

Left Hemithorax: Minimal infiltration; fibro-exudative'

His service record does not also indicate that he stopped working by reason of disability. Left merely to conjecture, we are constrained to deny this claim.

WHEREFORE, the order appealed from dismissing the claim shall be, as it is hereby, affirmed. No costs.

SO ORDERED." (Rollo, pp. 17-18).

Upon receipt of the decision of the Workmen's Compensation Commission on March 2, 1976, petitioner filed a motion for extension of time to file petition for review with the Supreme Court (Rollo, p. 1).

On March 26, 1976, petitioner filed his petition for review on certiorari of the decision of the Commission (Rollo, p. 6).

Required to comment on the petition, the Office of the City Legal Officer, representing the respondent, filed one on April 28, 1976 (Rollo, p. 29).

In a resolution dated May 7, 1976, the Supreme Court, First Division, resolved to treat the petition for review as a special civil action, and required the parties to submit their respective Memoranda (Rollo, p. 33).

On June 25, 1976, respondent filed its memorandum (Rollo, p. 43) while that of the petitioner was filed on July 14, 1976 (Rollo, p. 48).

In a resolution dated July 23, 1976, the Supreme Court resolved to declare the case submitted for decision (Rollo, p. 55).

The main issue in this case is whether or not petitioner's sickness or pulmonary tuberculosis arose out of or was at least aggravated by the nature of his employment and if in the affirmative, compensable.

It is evident from the records that petitioner was in good health when he was employed in 1949 as garbage collector in the City of Manila, and he contracted this illness in 1969.

His duties as a garbage collector consisted primarily of loading and unloading of garbage in the garbage truck and other allied activities. The nature of his work entailed travelling to different places to collect garbage and in the process exposed himself to the heat of the sun, dust and bad weather. Under these conditions, a person can easily contract a respiratory disease. Thus, in 1969, petitioner started to complain of chest pains and afternoon fever. He consulted Dr. Tomas Josef and he was found to be suffering from P.T.B. Minimal and Asthmatic Bronchial. Dr. Josef Certified in his physician's report that he administered treatment to petitioner from 1969 up to January, 1975, and opined that said petitioner's ailment arose out of and was aggravated in the course of his employment with the respondent employer. Furthermore, Dr. Romeo P. Pira, in his physician's report dated February 20, 1972, certified that petitioner was suffering from P.T.B., Moderately advanced, and that he first administered treatment to petitioner on July 16, 1969 and continued doing so up to February 20, 1972, and likewise opined that the said illness was directly caused and aggravated by his employment. However, Dr. Pira's opinion was not backed by X-ray examination, and this lack became the bone of contention in this case. The findings of the X-ray examination, made only on January 29, 1975, confirmed that petitioner was suffering from P.T.B. minimal. But respondent countered that if petitioner was affected with pulmonary tuberculosis at its minimal stage, in 1975, he could not have been afflicted with said ailment at the time of his retirement in 1972.

It is now unquestioned that under the Workmen's Compensation Act, when an illness supervenes during the course of employment, it is deemed to have either arisen out of or been aggravated by petitioner's employment. (*Zozobrado v. E.C.C., et al.*, 141 SCRA 140 [1986]; *Felarca v. Bookman, Inc.* (127 SCRA 275 [1984])).

Respondent employer failed to controvert the claim for compensation of the petitioner in accordance with Section 44 of the Workmen's Compensation Act, as amended, which provides that in case the employer decided to controvert the right to compensation, he shall either within 14 days following the date of disability or within 10 days following the employer's knowledge thereof, file a notice with the Commission. It is evident that petitioner's notice of injury and claim was filed on March 31, 1975 with the WCC Regional Office No. 4, Department of Labor, a copy of which was received by respondent employer on June 16, 1975; while respondent employer filed on July 3, 1975 a notice dated July 2, 1975 that it controverts the claim for disability of herein petitioner for lack of work connection, about 17 days later, or beyond the 14-day or 10-day period for controversion. The Supreme Court has time and again said that "the failure of the employer to controvert the claim within the prescribed period of fourteen (14) days from the date of the disability or within ten (10) days after knowledge of such disability amounts to a waiver of the right to controvert and a renunciation of all defenses, like the defense that the claim is not compensable" (*Faicol vs. WCC*, 93 SCRA 811 [1979] *Simeon A. Canonero vs. WCC*, 81 SCRA 712 [1978]; *Romero vs. WCC*, 77 SCRA 486 [1977]; *DBP vs. WCC*, 49 SCRA 365 [1973]; *MRR vs. WCC*, 20 SCRA 982 [1976])).

Moreover, the respondent City of Manila knew as early as January 31, 1972 when petitioner retired from the government service that petitioner was suffering from pulmonary tuberculosis. But respondent City of Manila failed to controvert. Therefore, respondent employer cannot now question the compensability of petitioner's claim.

There arises therefore, in favor of the petitioner the rebuttable presumption of compensability of the illness because it supervened in the course of his employment, and there is no need for petitioner to establish by evidence his disability by reason of his illness as long as the presumption is not destroyed by respondent employer. The presumption rebuttable in its inception becomes conclusive upon the failure of the respondent employer to destroy the same (*Faicol vs. WCC*, 93 SCRA 811 [1979]; *Enriquez vs. WCC*, 93 SCRA 366 [1979]; *Paraiso vs. Castelo-Sotto*, 85 SCRA 419 [1987]; *Canonero vs. WCC*, 81 SCRA 712 [1978]; *Santo vs. WCC*, 75 SCRA 635 [1977]; *Villasan vs. Republic of the Phil.* 104 SCRA, 102 [1981]). In the instant case, the respondent employer failed to present any substantial evidence showing lack of connection between the petitioner's illness and his employment. Therefore, the illness remains compensable.

The degree of proof required in compensation cases is merely substantial evidence. What the law requires is a reasonable work-connection and not a direct causal relation. (*Sagliba v. E.C.C.*, 128 SCRA, 723 [1984]). The test of compensability under the old Workmen's Compensation Law is probability and not certainty. (*Matta vs. W.C.C.*, 133 SCRA 635 [1984]).

Medical certification of doctors that claimant's disease is compatible with pulmonary tuberculosis has been held to be reliable (*Lopez v. W.C.C.*, 132 SCRA 257 [1984]). An X-ray or some other laboratory report is not an indispensable prerequisite for compensation (*Vallo v. W.C.C., et al.* 73 SCRA 626 [1976]; *Jacob v. W.C.C.*, 72 SCRA 578, 579 [1976]; *Romero v. W.C.C.*, 77 SCRA 488 [1977]; *Jereza v. Mondra*, 138 SCRA, 62 [1985]; *Sanchez v. W.C.C.*, L-47985, June 20, 1986).

It may even be added that by the very nature of tuberculosis, petitioner could not have instantly acquired such illness only on January 29, 1975. In *Villones vs. E.C.C.* (92 SCRA 320 [1979], citing *Batangas Transportation Co. vs. Perez and WCC*, 11 SCRA 793 [1964]), the Supreme Court said that: "Tuberculosis is not an instantaneous disease, it is an imperceptible germ disease that feeds on the lungs whose presence in the body cannot be easily discerned and its incipient stage may not be readily discovered."

In denying the claim of the petitioner, the respondent Commission ruled that his service record does not indicate that he stopped working by reason of disability. This is of no moment because with the approval of petitioner's optional retirement under R.A. 1616 at the age of 47 years, the fact of his disability is already implied since under Memorandum Circular No. 133, issued on October 19, 1967 by the Office of the President, optional retirement may be allowed before reaching the compulsory age of retirement only upon proof that the employee is already physically incapacitated to render sound and efficient service. Consequently, the question as to the petitioner's disability is foreclosed with the approval of his optional retirement under R.A. 1616 and petitioner is entitled to the disability benefits of the Workmen's Compensation Act, as amended (*Faicol vs. WCC*, 93 SCRA 811 [1979] citing *Canonero vs. WCC*, 81 SCRA 712 [1978]).

PREMISES CONSIDERED, the assailed decision dated February 18, 1976 of the respondent Workmen's Compensation Commission is SET ASIDE, and respondent City of Manila is ordered:

(1)

To pay petitioner six thousand (P6,000.00) pesos as compensation benefits;

(2)

To reimburse petitioner his expenses for medical and hospital services, duly supported by proper receipts;

(3)

To pay petitioner the sum of six hundred (P600.00) pesos as attorney's fees; and

(4)

To pay costs.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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