

PIONEER CERAMICS, INC., PETITIONER, VS. ELISEO O. SAMIA, AND THE WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.

G.R. No. L-28819. June 23, 1970

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is a review of the decision of the Workmen's Compensation Commissioner in R0-WC Case No. 97135 and of the resolution of the Workmen's Compensation Commission en banc denying the petitioner's motion for reconsideration.

The claimant below, now respondent, is Eliseo O. Samia, who was employed as plant mechanic (foreman) in the Pioneer Ceramics, Inc., in 1956. He worked as such continuously until October 8, 1965, when he failed to report for work. On June 10, 1966, he filed with Regional Office No. 4 of the Department of Labor a notice of injury or sickness and claim for compensation, stating that by reason of the nature of his work he contracted pulmonary tuberculosis, and that on October 8, 1965 he gave notice thereof to Ramon Atienza, general manager of the Pioneer Ceramics, Inc. By registered mail dated June 30, 1966, Regional Office No. 4 transmitted the claim to the employer, together with blank forms to be accomplished by it and returned to said office, namely, WC Form No. 3, Employee's Report of Accident or Sickness; WC Form No. 4, Physician's Report; and WC Form No. 5, Employer's Supplementary Report. Those forms were received by the addressee on July 20, 1966, but were neither accomplished nor returned. However, on July 7, 1966 the company wrote a letter to Regional Office No. 4, "registering our controversion of any claim that may be filed or that may have been filed already by one of our employees, named Eliseo Samia, for compensation under the Workmen's Compensation Law as amended, on the ground that his illness is not work-connected, or was directly caused by the nature of his employment or aggravated by such employ-ment." The company alleges that the said letter was sent because "of a rumor that the claimant was sick," but that actually it was only on July 27, 1966 when the latter came personally to the office to claim compensation benefits, by reason of which it filed its "Employer's Report" two days later, or on July 29, 1966. The record, however, does not show that such report was actually received.

On September 7, 1966 the acting Chief Referee of Regional Office No. 4, considering the claim as uncontroverted on the ground that, the letter of July 7, 1966 was out of time, issued a compensation award without a formal hearing, and mainly on the basis of the physician's report that the illness was "directly caused by the nature of (claimant's) employment," that is, by "probable exposure to dust in the factory which he inhales while within the vicinity...(which dust) causes irritation to the lung tissue."

The company moved to reconsider and the claimant opposed. To enable himself to review the case thoroughly, the Workmen's Compensation Commissioner set the hearing for July 25, 1967, at 9:00 in the morning, for the purpose of receiving additional evidence concerning the work of the claimant. Counsel for the company received notice of the hearing the day before, July 24, but failed to appear therein on time. The testimony of the claimant

was taken, wherein he described his work as a plant mechanic, as a kiln fireman, as foreman in the "forming section" where clay was pulverized to be made into plates, vases and other products, and as machine press operator - all of which work involved physical effort and exposure to heat and dust. On the basis of the evidence the Commissioner, on August 3, 1967, affirmed the award by the Acting Chief Referee dated September 7, 1966. The company filed a petition for review with the Commission en banc, with a motion to reinstate the right of controversion, but was turned down.

The first issue raised in the instant petition before us is whether or not the petitioner filed a timely controversion of the respondent's claim for compensation, pursuant to the second paragraph of Section 45 of the Workmen's Compensation Act, which provides:

"In case the employer decides to controvert the right to compensation, he shall, either on or before the fourteenth day of disability or within ten days after he has knowledge of the alleged accident, file a notice with the Commissioner, on a form prescribed by him, that compensation is not being paid, giving the name of the claimant, name of the employer, date of the accident and the reason why compensation is not being paid. Failure on the part of the employer or the insurance carrier to comply with this requirement shall constitute a renunciation of his right to controvert the claim unless he submits reasonable grounds for the failure to make the necessary reports, on the basis of which grounds the Commissioner may reinstate his right to controvert." (Underscoring supplied)

The claimant, Eliseo Samia, failed to report for work on October 8, 1965. His bare allegation that he reported his illness that very day to the general manager of the company where he was working, unsupported as it is by any written evidence and denied by the other party, really should not be taken at face value, even to the extent of foreclosing the other party's right to present evidence to the contrary on the ground that said right had been lost by its failure to make a timely controversion. However, there exists other convincing evidence of such failure - evidence that the petitioner has not seen fit to dispute. It appears that on December 3, 1965, the Social Security System sent a letter to the petitioner, informing the latter that the claimant was applying for sickness allowances "for his confinement from October 8, 1965 to November 27, 1965," and asking that said allowances "be advanced by the petitioner, to be reimbursed by the System upon presentation of proof of its payment and its legality;" that the petitioner did advance the sickness allowances to the claimant; and that it was duly reimbursed thereafter, as shown by an SSS voucher dated June 3, 1966. A copy of the letter of December 3, 1965 is attached to the respondent's answer to the petition; and the same, as well as the fact of the petitioner's having made the advances and its subsequent reimbursement therefor, were set forth in the claimant's answer to the petition for reconsideration below. As of December 3, 1965, therefore, the petitioner had knowledge of the respondent's illness. Its letter of July 7, 1966 addressed to Regional Office No. 4 was very much beyond the period fixed in Section 45 of the Workmen's Compensation Act. The Commissioner's finding that the claim is uncontroverted is therefore correct.

The petitioner would interpret Section 45 as referring only to controversion in cases of accidents or personal injuries, not sickness. This restrictive interpretation is unjustified, for paragraph "c" of Section 39 of the same Act states explicitly that "injury or personal injuries includes sickness; injury or personal injuries or sickness includes death produced by the injury or sickness."

The petitioner next contends that the respondent's notice of injury or sickness, filed on June 10, 1966, was out of time, and that in any case it was not a claim for compensation. In the first place, the form used for the purpose (WC Form No. 1) is entitled "Notice of Injury or Sickness and Claim for Compensation," and contains not only the initial date of the sickness but also the daily wage of the claimant, the number of working days per week, and the amount of overtime earned. In the second place, it is already settled that the failure to file the notice and claim within the time prescribed in Section 24 of the Act is non-jurisdictional and does not bar the claim if there is a

failure to controvert on the part of the employer, as in this case.

The petitioner objects to the consideration of the physician's report as a basis for the award on the ground that it is hearsay evidence, the physician himself not having been presented as witness. This Court has ruled, in the case of *National Development Co. vs. WCC*, G. R. No. L-21724, April 27, 1967, that while such a report may be hearsay under the common law rules of evidence, it is nevertheless admissible under Section 49 of the Act, and may be considered in addition to the sworn testimony at open hearing. In the present case, aside from the physician's report there is the testimony of the claimant himself concerning the nature of his work, which testimony constitutes substantial evidence to support the award. It can hardly be doubted that the disease (pulmonary tuberculosis) which the claimant contracted, if not directly caused by his employment was at least aggravated by it.

The fact that the claimant was allowed by the Work-men's Compensation Commissioner to present additional evidence (at the hearing held by virtue of the petitioner's motion for reconsideration below) is now challenged as erroneous and against the law. Far from being either, the presentation of such evidence, in the form of the claimant's testimony, was entirely in accordance with the sixth paragraph of Section 49, which provides:

"Any party in interest who is dissatisfied with the order entered by the referee may petition to review the same and the referee may re-open said case, or may amend or modify said order, and such amended or modified order shall be a final award unless objection be made thereto by petition for review. In case said referee does not amend or modify said order, he shall refer the entire case to the Commissioner, who shall thereupon review the entire record in said case, and, in his discretion, may take or order the taking of additional testimony, and shall make his findings of facts and enter his award thereon. x x x." (Underscoring supplied)

Wherefore, the decision appealed from is affirmed, with costs against the petitioner.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Castro, Fernando, Teahankee, Barredo, and Villamor, JJ., concur.

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