

FLORENCIO REDOBOS, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION, ET AL., RESPONDENTS.

G.R. No. L-18737. November 29, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Florencio Redobos was an employee of the Benguet Consolidated, Inc. having worked it continuously from September 1, 1948 to April 17, 1958 in various capacities, such as mucker, miner, and miner capataz, and during said period he contracted tuberculosis with the result that he was separated from the service on the date last mentioned. Hence, he filed a claim for compensation with Regional Office No. 1, Department of Labor, Dagupan City, seeking to be paid the compensation to which he is entitled under the law consequent upon his separation from the service as a result of such sickness.

The case was docketed as B.W.C. Case No. 422-ROI and was assigned to hearing officer Erudito E. Luna. Respondent company having controverted the claim, the same was set for hearing during which both parties presented their evidence. On December 7, 1960, the hearing officer rendered decision ordering respondent to pay claimant the sum of P2,170.26 as compensation benefit and a weekly compensation of P12.00 from December 8, 1960 up to the time his physical incapacity shall have ceased, less any amount already paid as advanced compensation.

Not satisfied with this decision, respondent filed a petition for review, to which petitioner filed an opposition. The hearing officer, finding no reason to modify his decision, elevated the entire record to the Workmen's Compensation Commission for review pursuant to Section 49 of Act 3428, as amended. The case was assigned to Associate Commissioner Cesareo Perez who rendered decision reversing that of the hearing officer and absolving respondent from the claim. This time petitioner filed a motion for reconsideration, to which respondent filed an opposition. Thereafter, the Workmen's Compensation Commission, sitting en banc, denied the motion for reconsideration. Petitioner interposed the present petition for review.

It appears that petitioner started to work with respondent on September 1, 1948. He was subjected to pre-employment examination and was found fit for work. His employment record shows that he acted as mucker from September 1, 1948 to August 31, 1949; as miner from September 1, 1949 to June 15, 1951; and as capataz from June 16, 1951 to June 14, 1956, when he was hospitalized.

The first X-ray examination made on petitioner at the Notre Dame Hospital on November 7, 1950 revealed pulmonary tuberculosis, fibroid, left, probably non-active. He was allowed to continue working. Subsequent X-ray examinations made on March 4, 1954, February 3, 1955, September 12, 1955 and January 27, 1956 showed the same results as the first examinations, that is, his pulmonary tuberculosis had apparently remained stationary or inactive. In the X-ray examination made on March 1, 1957, petitioner was found to have some lesion in his right lung. The same result was obtained in the X-ray examination taken on June 10, 1957.

On June 14, 1956, petitioner was advised to take sick leave and seek medical treatment at the Notre Dame

Hospital. He was confined in said hospital and later transferred to Balatoc Hospital on July 31, 1957. He was discharged on January 31, 1958 with the diagnosis that he was suffering pulmonary tuberculosis, minimal, bilateral, chronic, and inactive. His illness was considered clinically and radiographically stable.

Considering the above facts, together with other evidence extant in the record, the Workmen's Compensation Commission made the following findings:

"From all these facts we have come to the inevitable conclusion that there existed no causal relationship between claimant's illness and his employment. Had the factors or conditions of claimant's employment contributed to the development of his illness, his tuberculosis would have worsened at the time when he was performing the work of a miner or mucker. There can be no doubt that the work of a miner or mucker is more strenuous than that of a capataz. The reverse is true in this case. As the work of the claimant became less strenuous his illness progressed faster. This can only mean that the worsening of claimant's illness is due to factors extraneous to the employment. A contrary view would be illogical. The evidence on record shows that the claimant used to stay late at night and sometimes, up to early hours of the following morning due to his gambling activities. This, no doubt, had contributed greatly to the development and progress of his illness. It cannot be denied that lack of sleep at night has a debilitating effect on one's health, especially, to one who like the herein claimant, is suffering from pulmonary tuberculosis."

It appears, therefore, that while petitioner contracted tuberculosis during his employment to the extent that he has been under medical treatment for sometime at the Notre Dame Hospital and Balatoc Hospital his sickness was, however arrested, and if he suffered later some lesion in his lung thus causing minimal pulmonary tuberculosis, it was aggravated not because of the nature of his work, but because of other human factors, because at that time he was no longer a mine laborer but a capataz whose duties were merely to supervise the work of other laborers. The truth about the sickness of petitioner, according to the Workmen's Compensation Commission, is that his situation was aggravated not because of his employment, but because of personal dissipation caused by night gambling activities which eventually caused his dismissal. In this respect, the Workmen's Compensation Commission said: "The evidence on record shows that the claimant used to stay late at night and sometimes, up to early hours of the following morning due to his gambling activities. This, no doubt, had contributed greatly to the development and progress of his illness. It cannot be denied that lack of sleep at night has a debilitating effect on one's health, especially, to one who, like the herein claimant, is suffering from pulmonary tuberculosis."

Since the above findings of fact are supported by substantial evidence, the same are binding upon this Court and are no longer subject to review.^[1] We are, therefore, persuaded to conclude that the illness of petitioner even when contracted during his employment was not aggravated by the nature of his work but by factors that can only be attributed to his fault. In this sense, we find no reason to disturb the decision reached by the Commission.

The contention that the Workmen's Compensation Commission erred in not dismissing the petition for review filed by respondent on the ground that it was filed beyond the reglementary period provided for by the rules and regulations of said Commission is untenable, it appearing that respondent has filed two motions for extension which were granted and the petition for review was filed within the period extended. These motions had the effect of suspending the running of the reglementary period and were filed pursuant to pertinent provisions of the same rules and regulations.

We also find no merit in the contention that the Commission erred in entertaining the defense of respondent notwithstanding its failure to controvert petitioner's claim it appearing that petitioner has not raised this question either before the hearing officer or before the Workmen's Compensation Commission. This question cannot be raised for the first time on appeal.^[2]

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] *Sereno vs. Phil. Long Distance Telephone Company*, L-11184, May 29, 1959; *Madrigal Shipping Co. vs. Nieves Baens del Rosario, et al.*, L-13130, Oct. 31, 1959; *Batangas Transportation Company vs. Rivera, et al.*, 109 Phil., 175; 60 Off. Gaz. [35] 5320. [2] *Kiva vs. Lim*, G.R. No. L-9232, May 1957; *Desbarats vs. Mortera*, G.R. No. L-4915 May 25, 1956; *Iloilo Chinese Commercial School vs. Fabrigar, et al.*, G.R. No. L-16600, December 27, 1961.

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