

JULIAN CUSTODIO, PETITIONER, VS. THE WORKMEN'S COMPENSATION COMMISSION AND THE PANQUI SUGAR MILLS, INC., RESPONDENTS.

G.R. No. L-43401. November 29, 1978

Ponente: GUERRERO, J.

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GUERRERO, J.:

Petition for review on certiorari^[1] of the decision of the Workmen's Compensation Commission dated March 16, 1976 affirming the Referee's decision denying petitioner's claim for compensation benefits.

Petitioner Julian Custodio had been in the employ of respondent Paniqui Sugar Mills, Inc. for 26 long years as a seasonal worker hired only during milling seasons. Previous to the discovery of his illness, he was last hired as an "ashman" in the respondent company's fire room department with a weekly wage of P84.70. He was not re-hired for the 1973-1974 milling season upon the basis of the results of the company-given annual medical examination in August 1973 where he was found suffering from "Pulmonary Tuberculosis (PTB), minimal."

Thereafter, petitioner filed a disability compensation claim with the Workmen's Compensation Section, Regional Office No. III, Department of Labor. Together with the other similar claims filed by several of petitioner's co-workers who were similarly not re-hired by respondent company on the basis of the results of the annual medical check-up, petitioner's compensation claim was dismissed in a consolidated decision for lack of merit. Upon appeal by petitioner, the respondent commission on review affirmed the referee's decision and denied petitioner's claim for failure to show that his PTB was work-connected. Hence, this petition.

In denying the claim for compensation, respondent Commission opined that petitioner's disability was not work-connected since "it is probable that he acquired de same during the off-season period when he was not rendering service for the respondent."^[2] This is without merit for the Commission's opinion is merely conjectural, without evidence to support it inasmuch as the respondent company did not conduct any physical check-up among its workers at the end of every milling season. The respondent Commission cannot rely on probabilities or suppositions to overcome the presumption mandated by Section 44 of the Workmen's Compensation Act that a claim is compensable once it is shown that the illness or injury supervened in the course of employment, the presumption being that the disability either arose out of or was aggravated by the employment and with this presumption, the burden to show by substantial evidence the contrary shifts to the employer.^[3] This burden has not been discharged by respondent employer for the record is bereft of any evidence that petitioner's PTB did not in fact arise out of his employment.

On the other hand, with the presumption of compensability, the law allows that in testing the evidence on the relation between the injury or disease and the employment, probability and not certainty is the touch-stone.^[4] Considering the work of petitioner in respondent company, it is probable that his PTB either arose out of or was aggravated by the nature of his job. It is not denied that petitioner worked for respondent company every milling season during a period of 26 years. Neither is it denied that he was physically fit when he was first employed and

that it was only before the 1973-1974 milling season that his PTB was discovered. His job required him to gather ashes from the "pugon" and load them in a wheel-barrow to the "bagon" for disposal in the ash area. At the end of the milling season which usually lasted for 6 or 8 months, petitioner continued working, cleaning and repairing machines and the railroad track. It is not surprising, therefore, that petitioner contracted PTB, a germ disease that feeds on the lungs, when We consider that he was performing heavy manual labor, inhaling flying ash dust, and exposed to the heat generated by the "pugon" for a span of 26 years. We have stated before that -

"It is medically accepted that exposure to dust and dirt is a predisposing cause of tuberculosis and tends to produce fibrosis of the lungs which weakens resistance to any latent tuberculosis infection and reactivates that infection."[5]

In the case of *Valencia vs. Workmen's Compensation Commission*,[6] the Court awarded petitioner's claim, reasoning out that -

"Tuberculosis is a chronic infection caused in humans by bacteria and initiated almost always by inhalation of infectious bacteria. Medical authorities are agreed that the incubation period of tuberculosis is from two (2) to ten (10) weeks from the time of infection. Tuberculosis in its minimal stage indicates a slight lesion without demonstrable cavitation, confined to a small area of one or both lungs, the total extent of which does not exceed the equivalent of the volume of lung tissue which lies above the 2nd chondrosternal junctions and the spine of the 4th or body of the 5th thoracic vertebra on one side. As stated in *Batangas Transportation Co. vs. Perez and Workmen's Compensation Commission*, L-19522, August 31, 1964, 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."

Petitioner's claim is clearly within the purview of the compensation law and unrebutted by respondent milling company under Section 2 of the Workmen's Compensation Act, which provides:

"Sec. 2. Grounds for compensation.- When an employee suffers personal injury from any accident arising out of and in the course of his employment or contracts tuberculosis or other illness directly caused by such employment, or either aggravated by or the result of the nature of such employment, his employer shall pay compensation in the sums and to the person hereinafter specified. x x x"

Considering that the petitioner was not able to work due to his ailment, We rule that he is entitled to disability compensation benefits. As stated in *Alatco Transportation Company, Inc. vs. The Workmen's Compensation Commission*: [7]

"Disability compensation represents lost or impaired earnings of a claimant due to his illness and becomes due from the time his earning power is lost or impaired."

WHEREFORE, the decision appealed from should be, as it is hereby REVERSED, and the respondent is ordered:

1. To pay the petitioner the sum of P2,642.64 as disability compensation benefits computed as follows:

Under Section 14 of the Act, as amended, the petitioner's daily wage of P11.10 plus P1.00 a day living allowance multiplied by 7 working days equals P84.70. 60% of P84.70 is P50.82 multiplied by 52 weeks (6 months per milling period for the 1973-1974 and 1974-1975 milling seasons) amounts to P2,642.64.

2. To pay the petitioner disability compensation as above computed for the succeeding milling seasons wherein he

was not able to work due to his illness, provided that the total compensation shall not exceed P6,000.00 and that the payments shall not go beyond petitioner's 65th birthday;

3. To furnish petitioner with such medical services and supplies as the nature of his disability and the process of his recovery from pulmonary tuberculosis may require;

4. To pay petitioner's counsel 10% of the amount collected as disability compensation; and

5. To pay the sum of P61.00 as administrative fee.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Santos, and Fernandez, JJ., concur.

[1] Treated as a special civil action in the resolution of July 2, 1976.

[2] Decision, WCC, p. 2.

[3] Lorenzo vs. WCC, 81 SCRA 434; Cañonero vs. WCC, 81 SCRA 712; Mercado vs. WCC, 81 SCRA 730; Bautista vs. WCC, 80 SCRA 313; Monsale vs. Republic of the Philippines, 80 SCRA 448; Mulingtapang vs. WCC, 80 SCRA 610; Ilingan vs. WCC, 79 SCRA 345; Guevarra vs. Republic, 77 SCRA 292; Caling vs. WCC, 77 SCRA 309; Evangelista vs. WCC, 77 SCRA 497; Romero vs. WCC, 77 SCRA 482.

[4] Vda. de Laron vs. WCC, 73 SCRA 84.

[5] Justo vs. WCC, 75 SCRA 220.

[6] 72 SCRA 242.

[7] 42 SCRA 391.

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