

**SULPICIA BATERNA, PETITIONER, VS. WORKMEN'S
COMPENSATION COMMISSION (OR ITS SUCCESSOR EMPLOYEES
COMPENSATION COMMISSION) AND BOGO-MEDELLIN MILLING CO.,
INC., RESPONDENTS.**

G.R. No. L-43932. February 28, 1977

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petition for review of the decision dated December 31, 1975 of the Workmen's Compensation Commission in RO7-18373, reversing the decision dated July 17, 1975 of the hearing officer and acting referee, Workmen's Compensation Unit, Regional Office No. VII, Cebu City.

Deceased Magno Baterna was employed by private respondent as oiler filter tender in 1933 until he became ill on January 6, 1964. Due to said illness and upon recommendation of respondent company's physician, Baterna was separated from the service on March 15, 1964. On October 25, 1964, he died of Hodgkins disease.

On October 22, 1974, Sulpicia Baterna, surviving spouse of Magno Baterna, filed a claim for death benefits with Regional Office No. VII, Department of Labor, Cebu City, docketed as RO7-18373.

On July 17, 1975, Regional Office No. VII rendered a decision awarding death compensation to herein petitioner (Annex B, pp. 11-12, rec.). Private respondent sought a reconsideration of this award, which was denied by Regional Office No. VII, and the case was elevated to the Commission for review.

On December 31, 1975, the Commission ordered the dismissal of the case in a decision (Annex A, pp. 8-9, rec.), the dispositive portion of which reads:

"After duly considering the facts of the case, this Commission finds that this claim for death compensation benefit has prescribed already in view of the fact that ten years had elapsed before the same was filed and, therefore, the same may not anymore prosper as claims under the provisions of the Workmen's Compensation Act prescribes after 10 years. In view thereof, the petition for review of respondent is hereby granted and this case is ordered dismissed."

On February 2, 1976, petitioner through counsel received her copy of the Commission's decision dated December 31, 1975, and on the same date filed a motion for reconsideration (Annex D, pp. 15-16, rec.) of the decision.

Petitioner instituted present petition dated May 5, 1976 pending resolution by the Commission of her motion for reconsideration dated February 2, 1975.

On August 11, 1976, this COURT resolved to treat the petition as a special civil action and to require both parties to submit simultaneous memoranda.

Respondent employer had renounced its right to controvert this claim. The records show that after respondent company's physician recommended Baterna's separation from the service due to his illness, which eventually

resulted in his death, it did not file the prescribed notice of controversion as required by Section 45 of the Workmen's Compensation Act. On the contrary, as a result thereof, respondent paid him gratuity benefits on April 21, 1964 (p. 51, rec. of WCC, RO7-18373). Incidentally, though, this payment may not validly be pleaded as a defense due to non-compliance with certain requisites established by law. Thus, the company's notice of controversion of this claim (p. 52, rec. of WCC, RO7-18373) filed on November 7, 1974 on the ground that the illness did not arise out of or in the course of employment was deemed to have been filed out of time and the defense invoked therein deemed waived.

Be that as it may, even on the merits, the disputable presumption that the illness of deceased employee arose out of his employment or at least was aggravated by such employment because it supervened at the time of his employment, has not been sufficiently rebutted by the regional medical officer's findings that Hodgkins disease is a disease of the node and non-nodal lymphatic tissues, the etiology of which is unknown and its causal relation to the employment is still open to further studies (pp. 27-28, rec. of WCC, RO7-18373). The facts are clear and uncontroverted that deceased employee Magno Baterna died on October 25, 1964 and that his widow, petitioner herein, filed her claim for death compensation on October 22, 1974 - a period of 9 years, 11 months, and 27 days after employee's death, which is certainly well within the ten-year period prescribed by law for the filing of such claim.

It would appear that the Commission has adopted private respondent's contention that the ten-year prescriptive period should be reckoned from January 6, 1964, the date when deceased employee was disabled due to illness which caused his separation from the service and ultimately his death. But this argument is clearly untenable. This is a claim for death benefits. Logically, the prescriptive period should run from the date of employee's death and not from the date when he contracted the illness.

Likewise of no merit is respondent company's argument that petitioner is barred from claiming death compensation because she has failed to make a demand for such claim within 3 months after employee's death in accordance with the Workmen's Compensation Act. This COURT has ruled that the failure to file the claim within the period provided in Section 24 of the Workmen's Compensation Act does not affect the jurisdiction of the Commission to entertain said claim, more especially where there is no showing that the employer sustained damage by such delay or failure (ibid).

Finally, this COURT has given due course to this petition pending resolution by respondent Commission of a motion for reconsideration filed by petitioner on February 2, 1975, the same date when she received a copy of the Commission's decision. Hence, respondent company's contention that this petition has been filed beyond the reglementary period is baseless.

WHEREFORE, THE DECISION OF RESPONDENT WORKMEN'S COMPENSATION COMMISSION IS HEREBY REVERSED AND SET ASIDE AND RESPONDENT BOGO-MEDELLIN MILLING CO., INC. IS HEREBY ORDERED TO PAY:

1. CLAIMANT SULPICIA BATERNA:
 - A. THE SUM OF SIX THOUSAND PESOS (P6,000.00);
 - B. EXPENSES FOR MEDICAL AND HOSPITAL SERVICES SUPPORTED BY PROPER RECEIPTS;
2. ATTY. FROILAN QUIJANO, CLAIMANT'S COUNSEL, ATTORNEY'S FEES EQUIVALENT TO TEN PERCENT (10%) OF THE RECOVERABLE AMOUNT;
3. THE WORKMEN'S COMPENSATION COMMISSION, SIXTY-ONE (P61.00) PESOS AS ADMINISTRATIVE FEE; AND

4. THE COSTS.

SO ORDERED.

Teehankee, (Chairman), Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.

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