

VICENTE S. LAUDE, PETITIONER, VS. CINE MODERNA AND/OR ANITA GUANSON, RESPONDENTS.

G.R. No. L-43009. August 31, 1976

Ponente: MARTIN, J.

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MARTIN, J.:

Petition for review of the decision of the Workmen's Compensation Commission which disallowed the claim of the petitioner Vicente S. Laude for compensation benefits under the Workmen's Compensation Act.

Sometime in 1971, petitioner was employed by private respondent as a janitor with an average weekly wage of P60.00. On May 31, 1973, he was found to be suffering from pulmonary tuberculosis (minimal) and peptic ulcer. On November 26, 1973, he filed a claim for compensation with the Workmen's Compensation Section, Regional Office No. 4, Department of Labor, Manila. In support of his claim, he submitted a Physician's Report of Sickness signed by Dr. Cesar de los Reyes who diagnosed his ailment as "PTB minimal, peptic ulcer syndrome." He likewise submitted a report on his x-ray examination conducted by the National Tuberculosis Center Clinic, Manila on July 2, 1974 with the following reading: "suggestive of PTB minimal probably active." Respondent employer failed to controvert the claim of the petitioner.

Based on the evidence presented, the Acting Referee issued an award in favor of the petitioner which reads as follows:

"AWARD, therefore, is hereby entered and respondent ordered to pay: 1. The claimant, thru this Office, the amount of TWO THOUSAND ONE HUNDRED NINETY-SIX PESOS (P2,196.00) as partial compensation as of July 31, 1974 and the weekly compensation of P36.00 beginning August 1, 1974 until his illness is cured or arrested or his disability ceases. Provided, that the lump sum payment and subsequent weekly payments do not exceed P6,000.00. 2. The Workmen's Compensation Fund, the amount of P22.00 as administrative fee, pursuant to Sec. 55 of the Act. * * *

SO ORDERED."

A motion for reconsideration of the award was denied. On review by the Workmen's Compensation Commission, the award was reversed and the claim dismissed by the respondent Commission for lack of merit.

In denying the claim of the petitioner, respondent Commission considered the Physician's Report submitted by him as not sufficient to prove his illness for it was not supported by an x-ray result. But the records show that when Dr. Cesar de los Reyes examined petitioner on May 31, 1973 and diagnosed his illness as pulmonary tuberculosis even if it was still at its minimal stage and its presence was not easily perceptible as when TB is already far advanced,[1] then it must have been obvious to him, due to other symptoms of the disease existing at the time the petitioner was examined, that he was in fact suffering from pulmonary tuberculosis which finding was later confirmed by an x-ray result obtained on July 2, 1974 or about a year after he was first examined by Dr. Cesar de los Reyes. This being the case, it is evident that the illness of petitioner must have supervened during his employment and therefore there is the rebuttable presumption pursuant to Section 44 of Act 3428[2] that his

illness arose out of, or at least aggravated by the nature of his employment. With this presumption, the burden of proof that it is not, shifts to the employer and the employee is relieved of the onus to show causation.[3] In this case, the employer has failed to submit any substantial evidence to rebut the compensability of the claim.

More than that, it has failed to controvert the claim within the reglementary period. Well ingrained in our jurisprudence is the doctrine that failure on the part of the employer to controvert the claim within the prescribed period amounts to a waiver of the right to controvert and a renunciation of all defenses.[4] He cannot even prove that the illness of the employee is not work-connected or work-aggravated.[5] Even the contention of private respondent that petitioner's claim is barred by prescription for having been filed six (6) months after petitioner's discovery of his illness and thus beyond the reglementary period required by Section 24 of Act 3428, as amended[6] cannot stand.

Private respondent contends that it has filed a timely petition to reinstate its right to controvert in accordance with Section 3, Rule 8 of the Rules of the Workmen's Compensation Commission.[7] There is nothing in the records to show that private respondent's right to controvert has been reinstated by the "Unit" or referee or by the Commissioner of the Workmen's Compensation Commission for that matter. This is the reason why in his award the Acting Referee expressly stated: "* * * and it appearing further that respondent failed to controvert the claimant's right to compensation within 14 days from the date of disability or within 10 days from knowledge thereof, pursuant to Section 45 of Act 3428, as amended,* * * an outright award of compensation in favor of the latter is, under the circumstances, in order." (Annex "B", Decision of Acting Referee). In fact the respondent Commission confirmed the lack of controversion when in its decision it stated: "Under the law the fact that respondent failed to timely controvert a claim for compensation does not ipso facto make an otherwise non-compensable claim, compensable."

Private respondent also contends that the illness of the petitioner supervened outside of the employment by reason of the severance of employer-employee relation-ship between petitioner and private respondent when the theater wherein petitioner was working was razed by fire in April 1973. But there is authority to the effect that destruction of the employer's property does not ipso facto work to terminate employer-employee relationship even if the employer ceases to do business as a result.[8]

IN VIEW OF THE FOREGOING , decision of the respondent Commission is hereby reversed and set aside and the award of the Acting Referee revived and reinstated.

Without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Concepcion, Jr.[*] , JJ., concur.

[1] Batangas Trans. Co. vs. Perez, 11 SCRA 793, 797; Valencia vs. WCC, L-41554, July 30, 1976.

[2] "SEC. 44. Presumption. - In any proceeding for the enforcement of the claim for compensation under this Act, it shall be presumed in the absence of substantial evidence to the contrary -

1. That the claim comes within the provisions of this Act;
2. That sufficient notice thereof was given;
3. That the injury was not occasioned by the will-ful intention of the injured employee to bring about the injury or death of himself or of another;

4. That the injury did not result solely from the intoxication of the injured employee while on duty; and
5. That the contents of verified medical and surgical reports introduced in evidence by claimants for compensation are correct.

[3] Talip vs. WCC, G.R. No. L-42575, May 31, 1976; Maria Cristina Fertilizer Corp. vs. WCC, 60 SCRA 228; Simon vs. Republic of the Phil. (Supreme Court), G.R. No. L-42510, June 30, 1976.

[4] DBP vs. WCC, L-30428, Feb. 7, 1973; Phil. Graphic Arts Inc. vs. Mariano, L-30979, Oct. 26, 1973; MRR vs. WCC, L-19773, May 30, 1964.

[5] Reynaldo vs. Republic, L-43108, June 30, 1976.

[6] "SEC. 24. Notice of the injury and claim for compensation. - No compensation proceeding under this Act shall prosper unless the employer has been given notice of the injury or sickness as soon as possible after the same was received or contracted and unless a claim for compensation was made not later than two months after the date of the injury or sickness."

[7] Reinstatement of the right to controvert. – An employer or carrier who has failed to controvert the right to compensation within the period and in the manner stated in the preceding sections may file with the Unit before the award is rendered or before such award has become final, a petition under oath specifying therein the reasons for his failure to controvert the right to compensation and the grounds relied upon, in which case the Unit may, upon reasonable grounds, reinstate the employer's right to controvert."

[8] Ga. Macon Canning Co. vs. Robert, 105 S.E. 734, 28 GA. App. 147; Madden v. Jacobs, 52 La. Ann. 2107, 28 South 225; 50 L.R.A. 827; 56 C.J.S. 422; (Act 3428, being a U.S. patterned statute, American Jurisprudence has a strong persuasive effect in the interpretation thereof).

[*] Designated to sit in the First Division.

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