

ESPERANZA BUYCO, CLAIMANT-APPELLANT, VS. HON. SECRETARY OF LABOR, IN HIS CAPACITY AS EX-OFFICIO CHAIRMAN OF THE COMPENSATION APPEALS AND REVIEW STAFF, AND REPUBLIC OF THE PHILIP...

G.R. No. L-47276. November 10, 1986

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the July 28, 1977 order of the Hon. Secretary of Labor affirming the November 14, 1975 Order of the Acting Referee of the Compensation Task Force as follows:

"For lack of merit, claimant's motion for reconsideration of the order dated November 14, 1975 of the Bacolod City Sub-Regional Office dismissing her claim, should be, as it is hereby, denied."

Petitioner Esperanza Buyco was employed with respondent Republic of the Philippines as a classroom teacher at Lopez-Jaena Elementary School, Bacolod City, until her optional retirement at the age of 63 years under Republic Act. No. 660 on August 4, 1968 (Page 1 of the November 14, 1975 Decision of the Acting Referee, Annex "G" of the Petition; Record, p. 27).

Subsequently, petitioner filed with the Workmen's Compensation Unit, Sub-Regional Office, Bacolod City her claim for disability compensation benefits under the provisions of the Workmen's Compensation Act, as amended, docketed therein as W.C.C. Case No. 11215. From the given questions and answers in her submitted "Notice of Injury or Sickness and Claim for Compensation" dated October 23, 1972 (Annex "B" of the Petition; Ibid., p. 21), she claims that she met an accident or illness on the 3rd day of August, 1968 at the Lopez-Jaena Elementary School; that said accident or illness was attributed to performing classroom activities, membership in cub scout functions, physical education, expo-sure to all kinds of weather and other contributing factors; that such injury/illness kept her from working as of August 3, 1968; and that later that August, 1968, she had given oral and written notice of injury/illness to her employer (Answers given to questions Nos. 11 to 15 and 22 to 23).

In support of her claim, petitioner submitted to the Labor Sub-Regional Office, Bacolod City, the Physician's Report of Sickness or Accident dated October 21, 1972, signed by Dr. Eduardo Garcia (Annex "D" of the Petition; Ibid., p. 24). In the said report, petitioner's illness was diagnosed as "cyst-adenoma, breast-left" (Answer to question No. 6); the report also stated that same was not caused by accident due to and in pursuance of the employment or the result of the nature of such employment, or that the illness contracted was caused by her employment.

During the consideration of the case, petitioner, to support her claim, submitted her affidavit-dated August 25, 1975 wherein she alleged that on January 2, 1968, at around 2:30 in the afternoon, she fell down from the stool on which she was standing while putting a picture on the wall of her classroom, causing her breast to bump the edge of the blackboard and she felt a stabbing pain in her left breast (Annex "C" of the Petition; Ibid., pp. 22-23); and

the unverified certification of her co-teacher Gregoria P. Francisco, dated August 28, 1975, stating in effect that on January 2, 1968 she saw petitioner holding her left breast and when she asked petitioner what had happened the latter told her that she fell down while placing pictures on the wall of her classroom (Annex "F" of the Petition; *Ibid.*, p. 26).

On November 14, 1975, the Acting Referee of the Compensation Task Force in Bacolod City, rendered a decision dismissing the claim on the grounds that (1) there was apparently no loss of petitioner's earning capacity as she retired on August 4, 1968 under Republic Act. No. 660 when she was already 63 years old; and (2) her alleged illness was an idiopathic disease which is per se not compensable (Annex "G" of the Petition; *Ibid.*, p. 27-28). Petitioner filed a Motion for Reconsideration and/or Petition for Review (Annex "J" of the Petition; *Ibid.*, p. 31) but in an order dated July 28, 1977, the same was denied by the Secretary of Labor (Annex "A" of the Petition; *Ibid.*, p. 20).

On November 3, 1977, petitioner filed with this Court a Notice of Appeal (Record, pp. 1-3).

On the same date, November 3, 1977, petitioner filed a Motion to Appeal as Pauper (*Ibid.*, pp. 4-7).

Likewise, on the same date, petitioner filed the instant petition (*Ibid.*, pp. 11-19).

In a Resolution dated November 9, 1977, the First Division of this Court granted the motion of petitioner to litigate as a pauper, and resolved to require the respondents to comment (*Ibid.*, p. 34. Comment was filed by the Solicitor General on January 4, 1978.

The day before, on January 3, 1978, petitioner filed her brief (*Ibid.*, p. 45) after which the First Division of this Court resolved on January 11, 1978 to give due course to the petition, and to require the respondents to file their reply memorandum to petitioner's brief (*Ibid.*, p. 54) which was complied with by the Solicitor General on March 14, 1978. (*Ibid.*, pp. 66-73).

Finally, in a Resolution dated March 31, 1978, the First Division of this Court resolved to declare the case submitted for decision (*Ibid.*, p. 75).

The issues in this case may be reduced to one; that is:

WHETHER OR NOT PETITIONER WHO RETIRED ON THE SAME DAY SHE WAS AFFLICTED BY AN ILLNESS CALLED "CYST-ADENOMA, BREAST-LEFT" CAN CLAIM COMPENSATION DESPITE HER RETIREMENT.

Respondent's objections are on two counts: (1) the sickness was per se not compensable and (2) there is no loss of earning capacity on the part of the petitioner who has retired.

The second paragraph of the Acting Referee's Decision of November 14, 1975, which was affirmed by the Secretary of Labor in an Order dated July 28, 1977, reads:

"Records of the case show that claim-ant Esperanza Buyco used to be employed with the respondent as classroom teacher assigned to Lopez-Jaena Elementary School, Bacolod City. Records show that claimant was afflicted with the illness on August 3, 1968 and stopped working on the same date. It is likewise shown that she was retired from the service on August 4, 1968 under R.A. 660 and she was already 63 years old then. Apparently, there is a clear showing that her service with the government was continuous up to the date of her retirement. There was therefore, no loss of her earning capacity. In the second place, the illness allegedly suffered by her was an idiopathic disease which is per se not compensable. The Supreme Court has repeatedly upheld this principle in an array of cases."

There appears to be no dispute that petitioner's illness of "Cyst-Adenomas, Breast-Left," supervened during her

employment, and as such she has in her favor the legal presumption that the same is compensable, which presumption shifts the burden of proof on the employer to show otherwise.

However, a perusal of the records fails to show that respondent filed a notice of controversion nor is there any allegation that one was filed. On the contrary the Solicitor General, in his Comment and Reply Memorandum, merely alleged that -

"On November 23, 1972, the Office of the Solicitor General referred the said claim of petitioner to the Director of Public Schools, for his information and appropriate action, and with the suggestion that pursuant to Memorandum Circular No. 210 dated October 29, 1968, issued by the Office of the President, he submit the employer's report directly to the Labor Regional Office concerned."

The above memorandum only served to confirm the fact that such notice of controversion even if filed, could not have been filed on time as required by Section 45 of the Workmen's Compensation Act since petitioner, in her "Notice of Injury or Sickness and Claim for Compensation dated October 23, 1972, claims that she had given her employer oral and written notice of injury/illness in August, 1968, more than four (4) years from November 23, 1972 when the Office of the Solicitor General was still referring petitioner's claim to the Director of Public Schools for his information and appropriate action; or exactly one (1) month from petitioner's Notice of Injury or Sickness and Claim for Compensation.

It is well-settled that under the Workmen's Compensation Act, when an illness supervenes during the course of employment, it is deemed to have either arisen out of or been aggravated by petitioner's employment; and with this legal presumption the burden of proof shifts to the employer and the employee is relieved of the burden to show causation. (*Simon v. Republic*, 71 SCRA 643; *Talip v. W.C.C.*, 71 SCRA 218; *Aranzanso v. Saguit*, 71 SCRA 608; *Abcede v. W.C.C.*, 138 SCRA 53-54 [1985]; *Zozobrado v. E.C.C.*, Jan. 17, 1986).

In one case, where the employer failed to file a reasonable notice of controversion, this Court ruled that such "constitutes a waiver by separation of law of his right to controvert the employee's claim for compensation on non-jurisdictional grounds and such legal defect does not violate the requirements of due process." (*Simon v. Republic*, supra).

Moreover, the fact that petitioner's submitted "Physician's Report of Sickness or Accident" dated October 21, 1972 states that her illness was not caused by her employment or the result of the nature of such employment, does not militate against bar claim. As held by the Court, a negative answer in the physician's report, even if the latter is part of the documentary evidence of the claimant, is insufficient in itself to destroy the legal presumption of compensability, in the same manner that mere opinion, of doctors presented by the employer or that of the Commission's medical rating officer which would disconnect the employee's ailment from his employment, cannot prevail over the presumption of compensability mandated by law (*Saril v. Workmen's Compensation Commission*, 84 SCRA 319).

As to petitioner's optional retirement at the age of 63 years, this Court has already ruled that the same does not militate against her claim. Note the case of *Espiritu vs. Workmen's Compensation Commission*, 84 SCRA 636, 643, where the claimant also retired at the age of 63 years. The decision in said case reads:

"x x x. Petitioner was then only 63 years of age, short of the compulsory age for retirement. It is not, therefore, accurate to state that there was no wage-loss factor involved, for verily, if petitioner was not disabled, he could have retired two years later and could have received the maximum benefits of the Retirement Law. Thus, the Court herein affirms once more Our ruling in previous cases involving claimants optionally retired that the fact of optional retirement does not militate against the success of their claim for disability compensation, for the fact that their application for optional retirement has been approved places beyond doubt their physical

incapacity to render further efficient service. (R.A. 1616 in relation to Memorandum Circular 133 issued on October 19, 1967 by the Office of the President)."

PREMISES CONSIDERED, the assailed Order of the Hon. Secretary of Labor is hereby REVERSED and SET ASIDE, and a new one is hereby rendered awarding petitioner the maximum disability compensation of P6,000,00 under Section 14 of the Workmen's Compensation Act.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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