

VIRGILIO ZAFRA, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND MANILA PAPER MILLS, INC., RESPONDENTS.

G.R. No. L-42990. November 21, 1978

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for review^[1] of the decision of the Workmen's Compensation Commission which reversed the award rendered by the Hearing Officer granting herein petitioner disability compensation benefits under Sections 14 and 18 of the Workmen's Compensation Act, as amended.

For respondent employer's failure to controvert the claim as well as to contravene the proof of illness by not presenting evidence to the contrary, the facts established in this case are beyond dispute. The records show that petitioner has been in the employ of respondent Manila Paper Mills, Inc. since 1956, first as machine operator and later, as machine foreman with a wage of P18.00 a day. Prior to his employment, petitioner was required by the company to submit his health certificate which he did. As a machine foreman working 12 hours a day, petitioner's duties and responsibilities included but were not limited to repairing the paper mill machine consisting of three sections namely, the paper reel, the press and wire section by washing and replacing the worn out parts. The work was heavy physically, lifting the machine parts and exhaustively taxing under arid conditions and excessive heat generated or emitted by the machine which greatly weakened his physical condition. His place of work was poorly ventilated and he was exposed to the harmful effects of a chemical, caustic soda and inhalation of minute paper dust. On September 3, 1974, petitioner stopped working due to chest pains, difficult breathing and persistent coughing, for which reason he consulted Dr. Fu Sun Yuan, the company physician, at the Chinese General Hospital, who diagnosed petitioner's illness as "pulmonary tuberculosis, minimal," as per the physician's report dated September 9, 1974, attesting to the aforesaid diagnosis and supported by an X-ray finding on the same date by one Dr. H. L. Zialcita, showing that petitioner had "minimal PTB, right upper lobe." Petitioner thereupon informed his employer, the respondent Manila Paper Mills, Inc. through its personnel officer, Mr. Peregrino Lachica, about his illness but was given sick leave without pay. He filed numerous requests for sick leave, the first dated Sept. 13, 1974 and was recommended for approval by the physician assigned at the company premises, Dr. Reyes, and Antonio Go, company supervisor.

An X-ray service report taken later on October 24, 1975 at the Quezon Institute with radiological findings of "Right Hemithorax: Minimal Infiltration at first and second interspaces" was also submitted as part of claimant's evidence. Claimant returned to work on October 12, 1975 although he was not yet fully recuperated.

On the basis of these uncontroverted facts, award was granted by the Hearing Officer in his decision dated October 29, 1975, thus:

"WHEREFORE, responsive to the foregoing considerations, judgment is hereby rendered in favor of claimant

Virgilio Zafra and against respondent Manila Paper Mills, Inc., ordering the latter:

1. To pay claimant thru this office the sum of FIVE THOUSAND TWO HUNDRED FORTY FIVE AND 10/100 (P5,245.10) PESOS by way of disability compensation benefits under Section(s) 14 and 18 of the Act, as amended, and

2. To pay to this Office the sum of FIFTY THREE (P53.00) PESOS as decision fee pursuant to Section 55 of the same Act."

Respondent company sought a review of the foregoing award. Accordingly, the Workmen's Compensation Commission thru Associate Commissioner Eugenio I. Sagmit, Jr. nullified the award in a decision dated January 29, 1976 dismissing the claim on the grounds that the physician's report was not verified to qualify as evidence under Section 44 of the Act, and that the X-ray service report of the Quezon Institute did not indicate that claimant was suffering from pulmonary tuberculosis on the day he stopped working on September 4, 1974. Hence, this petition.

From the records of the case alone, We can readily conclude that the Commission had once again committed a grave error which must be corrected. The decision of the Hearing Officer is categorically clear that respondent company did not only fail to controvert the claim but also neglected to present any evidence to dispute the same. Under this situation, the Commission can justify a reversal only on jurisdictional ground. But such ground, obviously, We find none. The actuation of the Commission is a clear abuse of discretion, in utter disregard of the beneficent doctrines and jurisprudence laid down by this Court which have favored labor in its struggle to achieve decency, dignity and social justice.

We need only to stress and emphasize a few points. The notice of injury and claim for compensation was received by the Department of Labor on March 31, 1974. An untraversed allegation in the petition would show that even earlier petitioner had already informed the manager of the company about his illness. Yet, the company did not controvert the claim in accordance with the law. Granting, as respondent claims in its memorandum, that it did controvert the claim on October 9, 1976, this is much too late having gone beyond the reglementary period for controversion which is either on or before the fourteenth day of disability, or within ten days after employer's knowledge of the accident, pursuant to Section 45 of the Act. Respondent not having filed any petition for reinstatement of the privilege to controvert, the same is now totally lost.

The effect of non-controversion on the part of the employer is, indeed, far-reaching. As enunciated in a long line of decisions, this inaction constitutes a waiver of any conceivable defense not jurisdictional in nature, and fatal to those that might have been raised by the employer; it is a renunciation of the right to challenge the propriety of the claim; and ultimately, it is an admission of compensability by the employer.[2] Hence, as articulated in *Agustin v. Workmen's Compensation Commission*[3] the claimant-petitioner's right to compensation becomes all the more impregnable when We take into account that the employer's right to controvert the claim has been forfeited due to its failure to file with the Commission the notice of controversion prescribed by the second paragraph of Section 45 of the Act.

Respondent company contends in its memorandum that petitioner failed to establish the fact of illness. This contention is predicated on the findings of the Commission to the effect that the X-ray service report (presumably that issued on October 24, 1975) does not show claimant to have been afflicted with pulmonary tuberculosis on the day he stopped working on September 4, 1974; that the carbon copy of the X-ray result supporting the

physician's report has not been signed; and that the attending physician's report has not been verified to qualify under the provision of Section 44 of the Act, as amended.

Petitioner's evidence showing that his illness supervened during the course of his employment is ample and sufficiently clear. The documents presented by him have enough probative value to support this fact. It is positive from the physician's report issued only about five days after claimant stopped working that he was suffering from minimal infiltrations, evidently corroborated by the X-ray findings dated September 9, 1974. The later X-ray service report dated October 24, 1975 only confirmed the persistence, or at the least, the recurrence of the illness from the time it was first noticed. Suffice it to say that the evidence not having been objected to at the hearing, the admissibility, due execution and validity thereof may not now be raised in issue at this stage of the proceeding.

Moreover, Section 1, Rule 12 of the Rules of the Commission in relation to Section 49 of the Act, provides that "reports of attending and/or examining physicians and hospital records in relation to the case," among others, constitute admissible evidence provided the other party shall be given the opportunity to examine and rebut the same by further evidence. Such records need not be presented in a certain form. We have already ruled that failure to verify the attending physician's report is not fatal as would totally make the same void of evidentiary value.[4] Also, We have ruled that an X-ray report is not an indispensable proof to attest the existence of pulmonary tuberculosis since the physician's report does not require that an X-ray examination or laboratory findings be attached thereto, the absence of which does not invalidate the diagnosis stated in the report.[5] In the case at bar, We are satisfied that even if the carbon copy of the X-ray result supporting the physician's report had not been signed, and even in the absence of the X-ray result itself, the fact of illness of the petitioner had been amply and competently proved as pulmonary tuberculosis.

We agree with the petitioner that respondent Commission failed to apply and enforce the legal pre-sumption of compensability to which claimant under the obtaining circumstances is entitled. It has always been a cardinal rule that once the illness, subject of the compensation claim, is shown to have supervened in the course of employment, there arises in favor of claimant the rebuttable presumption that the said illness either arose out of or at least was aggravated by the nature of his employment, and that consequently, the burden to show by substantial evidence the contrary lies with the employer.[6]

Finally, respondent failed to dispute the fact that petitioner is still suffering from the same tuberculosis contracted during the course of employment up to the present time in spite of continuous medication. Application of Section 13 of the Act pertaining to medical benefits is, therefore, warranted.

IN VIEW WHEREOF, the Award of the Hearing Officer is hereby reinstated ordering the respondent Company:

- (A) To pay petitioner the sum of FIVE THOUSAND TWO HUNDRED FORTY-FIVE and 10/100 (P5,245.10) PESOS as disability compensation benefits under Sections 14 and 18 of the Act;
- (B) To pay or reimburse to said petitioner medical and hospital expenses, services, appliances and supplies as the nature of his disability and the process of his recovery may require for the promotion of his early restoration to maximum level of physical capacity, pursuant to Section 13 of the Act;
- (C) To pay petitioner's counsel the amount of FIVE HUNDRED TWENTY FOUR and 50/100 (P524.50) PESOS as attorney's fee which is equivalent to 10% of the foregoing award; and
- (D) To pay SIXTY-THREE (P63.00) PESOS as administrative fee pursuant to Section 55 of the Act.

SO ORDERED.

Teehankee, (Chairman), Muñoz Palma, and Fernandez, JJ., concur.

Makasiar, J., concurs in a separate opinion.

[1] Treated as special civil action in the resolution of May 3, 1976.

[2] *Seven-Up Bottling Co. v. Vda. de Tero*, L-31995, Feb. 12, 1973, 49 SCRA 378; *Development Bank of the Philippines v. WCC*, L-30428, Feb. 7, 1973, 49 SCRA 365; *Philippine Graphic Arts, Inc. v. Mariano*, L-30979, Oct. 26, 1973, 53 SCRA 409; *Abong v. WCC*, L-32347-53, Dec. 26, 1973, 54 SCRA 379; *Insular Lumber Co. v. WCC*, L-25756, January 24, 1975, 62 SCRA 105; *Regal Auto Works, Inc. v. WCC*, L-29455, September 30, 1975, 67 SCRA 207; *Simon v. Republic (Supreme Court)*, L-42510, June 30, 1976, 71 SCRA 643; *Security Services Unlimited, Inc. v. WCC*, L-40739, January 30, 1976, 73 SCRA 84; *Reynaldo v. Republic*, L-43108, June 30, 1976, 71 SCRA 650; *Pros v. WCC*, L-43348, Sept. 29, 1976, 73 SCRA 92; *Camarillo v. WCC*, L-42831, October 31, 1976, 73 SCRA 497; *Talip v. WCC*, L-42574, May 31, 1976, 71 SCRA 218; *Arzadon v. WCC*, L-42404, December 28, 1976, 74 SCRA 238; *Vallo v. WCC*, L-41816, October 29, 1976, 73 SCRA 623; *Vda. de Leorna v. WCC*, L-42543, September 30, 1976, 73 SCRA 228; *Despe v. WCC*, L-42828, February 28, 1977, 75 SCRA 350; *Bihag v. WCC*, L-43162, February 28, 1977, 75 SCRA 357; *Vda. de Galang v. WCC*, L-42531, March 30, 1977, 76 SCRA 153, etc.

[3] L-19957, September 29, 1964, 12 SCRA 55.

[4] *Caling v. WCC*, L-43209, May 31, 1977, 77 SCRA 309.

[5] *Vallo*, fn 2, supra; *National Development Co. v. WCC*, L-21724, April 27, 1967, 19 SCRA 864; reiterated in *Caluza v. WCC*, L-41961, July 21, 1978.

[6] *Paraiso v. Herminia Castello-Sotto & Eugenio I. Sagmit, et al.*, L-42896, Sept. 30, 1978; *Ballestamon v. WCC, et al.*, L-43083, Sept. 30, 1978; *Olina v. WCC, et al.*, L-43044, Aug. 31, 1978; *Cañonero v. WCC, et al.*, L-43880, Feb. 28, 1978; *Lorenzo v. WCC, et al.*, L-42631, Jan. 31, 1978; *Guevarra v. Republic*, 77 SCRA 292; *Caling v. WCC, et al.*, 77 SCRA 309; *Evangelista v. WCC, et al.*, 77 SCRA 497; *Romero v. WCC, et al.*, 77 SCRA 482; *Vda. de Flores v. WCC*, 78 SCRA 17; *Espino v. WCC, et al.*, 78 SCRA 189; *Dimaano v. WCC, et al.*, 78 SCRA 506; *Bautista v. WCC, et al.*, 80 SCRA 313; *Monsale v. WCC, et al.*, 80 SCRA 448; *De Vera v. WCC, et al.*, 80 SCRA 456; *Pillsbury Mindanao Flour Milling Co., Inc., et al. v. WCC*, 81 SCRA 306.

SEPARATE CONCURRING OPINION

MAKASIAR, J.:

I concur with the additional opinion that the respondent employer should likewise be directed to continuously provide the claimant with such medical, surgical and hospital services as well as appliances and supplies as the nature of his disability and the progress of his recovery may require and which will promote his early restoration to the maximum level of his physical capacity. It is my consistent view that the provisions of Section 13 of the Workmen's Compensation Act, as amended, and Article 185 of the New Labor Code confer such right on the disabled employee, whether his disability is temporary or permanent. This is in compliance with the social justice guarantee of both the 1935 and 1973 Constitutions and in obedience to the directive of Article 4 of the New Labor Code that "all doubts in the implementation and interpretation of the provisions of this Code, including its

implementing rules and regulations, shall be resolved in favor of labor", which is a re-statement of existing jurisprudence as well as Article 1702 of the New Civil Code. To limit such right to a temporarily disabled employee would inflict gross injustice on those permanently disabled, who still need to be relieved from the pain, trauma, social ostracism or humiliation generated by such permanent disability.

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