

PRIMITIVO C. COLLARGA, PETITIONER, VS. EMPLOYEES COMPENSATION COMMISSION AND SOCIAL SECURITY SYSTEM, RESPONDENTS.

Ponente: DIMARANAN-VIDAL, J.

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DIMARANAN-VIDAL, J.:

In this Petition for Review under Rule 43 of the Revised Rules of Court, Petitioner PRIMITIVO C. COLLARGA (hereinafter Petitioner) is seeking the reversal of the Decision[1] dated 26 March 2003 of the Employees Compensation Commission (ECC) in ECC Case No. SM-174354-802 which affirmed the decision[2] of the Social Security System (SSS) denying Petitioner's claim for the compensation benefits under P.D. 626.

THE FACTS

As synthesized by the ECC:

The appellant, Primitivo Collarga (SSS No. 03-3217975-1), was employed by Solid Cement Corp., Sitio Quarry, Tagbac, Antipolo City as a Crusher Operator from December 4, 1987 to February 28, 1998. As a Crusher Operator, the duties he performed were:

- Operates and tends crusher and its auxiliary equipment for both limestone and silica lines;
- Monitors operation gauges and metering devices and ensures that the standard operating parameters are maintained;
- Prepares and submits to immediate superior daily production logsheet and other pertinent documents relating to crusher operation;
- Counterchecks and co-approves limestone delivery receipts;
- Visually inspects operation for abnormalities and/or equipment defects;
- Takes corrective action and/or informs Supervisors of abnormalities noted;
- Initiates or assists in trouble shooting mechanical problems, gives suggestions on equipment modifications or improvements on existing operating procedures;
- Prepares and submits schedules of activities to be done during scheduled preventive maintenance;
- Performs minor repairs and maintenance work such as tightening or adjusting of nuts, bolts and screws;
- Maintains cleanliness in immediate work area;
- Accounts for tools assigned to him;
- Performs other related tasks which may be assigned by superior from time to time; and
- Coordinates with quarry contractor to ensure continuous and normal delivery of materials from quarry.

During the course of his employment, the appellant developed Pulmonary Tuberculosis (PTB), minimal in

1995. however, chest x-ray results dated August 9, 1996 and September 1, 1997 showed “essentially normal chest”, respectively. He availed of the early retirement program of the company on February 28, 1998 at the age of forty-two (42). However, his service record does not indicate that he stopped working by reason of disability.

It appears that on July 22, 1999 and August 8, 2000, appellant had a chest x-ray examination which showed PTB minimal and PTB, moderately advanced respectively. On account of his PTB, he was granted SSS (under SSS law) Permanent Partial Disability (PPD) benefits for twenty-three months that commenced on September 18, 2000.

Believing that his ailment was service-connected, appellant herein filed a claim for compensation benefits under P.D. 626, as amended in 2002. The System denied his claim reasoning that: “there is no longer an employee-employer relationship on July 22, 1999 and at the time he qualified for SSS PPD benefits on September 18, 2000; member's PTB in 1995 while still employed cannot also be considered due to late filing, claim for EC benefits was filed only in 2002 which is already beyond the three year prescriptive period pursuant to Art. 201 of P.D. 626, as amended”[3]

On 26 March 2003, the ECC rendered the assailed decision, the decretal portion of which reads:

WHEREFORE, the appealed decision is DENIED and the claim is DISMISSED for lack of merit.[4]

Evidently, the ECC denied the petition on the ground that 1) no employer-employee relationship existed between the Petitioner and his former employer, Solid Cement Corporation, at the time of the filing of the claim for compensation benefit under P.D. 626; 2) the three-year period for filing the claim has already prescribed.

Aggrieved, the Petitioner comes now before Us raising the following issues:

I

WHETHER OR NOT PETITIONER'S AILMENT OF PTB AFTER HIS RETIREMENT COULD STILL BE ATTRIBUTED TO HIS EMPLOYMENT.

II

WHETHER OR NOT PETITIONER'S CLAIM FOR EMPLOYEES' COMPENSATION BENEFITS WAS FILED BEYOND THE THREE (3) YEAR PRESCRIPTIVE PERIOD[5]

OUR RULING

The Petition is bereft of merit.

For a compensation claim for Pulmonary Tuberculosis, a disease listed as an occupational disease to prosper, the disease should be “arising out of” and contracted “in the course of employment.” The Amended Rules on Employees' Compensation promulgated on 21 July 1987 provides:

Section. 1. Grounds. - (a) For the injury and the resulting disability or death to be compensable, the injury must be the result of accident arising out of and in the course of the employment. (ECC Resolution No. 2799, July 25, 1984). (underscoring provided)

The phrase “arising out of” refers to the origin or cause of an injury or accident.[6] An injury is said to arise “in the course of employment” when it takes place within the period of the employment.[7]

The record shows that the Petitioner tested positive for PTB minimal on 22 July 1999[8] and PTB, moderately advanced on 8 August 2000, after he voluntarily availed of the Early Retirement Program of his company.[9] Evidently, the disease was not a consequence of his employment. Besides, there is no showing that the Petitioner contracted PTB before his retirement. The record does not show that he retired because of his disability.

The case of *Diopenes vs. GSIS*[10] relied upon by the Petitioner does not stand in parallel line with the case at bar. In that case, the Supreme Court noted that there was no evidence that the petitioner's disability occurred two years after the petitioner's retirement, and even if the petitioner did suffer a second attack after his retirement, this supervening event would not defeat the claim for the reason that the second stroke was only the consequence of the first stroke which he suffered in 1978, when he was still in the service. In the instant case, there is no showing that the second infection of PTB in 1999 was connected with or was the consequence of the first PTB incidence in 1995. It is uncontroverted that the chest x-ray results of the Petitioner in 9 August 1996 and 1 September 1997 showed that he no longer had PTB.[11]

The nature of PTB was ratiocinated by the Supreme Court in *Lorenzo vs. WCC and Philippine Glass Manufacturing Co., Inc.*,[12] in this wise:

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 & WCC*, 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. (emphasis provided)

Evidently, although 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,[13] a person needs to be exposed to infectious bacteria in order to contract PTB. Thus, the allegation of one *CESAR F. SALIGUMBA* in his letter[14] to the SSS that the Petitioner's PTB in 1999 was caused by his constant inhalation of silica at the cement factory while he was still working thereat holds no water.[15] Besides, there is also the glaring length of time that has elapsed between his retirement on 28 February 1998 and the occurrence of PTB on 22 July 1999.

It cannot be gainsaid that this Court sympathizes with the Petitioner's plight. However, although the Petitioner is deserving of Our compassion, the parameters set by law dictates that he is undeserving of compensation. *Dura lex sed lex*. This Court is likewise duty-bound to protect the State Insurance Fund from spurious claims, as mandated by the Supreme Court in *Bunao vs. SSS and Ocean Tanker Corp.*, to wit:

Even as this Court has ruled that the sympathy of the law on social security is toward its beneficiaries, it is likewise important to note that such sympathy must be balanced by the equally vital interest of denying undeserving claims for compensation. Payment to claimants not intended by law to be compensated endangers the stability and liquidity of the State Insurance Fund. Compassion for the victims of diseases not covered by law ignores the need to show a greater concern for the trust fund to which the tens of millions of workers and their families look to for compensation whenever covered accidents, diseases and deaths occur. In this case, this Court has no other recourse but to apply the clear provisions of the law.

Finding that the Petitioner is not entitled to the claim of compensation benefits under P.D. 626, as amended, We need not belabor the second issue of prescription.

WHEREFORE, premises considered, the instant Petition is DISMISSED.

SO ORDERED.

De Los Santos, (Chairman) and Lampas Peralta, JJ., concur.

[1] Rollo, p. 33-36

[2] Rollo, p. 28

[3] Rollo, pp. 34-35

[4] Rollo, p. 36

[5] Rollo, p. 11

[6] Azucena, The Labor Code with Comments and Cases, p. 363, citing Iloilo Dock and Engineering Co. vs. WCC, et al., L-26341, Nov. 27, 1968.

[7] Ibid.

[8] Rollo, p. 25

[9] Rollo, p. 24

[10] G.R. No. 96844. January 23, 1992.

[11] Rollo, p. 59

[12] G.R. No. L-42631. January 31, 1978.

[13] Ibid.

[14] Rollo, p. 29

[15] Rollo, p. 10

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