

**NENITA ALMAIZ, PETITIONER, VS. WORKMEN'S
COMPENSATION COMMISSION AND PROVINCE OF NEGROS
OCCIDENTAL (CORAZON LOCSIN MONTELIBANO MEMORIAL
HOSPITAL), RESPONDENTS.**

G.R. No. L-42794. August 31, 1978

Ponente: GUERRERO, J.

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GUERRERO, J.:

Petition for review[1] of the decision of the Workmen's Compensation Commission in W.C. Case No. 403 which reversed the award of disability benefits granted by Acting Referee Rodolfo L. Legaspi of Sub-Regional Office No. VII, Bacolod City, in favor of petitioner Nenita Almaiz.

The issue in this appeal is whether or not the illness diagnosed as Myoma Uteri which necessitated a surgical operation known as panhysterectomy, resulting in the removal of the uterus, both ovaries and tubes and ultimately depriving the patient of her reproductive system, is a permanent total disability compensable under Act. No. 3428, as amended.

Petitioner is an employee of the Corazon Locsin Montelibano Memorial Hospital, Negros Occidental, starting from September 1, 1960 when she was designated as Junior Resident Physician. She was subsequently promoted as Senior Resident Physician and designated as Head of the Obstetrics and Gynecology Department of respondent hospital with a salary of P684.00 a month. As head of the department, she attended to at least 50 to 60 patients everyday. Her office was situated on the second floor of the hospital and her daily routine required climbing several flights of the stairways. On June 12, 1970, petitioner suffered excruciating stomach pains while on hospital duty. On that same day she went on sick leave. She was attended by Dr. Esther Alunan, who in her Physician's Report (Exhibit A), diagnosed petitioner's illness as Myoma Uteri, "contracted while working with above said hospital" (Item No. 8), "as a result of the nature of such employment " (Items Nos. 9 and 10), or "due to pressure of work" (Item No. 11). On July 19, 1970, petitioner was admitted in respondent hospital for a major operation known as panhysterectomy resulting in the removal of her reproductive system. Her sick leave was extended up to October 1970, the entire period of which was charged to her sick leave credit. Petitioner returned to the service on October 20, 1970.

On the basis of the foregoing facts, petitioner filed a claim for compensation and the Acting Referee rendered a decision awarding compensation benefits, to wit:

"WHEREFORE, decision is hereby rendered in favor of claimant ordering respondent to do the following:

1. To pay the claimant, compensation in the amount of SIX THOUSAND PESOS (P6,000.00) the maximum amount allowed by law, pursuant to Section 18 of the Act;

2. To pay (to) claimant's counsel, Atty. Constantino Legaspi, attorney's fee, in the amount of THREE HUNDRED PESOS (P300.00), pursuant to Section 31 of the Act; and

3. To pay to the Workmen's Compensation Fund care of this Office, decision fee, in the amount of P61.00, pursuant to Section 55 of the Act.

SO ORDERED.

Bacolod City, Philippines, September 5, 1975."

Respondent Province of Negros Occidental sought a review of the award with the Commission en banc on the ground that the referee's decision was contrary to the actual facts and not in accordance with Act 3428, as amended.

In setting aside the award, the Commission ruled that petitioner has returned to the service after recovering from her illness; that petitioner was still in the active service, having been on sick leave of absence with pay from June 19, 1970 up to October 19, 1970 prior to her actual return to the service on October 20, 1970; and such being the case, for as long as the employee is in the active service and continues to receive salary, she is not entitled to the benefits under the Workmen's Compensation Act. The respondent Commission reasoned that under the law, for as long as the employee is in the active service of the employer, and continues to receive salary, she is not entitled to the benefits under the Workmen's Compensation Act as amended, and further, it is an essential requirement under the Act, that in order to impose liability for the payment of workmen's compensation, it must be shown that the illness must be reasonably connected with the employment; and that in the instant case, there is no substantial justification finding claimant's illness diagnosed as Myoma Uteri as being connected with her employment as Senior Resident Physician of the respondent hospital.

Firstly, We must take notice of respondent's failure to properly controvert petitioner's right to compensation. According to the records, petitioner was afflicted with illness on July 19, 1970. She filed a notice of injury with the Regional Office on July 5, 1973 (Records, p. 28) which was later amended on October 20, 1973 (Records, p. 62). Respondent thru the Chief of Hospital, Dr. Teodoro P. Motus, controverted the "claim to compensation" on July 23, 1973 (Records, p. 60). Evidently, seventeen (17) days after the filing of the notice of injury by petitioner, the notice of controversion was untimely filed. Section 45 of the Workmen's Compensation Act requires that in case the employer decides to controvert the right to compensation, he shall either on or before the fourteenth day of disability or within ten days after he has knowledge of the alleged accident, file a notice with the Commission on the prescribed form that compensation is not being paid.

Consequently, respondent's failure to controvert the claim on time results in the waiver of all non-jurisdictional defenses;^[2] it also renders the compensability of the claim, its reasonableness and validity beyond challenge.^[3] It is fatal to any defense that an employer could interpose. Any assertion to the contrary is doomed to futility.

The Commission, therefore, gravely erred in recognizing the defense that there is no substantial justification to support a connection between petitioner's illness and her employment as a Senior Resident Physician.

Moreover, the presumption of compensability under Section 44 of the Workmen's Compensation Act has not been overcome, there being no substantial evidence presented by respondent employer to the contrary. A bare denial of a causal link will not suffice. There must be positive proof to show that the illness was caused primarily by factors

extraneous to the employment, such as conditions inherent in petitioner's physical constitution and that aggravation thereof was due to circumstances of her personal life and habits, including negligence or fault.[4] In the instant case, petitioner's daily routine as a resident physician, particularly in conducting her regular rounds to some 50 to 60 patients a day in the hospital and her frequent use of the stairways, involve considerable physical exertion and movement that aggravated her illness.[5]

That petitioner's illness supervened in the course of employment is beyond dispute, hence the establishment of a causal link between the nature of employment and the illness is not anymore necessary, for the presumption of causation or aggravation applies. In other words, that the illness arose out of the employment, or was aggravated by or the result of the nature of said employment. The function of a presumption is precisely to dispense with the need for proof, and the burden to overthrow the presumption and to disconnect, by substantial evidence, the injury or sickness from employment, is laid down by the statute at the door of the employer.[6]

The injury for which petitioner seeks compensation is the loss or removal of both her ovaries, uterus and fallopian tubes. These are certainly very vital organs of the human body of a female person. While Sec. 18 of the Workmen's Compensation Act provides and awards compensation benefits for amputation of the arm and the leg as well as injuries producing serious disfigurement of the face or head in the amount which shall not exceed Six Thousand Pesos, there is no specific grant of compensation for the herein non-scheduled disability of loss of the ovaries, uterus and fallopian tubes. However, under paragraph 4 of the same section 18, compensation may be awarded "(i)n all other cases of this kind of disability not mentioned in other sections of this Act". Under the amendments introduced by Republic Act 772, Sec. 12 in 1952 and by Republic Act No. 4119 in 1964, which included "non-scheduled disability" by way of identifying the "all other cases of disability" mentioned in the fourth paragraph of Sec. 18, a Schedule of Compensation for non-scheduled disabilities such as loss of spleen, kidneys, lung, lifting power, facial disfigurement, and others was submitted by the Advisory Committee of Disability Evaluation appointed by the then Secretary of Labor and later approved by the Secretary on September 16, 1939. The first revision made of this Schedule was recommended and approved in 1953 by the Secretary of Labor and the same has been adopted as a supplementary Schedule of Compensation of the Workmen's Compensation Commission. There has been a second and third revision of the Schedule and the latest revision in 1964 has included compensation for injuries and loss to the male genitalia and the female generative organs.

Considering that the Workmen's Compensation Act is a social legislation intended to ameliorate the plight of the working class, men and women alike, and thus achieve the social justice program of the government as ordained by the fundamental law of the land, and that this labor enactment must be construed and interpreted liberally in favor of the worker whether in or outside of the government, We will not hesitate to interpret Sec. 18 of the Workmen's Compensation Act as to include the injury or loss suffered by the herein petitioner under its coverage within the term "in all other cases of this kind of disability not mentioned in other sections of this Act," and therefore, allow the grant of compensation to the claimant not exceeding six thousand pesos.

We cannot but express the considered view of this Court that the fair sex is as much entitled to this grant of benefits not alone by reason of the frailty and fragility of their bodies and faculties but also, if not more, because in the fullness of their endowments and physical qualities which must be protected and preserved in fact and in law, they hold the survival of mankind and the continuity of all human endeavors and institutions.

We overrule the contention of respondent that this benefit granted her should no longer be paid since petitioner has already been paid her sick leave benefits. It is elementary that the consideration for sick leave pay is services deemed to have been rendered and chargeable to the employee's earned and pre-existing leave credit. This benefit is entirely different from the financial relief due the disabled employee under the Workmen's Compensation Act.

WHEREFORE, the decision appealed from is hereby reversed and the Award made by the Acting Referee dated September 5, 1975 is reinstated, with modification. The respondent Province of Negros Occidental (Corazon Locsin Montelibano Memorial Hospital) is ordered:

- To pay the petitioner compensation in the amount of SIX THOUSAND PESOS (P6,000.00), the maximum amount allowed by law, pursuant to Section 18 of the Act;
- To pay to claimant's counsel, Atty. Constantino Legaspi, attorney's fees, in the amount of SIX HUNDRED PESOS (P600.00), pursuant to Section 31 of the Act; and
- To pay the amount of SIXTY-ONE PESOS (P61.00) as administrative fee, pursuant to Section 55 of the Act.

SO ORDERED.

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

[1] Treated as Special Civil Action in the resolution of July 23, 1976.

[2] Vda. de Galang v. Workmen's Compensation Commission, G.R. No. L-42531, March 30, 1977, 76 SCRA 153.

[3] La Mallorca v. Zuñiga and WCC, L-29315, Nov. 28, 1969, 30 SCRA 613.

[4] See: Operators Incorporated v. Cacatian, G.R. No. L-26178, October 31, 1969, 30 SCRA 218.

[5] Mercado v. Workmen's Compensation Commission, G.R. No. L-31591, June 30, 1971, 39 SCRA 669.

[6] Justiniano vs. WCC, L-22774, Nov. 21, 1966; Industrial Textile Manufacturing Co. vs. Florzo, L-21969, Aug. 31, 1966.

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