

VICTORIA D. DESPE, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND REPUBLIC OF THE PHILIPPINES (BUREAU OF PUBLIC SCHOOLS), RESPONDENTS.

G.R. No. L-42828. February 28, 1977

Ponente: MARTIN, J.

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MARTIN, J.:

This is a petition for review^[1] of the decision of the Workmen's Compensation Commission which reversed the decision of the Acting Referee of Regional Office No. VIII awarding compensation benefits to petitioner Victoria D. Despe under the provision of the Workmen's Compensation Act (Act 3428), as amended.

Petitioner was employed as a school teacher by the respondent Bureau of Public Schools on June 30, 1930. Sometime in 1967, she started complaining about the swelling and pain on her wrist joints and of sinusitis. Her ailments diagnosed by her attending physician, Dra. Mila B. Basco, as "Frontal Sinusitis and Rheumatoid Arthritis", slowly progressed in the subsequent years until on July 22, 1972, she had to be confined at the Cebu Doctors Hospital for treatment due to severe attack from said illness. After her confinement in the hospital she went back to work again, but because of the off and on recurrence of her illness, she was forced to apply for optional retirement at the age of 61 on September 30, 1973.

Two weeks thereafter or on October 16, 1973, she filed a claim for compensation with the Workmen's Compensation Unit, No. 8, Department of Labor, Cebu City, which claim respondent Republic did not controvert. In support of her claim, petitioner submitted a Physician's Report signed by Dr. Rudolfo Tabotabo, certifying to her illness as "Rheumatoid Arthritis, left and right wrist joints; Urinary Tract Infection; and Sinusitis Maxillary, bilateral; all of which are recurrent". It was the same physician who advised her to retire from her job as he found her suffering from 60% loss of use of both hands. In June 1974, petitioner was examined by Dr. Francisco Dayak, Compensation Rating Medical Officer. After evaluating her supposed disability, she came up with the finding that petitioner is not suffering from any. Accordingly, the Chief of the Workmen's Compensation Unit notified petitioner on June 28, 1974 of the denial of her claim.

On August 27, 1974, petitioner filed a motion to set aside the tentative adjudication by the Chief of the Workmen's Compensation Unit denying her claim. The motion was granted and the case was set for hearing.

On February 11, 1975, the Regional Office rendered a decision awarding petitioner the sum of P366.95 as medical benefits and P6,000.00 as disability compensation. Respondent Republic was also required to pay attorney's fees in the amount of P300.00 and administrative fees of P61.00. A copy of the decision was received by respondent Republic on March 3, 1975 to which it filed a motion for reconsideration on March 13, 1975 on the ground that the decision is not supported by substantial evidence. Accordingly, the records of the case were automatically elevated to the Workmen's Compensation Commission in accordance with Sec. 4, Rule 15^[2] of the Rules of the Workmen's Compensation Commission. After review of the records, the respondent Commission denied the payment of disability benefits to petitioner solely on the basis of the service record of the petitioner and the

finding of the Compensation Rating Medical Officer, Dr. Francisco Dayak. Hence this petition for review.

There is no question that the respondent Commission was justified under Sec. 49, par. 5[3] of Act 3428 and by Sec. 1, Rule 10 of the Rules of the Workmen's Compensation Commission to entertain the appeal of respondent Bureau of Public Schools because the same was filed in due time. But, respondent Commission should have dismissed the appeal of respondent Republic pursuant to the provision of Sec. 2, Rule 15 of the Rules of the Workmen's Compensation Commission because it is clear from the record that respondent Republic has not controverted the claim of petitioner. Well settled is the doctrine that failure to controvert the right of claimant to compensation benefits within the statutory period is a renunciation of the right to challenge the claim and a waiver of all non-jurisdictional defenses and there is nothing that the employer can legally prove in relation thereto.[4] Thus with its failure to controvert the claim of the petitioner within the statutory period, the respondent Republic cannot even raise the defense that the illness of the petitioner is not compensable because it is not work connected or aggravated. But even granting that the claim was controverted, still there is no legal basis for the respondent Commission to deny the claim of petitioner solely on the basis of her service record. Claim is made that the service record of petitioner shows that it has not filed any application for sick leave before she retired on September 30, 1973 and that her only sick leave was from November 3, to December 31, 1966. The mere fact that no sick leaves appeared on her record immediately before her retirement does not necessarily prove that petitioner suffered from no disability at the time of her retirement. The possibility is not to be discounted that at those times that petitioner was absent due to her illness, her sickleaves for some reason or another were not so reflected on her record. The fact, however, that her optional retirement at the age of 61 was approved by the Government Service Insurance System is a clear indication that she has met the conditions regarding applications for optional retirement under Commonwealth Act No. 186, as amended by Rep. Acts No. 1616 and No. 4968 payable by the employer pursuant to Memorandum Circular No. 133 of the Office of the President: Said Circular among others provides that x x x "all such applications shall not be recommended for approval unless funds are available in the bureau or office concerned for the payment of the applicant's retirement gratuity over and above the fund requirements of its programmed projects and activities and provided any of the following circumstances or conditions is present: (1)xxxxx; or (2) The employee-applicant is below 65 years of age, is physically incapacitated to render further efficient service."

Besides, it cannot be denied that the illnesses which constrained petitioner to apply for optional retirement occurred during the course of her employment as a public school teacher. As such, there is the presumption mandated by Section 44 of the Workmen's Compensation Act[5] that the employee's illness either arose out of, or at least was aggravated by said 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.[6] In the case before Us, respondent has not only failed to controvert the claim of petitioner within the statutory period but also failed to offer sufficient proof that the illness of petitioner was not work connected or work aggravated.

IN VIEW OF THE FOREGOING, the decision of the Workmen's Compensation Commission is hereby reversed and set aside and a new one rendered ordering respondent Republic (Bureau of Public Schools) -

1. To pay petitioner the sum of P6,000.00 as disability compensation benefits;
2. To reimburse petitioner of his medical expenses in the amount of P366.95;
3. To pay petitioner's counsel the amount of P600.00 as attorney's fees; and
4. To pay the amount of P61.00 as administrative fees.

Without pronouncement as to costs.

SO ORDERED.

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

[1] Treated as a special civil action by Court Resolution of September 17, 1976.

[2] Sec. 4. Duties of Referee. - Upon receipt of a petition for review, the referee having control of the case shall immediately act upon the same. Should he decide to re-open the case and order a new trial, his decision is deemed vacated so that after the re-hearing or reception of new or additional evidence, he shall render a new decision or order. He may merely amend or modify his decision or order. The new amended or modified decision or order, shall become final un-less a petition for review is filed with the referee within fifteen (15) days from receipt of a copy thereof by the aggrieved party.

In case the referee does not render a new decision or amend or modify the decision or order sought to be reviewed, he shall immediately issue an order denying the petition for review or motion for reconsideration and elevating the entire case to the Commission for review.

[3] Sec. 49. Procedure. *** Any party in interest who is dissatisfied with the order entered by the referee may petition to review the same and the referee may re?open said case, or may amend or modify said order, and such amended or modified order shall be a final award unless objection be made thereto by petition for review. In case said referee does not amend or modify said order, he shall refer the entire case to the Commissioner, who shall thereon review the entire record in said case, and, in his discretion, may take or order the taking of additional testimony, and shall make his findings of facts and enter his award, thereon. The award of the Commissioner shall be final unless a petition to review shall be filed by an interested party. Every petition for review shall be in writing and shall specify in detail the particular errors and objections. Such petition must be filed within fifteen days after the entry of any referee's order or award of the Commissioner unless fur-ther time is granted by the referee or the Commissioner with-in said fifteen days. All parties in interest shall be given due notice of the entry of any referee's order or any award of the Commissioner, and said period of fifteen days shall begin to run only after such notice and the mailing of a copy of said order or award addressed to the last known address of any party in interest shall be sufficient notice. * * *

[4] Dinaro vs. Workmen's Compensation Commission, 70 SCRA 292; Talip vs. Workmen's Compensation Commission, 71 SCRA, 218; Reynaldo vs. Republic, 71 SCRA, 650.

[5] 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 provision of this Act;
2. That sufficient notice thereof was given;
3. That the injury was not occasioned by the wilful 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. (As added by section 24 of Republic Act No. 772.)

[6] Talip vs. Workmen's Compensation Commission, 71 SCRA, 218.

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