

**LEONIDA ROMERO, PETITIONER, VS. WORKMEN'S
COMPENSATION COMMISSION AND REPUBLIC OF THE PHILIPPINES
(BUREAU OF PUBLIC SCHOOLS), RESPONDENT.**

G.R. No. L-42617. June 30, 1977

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petition for review on certiorari of the January 9, 1976 decision of the Workmen's Compensation Commission affirming the September 29, 1975 Order of its Hearing Officer, dismissing petitioner's compensation claim.

Petitioner Romero was employed by the respondent' Bureau of Public Schools as an elementary classroom teacher from 1943 until her retirement on January 9, 1974 at the age of fifty-two (52) years by reason of her disability due to hypertension and PTB.

On March 11, 1974, she filed her claim for compensation with the Department of Labor, Regional Office IV, Manila, accomplishing for the purpose WCC Form No. I. Her compensation claim was accompanied by (a) Physician's Report [WCC Form No. 4] prepared by Dr. Jose T. Romero, the Municipal Health Officer of Aliaga, Nueva Ecija, who attended to petitioner during her attack of hypertension on March 8, 1971 while in the performance of her duties in school at 10:30 A.M.; (b) letter of said Dr. Romero dated March 30, 1975 addressed to the Director of Public Schools describing therein the claimant's duties as a school teacher which gave rise to her hypertension; (c) written Report of the Evaluation Committee of the District, composed of Dr. Felipe Capalad, Division Health Supervisor, as chairman, Mr. Rufino Campos, School Principal II and Acting District Supervisor and Dr. Jose T. Romero, Municipal Health Officer of Aliaga, Nueva Ecija, as members; (d) Service Record of petitioner; and (e) Employer's Report of Accident or Sickness [WCC Form No. 3] stating among others that respondent employer was not controverting the claim and certifying that petitioner suffered an attack of hypertension while teaching her pupils at school (pp. 40-41, rec.).

Without conducting any hearing, the hearing officer, Pedro Pelaez, dismissed on September 29, 1975 the claim for lack of merit (p. 47, rec.).

On appeal to the Commission en banc, the order of dismissal was affirmed. According to the Commission, the sole determinative issue "x x is whether the claimant during her employment, had contracted disabling compensable ailment, necessitating retirement." It ruled that:

"We have always held in previous cases that such disease as pulmonary tuberculosis cannot be established by a mere physician's report. There should be an x-ray reading result in addition to this physician's report. And so, we shall conclude that the claimant was not suffering from any lung ailment on or before she retired on January 9, 1974.

"The claimant might have experienced temporary rise of blood pressure during her employment, for which reason she went on sick leave. But that is not the issue here. Claimant's cause of action is her alleged retirement on January 9, 1974, supposedly due to her hypertension. Her own service record will show that the

claimant, immediately before and at the time of her retirement, was not actually and physically disabled. In fact, she rendered service up to her last day of employment, so her service record says. It is certain, therefore, that the claimant did not retire on grounds of disability; she was not suffering any at the time of her retirement. Consequently, she should not be entitled to, and the respondent not liable for, disability compensation. There is nothing to be compensated, in the first place. She retired under RA 1616 because she was qualified to do that.

The claimant capitalizes so much on the recommendation of the local committee of the Bureau of Public Schools and the so-called non-controversion of the respondent. The Commission is not bound by such recommendation.

We believe that this case does not come within the compensatory ambit of the Act. We have no valid reason to disturb the findings and conclusion of the Referee below" (Commission en banc decision, pp. 26-27, rec.).

Petitioner duly filed a motion for reconsideration, but respondent WCC refused to change its stand.

Hence, this petition.

Required to comment on the petition, the Solicitor General filed one on May 10, 1976 (pp. 64-72, rec.). On June 4, 1976, the Court resolved to treat the petition as a special civil action and further required the parties to file their respective memoranda (p. 73, rec.).

On July 23, 1976, the Court upon motion of the Solicitor General granted him leave to adopt his May 7, 1976 comment as his memorandum. With the subsequent submission by petitioner of her rejoinder (pp. 82-90, rec.) which she filed in lieu of memorandum, the Court resolved on August 18, 1976 to consider the case submitted for decision.

The decision of the respondent Commission dismissing the compensation claim of petitioner must be reversed and set aside.

1. Patent from the records are the respondent employer's statement of non-controversion and its express admission of the compensability of the claim of petitioner. Thus, in answer to item number 2 of the Employer's Report (p. 40, rec.), respondent employer stated that it was not controverting the employee's right to compensation and the report dated June 7, 1971 of the District Evaluation Committee which was favorably indorsed on June 8, 1971 to the Director of Public Schools, Manila expressly stated that on the bases of its investigation and the physician's report, the claimant, herein petitioner, was found unfit to continue rendering service as a school teacher and thereby recommended approval of her compensation claim (pp. 43-44, rec.). Another report of the same Committee dated January 19, 1974 reiterated the same findings and recommendation (p. 38, rec.).

Since there was no controversion of the claim and there was no showing or claim of fraud or collusion in the non-controversion of the claim, an outright award in favor of the claimant, herein petitioner, should have been made by the Commission. For it is now well settled that failure of the employer to controvert a claim for compensation results in the loss of non-jurisdictional defenses and constitutes an ultimate admission of compensability (*Vallo vs. Workmen's Compensation Commission, et al.*, L-41816, October 29, 1976, citing numerous cases). The award of compensation to herein claimant becomes more compelling because there was furthermore a recognition by the respondent employer of the compensability of the claimant's illnesses; hence an admission of liability. OUR ruling and observation in the very recent case of *Dinaro vs. Workmen's Compensation Commission* (70 SCRA 292 [1976]) where the employer, as in the present case, not only failed to controvert the claim but also admitted the compensability of the claim, find relevance and application in this present case. Thus:

"What the Commission inexplicably failed to do, particularly in view of the approaching end of the 1975 deadline was to apply the express mandate of Section 45 of the Workmen's Compensation Act x x as it has heretofore done in an unbroken line of countless cases (Cf. Victorias Milling Co. vs. WCC, 101 Phil. 1208 [May 13, 1957]; Magalona vs. WCC, 21 SCRA 1199 [Dec. 11, 1967]) and issue outright an award, since a failure to controvert (and more so, an express admission of the compensability of the claim, as in this case) 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.

"Here, there was an express statement of non-controversion of claim and no showing of any petition under oath for rein-statement of the right to controvert nor any claim of fraud or collusion in the non-controversion of the claim. The outright issuance of an award in favor of petitioner-claimant is therefore in order. x x" (Pp. 295-296).

Consequently, the contention of the Solicitor General that the filing by claimant of her notice of claim for compensation beyond the reglementary period of two months as provided by Section 24 of the Workmen's Compensation Act, as amended, was fatal to the success of her claim, is likewise without merit. Aside from the fact that such defense is barred by the failure to controvert the claim (NDC vs. WCC, 10 SCRA 696, 699 [1964], citing cases), WE have held that said defense is not jurisdictional and that the statutory right to compensation prescribes in ten years (Art. 1144 [2], New Civil Code; Vallo vs. WCC, et al., supra).

2. The ample documentary evidence on record clearly established that the illnesses of petitioner supervened in the course of her employment with respondent employer. For undisputed that petitioner was stricken with hypertension on March 8, 1971, at 10:30 A.M. during working hours and while in the performance of her regular duties as a school teacher. The report of the attending physician showed that she was suffering from hypertension, sclerotic heart, lungs KOCHS - moderate. Hence, there is also in favor of petitioner the presumption that her illnesses arose out of, or were at least aggravated by, the nature of her work and therefore compensable. Consequence of that presumption is the duty of the employer to show by substantial evidence lack of connection between petitioner's illnesses and her employment. In the instant case, not only did respondent failed to discharge that burden, for not even an iota of disconnecting evidence was presented by it, but had likewise admitted the causal connection of said illnesses the petitioner's employment.

Respondents Commission therefore erred in ignoring the aforesaid presumption when it ruled that with respect to petitioner's illness of pulmonary tuberculosis, the same "x x cannot be established by a mere physician's report. There should be an x-ray reading result in addition to this physician's report." At any rate, that conclusion of the respondent Commission is erroneous. WE have already ruled that under Section 49 of the Workmen's Compensation Act, as amended, a medical report of an attending physician may be received as evidence and used as proof of the fact in dispute (Vallo vs. WCC, et al., L-41816, Oct. 29, 1976, citing the cased NDC vs. Raymundo & WCC, L-21724, April 27, 1967, 19 SCRA 861, 864). In the instant case, the report of the attending physician was made part of the record and there was no showing that the same is false or erroneous. Like-wise, We have categorically ruled that an x-ray or some other laboratory report is not an indispensable prerequisite to compensation (Vallo vs. WCC, et al., supra invoking Jacob vs. WCC, et al., 72 SCRA 575, [1976]).

With respect to her hypertension, respondent Commission ruled that the petitioner did not suffer any physical disability for her service record not only showed that she was not actually and physically disabled immediately before and after retirement but also that she rendered service up to her last day of employment. Even if We are to disregard the presumption of compensability and the adverse consequence of non-controversion on respondent employer's defenses, as the respondent Commission gratuitously did, the above findings of the respondent Commission would still be erroneous. To begin with, petitioner's absences (sick leaves) between March 8, 1971, when she suffered from hypertension, and January 9, 1974, the effective date of her retirement, were already

without pay. And the fact that she rendered service up to the last day prior to her retirement is not conclusive as to her non-disability nor is the same sufficient to overcome the finding of the attending physician and the District Evaluation Committee that petitioner was disabled by her illnesses from her work as a school teacher. For it may be that, while she was pronounced medically disabled since March 8, 1971, nevertheless by sheer determination, she was able to continue with her work as a school teacher to earn her salary, as she had already exhausted her sick and vacation leave credits. As discussed by Morabe and Inton in their book, *The Workmen's Compensation Act*, collating foreign jurisprudence on the matter --

"Disability, as a basis for com-pensation, is the combination of partial or total physical incapacity and of inability to work, or inability to work with the same ease and competency as before the injury, or the loss, total or partial of earning power from the injury. (Corpus Juris, Section 535, p. 813).

"Disability is used either in the medical or physical sense, as evidenced by obvious loss of members or by medical testimony that the claimant simply cannot make the necessary muscular movements and exertions; it is also used to mean de facto inability to earn wages, as evidenced by proof that claimant has not in fact earned anything.

"These medical and wage-loss aspects of disability may be more clearly illus-trated as follows: A claimant may be, in a medical sense, utterly shattered and ruined, but may by sheer determina-tion and ingenuity contrive to make a living for himself; conversely, a claim-ant may be able to work, in both his and doctor's opinion, but awareness of his injury may lead employers to refuse him employment.

"The problem of the administrators of the Act is the proper balancing of these medical and wageless factors. An absolute insistence on medical dis-ability in the abstract would produce a denial of compensation in the latter case, although the wage-loss is as real and as directly traceable to the injury as in any other instance. At the other extreme, an insistence on wage-loss as the test would deprive the claimant in the former illustration of an award, thus not only penalizing his laudable efforts to make the best of his mis-fortune but also fostering the absurdity of pronouncing a man non-disabled in spite of the unanimous contrary evidence of medical experts and of common observa-tion. (Larson, p. 3, Vol. III)" [p. 76].

Indeed, her obstinacy and persistence ultimately had to give way to actuality when on January 9, 1974, petitioner, unable to contain or endure the disabling effects of her illnesses any longer, mentally and physically, had to retire at the age of fifty-two (52), thirteen (13) years short of the compulsory retirement age of sixty-five (65), under C.A. 186, as amended by R.A. 1616 and R.A. 4968. Memorandum Circular No. 133, issued on October 19, 1967 by the Office of the Presi-dent, authorizes optional retirement even before reach-ing the compulsory age of retirement only when the employee "x x is physically incapacitated to render sound and efficient service." The fact that petitioner retired under the said law is likewise acknowledged by the respondent Commission when it found out that petitioner "x x retired under RA 1616 because she was qualified to do that." Respondent Commission, of course, was referring to C.A. 186, as amended by R.A. 1616 and R.A. 4968. Yet, it went on to rule that petitioner was not physically disabled at the time of her retirement. With the approval of petitioner's retirement (pp. 89-90, rec.) under C.A. 186, as amended in relation to Memorandum Circular No. 133, the fact of petitioner's disability is thus placed beyond question or doubt.

Finally as a school teacher, petitioner has to commute daily from her house to the school located in the barrio, braving all kinds of weather, has to under-go the strenuous work of teaching school children of tender age and likewise engage in extra-curricular activities like scouting, conducting demonstrations in different barrios and attending conferences (p. 37, rec.). Undoubtedly, these factors brought about her illnesses which sapped her physically and ultimately forced her to retire at the early age of fifty-two (52). In this connection, it must be pointed out that R.A. 4670, otherwise known as the Magna Charta For Public School Teachers directs that --

"Teachers shall be protected against the consequences of employment injury in accordance with existing laws. The effects of the physical and nervous strain on the teacher's health shall be recognized as compensable occupational diseases in accordance with existing laws."

WHEREFORE, THE DECISION DATED SEPTEMBER 29, 1975 OF THE RESPONDENT WORKMEN'S COMPENSATION COMMISSION IS HEREBY SET ASIDE AND RESPONDENT BUREAU OF PUBLIC SCHOOLS IS HEREBY ORDERED

TO PAY

1. THE CLAIMANT (A) THE SUM OF SIX THOUSAND (P6,000.00) PESOS AS DISABILITY BENEFITS AND (B) HER EXPENSES FOR MEDICAL AND HOSPITAL SERVICES SUPPORTED BY PROPER RECEIPTS;
2. CLAIMANT'S COUNSEL THE AMOUNT OF SIX HUNDRED (P600.00) PESOS AS ATTORNEY'S FEES; AND
3. THE WORKMEN'S COMPENSATION COMMISSION THE AMOUNT OF SIXTY-ONE (P61.00) PESOS AS ADMINISTRATIVE FEE.

SO ORDERED.

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

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