

NORBERTO G. SUDARIO, JR., PETITIONER, VS. REPUBLIC OF THE PHILIPINES (BUREAU OF TELECOMMUNICATIONS), RESPONDENT.*G.R. No. L-44088. October 06, 1977*

Ponente: MARTIN, J.

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Petition for review[1] of the decision of the Workmen's Compensation Commission which reversed the award made by Regional Office No. 10, Workmen's Compensation Unit, Zamboanga City, in favor of petitioner.

Petitioner, Norberto G. Sudario, Jr. was employed as Senior Telegraph Operator with a monthly salary of P386.00 by the Bureau of Telecommunications from September 16, 1953 until his retirement on January 1, 1973. His duties consisted of starting the telegraph engine for about four or five times daily in order to provide the power link between the Liloy telegraph station and the nearby stations. He also had to deliver telegrams on foot to the residents of Liloy, Zamboanga del Norte. Most of the time he was at the mercy of the elements. After some years in the service, he started suffering chest pains and difficulty in breathing. When he was transferred to Ipil, Zamboanga del Sur he had himself x-rayed by Dr. Henry Sevilla and was found to be suffering from cardiac enlargement. An x-ray examination made by Dr. Milagros Fernandez confirmed said findings. Due to his ailments, he was constrained to file an application for sick leave from November 11, 1971 to December 12, 1971. After recuperating from his ailment he returned to work but only to perform light jobs. The recurrence of his ailment eventually forced him to apply for retirement on January 1, 1973. Prior to his retirement, however, petitioner filed a claim for compensation with Regional Office No. 10, Workmen's Compensation Unit, Zamboanga City on March 20, 1972. The Regional Office, however, did not act on his application because he failed to submit a physician's report of his illness. On March 26, 1975, petitioner refiled his claim and submitted an electrocardiographic examination performed on him by Dr. Jose Generoso. The Acting Referee of the Regional Office gave due course to the application and set the case for hearing after which he rendered a decision granting compensation benefits to petitioner in the sum of P2,315.56, pursuant to Section 18 of the Workmen's Compensation Act.[2]

Respondent Republic Bureau of Telecommunications filed a motion for reconsideration of said decision on the ground that petitioner's illness medically known as "cardiomegally-carditis chronic," is not compensable. The motion was denied. After the denial of the motion, the records of the case were forwarded to the Workmen's Compensation Commission as provided by Section 4, Rule 15[3] of the Rules of the Workmen's Compensation Commission.

The respondent Commission reversed the decision of the Acting Referee on the following grounds:

- 1) That petitioner failed to present substantial evidence to show that his sickness which is not per se a compensable illness, was service-connected or was aggravated by the nature of his employment.
- 2) That petitioner failed to show that prior to January 1, 1973, he had been disabled to work for a certain period of time and that petitioner having filed his claim after having retired from the service can no longer claim for

benefits under Act 3428.

We reverse and set aside the ruling of the respondent Commission. By presenting a physician's report regarding his illness and his application for sick leave due to his heart ailment, petitioner has sufficiently substantiated his claim. Considering the nature of his work which consisted of deliver-ing telegrams to distant places by foot plus doing odd jobs in the office due to lack of personnel therein, it is not difficult to sustain the claim of petitioner that he acquired his illness in the course of his employment or at least aggravated during his employment. It has long been settled that once an illness supervenes in the course of one's employ-ment, the presumptions established by Section 44[4] of the Workmen's Compensation Act stand in the employee's favor. It is then incumbent upon the employer to rebut the said pre-sumptions with substantial evidence, which respondent Republic failed to do in the instant case. While it might have contested the claim, it has not presented sufficient evidence to overcome Section 44 of Act 3428 except to contend that the illness of petitioner is non-compensable.

It is claimed by respondent Republic that petitioner has never been disabled before his retirement on Jan-uary 1, 1973. The transcript of the stenographic notes of the proceedings of the Regional Office shows that in 1972 petitioner was still sick and was incapacitated from doing his regular work in the office. True it is that he reported for work but with his physical condition at the time he could not perform the work he used to do for the respondent Republic, like starting the engine, delivering telegrams and so forth. He was in such a bad shape that it was physically impossible for him to perform his old job in the Bureau of Telecommunications. As a matter of fact his retirement was approved by the government, which only shows that he had met, the conditions prescribed for optional retirement pursuant to Memorandum Circular No. 133 issued by the Office of the President which among others provides that "all applications for optional retirement under Commonwealth Act No. 180, as amended by Republic Act No. 1616 and No. 4968 shall not be recommended for approval unless funds are available in the office or bureau concerned for the payment of applicant's retirement of its programmed projects and activities and provided any of the following circumstances or conditions is present: 1. x x x (2) The employee is below 65 years of age, is physically incapacitated to render further efficient service." The approval of petitioner's application for retirement is a clear indication that he was physically incapacitated to render further efficient service.

It is also claimed by respondent Republic that petitioner is no longer entitled to compensation benefits after having received his retirement benefits from the government. While it is true that retirement from the service results in the severance of employer-employee relationship which relationship is the jurisdictional foundation for a claim for compensation benefits under the Workmen's Compensation Act, nevertheless, as long as the illness or injury for which compensation is claimed arose out of or in the course of the employment, the retired employee is still entitled to compensation benefits under the provisions of Act 3428. The enjoyment by government employees covered by the GSIS law of retirement benefits under said Act (C.A. 186, as amended), concurrently with benefits under the Workmen's Compensation Act, is expressly provided for in Section 3 of Act 3428 which reads:

"This Act is also applicable to all officials, employees and laborers in the service of the National Government and its political subdivisions and instrumentalities; Provided, however, "That officials, laborers and employees insured with the Government Insurance System, and their dependents when entitled to the benefits of the said in-surance system shall, in addition to the same, be entitled to the benefits granted by this Act."

Thus in one case[5] the Supreme Court speaking thru Associate Justice Felix V. Makasiar has ruled that the claim for death benefits is compatible with compulsory retirement benefits from the service. Apart from the fact that the retirement of government officials and employees and the award of death benefits to them are governed by different laws and therefore should be treated separately one from the other, in Reynaldo vs. Republic of the Philippines (Bureau of Public Schools), et al., G.R. No. L-43108, June 30, 1976, finding that the claimant therein

had been on sick and vacation leaves from 1971 to sometime 1972 when she retired at the age of 55 due to further aggravation of her illness, this Court sustained the award of compensation benefits after finding therein that petitioner's illness was traceable to her working condition which was obtained by continuous and long use of her eyes in connection with her work and that her illness might have been aggravated by her employment.

IN VIEW OF THE FOREGOING, the appealed decision of the respondent Commission is hereby reversed and set aside and another one entered ordering private respondent to pay the petitioner the amount of P2,315.56 as compensation benefits pursuant to Section 18 of the Workmen's Compensation Act; to reimburse to him his medical expenses properly receipted for and also to pay attorney's fee in the amount of P230.00 and P61.00 as administrative fees. Without pronouncement as to costs.

SO ORDERED.

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

[1] Treated as a special civil action by Court resolution of October 1, 1976.

[2] SEC. 18. Amputation and non-scheduled disability. - Amputation between elbow and wrist shall be considered as equivalent to the loss of a hand. Amputation between knee and ankle shall be considered as loss of a foot. Amputation at or above the elbow shall be considered as equivalent to the loss of an arm. Amputation at or above the knee shall be considered an equivalent to the loss of a leg.

Compensation for the injuries above specified shall exclude all other compensation except the benefits provided for in Sections thirteen, fourteen and fifteen.

In case of an injury producing a serious disfigurement of the face or head, the Commission may, at the request of a interested party, determine and award such compensation as may seem fair and proper in view of the nature of the disfigurement, but which shall not exceed six thousand pesos.

In all other cases of this kind of disability not mentioned in other sections of this Act, the compensation shall be fifty per centum of the difference between the average weekly wages of the injured person and his subsequent earning capacity in the same or some other employment, payable while the partial disability lasts; but subject to reconsideration of the degree of impairment by the Commission at the request of an interested party: Provided, however, That the weekly payments shall in no case be continued for a period longer than two hundred and eight weeks.

The total compensation prescribed in this and the next preceding section and the total compensation prescribed in Sections fourteen and fifteen of this Act, shall, together, not exceed the sum of six thousand pesos: Provided, however, That after the payment has been made for the period specified by the Act in each case, the Workmen's Compensation Commission may from time to time cause the examination of the condition of the disabled laborer, with a view to extending, if necessary, the period of compensation which shall not however, exceed the said amount of six thousand pesos.

[3] SECTION 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 unless 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 issued an order denying the petition for view or motion for reconsideration and elevating the entire case to the Commission for review.

[4] 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 provisions 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 in-toxication 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.

[5] Magpantay vs. WCC, et al., G.R. No. L-43457, October 26, 1976.

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