

BASILISA YBAÑEZ, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND REPUBLIC OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-44123. June 30, 1977

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a petition to review the decision rendered on March 18, 1976 by the Workmen's Compensation Commission which affirmed the October 13, 1975 order of the Acting Referee, Regional Office No. 4, Department of Labor, Manila, dismissing petitioner's claim for compensation.

On July 19, 1976, this Court required respondents to comment on the petition (p. 11, rec.). After receipt and consideration thereof, this Court resolved on August 18, 1976 to treat the petition as a special civil action and required both parties to submit simultaneous memoranda (p. 26, *ibid.*).

The records show that petitioner was employed as a classroom teacher by respondent Bureau of Public Schools with a monthly salary of P278.00, working five (5) days a week. On February 9, 1968, she submitted herself to medical examination due to coughing and severe chest pains. Her attending physician, Dr. Diosdado M. Tech of the Chest Center in Davao City, diagnosed her sickness as "bronchiectasis" and that the same "maybe aggravated by employment due to physical exertion" (p. 20, WCC rec.). She stopped working as a classroom teacher on July 5, 1970 at the age of 64 (not 68) for reason of disability due to said illness "under Republic Act 1616 providing for optional retirement with lump sum benefits" (p. 32, rec.).

On March 31, 1975, petitioner filed her notice of sickness and claim for compensation benefits with Regional Office No. 4, Workmen's Compensation Unit of the Department of Labor, Manila, which was docketed as R04-WC Case No. 166763. The case was assigned to Acting Referee Voltaire A. Balitaan, who set it for hearing at 2:00 P.M. on October 13, 1975 (p. 15, WCC rec.). On said date, the Acting Referee ordered the dismissal of the case "for failure of claimant to appear and prosecute her claim x x x" (p. 11, *ibid.*)

On November 3, 1975, claimant-petitioner filed an urgent motion to set aside the dismissal order asserting that "her failure to appear was due to the fact that the notice of hearing for October 13, 1975 was received by her at her address in Baganga, Davao, on October 17, 1975, or after the date of hearing" (p. 10, *ibid.*). This motion was denied and so the case was elevated for review to the Workmen's Compensation Commission.

On March 18, 1976, the Commission en banc affirmed the order of the Acting Referee and dismissed the case for alleged lack of merit, holding that:

"The claim is predicated on a service-connected illness which is not supported by chest x-ray to prove its veracity. Besides, there is no showing in the records that on or before she stopped working on July 5, 1970, she was suffering from any illness that resulted in her disability" (pp. 5-6, WCC rec.).

A notice of appeal dated April 1, 1976 was filed by claimant-petitioner with the respondent Commission

contending that the aforesaid decision was "contrary to law and jurisprudence" (p. 1, WCC rec.) and, there-after, or on July 12, 1976, instituted the instant petition for review (pp. 2-4, rec.).

WE find merit in the petition and the questioned decision of the respondent Commission should be set aside.

It is beyond dispute as it is amply supported by documentary evidence on record that herein petitioner during her tenure as a classroom teacher in Baganga, Davao Oriental, was afflicted with and has been actually treated by her attending physician, Dr. Diosdado M. Tech, for PTB (minimal, bilateral and active) since March of 1963. Said illness was complicated by bronchiectasis resulting in her optional retirement on July 5, 1970 for reason of physical disability. "Bronchiectasis" as a kind of illness has been positively ascertained by said attending physician as "can easily be aggravated" by petitioner's employment as such classroom teacher as it inevitably involved physical exertion consisting as it did in the preparation of lesson plans, teaching the students, going to and from the school building and such other strenuous work or activities customarily engaged in by a public school teacher (see certification and report of sickness or accident on pp. 4 and 51, rec.). Thus, Section 2 of Act No. 3428, as amended, known as the Workmen's Compensation Act, provided that "[W]hen an employee suffers personal injury from any accident arising out of and in the course of his employment, or contracts x x x illness directly caused by such employment, or either aggravated by or the result of the nature of 'such employment, his employer shall pay compensation in the sums and to the person herein-after specified. x x x". PTB is a kind of disease which has been held to be "service-connected", and more so if the same, as in the instant case, has been complicated with "bronchiectasis" which has for its symptoms severe chest pains and coughing.

Moreover, the presumption of compensability remains un rebutted.

In *Bihag, et al. vs. WCC and Republic of the Philippines (Bureau of Public Schools)* [G.R. No. L-43162, February 28, 1977], this Court held:

"x x x. At the very least, there-fore, the nature and condition of her work contributed to and aggravated in a large measure her ailment and entitled her to compensation under the Workmen's Compensation Act. Thus, *Lilia D. Simon versus Republic of the Philippines* (G.R. No. L-42510, June 30, 1976), citing a very recent case penned by Mr. Justice Ruperto G. Martin, held:

'x x x assuming the employee's illness may be ruled out an occupational disease or that the causal link between the nature of his employment and his ailment, has been insuffi-ciently shown, nevertheless, it is to be presumed as mandated by Section 44 of the Workmen's Compensation Act that the employee's illness which supervened during his employment either arose out of, or at least aggravated by said employment and with this presumption, the burden of proof shifts to the employer and the employee is relieved of the burden to show causation. In the case before us, the respondent has failed to discharge that burden. The mere opinion of the doctor who treated the petitioner that 'dermoid cyst' is congenital, although he admitted that it may also be aggravated by her employment, cannot prevail over the presumption of compensability.'"

The main basis of respondent Commission in denying her, claim, apart from her failure to appear and prosecute her case on the date set for hearing on October 13, 1975, is that her claim, which is predicated on a service-connected illness should be supported by chest X-ray in order to prove its veracity. This is not only contrary to the afore-quoted ruling of this Court wherein the burden of proof is placed on the employer but to the well-entrenched and oft-repeated pronouncements of this Tribunal to the effect that an x-ray or some other laboratory report is not an indispensable prerequisite to compensation. Thus, in the case of *Vallo vs. WCC and the Republic of the Philip-pines*, G.R. No. L-41816, October 29, 1976, this Court, speaking through Justice Muñoz Palma and citing the case of *Jacob vs. WCC, et al.* (L-43302, August 31, 1976), made the following pronouncement:

"x x x Jacob was also a school-teacher who became afflicted with pulmonary tuberculosis and whose claim for compensation was dismissed for insufficiency of evidence for lack of an x-ray report or laboratory findings to corroborate the physician's report and certification. We set aside the dismissal and awarded compensation under the settled jurisprudence that when an illness supervened during the course of employment there is the presumption that the same arose out of or was at least aggravated in the course of employment, and that this legal presumption can be overthrown only by substantial evidence to the contrary, and here there was none (Talip vs. WCC, et al., L-42574, May 31, 1976).

"In the case of petitioner Vallo, he developed tuberculosis of the lungs while working as a public elementary school teacher in San Carlos City and had to stop teaching due to his ailment which needed constant treatment for an indefinite period of time. The physician's report stated that petitioner underwent strenuous work, teaching at daytime and preparing lesson plans at night, and super-vising the gardening of the school children all of which caused or aggravated his illness. The medical report of Dr. Juan C. Lomibao, a duly licensed practising physician of San Carlos City, is sufficient evidence to establish the nature of the illness of petitioner. Under Sec. 49 of the Workmen's Compensation Act, a report of an attending examining physician may be received as evidence and used as proof of the fact in dispute (National Development Co. vs. Raymundo and WCC, L-21724, April 27, 1967, 19 SCRA 861, 864). And as stated earlier, in the case of Jacob, the Court categorically held that an x-ray or some other laboratory report is not an indispensable prerequisite to compensation."

Respondents also placed grave doubt as to the state of health of petitioner on or before she stopped working on July 5, 1970 for according to them, there is no showing in the records that she was suffering from any illness that resulted in her disability. This may only be attributed to the fact that respondent Commission may have overlooked the physician's report of sickness or accident (p. 20, WCC rec.), which is attached to the record of the case. It has been held that "a report of an attending examining physician may be received as evidence and used as proof of the fact in dispute" (Sec. 49, Workmen's Compensation Act, cited in the case of National Development Co. vs. Raymundo and WCC, L-21724, supra). The fact remains, however, that the reason why she stopped working as a classroom teacher on July, 5, 1970 was due to the approval of her optional retirement for disability under the provisions of Commonwealth Act No. 180, as amended by Republic Act 1616, and further amended by Republic Act No. 4968, and at the time when she was only 64 years of age and had not as yet reached the compulsory retirement age of 65. Apropos is the case of Gomez vs. WCC, et al., G.R. No. L-43617, February 28, 1977, where this Court, speaking through Mr. Justice Martin, held:

"Much doubt is laid on the state of health of petitioner at the time of her retirement at the age of 63. It is contended by respondent that she has not been disabled by any illness from her employment but that she voluntarily retired from the government service at the age of 63. Pursuant to Memorandum Circular No. 133 issued by the Office of the President 'All optional applications for optional retirement under Com. Act No. 180, as amended by Rep. Act No. 1616 and No. 4968, shall not be recommended for approval unless funds are available in the bureau or office concerned for the payment of applicant's retirement gratuity over and above the fund requirements of its programmed project and activities and provided any of the following circumstances or condition are present: (1) x x x; (2) The employee-applicant is below 65 years of age and is physically incapacitated to render further efficient service.' The fact that the application of petitioner for retirement at the age of 63 was duly approved by the Government Service Insurance System is a clear indication that at the time her application was approved she was below 65 years of age and she was physically incapacitated to render further efficient service" (see also the case of Despe vs. WCC, et al., G.R. No. L-42828, Feb. 28, 1977, per Justice Martin).

Respondents likewise bewailed the fact that petitioner's claim was only filed after five (5) years from the date she stopped working as a classroom teacher on July 5, 1970, and would thus imply that the same has already been barred. This is obviously without merit. It has been the consistent ruling of this Court that the failure to file the

claim within the period provided for in Section 24 of the Workmen's Compensation Act does not affect the jurisdiction of the Commission to entertain said claim, and that compensation under said Act, as amended, is a liability vested by statute, which prescribes in ten years pursuant to Article 1144 (2) of the Civil Code (Manila Railroad Co. vs. Perez and the WCC, L-20171, June 29, 1965, cited in Tecla Magpantay vs. Workmen's Compensation Commission, et al., G.R. No. L-43457, October 26, 1976 and in Vallo vs. WCC, et al., G.R. No. 41816, Oct. 29, 1976).

WHEREFORE, THE DECISION DATED MARCH 18, 1976 OF RESPONDENT WORKMEN'S COMPENSATION COMMISSION IS HEREBY SET ASIDE AND RESPONDENT BUREAU OF PUBLIC SCHOOLS IS HEREBY ORDERED TO PAY:

1. CLAIMANT BASILISA G. YBAÑEZ:

A. THE SUM OF SIX THOUSAND (P6,000.00) PESOS AS DISABILITY COMPENSATION;

B. EXPENSES FOR MEDICAL, SURGICAL AND HOSPITAL SERVICES SUPPORTED BY PROPER RECEIPTS;

C. THE SUM OF SIX HUNDRED (P600.00) PESOS AS ATTORNEY'S FEES; AND

2. THE WORKMEN'S COMPENSATION COMMISSION THE SUM OF SIXTY-ONE (P61.00) PESOS AS ADMINISTRATIVE FEES.

SO ORDERED.

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

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