

**SIMEON A. CAÑONERO, PETITIONER, VS. WORKMEN'S
COMPENSATION COMMISSION AND REPUBLIC OF THE PHILIPPINES
(BUREAU OF PUBLIC SCHOOLS), RESPONDENTS.**

G.R. No. L-43880. February 28, 1978

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Review of the January 5, 1976 decision of the respondent Commission reversing the September 15, 1976 award of the referee WCU Case No. 18136 filed with the Department of Labor, Regional Office No. VII at Iloilo City.

Petitioner was employed by the respondent Republic of the Philippines (Bureau of Public Schools) from 1924 to 1968. At the time of his retirement on March 18, 1968, he was holding the position of Disbursing Officer of the Alimodian National Vocational High School.

On March 31, 1975, petitioner filed his notice and claim for compensation with the Workmen's Compensation Unit of the Department of Labor.

On April 7, 1975, a copy of the notice and claim was sent to the Solicitor General who received it on May 5, 1975 (p. 72, WCC rec.) and to the Bureau of Public Schools, which received the same on May 8, 1975 (p. 71, WCC rec.).

On September 15, 1975, the referee rendered a decision finding petitioner's compensation claim meritorious and thus ordered respondent Republic of the Philippines to pay:

"1) x x the claimant, Simeon Cañonero, the sum of SIX THOUSAND PESOS (P6,000.00) as compensation benefits under Section 18 [N.S.D.] of the Act, for being permanently and totally disabled, after his disability retirement was approved on March 18, 1968;

"2) x x the claimant, the sum of TWO THOUSAND TWO HUNDRED SIXTY-EIGHT PESOS and 40/100 (P2,268.40) as reimbursement of medical and hospital expenses and doctor's fees, under Section 23 of the Act (Annex 'C', 'D-1' and 'F'-21) hereto attached;

"3) x x Atty. Mariano T. Toledo, claimant's counsel, the sum of THREE HUNDRED PESOS (P300.00), as attorney's fees under Section 31 of the Act; and

"4) x x this Office (Department of Labor) the sum of EIGHTY-THREE PESOS (P83.00) as administrative fee under Sec. 55 of the Act."

The decision of the referee comprehensively stated the facts of the case, the issue raised, the principles of law involved, as well as the jurisprudence relied upon, thus:

"x x x claimant Simeon A. Cañonero, first entered government service as classroom teacher at the Alimodian Elementary School from June 12, 1924 to April 15, 1942. During the war years, he saw military service as a commissioned officer of the Philippine Army (Guerrilla) from September 27, 1942 to April 11, 1946. He was Mayor of Alimodian, Iloilo from June 12, 1946 to December 31, 1959; Clerk of Congress of the Philippines from January 1, 1960 to March 28, 1960 and then Clerk of the Special Committee of Congress from March 30, 1960 to January 15, 1961 and thence, as a Disbursing Officer of the Alimodian National Vocational High School from January 16, 1961 to March 18, 1968, when he finally retired due to disability. That sometime on or about March 27, 1966, he was stricken with his illness and was brought to the Iloilo Mission Hospital where he remained under confinement and medical treatment up to April 2, 1966 by Dr. Arnulfo Sulit for 'Hypertensive Crises with Encephalopathy.' He had a second similar stroke sometime on March 1, 1967. He was hospitalized at the Aleosan General Hospital, Alimodian, Iloilo, sometime on January 29, 1971 with the complaint of loss of speech and difficulty of locomotion and was under the medical treatment of Dr. Wilfredo Salapantan. Since then, after his discharge, he was under the continuous medical care and treatment up to the present by Dr. Alejandro Nery Cruz for 'Hypertension, Cerebro-Vascular Accident and its Residuals.'

"The issue posed by the parties is whether or not the illness of the claimant is service-connected in order to comprehend benefits under the compensatory provisions of the Workmen's Compensation Act, as amended.

"In the first place, as clearly noted from the records of the case, the notice and claim was filed on March 31, 1975. It was transmitted on April 7, 1975 and the Solicitor General received said notice on May 5, 1975 and the Bureau of Public Schools on May 8, 1975. It was only on May 28, 1975 that the Solicitor General registered its controversion and the Bureau of Public Schools on June 25, 1975. There was, therefore, a late controversion of the claim by the respondents as based on the provisions of Section 37 and 45 of the WCA, as amended, and as a consequence thereof, the respondents had waived their right to controvert the claim as to its compensability. The respondent under Section 37 of the Act, never reported the matter of absence by the claimant from his work in the year 1966 and 1967 when he suffered from a stroke. Neither did the respondent submit any notice of controversion pursuant to Section 45 of the Act. The truth is that the respondent only registered its controversion to the claim on May 28, 1975, when this Office received a communication from the Solicitor General dated May 15, 1975 manifesting its tentative controversion, and on June 25, 1975 when this office likewise received a communication from the Bureau of Public Schools dated May 23, 1975, also controverting the claim. These controversions were all definitely beyond the reglementary period required in Section 45 of the Act, as amended, and therefore, is of no effect. Hence, all non-jurisdictional defenses, such as the alleged non-compensability of the instant claim and others, are now deemed renounced by respondent and the compensability of the claim stands.

"As to the existence of any causal link or service-connection of claimant's illness to the nature of his employment, his long years of continuous and dedicated service with the government of almost 44 years, no doubt had affected the bodily resistance of the claimant from the onslaught of the disease. The severe tensions and strains which are but natural in his employment no doubt did aggravate his already failing heart condition. His continued performance of his work despite the presence of his pre-existing disease or infirmity (he had experienced quite several strokes while in the course of his employment) must have had adverse effects on his health. It was so debilitating so that it gradually lowered his body resistance and aggravated his already ailing

heart condition. Granting that the evidence of the claimant is insufficient to show a causal link between his illness and his employment, under the provisions of Section 44 of the Act, it is to be presumed that his illness which supervened at the time of his employment either arose out of, or was at least aggravated by, said employment. With this legal presumption, the burden to show proof of non-service-connection is shifted to the employer and the employee is relieved of the burden to show causation. (See case of *Justiniano v. WCC*, GRL-22774, Nov. 21, 1966). We fail to find in the records tending to show that the respondent had ever submitted sufficient evidence to overthrow this legal presumption established by law, and compensability stands. Viewing the case from another angle, granting but without admitting that there are factors other than the employment of the claimant which may have contributed to the aggravation of his illness, this would not prove fatal to his claim. For under the law, it is not required that the employment be the sole factor in the growth, development and acceleration of his illness. It is enough that his employment had contributed even in a small degree, to the development of the disease (see case of *Manila Railroad v. WCC and Crispin Pineda*, GRL-19773, May 30, 1964)." [Underscoring supplied].

A motion for reconsideration filed by the respondent Republic of the Philippines on the ground that the illness of claimant was not work-connected, was denied by the referee. But upon review of the aforesaid decision, the respondent Commission reversed it. It was the opinion of the respondent Commission that petitioner is not entitled to compensation because the record of the claim was bereft of proofs that he was incapacitated for labor before his retirement. It reasoned out its order of reversal as follows:

"After a careful perusal of the records of the case and on the basis of established facts, we find merit in the respondent's contentions. The records are bereft of proofs that the claimant was incapacitated for labor prior to his retirement. Considering that the claimant was never incapacitated for labor prior to his retirement, he is therefore, not entitled to any compensation benefits for the reason behind the compensation law is to compensate the employee concerned for his lost earning due to work-connected illness/injury but in the instant case there was no such loss or impaired earning capacity to compensate for. For what is clear on the record is that the herein claimant opted to retire under the Optional Retirement Law."

Hence, this petition.

I

The conclusion of the respondent Commission is totally unwarranted as it proceeds from the wrong premise that, under the obtaining facts, the petitioner has still the burden to show by substantial evidence that he was incapacitated from labor by reason of his illness. That is a patent distortion of the burden of proof applicable to cases where, as in this case, the presumption of compensability had already set in. For WE have repeatedly ruled that once the illness subject matter of a compensation claim is shown to have supervened in the course of employment, as is the situation here, there arises in favor of claimant the rebuttable presumption that the said illness, either arose out of, or at least was aggravated by, the nature of his employment; and that consequently, the burden to show by substantial evidence the contrary lies with the employer. The ultimate result of that principle is that the presumption rebuttable in its inception becomes conclusive upon the failure of the employer to destroy the same (*Santos vs. Workmen's Compensation Commission*, 75 SCRA 365, 370 [1977]). In the instant case, the record is bereft of any evidence presented by respondent employer to discharge the aforesaid burden. In fact, no evidence of whatever kind was presented by it (p. 13, WCC rec.). As the facts of the case stand, the petitioner was under no obligation to the referee or to the Commission to further present evidence to sustain, his compensable claim. For as already stated, he enjoys the legal presumption of compensability. Respondent Commission therefore gravely abused its discretion in absolving respondent employer, instead of affirming the award of the referee.

Furthermore, petitioner's claim for compensation was not timely and effectively controverted. This finding of the referee was never questioned by the respondent employer in its September 17, 1975 motion for reconsideration (p. 14, WCC rec.) of the decision of the referee.

It is however now claimed by respondent employer, through its counsel, the Solicitor General, for the first time in this appeal that it had timely and properly controverted this compensation claim because "x x x (a)s borne out by the records, the notice of injury was received by the office of the Solicitor General on May 19, 1975 and the letter of controversion was sent by registered mail on May 21, 1976 (should be 1975). In other words, the claim was controverted three days after receipt of the notice of injury, well within the reglementary period prescribed by law" (pp. 50, 62, rec.). Basic is the rule, however, that issues or questions not raised below cannot be raised for the first time on appeal (*Buenaventura vs. WCC*, 76 SCRA 485, 489 [1977]); because by that failure, respondent employer is deemed to have waived the same.

At any rate, WE find the Solicitor General's claim of having received the notice of injury only on May 19, 1975 to be patently false in the face of the documented facts of record that his office received the said notice of injury on May 5, 1975 (as evidenced by the improvised Registry Return Card attached to the record) [p. 52, WCC rec.]; and therefore, its controversion which it sent by registered mail on May 21, 1975 which was the 16th day from May 5, 1975 and received by the Department of Labor on May 28, 1975 was clearly beyond the reglementary period for controversion. The inefficacy of that controversion becomes more patent when WE consider the fact that respondent employer failed to comply with Section 37 of the Workmen's Compensation Act, as amended, on the filing of Employer's Report of Accident or Sickness with respect to petitioner's illness of which it was informed in writing as early as March, 1966 (see items 20 & 21, Notice of Injury and Claim for Compensation, p. 73, WCC rec.). WE have repeatedly ruled that such failure of respondent employer constitutes a renunciation of the right to controvert the claim unless it submits reasonable grounds therefor (*Justo vs. WCC* 75 SCRA 223 [1977]; *DBP vs. WCC*, 49 SCRA 365-366, 375 [1973]; *MRR vs. WCC*, 20 SCRA 982-983 [1967]). The respondent employer, therefore, was, by its failure to effectively controvert the claim of petitioner, considered to have renounced all non-jurisdictional defenses, such as the non-compensability of the claim (*Romero vs. WCC*, 77 SCRA 482, 486-7 [1977]; *Buenaventura vs. WCC*, 76 SCRA 485-488 [1977]; *Vda. de Galang vs. WCC*, 76 SCRA 157-158 [1977]; *Talip vs. WCC*, 71 SCRA 218 [1976]; *Dinero vs. WCC*, 70 SCRA 292 [1976]; *Abong vs. WCC*, 54 SCRA 379 [1973]; *DBP vs. WCC*, 49 SCRA 375 [1973]; *General Textiles, Inc. vs. Taay*, 42 SCRA 375, 380 [1971]; *NDC vs. Galamgam*, 38 SCRA 495, 498 [1971]; *La Mallorca vs. Zuñiga & WCC*, 30 SCRA 613, 619 [1969]; *Republic vs. WCC*, 7 SCRA 985, 988 [1963]).

Parenthetically, it must be pointed out that in none of the above-cited precedents, did WE inject the qualification that an uncontroverted compensation claim to erectly stand must still be substantiated. For to do so, as was the view of the respondent Commission, would not only unduly or gratuitously relieve the respondent employer of the above-stated disastrous consequence on it for its failure to controvert but would likewise unreasonably deny to petitioner the beneficent effects flowing from the un rebutted legal presumption of compensability of his illness (*Buenaventura vs. WCC*, 76 SCRA 485-488 [1977]). It is indeed lamentable that the respondent Commission chose to ignore the herein applicable principle of law and jurisprudence which were all neatly laid by the learned referee in his decision.

II

The approval of petitioner's optional retirement invigorates rather than weakens his claim for disability compensation for the reason that under Memorandum Circular No. 133 such optional retirement can only be ultimately allowed if the employee-applicant is below 65 years of age and is physically incapacitated to render further efficient service. Consequently, any doubt on the petitioner's state of health was laid to rest by the

aforesaid approval of his optional retirement from the government service (Romero vs. WCC, 77 SCRA 490 [1977]; Despe vs. WCC, 75 SCRA 350, 354 [1977]).

III

Finally, the contention of the respondent employer that the filing of the claim for compensation only after the lapse of more than seven (7) years from the time of disability or illness in violation of Section 24 of the Workmen's Compensation Act, as amended, was fatal to its success, is likewise without merit; firstly, because that issue was never raised below and therefore, is deemed waived and cannot be raised for the first time on appeal; and secondly, aside from the fact that such defense is barred by the failure to controvert the claim, WE have ruled that such defense is not jurisdictional and that the statutory right to compensation prescribes in ten (10) years [Romero vs. WCC, 77 SCRA 487 (1977)].

WHEREFORE, THE DECISION DATED JANUARY 5, 1976 OF THE RESPONDENT WORKMEN'S COMPENSATION COMMISSION IS HEREBY SET ASIDE AND RESPONDENT BUREAU OF PUBLIC SCHOOLS IS HEREBY ORDERED

I. TO PAY PETITIONER

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

B. THE SUM OF TWO THOUSAND TWO HUNDRED SIXTY-EIGHT PESOS AND 40/100 (P2,268.40) AS REIMBURSEMENT OF EXPENSES FOR MEDICAL AND HOSPITAL SERVICES;

II. TO PAY PETITIONER'S COUNSEL ATTORNEY'S FEES EQUIVALENT TO 10% OF THE TOTAL AMOUNT AWARDED;

III. TO PROVIDE PETITIONER WITH SUCH MEDICAL, SURGICAL AND HOSPITAL SERVICES AS WELL AS NECESSARY APPLIANCES AS REQUIRED BY THE NATURE OF HIS AILMENT; AND

IV. TO PAY THE SUM OF EIGHTY-THREE (P83.00) PESOS AS ADMINISTRATIVE FEE.

SO ORDERED.

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

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