

## **JESUS FERNANDEZ, PETITIONER, VS. ANSCOR CONTAINER CORPORATION AND THE WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.**

*G.R. No. L-42844. February 21, 1992*

Ponente: GUTIERREZ, JR., J.

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### **GUTIERREZ, JR., J.:**

The instant petition seeks to review the decision of the Workmen's Compensation Commission which denied the claim for disability benefits earlier granted by the Workmen's Compensation Section, Manila.

Petitioner Jesus Fernandez was an employee of respondent Anscor Container Corporation for over twenty three (23) years starting from September 22, 1952. He served as maintenance mechanic for many years and was assigned to Quality Control at the corporation's maintenance department until June 13, 1974 when he took his sick leave. His sick leave was prompted by a medical examination on June 13, 1974 conducted by the company physician, Dr. Herminio Ilagan who found him suffering from advanced Bilateral PTB. (Annex A, Petition)

On December 2, 1974, the petitioner was again examined, this time by Dr. Alfredo P. Del Rosario, medical officer of the Armed Forces at Camp Crame. He was diagnosed as still suffering from "Far Advanced PTB."

On March 4, 1975, the petitioner submitted his notice and claim for Workmen's Compensation Commission (WCC) compensation benefits with the Manila Regional WCC Office No. 4.

On October 14, 1975, the Regional Office through Meliton C. Perducho issued an AWARD as follows:

- "1. To pay the claimant, thru this Office, the sum of FIVE THOUSAND THREE HUNDRED NINE PESOS 62/100 (P5,309.62) representing the compensation which has accrued to date and beginning October 15, 1975, a weekly compensation of SEVENTY SIX PESOS & 15/100 (P76.15) until his disability for labor ceases but not exceeding SIX THOUSAND PESOS (P6,000.00) including the lump sum payment;
2. To extend or continue extending to claimant such necessary medical services and supplies as the nature of his illness and the process of his recovery may require and that which will promote his early restoration to the maximum level of his physical capacity and should respondent fail in this regard claimant may secure such medical services and supplies at respondent's expenses; and
3. To pay to the Workmen's Compensation Fund, likewise thru this Office, the sum of FIFTY FOUR PESOS (P54.00) as partial administrative fee, pursuant to Sec. 55 of the Act, Bill No. 4211-75 is attached." (Rollo, p. 23)

The award was based on the following findings:

"In the claim for compensation filed in this case, it is alleged, among other things, that the above-named claimant in the employ of respondent as 'Maintenance Mechanic' contracted illness (PTB, Far Advanced) on June 13, 1974 in the course of his employment and aggravated by the nature of such employment, disabling him for labor since the said date. The record shows that a copy of said claim was transmitted to respondent

under covering letter dated June 30, 1975 and the same was received on July 15, 1975, but respondent failed to submit the required Employer's Report of Accident or Sickness or file its answer to the claim, Respondent having failed to dispute the allegations of the claim and to establish its right to controvert, the compensability of the claim is deemed admitted, respondent being considered to have waived or furnished all its defenses as are available to it which go into the merits of the case." (Rollo, p. 23)

Upon appeal by the respondent corporation, the WCC set aside the Award and dismissed the case for insufficiency of evidence.

In reversing the Award, the WCC stated:

"We observe that the claimant stopped working on June 13, 1974. His physician started treating him on December 2, 1974. He was found to be ill of pulmonary tuberculosis, bilateral, far advanced, per X-ray taken on January 2, 1975. By February 17, 1975 there was a slight improvement in his condition as a result of another X-ray per his information contained in the notice and claim. There is no evidence on record particularly an X-ray finding that on or before June 13, 1974 he was sick of pulmonary tuberculosis, far advanced, which was the time he stopped working and allegedly went on sick leave. The illness was categorically ascertained only as of January 2, 1975. It is not shown for what illness he had been on sick leave beginning June 13, 1974 until September 1974 as stated in the notice. These are alleged per notice and claim and substantiated by the physician's report without, however, any X-ray report presented as the records disclosed.

In the absence of any categorical showing that the claimant was ill of the illness subject of this claim as of June 13, 1974, this Commission is constrained to believe that the illness surfaced after that date for the same was only categorically ascertained on January 2, 1975 and the claimant was consulting a physician beginning December 2, 1974 only. It cannot also be stated that the illness supervened in the course of employment for although the claimant as he claimed he was on sick leave starting June 13, 1974 the illness which was made the basis of such sick leave is not mentioned categorically. The claimant, assuming that he was sick as of that date, may have been ill of another illness other than pulmonary tuberculosis which is not mentioned in the claim, hence, no basis from the standpoint of jurisdiction. If he was ill of pulmonary tuberculosis as of June 13, 1974 there is no X-ray result presented purportedly showing that he was ill of such sickness." (Rollo, p. 29-30; Underlining supplied)

The petition is impressed with merit.

Significantly, the respondent corporation did not present evidence to prove its allegation in its notice of controversion filed with the Regional Office that the alleged disabling condition of the petitioner was not due to an illness directly caused or aggravated by the nature of his employment.

Contrary to the findings of the WCC, the petitioner was diagnosed as suffering from pulmonary tuberculosis (PTB Far Advanced) as of June 13, 1974 by the corporation's own physician Dr. Herminio Ilagan. (Annex "A", Petition) On the same day, the petitioner filed his sick leave. On September 10, 1974, the petitioner had his chest X-ray and was found to have "marked improvement of lesions in both lungs as compared with X-ray plate taken on July 1974." (Annex I, Petition, p. 32, Rollo) On January 2, 1975, the petitioner had another chest X-ray with the following result: "marked improvement of lesions in both lungs as compared with previous X-ray taken September and November, 1974." (Annex J, Petition, p. 33)

On February 17, 1975, the petitioner had another chest X-ray and was found to have slight improvement of lesions as compared with plate No. 04 taken January 2, 1975. (Annex "K", Petition, p. 34).

The petitioner was also examined on December 2, 1974 by Dr. Alfredo P. Del Rosario, a medical officer of Camp Crame. The "Physician's Report of Sickness or Accident" signed by Dr. Del Rosario shows that the petitioner was

suffering from Far Advanced PTB "due to the nature of his work rendering overtime." The physician certified that as of March 11, 1975 when the physician's report was accomplished the petitioner was still under treatment.

These findings tend to show that the petitioner's sickness had its onset or at the very least was aggravated during his employment with the respondent corporation. Since there is no dispute that the applicable law to the case is the Workmen's Compensation Act, as amended, the principle of presumption of compensability applies (*Barbas v. Victorias Milling Co., Inc.*, 131 SCRA 542 [1984]). So is the rule on aggravation under the former law. (See *Santarin v. Employees' Compensation Commission*, 124 SCRA 548 [1983])

It is to be noted that the petitioner's claim for compensation benefits which was granted by the Regional Office was based on Section 13 of the Workmen's Compensation Act, as amended. The records, however, disclose that since he stopped working on June 13, 1974, the petitioner has not yet returned to work in view of his last medical examination performed by Dr. Alfredo P. del Rosario of Camp Crame wherein the petitioner was diagnosed to be suffering from "Far advanced PTB" which requires treatment for an indefinite period. (Annex B, Petition) Although his chest X-rays showed slight improvement of his lungs, Dr. del Rosario certified that as of March 5, 1975, the petitioner was still under his treatment.

Under these circumstances, Section 14 of the Workmen's Compensation Act, as amended providing for temporary total disability for labor would have been more appropriate. The record, however, is silent on how many years, months and days the petitioner would have been kept from his job by his sickness. The petitioner is now more than sixty (60) years old, hence restoring him to full capacity for resumed employment is obviously remote. We rule that applying the law and equitable considerations to the facts of the case, the maximum P6,000.00 under Section 14 is fair compensation as far as the petitioner and the respondent corporation are both concerned. (See *Barbas v. Victoria Milling Co., Inc.* supra).

WHEREFORE, the decision of the Workmen's Compensation Commission dismissing the claim for compensation is hereby REVERSED and SET ASIDE. The decision rendered by the Workmen's Compensation Section, Manila is REINSTATED but MODIFIED as follows:

The private respondent shall pay petitioner Jesus Fernandez the sum of SIX THOUSAND PESOS (P6,000.00) pursuant to the provision of the Workmen's Compensation Act, as amended; the petitioner's counsel of record the sum of SIX HUNDRED PESOS (P600.00) in accordance with Rule 27 of the Rules of the Workmen's Compensation Commission on attorney's fees and the sum of SIXTY SIX PESOS (P66.00) to the Department of Labor and Employment which now supervises the implementation of decisions under the Old Workmen's Compensation Act.

**SO ORDERED.**

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

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