

REBAR BUILDING, INC., PETITIONER VS. WORKMEN'S COMPENSATION COMMISSION AND DESIDERIO LUCERO, RESPONDENTS.

G.R. No. L-27486. April 30, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

Desiderio Lucero worked as a welder of the Rebar Buildings, Inc. located at 1515 Shaw Boulevard, Manda-luyong, Rizal, from November 1953 to April 6, 1958. He started with a daily wage of "P4.50 which was increased to P5.00 on September 11, 1957. He worked 6 days a week, on different shifts rotated weekly, from 12 midnight to 8 a.m., or from 8 a.m. to 5 p.m., or from 5 p.m. to 12 midnight.

He welded steel frameworks for buildings under construction, using an electric motor with an electric cable and a torch. The welding was done inside a building made of steel frames, with asbestos and G.I. sheet roofing, without sidings or partitions, and with a half-cemented flooring. It was in the non-cemented half portion of the flooring where most of the welding was done. The building was dusty, dirty, and hot, the heat generated by the motor and the torch flame reaching a temperature of from 75 to 95 degrees centigrade.

The welded steel frameworks, after they were cleaned and painted, were transferred from the building to a bodega. The trenches or overhead cranes that lifted them were "most often . . . out of order," so that the welder himself, like Lucero during his tour of duty, lifted the welded steel frameworks bodily from the building to the bodega. The weight of these steel frameworks varied, depending on their sizes. The heavy ones weighed approximately 60 kilos each.

Sometime in 1958, while welding steel frameworks inside the company premises, Lucero spat blood. He reported the matter to Luis Magsalin, an accountant of the company.

Then he submitted himself to an X-ray examination and was found by the Philippine Tuberculosis Society to be suffering from pulmonary tuberculosis. On the day following the X-ray examination, he went to the company and informed the management of the findings of the Philippine Tuberculosis Society. Upon instructions of Luis Magsalin, a clerk of the company gave him P120 for "medical expenses" and "financial help." He returned to the office a month afterwards and asked for further financial assistance, but was told that the company was "suffering losses". So he asked to be given a lighter assignment, but was refused on the grounds that work would only aggravate his ailment and that he might infect the other workers. Lucero then demanded disability compensation. This was denied by the company. On April 6, 1958 the company dismissed him from the service because of his affliction.

After his discharge, he had himself treated at the clinic of Dr. Manuel Marquez in Kataman, Tondo, Manila. He had 3 X-ray examinations conducted by the Philippine Tuberculosis Society. A certificate issued by that office on November 9, 1962, states that he had an X-ray examination on November 9, 1962, and that he was suffering from "Moderate infiltrations" and "Minimal infiltrations" on his right and left hemithorax. For medical treatment, he

spent P500 more or less, which was contributed by his close relatives.

On November 19, 1962 he filed with the Manila regional office of the Department of Labor (RO4-WC Case 2414) against the Rebar Buildings, Inc., a claim for (1) disability compensation in connection with his sickness of pulmonary tuberculosis, (2) medical expenses already incurred and to be incurred for his medical treatment; and (3) attorney's fees.

On January 14, 1963 the company filed its answer containing admissions and denials, and, on the grounds that the complainant's cause of action had already prescribed, and that the latter was guilty of laches, prayed for the dismissal of the claim.

On May 29, 1964 the hearing officer of the regional office rendered a decision, reciting that Lucero had not complied with the jurisdictional requirements of section 24 of the Workmen's Compensation Act, as amended, because he failed to file a notice of injury or claim with the company within "two months after the date of the injury or sickness;" that such non-compliance barred his claim for disability compensation; and that Lucero's own testimony before the regional office that he worked as a welder of Mulvaney McMillan & Co., also located at 1515 Shaw. Boulevard, Mandaluyong, Rizal, from 1953 to 1958, rendered unbelievable his claim that he worked as a welder of the petitioner company during the same period of time. The hearing officer dismissed the claim, with costs against Lucero.

On February 9, 1967 the WCC, on review, found that the claim is not time-barred because the company had previous knowledge of the claimant's illness; that the delay in filing the claim did not prejudice the company, and, if it did, it was due to the fault of the latter; that the company failed to make a seasonable controversion of the claim; and that the claimant's illness was service-connected because his work as a welder "was strenuous and the working conditions to which he was subjected were unfavorable to his health". The WCC reversed the decision of the hearing officer, adjudged the company liable for compensation pursuant to section 14 of the Workmen's Compensation Act, as amended, and ordered the latter

"1. To pay the claimant, thru this Commission, the sum of FOUR THOUSAND and no/pesos (P4,000.00), the maximum compensation allowed under the law then existing at the time of claimant's disability for labor;

"2. To provide the claimant with medical, hospital and surgical services and supplies as the nature of his illness may require until his PTB shall have been declared cured or arrested by competent authority;

"3. To pay claimant's counsel the amount of "P400.00 as attorney's fees equivalent to 10% of the amount pursuant to Rule 22 of the Rules of the Commission in conjunction with Art. 2208 Par. 8 of the Civil Code of the Philippines;

"4. To pay to the Workmen's Compensation Fund the sum of P41.00 as fee under Sec. 55 of the Act, plus the sum of P5.00 assessed against the respondent pursuant to the Order dated March 26, 1963 by the Hearing Officer."

The company's motion for reconsideration was denied by the WCC en banc on March 20, 1967. Hence this appeal by the company.

1. It is first contended that the WCC erred in finding that the claimant's illness arose in the course of, and was aggravated by, the nature of his employment. It is argued that the latter's averment that he spat blood in 1958 while working with the company was denied by the company's answer to the complaint, and consequently the burden of proof rests on the claimant; that the only evidence for the latter is his sole declaration before the hearing officer which is not only self-serving and uncorroborated but as well is belied by his own documentary evidence which shows that his first X-ray examination was had, not in 1958 when he was still employed with the company,

but on February 25, 1960, or two years after he had ceased to work for the company; and that there being no tangible proof that his ailment arose in the course of employment, there is no room for the application of section 44(1) of the Workmen's Compensation Act, as amended, which provides that in any proceeding for enforcement of a claim for compensation, "it shall be presumed in the absence of substantial evidence to the contrary" that the claim comes within the provisions of this Act".

This contention is without merit. This Court, in *Agustin vs. WCC and Paniqui Sugar Mills*,^[1] adhering to the doctrine expounded in previous cases^[2], held that the presumption, in the absence of substantial evidence to the contrary, that a claim for compensation comes within the purview of the Workmen's Compensation Act, as amended, means that the mere absence of evidence that the mishap was traceable to the employment does not suffice to reject the claim, and that, on the contrary, there must be credible showing that it was not so traceable. This doctrine sets at naught earlier decisions holding that the burden of proof of compensability rests on a claimant^[3]. The new doctrine is reinforced by article 1702 of the new Civil Code which directs that in case of doubt all labor legislation and all labor contracts shall be construed in favor of the workingman, and by the inescapable reality that a laborer is usually poor and unlettered, and an employer has all the resources to secure able legal advice, which is the reason why the law demands from the latter stricter compliance with the Act.

Lucero was admitted by the company into its service in 1953, was allowed to work continuously for 5 years until 1958, and was even promoted in salary. It stands to reason that he was physically fit for his job as a welder, an efficient worker, and was unafflicted with any ailment. The conclusion is ineluctable that the claimant's illness was contracted during the course of his employment.

2. It is next contended that the WCC erred in holding that the claim is not time-barred, although it was filed four years late and the notice of illness and the claim itself were not served on the company but on an employee of an entirely different company.

This contention is likewise devoid of merit.

It was in the premises of the company while performing his duties as a welder where the claimant spat blood sometime in 1958. It was Luis Magsalin, then an accountant of the company, to whom the matter was immediately reported and the findings of the Philippine Tuberculosis relayed. It was the same Magsalin who ordered that Lucero be paid P120 for "medical expenses" and "financial help". All these circumstances give the lie to the company's denial of knowledge of the claimant's ailment. It then became the company's obligation to make that report required by section 37 of the Workmen's Compensation Act, as amended; and had the company decided to controvert the claim for compensation, it should have sent a notice of controversion to the Commission either on or before the fourteenth day of disability or within ten days after it came to know of the injury, as required by section 45 of the same Act. The company failed to make the required report, failed to send a notice of controversion; as a consequence, it forfeited its right to contest the claim for compensation.^[4]

The assertion that Magsalin was not an employee of the company but of Mulvaney MacMillan & Co., Inc., is an exercise in futility. Mulvaney MacMillan & Co., Inc. and Rebar Buildings, Inc. are, in essence, one and the same company, and have one and the same president. Magsalin, who was in 1947 an accountant of Mulvaney MacMillan & Co., Inc., was, together with all the latter's employees including the claimant, transferred to Rebar Buildings, Inc. And Magsalin is admittedly a stockholder of the appellant company.

3. The final contention that the notice of sickness was ineffective as it was made verbally, and not in writing as required by section 25 of the Workmen's Compensation Act, as amended, is of no moment. Such written notice was unnecessary as the company had paid to the complainant the sum of P120 for medical-expenses and financial help.^[5]

ACCORDINGLY, the judgment a quo is affirmed in toto, at petitioner's cost.

Reyes, J.B.L., (Acting C.J.), Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Angeles and Fernando, JJ., concur.

Judgment affirmed.

[1] 19957, September 29, 1964.

[2] Batangas Transportation Co. vs. Vda. de Rivera, L-7658, May 8, 1956; Iloilo Dock & Engineering Co. vs. WCC, L-16206, June 29, 1962; Naira vs. WCC, L-18066, October 20, 1962.

[3] Vilguera vs. Tan Kac, L-43002, May 29, 1935, 61 Phil. 1050; Montealegre vs. De la Rama Steamship Co., L44661, March 30, 1936.

[4] Victorias Milling Co., Inc. vs. WCC and Vicente del Rosario, L-25640, March 21, 1968, and cases cited therein.

[5] Plywood Industries vs. WCC, L-18165, May 30, 1962.

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