

REMUS VILLAVIEJA, PETITIONER, VS. MARINDUQUE MINING AND INDUSTRIAL CORPORATION, AND THE WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.

G.R. No. L-43349. October 23, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review on certiorari the decision of the Workmen's Compensation Commission absolving respondent Marinduque Mining and Industrial Corporation from liability in a claim for injury and sickness benefits.

Petitioner was hired as helper by respondent Marinduque Mining in its crushing plant. His work consisted, among other things, of watching and taking charge of the trip conveyor machine loaded with stones. Whenever it stopped functioning, he had to unload the stones, fix and clean the machine and the tail pulley, push the button and load the unloaded stones. He also had to take charge of the loading of spilled lid and of cleaning everything found within the premises, as well as all other work assigned to him by his foreman. His job required him to follow this routine from 8:00 a.m. to 4:00 p.m. The petitioner had been exposed to fumes, smoke, heat of the engine, hunger, thirst, physical strain, holding his urination and "all sorts of hardship."

Sometime in May, 1973, while still in the active course of his employment, Villavieja was operated on for kidney trouble but he was able to resume work on September 16, 1973. Although the sickness was not completely arrested, he was asked and was permitted to work up to the time of his dismissal on January 23, 1975.

On February 5, 1975, petitioner filed the instant claims for injury or sickness benefits and reimbursement of medical expenses. The claim was uncontroverted by his employer and a decision was rendered by the Chief, Workmen's Compensation Unit awarding the petitioner's claims.

Respondent corporation filed a petition for review stating that the decision was a nullity for lack of due process, the case not having been formally set for hearing for the reception of the evidence of the parties. Moreover, Marinduque Mining and Industrial Corporation alleged that the referee erred in holding it liable for claimant's illness which is not work-connected.

The Workmen's Compensation Commission en banc, reversed the decision of the Chief, Workmen's Compensation Unit, Bacolod City. The Commission held that: "The record reveals that claimant was paid 60% of his average weekly wage during his temporary total disability. The grant of 50% NSD is without basis because under the New Schedule of Compensation, a supplement to the law, there is no NSD for this illness."

Hence, this petition.

The sole issue at hand is whether or not the respondent Commission committed grave abuse of discretion when it reversed the decision or award of the Chief, Workmen's Compensation Unit and dismissed the case in its entirety including reimbursement for medical expenses, and in further holding that illness due to stones of the kidney is

non-compensable as a Non-Scheduled Disability (NSD).

Petitioner relies on the presumption of compensability of illness which supervenes during employment.

Respondent, however, maintains that petitioner's illness is a non-occupational disease which can be acquired without regard to one's employment. It is alleged that the case was not formally set for hearing before the Workmen's Compensation Unit, with the result that the decision was rendered without evidentiary basis to support compensability either on causal connection between the ailment and the employment nor aggravation of illness by reason of the nature of the employment.

We only need to reiterate well-settled principles and jurisprudence to resolve the issue at hand. As early as *Batangas Transportation Co. v. Vda. de Rivera*, 99 Phil. 1025 in 1956 and *Bohol Land Transportation Co. v. De Madanguit*, 70 Phil. 685 to *Felarca v. Bookman, Inc.* 127 SCRA 275 in 1984, this court has consistently ruled that "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 was aggravated by said employment and with this legal presumption, the burden of proof shifts to the employer and the employee is relieved of the burden to show causation." True, this presumption may be rebutted by substantial evidence to the contrary. Yet, the records in the case at bar show that petitioner's "right to compensation has not been controverted by respondent" (Award by the Chief, Workmen's Compensation Unit, *Felicito D. Ciocon*, page 16 Rollo). Thus failure to controvert results in the renunciation of defenses available to the employer, including the defense that the illness subject matter of the claim is not compensable (*Vda. delos Santos v. Workmen's Compensation Commission*, 88 SCRA 134). What the Commission inexplicably failed to do, *x x x*, was to apply the express mandate of Section 45 of Workmen's Compensation Act, the pertinent provision of which reads:

"In case the employer decided to controvert the right to compensation, he shall, either on or before the fourteenth day of disability or within ten days after he has knowledge of the alleged accident, file a notice with the Commissioner, on a form prescribed by him, that compensation is not being paid, giving the name of the claimant, name of the employer, date of the accident and the reason why compensation is not being paid. Failure on the part of the employer or the insurance carrier to comply with the requirement shall constitute a renunciation of his right to controvert the claim unless he submits reasonable grounds for the failure to make the necessary reports, on the basis of which grounds the Commissioner may reinstate his right to controvert the claim."

As we have heretofore held in an unbroken line of countless cases (Cf. *Victorias Milling Co. v. Workmen's Compensation Commission*, 101 Phil. 1208; *Magalona v. Workmen's Compensation Commission*, 21 SCRA 1199; *Tortal v. Workmen's Compensation Commission*, 124 SCRA 211) it may issue outright an award, since a failure to controvert is a renunciation of the right to challenge the claim and a waiver of all non-jurisdictional defenses and there is nothing that the employer can legally prove in relation thereto (*Dinaro v. Workmen's Compensation Commission*, 70 SCRA 292). Further, the employer's failure to controvert the claim for compensation is equivalent to a waiver of the right to due process, and an award can be issued without a formal hearing (*Caleb v. Workmen's Compensation Commission*, 88 SCRA 114; *Pajarillo v. Workmen's Compensation Commission*, 95 SCRA 582; *De Castro, Jr. v. Republic*, 75 SCRA 364). The employer may no longer be heard to complain after having failed to avail of its rights under the law. Here, there is no showing of any petition under oath for reinstatement of the right to controvert nor any claim of fraud or collusion in the non-controversion of the claim (*Dinaro v. Workmen's Compensation Commission*, *supra*). Hence the issuance of an award in favor of petitioner-claimant is in order.

Petitioner assails respondent Commission's dismissal of the case which included reimbursement for medical expenses. And with reason, Section 13 of the Workmen's Compensation Act as amended, provides that

"Immediately after an employee has suffered an injury or contracted sickness and during the subsequent period of disability, the employer or insurance carrier shall provide the employee with such services, appliances and supplies as the nature of his disability and the process of his recovery may require; and that which will promote his early restoration to the maximum level of his physical capacity. xxx" Against this, the law provides the employee with only a single defense, to wit: "x x x If it is shown before the Commission or its authorized representative that the injured or sick employee voluntarily refused to accept without justifiable cause the services, appliances and supplies provided by the employer or insurance carrier or voluntarily obstructed without justifiable cause the giving of such services, appliances and supplies, such refusal or obstruction shall be construed as a waiver of all or part of his rights to the same and in this case, the employer or insurance carrier shall be liable only for the disability of any nature that would have ensued if the injured or sick employee has accepted the services, appliances and supplies tendered by the employer or insurance carrier; x x x" (paragraph 4, Section 13, Workmen's Compensation Act). There has been no such waiver of petitioner's right to reimbursement for medical expenses. Yet, the Workmen's Compensation Commission in its decision, withheld the grant of such benefit. No explanation was made why the same was denied there being no relinquishment of rights under the law, and the compensability of the illness having been shown, reimbursement of medical expenses already incurred by petitioner in the amount of P1,836.00 is but proper.

Petitioner further takes exception to the Commission's ruling to wit:

"The record reveals that claimant was paid 60% of his average weekly wage during his temporary total disability. The grant of 50% NSD is without basis because under the new Schedule of Compensation, a Supplement to the Law, there is no NSD for this illness."

It is alleged that there was no payment whatsoever made by respondent company. We are inclined to agree. Other than its own assertion, there is no showing nor any evidence presented to show any alleged payment by respondent. The facts show that upon receipt of the award issued in favor of the petitioner by the Workmen's Compensation Unit, a petition for review was filed by respondent, which petition resulted in the reversal of said award by the Commission en banc. Respondent asserts petitioner's non-entitlement to the award yet, at the same time alleges payment of disability compensation to petitioner-claimant. Having alleged the latter, it would be consistent with respondent's posture to request a refund or return of payment from petitioner after receipt of the Commission's decision in its favor. It is quite contrary to reason and logic that such payment be advanced to support respondent's contention. Respondent cannot now allege payment of compensation to avoid liability under the law.

Anent the 50% NSD disability benefit, aside from the non-controversion thereof by respondent before the Workmen's Compensation Unit, it should be understood that although the Schedule of Compensation, a supplement to Article 18, paragraph 5 of the Workmen's Compensation Act, does not specifically provide for kidney stone as a non-scheduled disability, it must be understood that just as the law is non-exclusive, the enumeration therein must, likewise, be understood as such. Further, such schedule explicitly provides for cases under which the petitioner's disability may fall, to wit:

"XX. THE ABDOMEN

xxx xxx xxx

"2. Chronic diseases of any kind of the abdominal organs arising from industrial injury and resulting in permanent derangement of their functions, or impairment of nutrition:

xxx xxx xxx

- a. Slight x x x.
- b. Moderate x x x.
- c. Severe (such as chronic disease of the abdominal organs as produces marked impairment of nutrition or such symptoms as totally incapacitate the laborer from securing or retaining employment)."

(New Schedule of Compensation, A Supplement to the One Prescribed by Law, Fourth Issue, Revised, improved and up-dated [1964] by Fidel M. Guilatco, MD. DIH, Chief Compensation Ratings Medical Officer and Chief, Evaluation Division, Bureau of Workmen's Compensation, Department of Labor, Manila).

Moreover, as between the impartial finding or evaluation on the matter of disability of the Compensation Medical Rating Officer who had physically examined petitioner-claimant and the conclusion of the Associate Commissioner of the respondent Workmen's Compensation Commission based merely on his general observation of the case, we find the former more reliable.

WHEREFORE, in view of the foregoing, the petition is hereby GRANTED. The decision of the respondent Workmen's Compensation Commission is REVERSED and SET ASIDE. The decision of the Chief, Workmen's Compensation Unit, Felicito D. Ciocon, dated November 12, 1975 is REINSTATED. Respondent Marinduque Mining and Industrial Corporation is ordered:

1. To pay petitioner-claimant the amount of FOUR THOUSAND FOUR HUNDRED EIGHTY FOUR & 63/100 (P4,484.63) PESOS as disability compensation benefits;
2. To reimburse petitioner his medical and hospital expenses in the amount of ONE THOUSAND EIGHT HUNDRED THIRTY SIX (P1,836.00) PESOS subject to strict auditing procedures of respondent company;
3. To pay petitioner attorney's fees in the amount of FOUR HUNDRED FORTY-EIGHT & 46/100 (P448.46) PESOS; and
4. To pay to the Ministry of Labor and Employment the sum of FORTY FIVE (P45.00) PESOS for expenses for administration.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova, and De La Fuente, JJ., concur.

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