

JESUS RAMOS, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND THE REPUBLIC OF THE PHILIPPINES (DEPARTMENT OF PUBLIC HIGHWAYS), RESPONDENTS.

G.R. No. L-46263. October 30, 1978

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petition for review on certiorari of the decision rendered on December 30, 1975 by the Workmen's Compensation Commission in R05-WC Case No. 129857, which affirmed the order dated November 21, 1975 of the acting referee, Workmen's Compensation Section, Regional Office No. V, Department of Labor, Legaspi City, denying petitioner's claim for disability benefits under the provisions of the Workmen's Compensation Act, as amended, on the ground of "insufficiency of evidence."

It appears that herein petitioner Jesus M. Ramos of Cogon, Virac, Catanduanes, was employed as an auto-mechanic by respondent Bureau of Public Highways since 1930 up to 1941 and then after the war from 1946 up to September 8, 1973 when he retired under Commonwealth Act No. 186, as amended. The highest monthly pay he received was P222.70.

On June 16, 1974, after his retirement, petitioner filed his claim for disability benefits against respondent Republic of the Philippines (Department of Public Highways) due to his alleged illness of "pulmonary tuberculosis, bilateral, chronic, hypertension, essential", which he claimed to have contracted and/or been aggravated during his employment as auto-mechanic by respondent Department of Public Highways. Respondent controverted this claim on the ground that said illness was not due to petitioner's employment.

On July 9, 1974, claimant-petitioner, in support of his claim, submitted documentary evidence consisting of physician's report, service record and his approved retirement under R.A. No. 186. According to the acting referee, the notice of injury shows that petitioner stopped working on December 14, 1966 and returned to work without stating the date when.

On November 21, 1975, the acting referee of the Workmen's Compensation Section, Regional Office No. V, Department of Labor in Legaspi City, issued an order dismissing claimant-petitioner's claim for disability benefits for "insufficiency of evidence" based on his finding that "claimant lacks proof that he was really disabled, like approved sick leave applications."

Thereafter, claimant-petitioner through counsel filed an urgent motion for reconsideration dated December 10, 1975, praying that his claim be given due course and that an award and attorney's fees be given to him, this time attaching to said motion xerox copies of the following documents: (a) nineteen [19] days sick leave of absence from May 16 to June 3, 1956, his ailment being fibro-nodular infiltration both spaces and middle third left lung [Annex F-1]; (b) twenty-seven [27] days sick leave of absence with pay from June 4 to June 30, 1956 [Annexes F-1 and F-2]; (c) thirty [30] days vacation leave of absence with pay from June 5 to July 4, 1957 [Annex F-3]; (d) twenty-three [23] days sick leave of absence with pay from July 19 to August 18, 1961 [Annex F-4]; (e) telegram

dated July 26, 1961 sent by the District Engineer to the Secretary of Public Works and Communications, requesting the commutation pay for one month of petitioner for urgent medical expenses [annex F-5]; (f) three [3] days sick leave of absence with pay from July 18 to 23, 1963 [Annex F-6]; (g) twenty [20] days leave of absence [vacation - 15 days and sick - 5 days] with pay from July 1 to 31, 1966 [Annex F-7]; and (h) three [3] days sick leave of absence with pay from October 24 to 26, 1966 [Annex F-8].

On December 15, 1975, the acting referee denied the motion for reconsideration for lack of merit and elevated the entire records of the case to the Workmen's Compensation Commission for review (Annex G, p. 39, rollo).

On December 30, 1975, the Workmen's Compensation Commission rendered its decision affirming the order of the acting referee which denied petitioner's claim for disability benefits for "insufficiency of evidence" (Annex H, p. 40, rollo), pertinent portion of which reads as follows:

"Elevated to this Commission is the Order of Acting Referee Edgardo dela Cruz, Member of the Compensation Task Force, sent to the Bicol area to terminate all cases thereat, which dismissed this claim on the ground of insufficiency of evidence, foremost of which was that claimant's ailment arose out of, or in the course of his employment. We have perused claimant's Notice of Claim or Sickness and noticed that claimant was seeking for disability benefit when he allegedly stopped working on December 14, 1966. We have also perused his service records for the period when he was allegedly disabled for labor and found no such disability. His service record showed that he worked continuously from 1930 up to 1941 and then after the war in 1946 up to his date of retirement on September 8, 1973. With these two (2) evidences contradicting each other, both coming from the same claimant, we have no alternative but to conform with the Order of dismissal of the Acting Referee below."

From the said decision, herein claimant filed a motion for reconsideration dated March 2, 1976 which was not resolved by respondent Commission, hence, the instant petition for review.

After going over the records of this case before this Court, WE find the petition meritorious.

It is sufficiently shown that petitioner Jesus M. Ramos' illness of "pulmonary tuberculosis, bilateral, chronic, hypertension, essential" was contracted during his 40 long years of employment as auto-mechanic by respondent Department of Public Highways. The nature of his work undoubtedly caused and aggravated said illness, thus, forcing him to take off-and-on sick leaves of absence in order to rest and find ways and means to cure his ailment in accordance with the advice of his physician. On top of that, petitioner was forced to retire under Commonwealth Act No. 186, as amended, on September 8, 1973 at the time when he was about 60 years old, very much below the compulsory retirement age of 65 (see Annex B, p. 23, rollo). Such voluntary retirement can only be allowed where the employee is physically incapacitated to render official service by reason of illness (Memorandum Circular No. 133). Although respondent employer controverted this claim on the ground that the said illness is not in connection with petitioner's employment, yet it failed to introduce substantial evidence in support of said contention. Hence, the presumption of compensability remains un rebutted.

In the past, it has been the consistent rulings of this Court to award compensation benefits to employees who were forced to retire below the compulsory retirement age of 65 in view of their incapacity to continue working by virtue of the illness which they either contracted, supervened and/or was aggravated during the period of their employment. Thus, in *Despe vs. Workmen's Compensation Commission and the Republic of the Philippines (Bureau of Public Schools.)* [G.R. No. L-42828, promulgated on February 28, 1977], this Court, through Mr. Justice Ruperto G. Martin, held:

"x x x The fact, however, that her optional retirement at the age of 61 was approved by the Government Service Insurance System is a clear indication that she has met the conditions regarding applications for optional retirement under Commonwealth Act No. 186, as amended by Republic Acts No. 1616 and No. 4968 payable by the employer pursuant to Memorandum Circular No. 133 of the Office of the President. Said circular among others provides that x x x 'all such applications shall not be recommended for approval unless funds are available in the bureau or office concerned for the payment of the applicant's retirement gratuity over and above the fund requirements of its programmed projects and activities and provided any of the following circumstances or conditions is present (1) x x x; or (2) the employee-applicant is below 65 years of age, is physically incapacitated to render further efficient service.'

"Besides, it cannot be denied that the illnesses which constrained petitioner to apply for optional retirement occurred during the course of her employment as a public school teacher. As such, there is the presumption mandated by Section 44 of the Workmen's Compensation Act that the employee's illness 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."

In *Illuminado G. Solite vs. Workmen's Compensation Commission and Republic of the Philippines* (Bureau of Telecommunications) [G.R. No. L-43404, promulgated on February 28, 1977], also penned by Justice Martin, this Court ruled that when petitioner's weakened bodily condition, not old age, forced him to retire, he is entitled to compensation. Likewise, in *Gomez vs. WCC and the Republic of the Philippines* (Bureau of Public Schools) [G.R. No. L-43617, promulgated on February 28, 1977], it was also held that when petitioner's application for retirement at age 63 was approved by the GSIS, it is a clear indication that she was physically incapacitated to render further efficient service.

As the fact remains that the illness of herein petitioner was contracted during the course of his employment as auto-mechanic with respondent Department of Public Highways, it is still within his right to file disability benefits even after the date of his retirement on September 8, 1973. Apropos is the case of *Sudario, Jr. vs. WCC and the Republic of the Philippines* (G.R. No. L-44088, promulgated on October 16, 1977). In this case, the petitioner was employed as Senior Telegraph Operator at the Bureau of Telecommunications from 1963 until his retirement in January, 1973. After some years in the service he suffered from chest pains and difficulty in breathing. He was found to be suffering from cardiac enlargement. Due to his ailment he went on sick leave. After recuperating from his illness he returned to work but only to perform light jobs. The recurrence of his ailment forced him to retire from the service. In 1975, he filed a claim for compensation under the Workmen's Compensation Law. The Workmen's Compensation Commission turned down the claim on the ground, among other things, that since he had retired he could no longer claim benefits. However, this Court ruled:

"While it is true that retirement from the service results in the severance of employer-employee relationship which relationship is the jurisdictional foundation for a claim for compensation benefits under the Workmen's Compensation Act, nevertheless, as long as the illness or injury for which compensation is claimed arose out of or in the course of the employment, the retired employee is still entitled to compensation benefits under the provisions of Act 3428. x x x".

Another case which bolstered the award of disability benefits to herein petitioner is that case of *Franco C. Espiritu vs. WCC and The Department of Health* (G.R. No. L-42471, promulgated on August 22, 1978). The facts of this case may be summarized as follows:

"The petitioner had been employed by the Department of Health since 1949. In 1967, a tumor developed in his neck. The mass was diagnosed as carcinoma. The petitioner was operated on several times. After his last operation he resumed work. In 1974 he went on sick and vacation leave and retired shortly thereafter at the age of 63. He filed a claim for disability compensation. The claim was turned down by the Workmen's Compensation Commission. The petitioner appealed. The government contended that since the petitioner continued working despite his ailment, until he retired voluntarily and not on the ground of his disability he did not suffer any wage loss and that therefore the government is relieved of the burden of compensating him for his disability."

In ruling that this contention of the government is without merit and forthwith awarded the petitioner disability benefits, this Court, through Mr. Justice Guerrero, ruled:

"This is without merit. Petitioner was forced to retire upon the advice of Dr. Magpayo. Petitioner was then only 63 years of age, short of the compulsory age for retirement. It is not, therefore, accurate to state that there was no wage loss factor involved, for verily, if petitioner was not disabled, he could have retired two years later and could have received the maximum benefits of the Retirement Law. x x x."

In the instant case, herein petitioner had sufficiently shown that his illness of "pulmonary tuberculosis, bilateral, chronic, hypertension, essential" was contracted during the course of his employment by respondent Department of Public Highways by presenting documentary proofs, such as physician's report, service record, his approved retirement under C.A. 186, as amended (see order of the Acting Referee, p. 28, rollo) and duly certified by the personnel clerk and administrative officer of the Office of the Highway District Engineer of Catanduanes as true and correct xerox copies of his applications for sick leave of absence for 19 days, 27 days, 30 days, 23 days, 3 days, 20 days and 3 days, covering the period from May of 1956 to October of 1966 (Annexes F-1 to F-8 of the petition). The duly certified true and correct xerox copies of his applications for sick leave of absence were attached to his motion for reconsideration of the order of the acting referee denying his claim (Annex F, pp. 29-31, rec.). The official records of the Office of the Highway District Engineer of Catanduanes and the respondent had not been controverted by the Solicitor General.

Considering that, as earlier stated, the presumption of compensability remains unrebutted by respondent employer; that in compensation proceedings probability and not the ultimate degree of certainty is the test of proof (National Housing Corp. vs. WCC, et al., G.R. No. L-37907, September 30, 1977); that in case of doubt the same should be resolved in favor of the claimant (Cuyno, Jr. vs. WCC, et al., G.R. No. L-44271, Sept. 22, 1977); and that the Workmen's Compensation Act is a social legislation designed to help the workingman and to implement the social justice guarantee enshrined in the Constitution, WE are of the view and so hold that herein petitioner is entitled to the maximum of the disability benefits provided for under the Workmen's Compensation Act, as amended.

WHEREFORE, THE DECISION OF THE RESPONDENT WORKMEN'S COMPENSATION COMMISSION IS HEREBY REVERSED AND SET ASIDE AND RESPONDENT DEPARTMENT OF PUBLIC HIGHWAYS IS HEREBY DIRECTED

I. TO PAY THE CLAIMANT-PETITIONER JESUS M. RAMOS

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

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

II. TO REIMBURSE CLAIMANT-PETITIONER HIS MEDICAL AND HOSPITAL EXPENSES DULY SUPPORTED BY PROPER RECEIPTS;

III. TO PROVIDE CLAIMANT-PETITIONER WITH SUCH MEDICAL, SURGICAL AND HOSPITAL SERVICES AS WELL AS APPLIANCES AND SUPPLIES AS THE NATURE OF HIS DISABILITY AND THE PROGRESS OF HIS RECOVERY MAY REQUIRE AND WHICH WILL PROMOTE HIS EARLY RESTORATION TO THE MAXIMUM LEVEL OF HIS PHYSICAL CAPACITY; AND

IV. TO PAY ADMINISTRATIVE COSTS.

SO ORDERED.

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

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