

SALVADOR M. YUTUC, PETITIONER, VS. REPUBLIC OF THE PHILLIPINES, (NATIONAL IRRIGATION ADMINISTRATION), RESPONDENT.

G.R. No. L-43270. December 29, 1978

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for review on certiorari[1] of the decision rendered by the Workmen's Compensation Commission on February 3, 1976 in RO3-WCC Case No. 10621 affirming the decision of the Acting Referee dismissing petitioner's claim for compensation.

This case was commenced on June 14, 1974 when petitioner Salvador M. Yutuc filed a Notice of Injury and Claim for Compensation[2] under Act No. 3428 as amended with the Regional Office No. 3 of the Workmen's Compensation Commission in San Fernando, Pampanga. According to the records, petitioner was 67 years of age at the time and employed as a ditch tender in the NIA (National Irrigation Administration); that on October 25, 1973, he was injured at Sto. Domingo, Lubao, Pampanga while in the employ of the NIA; that from the time of the accident he no longer reported for work; and that on the very day of the accident, Oct. 25, 1973, he orally gave notice of his injury to his employer, the National Irrigation System of Floridablanca, Pampanga, thru the workmaster, Francisco Monis. Supporting his claim were: (1) a Certificate of Attending Physician[3] dated May 9, 1974, and (2) a Physician's Report of Sickness or Accident[4] dated June 13, 1974, both of which were accomplished by Dr. Romeo S. Fernandez of the National Orthopedic Hospital, Quezon City.

Subsequently, or on December 4, 1975, petitioner submitted[5] to the same regional office an Affidavit[6] narrating the facts which gave rise to the filing of his claim.

Acting Referee Angel L. Hernando, Jr. dismissed the claim for insufficiency of evidence in a decision[7] dated December 3, 1975 and received by petitioner's counsel on December 29, 1975, holding that:

"Salvador M. Yutuc was employed as ditch tender with a weekly wage of P28.00 by the National Irrigation Administration. On October 25, 1973 while walking he fell into a ravine resulting to fracture and dislocation of 5th vertebra. Since then claimant has not returned to work. Claimant has been admitted at the National Orthopedic Hospital for rehabilitation and regained minimal motor functions both lower and upper extremities.

"The respondent thru the Solicitor General's Office contested the claim as not falling under Section 2 of Act 3428, as amended.

"The aforestated facts are indeed too bare. There is no showing that the claimant was in the official

performance of his job when the accident occurred." (Italics supplied.)

Through counsel, petitioner on January 6, 1976 moved to reconsider and/or review[8] the decision of the Acting Referee which, he alleged, was contrary to the facts and the documents submitted. The main ground relied upon by petitioner was that there was a misreading of the contents of his Physician's Certificate (Annex "B") and Report (Annex "C"), in that the word "working" was read as "walking", thereby leading the Acting Referee to arrive at the erroneous conclusion that petitioner was not in the official performance of his job when the accident occurred. Petitioner emphasized in his Motion that he was working and performing his duties as ditch tender when he accidentally fell into a ravine, adverting to his Affidavit of December 4, 1975. He further pointed out that the aforestated facts were never controverted by his employer.

In an Order[9] dated January 8, 1976, the Chief of Workmen's Compensation Unit, Exequiel E. Sison, denied the motion for reconsideration for lack of merit and ordered that the entire records of the case be elevated to the Workmen's Compensation Commission for review of the decision of the Acting Referee.

On February 3, 1976, the Workmen's Compensation Commission affirmed the dismissal of petitioner's claim in a decision[10] from which We quote:

"We are inclined to agree with the dismissal of this case not on the ground of insufficiency of evidence, but for lack of merit. On the fact of the claim itself claimant failed to state the cause of the accident. However, in the physician's report submitted by claimant together with his claim, it is explicitly stated therein that claimant fell into the ravine while walking. There is no evidence except claimant's uncorroborated affidavit, that at the time of the accident he was in the performance of his duty as a ditch-tender or on a special errand for the benefit of the respondent. Hence, there is no basis upon which his personal disability may be linked to the nature of his employment. Moreover, as shown in the service record claimant was born on October 13, 1907, so that when he stopped working on June 30, 1974 he was almost 67 years old. So that it is safe to conclude that claimant had to retire not due to his alleged disability but because he had reached the age of compulsory retirement." (Italics supplied.)

Petitioner filed this instant petition for review reiterating his contention that the Acting Referee, whose decision was affirmed by the Workmen's Compensation Commission, misread the word "working" in Annexes "B" and "C" as "walking", hence, his decision is not supported with the true facts of the case.

We agree with the petitioner. A close reading of both documents shows that the word "working" and not "walking" was used by Dr. Romeo S. Fernandez, the physician who accomplished in his own handwriting the Certificate of Attending Physician (Annex "B") and the Physician's Report (Annex "C"). The following appears clearly and unmistakably in the documentary evidence for the petitioner:

"Patient while working fell from a height 8 feet high sustaining pain x x x with weakness of both upper & lower extremities." [11]

"Patient while working accidentally fell into a ravine." [12]

"Patient while working fell into a ravine, lost consciousness, when he regained consciousness he was unable to move both upper & lower extremities. X-ray shows fracture dislocation 5th cervical vertebra. Patient admitted

for rehabilitation in National Orthopedic Hospital & at present has regained minimal recovery of motor function both upper and lower extremities." [13]

In addition to the foregoing, petitioner's Affidavit of December 4, 1975 in part states:

"That sometime on October 25, 1973, while I was working and performing my duties as a Ditch Tender in the Barrio of Sto. Domingo, Lubao, Pampanga, I accidentally fell into a ravine and lose (sic) consciousness and when I regained my consciousness I was unable to move both my upper and lower extremities;"[14]

In the face of the above evidence, We hold the Acting Referee and the Workmen's Compensation Commission in palpable error and grievous abuse of discretion in ruling that the petitioner suffered injury while "walking" instead of "working", the word repeatedly used in the evidence for petitioner, which error has led to an unreasonable delay in the grant of the award to the injured claimant.

Respondent herein represented by the Office of the Solicitor General, in its Comment and Memorandum, relies heavily upon the finding of the Acting Referee, and subsequently by the WCC, that petitioner was "walking" and not "working" at the time of his accident, and contends that such holding upon an issue of fact should be accorded weight and respect.

It is a well-settled rule that findings and conclusions of fact made by the WCC are conclusive and binding upon this Court.[15] However, equally well-settled is the exception thereto that findings and conclusions of the WCC may be reviewed and disregarded if the same find absolutely no support in the evidence on record or are unsupported by substantial or credible evidence on record.[16] Thus, if, as in the present case, the findings and conclusions of the WCC are not supported by the evidence, as in fact they are blatantly contrary to what appears on record, the same may be brushed aside.

There is here a patent error, amounting to grave abuse of discretion,[17] which We must correct and rectify.

Respondent further argues that, even assuming that Annexes "B" and "C" employ the word "working" rather than "walking" as petitioner insists, there is still no ground for granting compensation, for other than his Affidavit, petitioner presents no other evidence to show that he met the accident while in line of duty.

After carefully weighing the evidence, however, We find and so hold that the herein claim falls within the purview of the Workmen's Compensation Act, as amended, and We do so on the following grounds:

1. Petitioner's statement, which is under oath, that he was working when he accidentally fell into a ravine (Annex "D") is worthy of credence and belief. He was a ditch tender of the National Irrigation Administration and his job as such necessitated field work which brought him to the different places where his employer was maintaining irrigation projects. It would thus not be unusual to find him working on uneven terrain with frequent step gradations from the mountains or hills, sometimes with precipitous embankments down to the valleys and plains being irrigated.

In addition to his Affidavit, petitioner also presented his attending physician's Certificate and Report (Annexes "B" and "C") which may also be admitted to prove that at the time he was being treated, petitioner told his doctor the cause of his injuries in reply to questions from the latter, such being the standard procedure in medical examinations and treatment.

Considering the evidence for the petitioner, We find that he has sufficiently substantiated and established his allegation that his injuries were sustained in the course of employment and while in the performance of his duties. Substantial evidence shall be sufficient to support a decision, order or award in workmen's compensation cases, in

consonance with the fundamental objective of the law in the promotion of social justice and equity.[18]

2. The Workmen's Compensation Act, Act No. 3428, as amended, explicitly states that:

"Sec. 2. Grounds for compensation. - When an employee suffers personal injury from any accident arising out of and in the course of his employment x x x, his employer shall pay compensation in the sums and to the person hereinafter specified. x x x"

In the case at bar, there is no evidence that at the time of petitioner's accident, he was not actually working as ditch tender. We find nothing in the records to show that respondent presented evidence in rebuttal at the hearing before the Acting Referee. Thus, "there can be no question that the personal injury that disabled herein petitioner was the result of an accident arising out of and in the course of employment; for the respondent x x x never presented evidence to the contrary." [19]

3. Finally, it is rather too late in the day for respondent to put up any non-jurisdictional defense in an effort to defeat petitioner's claim for compensation. The records show that respondent failed to effectively controvert this claim in accordance with Section 45 of Act No. 3428, as amended. Forming part of the records are the following communications from the Office of the Solicitor General addressed to the Chief, Workmen's Compensation Unit, Regional Office No. III, San Fernando, Pampanga:

(1) Letter dated July 11, 1974, reading: "In connection with your letter dated June 24, 1974 relative to the above-captioned case, please be informed that we referred the same to the Administrator, National Irrigation Administration for his information and appropriate action pursuant to Memorandum Circular No. 210 of the Office of the President of the Philippines.

In the meantime, please register our controversion on this claim."

(2) Letter dated February 24, 1975, reading: "In behalf of the Republic of the Philippines (National Irrigation System), please take notice that we are controverting the claim of YATUC M. SALVADOR, RO3-WCC Case No. 10621, on the ground that it does not fall under Section 2 of the Workmen's Compensation Act, as amended." As in the case of Republic vs. Workmen's Compensation Commission,[20] We hold that these communications do not amount to the controversion required by law. To be valid and effective, a controversion must comply with the provision of Section 45 of the Workmen's Compensation Act, as amended, which requires the filing of an employer's report. This section provides:

"In case the employer decides 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. x x x"

The records also show that respondent employer failed to give notice of controversion within the ten-days period as the notice of the injury suffered by the claimant was given by him to the employer on October 23, 1973 while it was only on July 11, 1974 that the employer, through the Office of the Solicitor General as counsel, gave notice

of its intention to controvert. Thus, respondent, having failed to validly and properly controvert the claim pursuant to Section 45 of the law, petitioner is entitled to an outright award.[21] Failure to effectively controvert is failure to controvert at all. At this point, it hardly bears repeating, for We have held time and again, that failure to controvert a compensation claim constitutes a renunciation of all non-jurisdictional defenses and is an ultimate admission of compensability.[22] If only on this ground alone, petitioner's claim should be granted.

4. Respondent's remaining contention is that the instant claim does not come within the purview of the Workmen's Compensation Act as the injuries compensated for are only those affecting earning power, and "(c)laimant here never incurred loss of earning power as he compulsorily retired at the age of 67 - some eight months after he suffered the aforesaid accident and consequently received retirement benefits." This contention is untenable.

In the first place, the records show that petitioner was not "compulsorily retired" on account of his age, but was discharged from the service under Section 11(c) of C.A. 186, as amended,[23] by reason of his disability. Attached to the records is GSIS Retirement Gratuity No. 46706 addressed to petitioner's employer informing the latter of the approval of petitioner's retirement effective July 1, 1974, after having complied with the requirements under the aforementioned provision of the GSIS Charter (C.A. 186, as amended). It also prescribed the payment of gratuity in the amount of P2,478.00 computed on the basis of one month's salary per year of service based on the highest salary received. It was specifically noted therein that "the retiree-applicant (was) totally and permanently disabled as verified by the System," clearly showing that petitioner was retired because of his disability, and not because of his age.

In the second place, although petitioner was already due for compulsory retirement, the fact is that he was allowed to continue in the service even after reaching the age of sixty-five and We can only presume that he was so permitted because he only had less than ten (10) years of service to his credit (per Service Record) and, therefore, was not yet entitled to compulsory retirement benefits. Were it not for the accident, petitioner would have continued working until his compulsory retirement. It is significant to note that although petitioner stopped reporting for work immediately after his accident on October 25, 1973, his retirement was made effective only on July 1, 1974. During the interim period, he was placed on sick leave.[24] There was, therefore, a loss of earning power on the part of the petitioner for the eight-month period before his retirement, contrary to the contention of herein respondent. Respondent having knowingly allowed petitioner to continue working even after the latter had reached retirement age, it should be held responsible for compensation to which petitioner may be entitled under the law as any other employee would, until he is effectively retired.

Under Sections 14 and 15 of the Workmen's Compensation Act as amended, the petitioner, being totally and permanently disabled, is entitled to compensation benefits computed as follows: $P252.00$ (monthly salary) $\div 4$ = average weekly wage or $P63.00 \times 60\% = P37.00 \times 208 \text{ weeks} = P7,862.40$ reduced to $P6,000.00$, the maximum allowed by law.

WHEREFORE, the decision dated February 3, 1976 of the Workmen's Compensation Commission is hereby set aside and respondent Republic (National Irrigation Administration) is hereby ordered:

1. To pay petitioner the sum of Six Thousand (P6,000.00) Pesos as disability benefits;
2. To reimburse petitioner his expenses for medical and hospital services duly supported by proper receipts;

3. To pay petitioner's counsel the sum of Six Hundred (P600.00) Pesos as attorney's fees; and
4. To pay the Workmen's Compensation Commission the amount of Sixty-One (P61.00) Pesos as administrative fee.

SO ORDERED.

Teehankee, (Chairman), Santos, and Fernandez, JJ., concur.

Makasiar, J., concur in a separate opinion.

[1] Treated as a Special Civil Action per Resolution of June 23, 1976.

[2] Annex "A", Petition, Rollo, p. 7.

[3] Annex "B", Petition, Rollo, p. 8.

[4] Annex "C", Petition, Rollo, p. 9.

[5] Petition, pp. 1-2.

[6] Annexes "D" and "D-1", Petition, Rollo, pp. 10-11.

[7] Annex "E", Petition, Rollo, p. 12.

[8] Annex "F", Petition.

[9] Rollo, p. 16.

[10] Rollo, pp. 18-20.

[11] Annex "B", Item 3 (a), Rollo, p. 8; Underscoring Ours.

[12] Annex "C", Item 10, Rollo, p. 9; Underscoring Ours.

[13] Annex "C", General Remarks; Underscoring Ours.

[14] Rollo, p. 10.

[15] J. D. Transit, Inc. vs. The Workmen's Compensation Commission and Estanislao Sison, L-41431, February 28, 1978, 81 SCRA 660, 664, citing Abong v. WCC, et al., 1973, 54 SCRA 379; Bacatan, et al. vs. WCC, 1975, 67 SCRA 410; William Lines vs. Mondragon and WCC, 1971, 42 SCRA 48; Alatco Transportation, Inc. vs. WCC, et al., 1971, 42 SCRA 391; Pangasinan Transportation Co., Inc. vs. WCC, et al., 1975, 63 SCRA 349. See also Vda. de Torres vs. Warner Barnes & Co., Inc. and WCC, L-42654, February 28, 1978, 81 SCRA 681, 685.

[16] Mulingtapang vs. WCC and Marcelo Steel Corporation, L-42483, December 21, 1977, 80 SCRA 610, 614; Batangas Transportation Co. vs. Rivera and the WCC, L-14427, August 29, 1960, 109 Phil. 175, p. 177, citing PAL vs. PAL Employees Association, L-8197, October 31, 1958; Donato vs. Philippine Marine Officers' Association, L-12506, May 18, 1959; 5¢ and UP Employees Association vs. Dept. and Bazaar Free Workers' Union, L-9168, October 18, 1956; NLU vs. Dinglasan, 98 Phil. 649; 52 Off. Gaz. (4) 1933.

[17] Mulingtapang vs. Workmen's Compensation Commission and Marcelo Steel Corporation, supra, p. 614.

[18] Vda. de Olib, et al. vs. City of Manila, et al., L-32120, December 17, 1975, 68 SCRA 380, 381.

[19] Santos vs. Workmen's Compensation Commission and Philippine Engineering and Construction Corporation, L-43243, February 28, 1977, 75 SCRA 364, 367.

[20] L-34352, May 31, 1972, 45 SCRA 358, 363.

[21] Lopez vs. Workmen's Compensation Commission and Government Service and Insurance System, L-42582, October 21, 1977, 79 SCRA 551, 554.

[22] Roma vs. Workmen's Compensation Commission and Bureau of Public Schools, L-43675, October 28, 1977, 80 SCRA 170, 176; Bautista vs. Workmen's Compensation Commission and Republic of the Philippines, L-42885, November 23, 1977, 80 SCRA 313, 318; Despe vs. Workmen's Compensation Commission and Republic, L-42828, Feb. 28, 1977, 75 SCRA 350, 353; Gomez vs. WCC and Republic, L-43617, Feb. 28, 1977, 75 SCRA 395, 399.

[23] Section 11(c). Disability benefit. - If he becomes permanently and totally disabled and his services are no longer desirable, he shall be discharged and paid his own contributions with interest of three per centum per annum, compounded monthly, if he has served less than five years. If he has served at least five years but less than fifteen years, he shall be paid also the corresponding employer's premiums, without interest, described in subsection (a) of section 5 hereof: Provided, That if his disability is not due to his own misconduct, gross negligence, imtemperate use of drugs or alcoholic liquor, or vicious or immoral habits, he shall also be paid by the employer one month's salary for every year of service, based on the highest rate received.

[24] Annex "D", Petition.

SEPARATE CONCURRING OPINION

MAKASIAR, J.:

I concur with the additional opinion that the respondent employer should likewise be directed to continuously provide the claimant 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. It is my consistent view that the provisions of Section 13 of the Workmen's Compensation Act, as amended, and Article 185 of the New Labor Code confer such right on the disabled employee, whether his disability is temporary or permanent. This is in compliance with the social justice guarantee of both the 1935 and 1973 Constitutions and in obedience to the directive of Article 4 of the New Labor Code that "all doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor," which is a re-statement of existing jurisprudence as well as Article 1702 of the New Civil Code. To limit such right to a temporarily disabled employee would inflict gross injustice on those permanently disabled, who still need to be relieved from the pain, trauma, social ostracism or humiliation generated by such permanent disability.

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