

**BONIFACIA U. PACARRO, PETITIONER, VS. SECRETARY OF LABOR,
(COMPENSATION APPEALS AND REVIEW STAFF), WORKMEN'S
COMPENSATION COMMISSION AND BUREAU OF PUBLIC SCHOOLS,
RESPONDENTS.**

G.R. No. L-46969. December 11, 1987

Ponente: FERNAN, J.

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FERNAN, J.:

This is a petition for review of the decision of the Workmen's Compensation Commission dated October 14, 1975 in WCU Case No. DSRO-1343 entitled "Bonifacia U. Pacarro vs. Republic of the Philippines [Bureau of Public Schools]" which was sustained by the Compensation Appeals and Review Staff when it denied petitioner's motion for reconsideration in its order dated July 6, 1977.

Since November 21, 1938 until her optional retirement at the age of sixty-two, petitioner Bonifacia U. Pacarro was a grade school teacher assigned in the Oroquieta City Division of the Bureau of Public Schools. In 1965, she began having frequent coughs and colds which recurred every time she was exposed to sudden weather changes and heavy work in school. In 1967, her chest X-ray showed minimal pulmonary tuberculosis [PTB] for which tablets for medication were prescribed. In July, 1972, her illness worsened. Wracked with cough, fever and headache for two weeks despite medication, she was brought to the Cebu TB Pavilion where a second X-ray was taken on July 5, 1972. It revealed "PTB, moderately advanced on the right lung and minimal on the left lung." [1] The resident physician, Dr. Rafael A. Garcia, Jr., advised rest and drug therapy. Petitioner went on a two-month sick leave in the month of July, 1972, after which she resumed working until her optional retirement was approved, effective June 3, 1974. Her last sick leave before retiring was from October 18 to 26, 1973. For her more than thirty years of service, she was given a lump sum retirement pay equivalent to five years salary and more than P1,000.00 from the GSIS. [2]

On September 30, 1974, petitioner filed a "Notice of Injury or Sickness and Claim for Compensation" with the Workmen's Compensation Unit in Dipolog City against the Division Superintendent of Schools. Her claim was not controverted by her employer, the Bureau of Public Schools. [3]

On January 8, 1975, the Workmen's Compensation Unit of the Dipolog Sub-Regional Office issued an award in favor of petitioner, ordering respondent Republic of the Philippines [Bureau of Public Schools] to pay petitioner the amount of P6,000.00 representing disability benefits under Sections 14 and 18 of the Workmen's Compensation Act; P1,562.90 as medical expense reimbursement under Section 13; as well as P300.00 as attorney's fees for petitioner's counsel and P61.00 to the Commission through that Unit as award fees pursuant to Section 55. [4]

On appeal, the Workmen's Compensation Commission en banc rendered a decision on October 14, 1975 setting aside the aforesaid award and dismissing the claim on the ground that while petitioner was admittedly afflicted with PTB as of July 5, 1972, for which reason she went on a two-month sick leave, she afterwards returned to

work until her retirement on June 3, 1974. From this set of facts, the Commission concluded that at the time petitioner retired, she was not clearly suffering from PTB. "That she had the illness two years prior to retirement does not mean that she had the same illness during her retirement for there is no evidence to that effect. In other words, she did not retire due to any incapacitating disease; she was not suffering any at the time. There being no disability, the claimant should not be entitled to any compensating benefits. The claimant had retired on the basis of her retirable age and the length of service."[5]

Petitioner filed a motion for reconsideration of the Commission's decision but said motion was denied by the Compensation Appeals and Review Staff of the Office of the Secretary of Labor in its order of July 6, 1977.[6] Hence, this recourse.

There are two principal issues presented for our resolution, namely:

[a] Whether or not petitioner is entitled to disability benefits and refund of medical expenses after having been paid her full retirement benefits, considering that at the time of her retirement there was allegedly no substantial evidence to show that petitioner was still afflicted with tuberculosis; and,

[b] Whether or not the decision of respondent Workmen's Compensation Commission has become final and executory in view of petitioner's alleged failure to timely appeal therefrom.

The fact that petitioner, as a teacher, had to contend with classroom work, in addition to supervising the school children in gardening and cleaning the grounds as well as community work which exposed her to all kinds of elements, and was thereby compelled to retire, should have been given weight by respondent Commission. Instead, respondent Commission, joined by the Republic, capitalized on the fact that after a two-week leave petitioner was able to resume working and to continue doing so until she retired from the service under the Optional Retirement Law, thus precluding her claim for compensation benefits. This is utterly untenable.

Contrary to the findings of respondent Commission, there is ample evidence to support petitioner's contention that she had not fully recovered from tuberculosis when she opted for an early retirement on June 3, 1974. A subsequent X-ray examination made on her on November 9, 1974 by the same Dr. Garcia showed that although the PTB lesion on her right lung had healed, there was still the presence of fibrosis which meant that her resistance to any latent tuberculosis infection was still weak, thus necessitating "maintenance therapy".[7] This proves that petitioner was not completely cured as of November 9, 1974, or more than four months after her optional retirement. Otherwise, no further treatment would have been prescribed.

Records disclosed that petitioner was only sixty-two years old when her application for optional retirement was finally approved by her employer. That was three years short of the compulsory age for retirement. It is not therefore accurate to state that she had retired on the basis of her retirable age. She retired because in her debilitated state, she could no longer cope with the arduous tasks of a classroom teacher. If she were physically able, she would have waited for three years and thus receive the maximum benefits of the Retirement Law.

Thus, in the case of *Hernandez vs. WCC*, No. L-20202, May 31, 1965, 14 SCRA 219, we held that an employee, forced to ask for retirement ahead of schedule, not because of old age, but principally because of his weakened bodily condition due to illness contracted in the course of his employment, should be given compensation for his inability to work during the remaining days before his scheduled retirement, aside from the retirement benefits received by him. And in subsequent cases, we have consistently ruled that the receipt of optional retirement pay does not preclude the claimants from enjoying disability compensation, for the fact that their application for optional retirement has been approved places beyond doubt their "physical incapacity to render further efficient service".[8]

It is indeed a sad commentary on respondent Commission's misplaced zeal that instead of commending petitioner for her exceptionally dogged determination to continue with her work of educating the young despite the weakening effects of her illness, it had the temerity to deny her compensation benefits. Apparently, respondent is laboring under the impression that before one can avail herself of disability pay, she must necessarily be bedridden.

As to the right of petitioner to claim repayment of her medical expenses, the law is explicit and unequivocal. An employer held liable for disability compensation should also be ordered to provide the employee with such medical, surgical and hospital services, appliances and supplies as the nature of her debility and the process of recovery may require and that which will promote her early restoration to the maximum level of her physical capacity.[9]

On the second issue, we rule that the appeal from the decision of respondent Commission to this Court was seasonably made and the contrary assertion by the Solicitor General is patently erroneous.

Section 1, Rule 18 of the Workmen's Compensation Commission Rules states:

"Time of Appeal. - Any party in interest may appeal from any decision or order of the Commission en banc to the Supreme Court within ten [10] days from receipt of said decision or order in the manner provided for under Rule 43 of the Rules of Court."

Section 4, Rule 43 of the Rules of Court in turn provides:

"Period for filing. - Appeals from an order, ruling or decision of the x x x; and those from the Court of Industrial Relations, the Civil Aeronautics Board, the Workmen's Compensation Commission, and the Commission on Elections, within a period of ten [10] days."

Therefore, with respect to appeals from respondent Commission, the petition for review must be filed with the Supreme Court and notice of appeal with the Commission within ten days, counted from notice of the ruling, order or decision appealed from.

In the case at bar, petitioner was granted an extension of ten days to file a motion for reconsideration of the decision disallowing her claim. She filed the aforesaid motion on the tenth or last day. On July 6, 1977, the Compensation Appeals and Review Staff denied her motion and she received notice of the denial on August 26, 1977. On September 5, 1977, or on the last day of the reglementary period for appeals, petitioner simultaneously filed a notice of appeal with the Compensation Appeals and Review Staff and a motion for extension of time to file a petition for review with this Court.[10]

The Solicitor General claims that inasmuch as petitioner had filed her motion for reconsideration on the final day of the extended period, she should have filed her notice of appeal on the day following her receipt of the denial order, that is, not later than August 27, 1977. We cannot agree. There being no finding that petitioner's motion for reconsideration was merely pro forma, said pleading effectively tolled the running of the period for perfecting an appeal. Consequently, she still had ten days from August 26, 1977, or up to September 5, 1977, to seek recourse in this Tribunal.

WHEREFORE, the decision of respondent Workmen's Compensation Commission, subject to this petition for review, is hereby REVERSED. The original award made by the Workmen's Compensation Unit in WCU Case No. DSRO-1343 granting disability benefits and medical expense reimbursement to petitioner Bonifacia U. Pacarro is REINSTATED with the modification that respondent employer Republic [Bureau of Public Schools] should now pay the prescribed administrative fees of P61.00 to the present Department of Labor and the attorney's fees increased to P600.00.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Rollo, p. 43

[2] Rollo, p. 23

[3] Rollo, pp. 24-25

[4] Rollo, p. 28

[5] Rollo, p. 32

[6] Rollo, p. 41

[7] Rollo, p. 44. See *Vda. de Tumolva vs. WCC*, No. L-46167, January 16, 1986, 141 SCRA 78, 84

[8] R.A. No. 1616, in relation to Memorandum Circular No. 133, issued October 19, 1967 by the Office of the President. See *Romero vs. WCC*, No. L-42617, June 30, 1977, 77 SCRA 482; *Ybanez vs. WCC*, No. L-44123, June 30, 1977, 77 SCRA 501; *Sudario vs. Republic*, No. L-44088, October 6, 1977, 79 SCRA 337; *Espiritu vs. WCC*, No. L-42471, August 22, 1978, 84 SCRA 636; *Balatero vs WCC*, No. L-44634, January 28, 1980, 95 SCRA 608; *Buyco vs. Secretary of Labor*, No. L-47276, November 10, 1986, 145 SCRA 361 and *Berenguel vs. Republic*, No. L-47175, December 15, 1986, 146 SCRA 235

[9] Section 13, Workmen's Compensation Act; *Toralde vs. WCC*, No. L-43471, September 30, 1978, 85 SCRA 449 and *Biscarra vs. Republic*, No. L-43425, January 22, 1980, 95 SCRA 248

[10] Rollo, pp. 2 and 42

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