

DAVID AQUINO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION), MAERSK FILIPINAS CREWING, INC. (FORMERLY TABACALERA CREWING AGENCY), AP MOLLER A/S, MAMERTO A...

Ponente: GONZALES-SISON, M., J.

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GONZALES-SISON, M., J.:

This Petition for Certiorari filed by David M. Aquino assails the September 4, 2013 Decision[1] and November 11, 2013 Resolution[2] of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 07-000660-13.

The Facts

The case originated from the October 11, 2012 complaint[3] for disability benefits, moral and exemplary damages, attorney's fees and legal interest filed by petitioner Aquino against respondents Maersk Filipinas Crewing, Inc. (Maersk), formerly Tabacalera Crewing Agency (Tabacalera), the local agency, Mamerto Amomonpon, its president/owner/manager, and AP Moller A/S, the foreign principal. In his Position Paper[4], petitioner included all corporate officers and directors as well as the container ship MV Nicolai Maersk as respondents.

We find the following facts on record:

Sometime on September 30, 2011 in Manila, Aquino and Maryciel C. Tagal, signing for and on behalf of Maersk and/or AP Moller, entered into a Contract of Employment[5], pursuant to the Philippine Overseas Employment Administration Standard Employment Contract[6] (POEA-SEC), for Aquino to board the Danish vessel MV Nicolai Maersk under the following terms and conditions:

- 1.1 Duration of Contract: 6 months
- 1.2 Position: Ableseaman [sic]
- 1.3 Basic Monthly Salary: \$ 585.00
- 1.4 Hours of Work: 40 hrs./wk
- 1.5 Overtime: \$ 435.00 / G.O.T. 103 hrs \$ 4.23/hr
- 1.6 Vacation Leave Pay: \$ 176.00

x x x

- 1.11 Point of Hire:
Manila, Philippines

As able seaman, petitioner's task includes maintaining the deck, acting as lookout for four (4) hours or six (6)

hours at nighttime, assisting the bunker barge to come alongside the ship to refuel, and aiding the cook in provisioning the boat, among others.

Petitioner alleges that prior to his termination from work, he was hired continuously by respondents since 1995. After his last disembarkation on May 23, 2012, petitioner was referred by respondents to the University of Santo Tomas (UST) Hospital for the required pre-employment medical examination (PEME). After a series of tests, petitioner was diagnosed by UST's Dr. Elizabeth Roasa to have "Nephrotic Syndrome, s/p renal biopsy, Right, Hypertension Stage II, Benign Prostatic Hypertrophy"[7]. Petitioner claims that he suffered hypertension due to his exposure to extreme physical and psychological stress at work. For this reason, he was declared unfit for sea duty. Thus, respondents disallowed him to go onboard MV Nicolai Maersk. Petitioner also avers that he incurred P73,366.00 in personal expenses for his medical tests and medications. Petitioner asserts that despite his entitlement to permanent and total disability benefits, respondents refused to grant them.

On one hand, respondents aver that while working onboard the vessel, petitioner did not suffer any illness nor reported any health issue or medical condition. When his contract expired on May 23, 2012, complainant returned to the Philippines. He did not report any medical issue. When he applied for another engagement, petitioner's PEME showed that petitioner has high protein in his urine. Hence, he was confined at the UST Hospital on June 24, 2012, and was discharged after three (3) days. In a medical certificate[8] dated September 17, 2012, Dr. Roasa assessed that petitioner was suffering from membranoproliferative glomerulonephritis since July 2012 or about 2 months after he disembarked from the vessel. Respondents conclude that petitioner's illness was acquired after the expiration of the term of his contract. By the time petitioner returned to the Philippines on May 23, 2012, his employment had already ceased.

Respondents further claim that his illness was not work-related and therefore not compensable under the POEA-SEC. They insist that petitioner's failure to submit himself to a post-employment medical examination 3 days upon his repatriation, disqualified him from claiming disability compensation. When the term of his contract ended, petitioner did not report any disability that would have prompted the conduct of the medical examination by the company-designated physician. By such failure, petitioner allegedly forfeited his right to all benefits.

The Labor Arbiter's Decision

On May 29, 2013, the Labor Arbiter issued a Decision[9], the fallo of which states:

IN VIEW OF THE FOREGOING, the complaint filed in the instant case is dismissed.

SO ORDERED.

The Labor Arbiter ruled that petitioner forfeited his benefits by failing to submit himself for medical examination to the company-designated physician. According to the Labor Arbiter, petitioner was aware of an undetermined ailment but failed to comply with the mandatory reportorial requirement. Hence, the forfeiture was warranted.

The NLRC Ruling

Dissatisfied, petitioner interposed an appeal before the NLRC, which rendered the assailed September 4, 2013 Decision[10], the dispositive portion of which reads:

WHEREFORE, the appeal is DISMISSED for lack of merit. The Decision appealed from is AFFIRMED.

SO ORDERED.

The NLRC found that petitioner did not report for medical examination within three days from his disembarkation. The NLRC noted that the certification issued by petitioner's own physician, stating that he was on therapy since July 2012, proved that his illness was acquired after disembarkation and not during employment.

The NLRC held that although hypertension is a compensable disease, petitioner failed to prove that his 160/90 blood pressure reading impaired his body organs resulting to permanent disability.

Petitioner moved for reconsideration but the NLRC denied the motion in a Resolution dated November 11, 2013.

Hence, this petition.

The Issues

Petitioner submits the following issues for our resolution:

I. whether or not the public respondent gravely abused its discretion in finding that the petitioner's illnesses are not work-related and THAT he is not permanently and totally disabled; and

II. whether or not the public respondent gravely abused its discretion in not granting the claims of the petitioner despite his clear entitlement thereto.

Petitioner argues that he is entitled to claim disability benefits since he suffered an illness contracted during the term of his employment. Petitioner also claims that nephrotic syndrome, a condition of the kidney caused, in this case, by membranoproliferative glomerulonephritis, is work-related and that hypertension does not develop overnight; hence, he should be compensated. Finally, petitioner contends that the three-day reporting requirement is not absolute and admits of an exception as in the case at bar where petitioner was physically incapacitated from reporting for post-employment medical examination.

On one hand, private respondent filed their comment[11] basically alleging that petitioner disembarked on a finished contract and that he failed to comply with the mandatory reporting requirement.

The Court's Ruling

To justify the grant of the extraordinary remedy of certiorari, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon them. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction.[12] In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, inter alia, its findings and the conclusions reached thereby are not supported by substantial evidence. This requirement is clearly expressed in Section 5, Rule 133 of the Rules of Court which provides that “[i]n cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.”[13]

Guided by the foregoing, the Court finds that the NLRC did not commit grave abuse of discretion when it affirmed the Labor Arbiter's decision dismissing petitioner's complaint for total and permanent disability benefits, medical expenses, damages and attorney's fees.

Section 20(A)(4) of the POEA-SEC states that “[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.” It must be stressed that the provision merely provides for a disputable presumption. In *Sea Power Shipping Enterprises, Inc. v. Salazar*[14], it was explained that the legal presumption in Section 20(A)(4)[15] should be read together with the requirements specified by Section 32-A of the POEA-SEC.

Unlike Section 20(A), Section 32-A considers the possibility of compensation for the resulting disability of the seafarer on account of an occupational disease provided all of the following conditions are established:

(1) The seafarer's work must involve the risks described herein;

(2) The disease was contracted as a result of the seafarer's exposure to the described risks;

(3) The disease was contracted within a period of exposure and under such other factors necessary to contract it; and

(4) There was no notorious negligence on the part of the seafarer.

Moreover, while nephrotic syndrome is subsumed under “End Organ Damage Resulting From Uncontrolled Hypertension” and listed as an occupational disease under Section 32-A(13) of the POEA-SEC, certain specified conditions[16] must first be satisfied for this disease and the resulting disability to be considered compensable. We find that petitioner failed to show, by satisfactory evidence, that these specified conditions have been met.

In fulfilling these requisites, respondent must present no less than substantial evidence. Substantial evidence is more than a mere scintilla. It must reach the level of relevant evidence as a reasonable mind might accept as sufficient to support a conclusion.[17]

Specifically, petitioner was not able to demonstrate this evidentiary threshold, that his nephrotic syndrome, caused by membranoproliferative glomerulonephritis, a disease that affects the glomeruli, or filters, of the kidneys[18], was related to his work as Able Seaman during the course of his employment. It is well-settled that for a disability to be compensable, the seafarer must establish that there exists “a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.”[19] In other words, not only must the seafarer establish that his injury or illness rendered him permanently or partially disabled, it is equally pertinent that he shows a causal connection between such injury or illness and the work for which he had been contracted.[20]

Awards of compensation cannot rest on speculations or presumptions.[21] Petitioner must proffer real and substantial, and not merely apparent, evidence as a reasonable basis for arriving at a conclusion that the conditions of his employment caused the disease or that such conditions aggravated the risk of contracting the illness. Unfortunately, petitioner failed to provide the quantum of evidence required to support the claim for compensation on account of his disease or disability.

In our view, the NLRC did not gravely abuse its discretion when it affirmed the Labor Arbiter's finding that petitioner is not entitled to disability benefits. Indeed, despite the concomitant disputable presumption that it is work-related, petitioner still had the burden to prove the causal link between his nephrotic syndrome and hypertension and his duties as Able Seaman. As pronounced in *Quizora v. Denholm Crew Management (Philippines), Inc.*[22]:

At any rate, granting that the provisions of the 2000 POEA-SEC apply, the disputable presumption provision in Section 20 (B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. Contrary to his position, he still has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of his employment contract. He cannot simply argue that the burden of proof belongs to respondent company. [Emphasis ours.]

Thus, considering that petitioner failed to establish the work-relatedness of his kidney disease through substantial evidence, his claim for disability benefits was properly denied by the Labor Arbiter and affirmed by the NLRC as petitioner clearly failed to lay the factual basis for his entitlement to total and permanent disability benefits claim.

It must also be noted that a review of petitioner's Position Paper[23] shows that, while alleging the nature of his work, he failed to specify the working conditions, the risks attendant to the nature of his work with which he was allegedly exposed to, as well as how and to what degree the nature of his work caused or contributed to his illness. Hence, at the level of the labor tribunals, there was already no premise on which to base the conclusion that petitioner's work involved considerable exposure to the risks of contracting nephrotic syndrome caused by membranoproliferative glomerulonephritis with hypertension.

Nephrotic syndrome may occur when the filtering units of the kidney are damaged. This damage allows protein normally kept in the plasma to leak into the urine in large amounts, which reduces the amount of protein in your blood. Since the protein in the blood helps keep fluid in the bloodstream, some of this fluid leaks out of the bloodstream into your tissues, causing swelling.[24] What happens is that filters in the kidneys (the glomeruli) become 'leaky' and protein, instead of remaining in the blood, leaks out into the urine.[25] As protein is lost in the urine, this leads to low levels of protein in the blood.[26] One of the various diseases which affect the glomeruli and which can result in nephrotic syndrome is membranoproliferative glomerulonephritis. In membranoproliferative glomerulonephritis, both the membrane (capillary that filters the blood) and the mesangium (supporting structure) in the glomerulus, the filtering unit of the kidney, are affected, and the mesangium shows signs of proliferation.[27] Possible complications due to the loss of normal proteins from the blood caused by nephrotic syndrome include dehydration, blood clots, infection, kidney failure[28], high cholesterol[29] and high blood pressure[30]. Many people with kidney disorders have high blood pressure (hypertension). This is because the kidney makes chemicals involved in the control of blood pressure.[31] Hypertension can lead to damaged organs, as well as several illnesses, such as renal failure (kidney failure), aneurysm, heart failure, stroke, or heart attack.[32] A person suffering from nephrotic syndrome may also experience a high blood level of cholesterol and other fats due to the change in the balance of various protein levels in the blood due to the protein leakage.[33] Indeed, these definitions of the imputed medical conditions plainly do not indicate work-relatedness; by their nature, they are more the result of poor lifestyle choices and health habits for which disability benefits are improper.[34] In the instant case, petitioner utterly failed to prove the causal connection between his illness and his work as Able Seaman. Petitioner was unable to show how his illness contributed to or aggravated his medical condition.

Considering, therefore, that petitioner proceeded his conclusion from an unestablished factual claim, the resulting inference on the connection of his work and his illness may be disregarded. Indeed, no ruling shall be rendered by any court without clearly and distinctly stating therein the facts on which the ruling is based. Here, both the Labor Arbiter and the NLRC correctly found no factual justification on how petitioner's work environment and conditions caused the development of his ailment or how it worsened.

Indeed, it is not required that the occupation be the only cause of the disease as it is enough that the employment contributed even in a small degree to its development.[35] It must be stressed that the strict rules of evidence are not applicable in claims for compensation considering that probability and not the ultimate degree of certainty is the test of proof in compensation proceedings.[36] As it is, however, the record is bereft of any evidence showing that petitioner, during the term of his last employment or in one of his previous employment contracts, experienced symptoms of nephrotic syndrome or hypertension.

Moreover, even on the assumption that petitioner is correct in saying that there is no need to show a direct causal connection but only a probability, nonetheless, it is still incumbent upon him to prove by substantial evidence his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of his employment contract. He cannot simply argue that the burden of proof belongs to Maersk. Unfortunately, he failed to discharge this burden.

Entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. By law, the governing provisions are Articles 191 to 193, Chapter VI (Disability Benefits) of the Labor Code, in relation to Section 2, Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the provisions of the (POEA-SEC), as amended, which is required to be incorporated in every seafarer's contract of employment as well as the CBA, if any, between the seafarer and the employer govern.

Meanwhile, the three-day mandatory reportorial requirement for post-medical examination is provided in Section 20(A)(3) (2nd par.) of the POEA-SEC, viz:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

X x x x

3. X x x x

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits. [Emphasis ours.]

While the three-day mandatory reportorial requirement for post-medical examination admits of an exception due to physical incapacity on the part of the seafarer, the rule obliges the seafarer to submit a written notice to the agency within the same period, which is deemed as compliance. If petitioner wanted to avail of the exception, he should have submitted a written notice, which he failed to do.

Admittedly, strict rules of evidence are not applicable in claims for compensation and disability benefits[37], but the Court cannot altogether disregard employer's rights and act blindly in favor of labor. To say the least, social justice cannot be invoked to countenance every wrongdoing.

As emphatically pronounced by the high court in *Philippine Long Distance Telephone v. NLRC*[38]:

Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character. [Emphasis ours.]

Indeed, before there can be an occasion for compassion and mercy, there must first be justice for all.[39] For failure to prove his claims, we are, therefore, impelled to deny petitioner's claim for disability benefits.

As regards the claim for moral damages, the claimant must prove that the act complained of is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy.[40] On the other hand, in order to obtain exemplary damages under Article 2232 of the Civil Code, the claimant must prove that the assailed actions of the defendant are not just wrongful, but also wanton, fraudulent, reckless, oppressive or malevolent.

As we see it, petitioner failed to establish sufficient evidence that Maersk acted fraudulently, in bad faith or in a manner contrary to good morals, good customs or public policy. Thus, petitioner's claim for moral and exemplary damages are denied.

As regards attorney's fees, the Civil Code provides that the award shall be given to the claimant if exemplary damages are awarded; or if the defendant acted in gross and evident bad faith in refusing to satisfy the former's plainly valid, just and demandable claim.[41] With the denial of petitioner's claim for exemplary damages and for failure to prove that defendant acted in gross and evident bad faith, the Court also finds no basis to grant the claim for attorney's fees.

Settled is the rule that the burden of proof rests upon the party who asserts the affirmative of an issue. In labor cases, the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[42]

In sum, the Court finds no grave abuse of discretion on the part of the NLRC in affirming the decision of the Labor Arbiter, which dismissed petitioner's complaint for disability benefits, moral and exemplary damages, medical expenses and attorney's fees.

As a final note, while the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, it cannot allow claims for compensation based on surmises. Liberal construction is not a license to disregard the evidence on record or to misapply our laws.[43]

WHEREFORE, premises considered, the instant Petition for Certiorari is DISMISSED. Accordingly, the September 4, 2013 Decision and November 11, 2013 Resolution of the National Labor Relations Commission, which affirmed the Labor Arbiter's May 29, 2013 Decision, are AFFIRMED. The complaint filed by David M. Aquino is hereby DISMISSED.

SO ORDERED.

Salazar-Fernando, R.A., Chairperson and Cruz, R.A., JJ., concur.

[1] Rollo, pp. 29-35.

[2] Id. at 36-37.

[3] Id. at 44-45. Docketed as NLRC Case No. OFW (M) NCR-10-15384-12.

[4] Id. at 47-60.

[5] Id. at 134.

[6] Department Order No. 04, Series of 2000 ("2000 POEA-SEC"), as amended by Memorandum Circular No. 10, Series of 2010 ("2010 POEA-SEC"), entitled Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers on Board Ocean-Going Ships .

[7] Rollo, p. 90.

[8] Id. at 108.

[9] Id. at 38-43.

[10] See note 1.

[11] Rollo, pp. 259-287.

[12] *Ayungo v. Beamko Shipmanagement Corporation*, G.R. No. 203161, February 26, 2014.

[13] *Id.*

[14] G.R. No. 188595, August 28, 2013 citing *Leonis Navigation Co., Inc. v. Villamater*, G.R. No. 179169, March 3, 2010.

[15] Formerly Section 20(B)(4) in the 2000 POEA-SEC.

[16] Section 32-A. OCCUPATIONAL DISEASES

X x x x

13. END ORGAN DAMAGE RESULTING FROM UNCONTROLLED HYPERTENSION

Impairment of function of the organs such as kidneys, heart, eyes and brain under the following conditions considered compensable:

- if a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A) paragraph.

- In a patient not known to have hypertension has the following on his last PEME: normal BP, normal CXR and ECG/treadmill.

[17] *Sea Power Shipping Enterprises, Inc. v. Salazar*, supra note 14.

[18] <http://www.unckidneycenter.org/kidneyhealthlibrary/mpgn.html> accessed on January 29, 2015.

[19] *Magsaysay Maritime Services v. Laurel*, G.R. No. 195518, March 20, 2013.

[20] *Ayungo v. Beamko Shipmanagement Corporation*, supra note 12. See *Magsaysay Maritime Corporation v. NLRC (Second Division)*, G.R. 186180, March 22, 2010.

[21] *Vetyard Terminals & Shipping Services, Inc. v. Suarez*, G.R. No. 199344, March 5, 2014.

[22] G.R. No. 185412, November 16, 2012.

[23] Rollo, pp. 47-60.

[24] See <https://www.kidney.org/atoz/content/nephrotic>, accessed on January 27, 2015.

[25] <http://www.patient.co.uk/health/nephrotic-syndrome-leaflet> accessed on January 27, 2015.

[26] <http://www.patient.co.uk/health/glomerulonephritis-leaflet> acceptable on January 28, 2015.

[27] See <http://www.kidney.org.uk/help/medical-information-from-the-nkf-/kidney-diseases-index/medical-info-kidney-disease-mpgn/> accessed on January 29, 2015.

[28] http://www.betterhealth.vic.gov.au/bhcv2/bhcarticles.nsf/pages/Kidneys_nephrotic_syndrome accessed on January 27, 2015.

[29] <http://www.kidney.org.uk/help/medical-information-from-the-nkf-/medical-info-kidney-disease-symptoms/medic>

al-info-kidney-disease-nephrosyn-adult/ accessed on January 29, 2015.

[30] See note 25.

[31] Id.

[32] <http://www.medicalnewstoday.com/articles/150109.php> accessed on January 30, 2015.

[33] Id.

[34] See *Philman Marine Agency, Inc. v. Cabanban*, G.R. No. 186509, July 29, 2013.

[35] *Oriental Shipmanagement Co., Inc. v. Bastol*, G.R. No. 186289, June 29, 2010.

[36] Id.

[37] *Rivera v. Wallem Maritime Services, Inc.*, G.R. No. 160315, November 11, 2005.

[38] 164 SCRA 671, 682-683.

[39] *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa – Katipunan*, G.R. No. 164016, March 15, 2010.

[40] See Art. 2219, CIVIL CODE.

[41] Art. 2208, id.

[42] *Barko International, Inc., et al. v. Alcayno*, G.R. No. 188190, April 21, 2014.

[43] *Philman Marine Agency, Inc. v. Cabanban*, G.R. No. 186509, July 29, 2013.

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