

NATIONAL SHIPYARDS AND STEEL CORPORATION, PETITIONER, VS. SALVADOR ASUNCION, ET AL., RESPONDENTS.*G.R. No. 10307. February 28, 1958*

Ponente: PARAS, C.J.

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On March 31, 1955, Referee Erudito Luna of the Workmen's Compensation Commission rendered decision ordering the petitioner to pay to respondent Salvador Asuncion compensation, fees and costs. On April 26, 1955, the petitioner filed a motion for new trial on the ground of newly discovered evidence, all documentary and allegedly not discovered at the opportune time. Finding no error in the referee's decision, the Chief of the Referee Division elevated the case to respondent Commissioner for review. The latter did not consider the evidence presented in support of the motion for new trial as newly discovered within legal contemplation, and accordingly affirmed the decision of the referee. The petitioner has appealed by certiorari.

Respondent Asuncion was first employed by the petitioner on January 27, 1950, was laid off on April 30, 1950 due to lack of funds, and was reinstated on January 22, 1951. He worked as rigger and his assignment was to carry steel and other materials from the landing barges to the bodegas. On December 6, 1951, while shoveling gravel and sand, he vomited blood and was given first aid treatment at petitioner's infirmary. He was physically examined and referred to the San Lazaro Hospital for X-ray examination. Found to have pulmonary tuberculosis in a moderately advanced stage, and upon advice of the doctor, he was confined in the Quezon Institute from December 17, 1951 until July 11, 1952, when he was discharged as clinically and radiologically improved. He sought reinstatement, but allegedly for lack of funds, he was not re-employed by the petitioner.

The petitioner now contends that had respondent Commissioner taken into consideration the newly discovered evidence, Annex "G", which shows that respondent Asuncion had already been afflicted with and was suffering from the pulmonary tuberculosis as early as January, 1946 (while he was not yet employed by the petitioner), the decision complained of would have been greatly changed. In this connection, however, it is noteworthy that respondent Asuncion underwent the pre-employment physical examinations prescribed by the petitioner (one before his original employment and another upon his reinstatement), and on both occasions he was found by the company physician to be physically fit. With full opportunity and adequate means for checking, the petitioner cannot now have any reason either to complain about or to reopen the matter.

The petitioner's motion for new trial was based on newly discovered evidence showing that respondent Asuncion, after confinement in Quezon Institute beginning December 17, 1951, was released as cured on July 11, 1952, and that the physical examination made by petitioner's medical officer showed that said respondent was physically fit for work. Accordingly, it is urged that no compensation and medical expenses after July 11, 1952 should have been awarded in his favor.

The respondent Commissioner did not err in declaring that the alleged newly discovered evidence could have been produced at the trial if the petitioner had exercised due diligence, because the records referring to respondent

Asuncion had always been in petitioner's possession. Moreover, the medical finding that respondent Asuncion on July 11, 1952 as clinically and radiologically improved, was explained by the attending physician in Quezon Institute as merely meaning improvement in the physical condition. Indeed, Annex "I" of the motion for new trial shows that as of July 3, 1952, prior to his official discharge on July 11, 1952, said respondent was still positive with pulmonary tuberculosis. We agree, therefore, with respondent Commissioner in his observation that, unless a miracle played an important part, it is highly inconceivable for said illness to have been completely arrested or cured within the short span of two weeks.

Wherefore, the decision appealed from is hereby affirmed with costs against the petitioner. So ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia and Felix, JJ., concur.

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