

**LOURDES VDA. DE MAGALONA, PETITIONER, VS. THE WORKMEN'S COMPENSATION COMMISSION AND THE NATIONAL SHIPYARD AND STEEL CORPORATION (NASSCO), RESPONDENTS.***G.R. No. 21849. December 11, 1967*

Ponente: BENGZON, J. P., J.

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Since April 1, 1954, Jorge Magalona worked for NASSCO-Iligan Steel Mills, as batteryman, then as electrician-helper and finally as pulpit operator with a weekly salary of P26.40, with hours of work at 7:00 A.M.-12:00 Noon, 1:00 P.M.-4:00 P.M. As a batteryman, he filled jars of dry cells with hydrochloric acid inside a room that was always damp because of the sprinkling of water over the dry cells to prevent the acid from flowing. As electrician-helper, he helped clean electric motors, rewound coils and did other work in the electric shop. In his last designation as pulpit operator, he worked in the rolling mill department, which was hot, operated an electric switch and caught steel bars passing through at a finish line.

On February 16, 1956, Magalona went on sick leave, to last up to March 10, 1956. He was not able to report for work after his leave expired. On May 1, 1956, he was admitted in Riverside Hospital, Bacolod City, where he died on May 17, of that year, of duodenal ulcer with partial obstruction at the pyloric end of the stomach, severe anemia with kidney complications.

On July 25, 1956, his widow, Lourdes Magalona, filed a claim for compensation under the Workmen's Compensation Act. Respondent company did not controvert the claim. The hearing officer of the Regional Office, Department of Labor, awarded the widow and her child P2,745.60 as death benefits, P200.00 as burial expenses, P1,645.60 as medical expenses and P135.28 as attorney's fees. The award was based on the ground that the conditions of work - inhalation of gas fumes, incessant heat, irregular eating habits - might have caused duodenal ulcer, in line with the principle of liberal construction of labor laws in favor of the laborer.

On review before the Workmen's Compensation Commission in Manila, claimant's counsel filed a "Motion to Dismiss the Appeal or Reply to Petition for Review", alleging, as it did before the hearing officer, that the case should be dismissed because NASSCO had not filed any written notice of controversion of the claim. Since medical considerations were involved, Workmen's Compensation Commissioner Cesareo Perez referred the case to the Evaluation Division of the Bureau of Workmen's Compensation for a medical opinion. Dr. Elda M. Montemayor, Senior Compensation Rating Medical Officer therein, in her report dated February 20, 1963 (approved by the Chief of the Evaluation Division), stated that although the exact cause of duodenal ulcer is still unknown, the conditions of his work, in the absence of sufficient proof that the deceased missed or had irregular meals, had no causal relationship with the ailment causing his death. Without resolving the motion to dismiss, Commissioner Perez reversed the decision of the hearing officer, absolved NASSCO and ruled that duodenal ulcer is not compensable without any showing that there was any causal connection between the ulcer and the

nature of the work, such as aggravation of the illness through an accident, overexertion and the like.

After the Commission en banc denied her motion for reconsideration, claimant appealed to Us by way of certiorari, raising the following questions for determination:

1. Could the NASSCO have legally petitioned for review of the decision of the hearing officer considering that it had not controverted the claim?
2. Was the admission by Commissioner Perez of the medical opinion of a Senior Compensation Rating Officer of the Commission proper?
3. Was there need for claimant to show causal connection between the death of the employee and the nature of his work?

As the hearing officer found, NASSCO failed to controvert the claim. It is NASSCO's position that granting there was no controversion, the acceptance by the hearing officer of NASSCO's evidence was tantamount to reinstatement of its right to controvert, citing Section 4 of Rule 14 of the Rules of the Workmen's Compensation Commission. However, to reinstate one's right to controvert, the section requires a petition under oath by the employer, specifying the reason for its failure to controvert. In the case at bar, there was no such petition. Mere acceptance by the hearing officer of the evidence presented did not mean the reinstatement of the right to controvert. The law itself provides that only the Commissioner may reinstate the right to controvert (See Sec. 45, par. 2, Workmen's Compensation Act; *Agustin v. WCC*, L-19957, Sept. 29, 1964). By failing to present a written controversion of the claim, the employer, NASSCO, renounced its right to challenge the claim. And this means that all non-jurisdictional defenses, such as non-compensability of the illness, prescription, etc., are barred.[1]

Respondent NASSCO, in its answer before Us, alleges that the claim had prescribed, for it allegedly received notice of the claim for compensation only on July 25, 1964 (p. 64 of the Record). The hearing officer, however, found that the records show the claim to have been received on July 25, 1956 (Record, p. 33). Furthermore, it was the company physician who diagnosed the employee's illness (pp. 73 of T.s.n., quoted in petition, p. 22 of Record). The wife testified under oath that she sent a telegram to NASSCO right after the death of her husband and later filed her claim with its manager. These matters were not touched on by the reviewing commissioner or the Commission en banc and should stand. The widow's acts after the death her husband may be considered as substantial compliance with the required notice of claim for compensation. In a case, We accepted as substantial compliance with Section 24 of the Act an oral demand for compensation hardly a month after lay-off, making of little consequence a subsequent written claim filed much later.[2] And besides, as stated, for lack of proper controversion, the defense of prescription is likewise barred.

With regard to the admissibility of the medical opinion-report of Dr. Montemayor, said report should not have been admitted because while technical rules of procedure need not be followed by the Commission,[3] no evidence should be taken into account where the adverse party was not given the opportunity to object to its admissibility.[4] This is sound, especially where on such admitted report was principally based the decision of reversal.

Based on the medical report, the Workmen's Compensation Commissioner ruled that the claimant must first establish a causal link between the nature of the employment and the cause of death of Magalona, before claimant can be compensated. This is a reversible error. The employee had obviously been sick. His inability to report back to work when his sick leave expired did not sever the employer-employee relationship. NASSCO never claimed that it had terminated his employment. NASSCO claimed that he was "absent without leave" (pp. 36-38 of T.s.n., quoted in respondent's answer, pp. 68-69 of the Record). It is now unquestionable that once the illness supervened

at the time of the employment there is a rebuttable presumption that such illness arose out of the employment or was at least aggravated by such employment. The claimant is relieved from the burden of proving causation once the illness or the injury is shown to have arisen in the course of employment.<sup>5</sup> Thus, the precise medical cause of the illness is not legally significant, as long as the illness supervened in the course of the employment. The presumption of causation or aggravation then applies. The function of a presumption is precisely to dispense with the need for proof. The burden to overthrow the presumption and to disconnect, by substantial evidence, the injury or sickness from employment, is laid by the statute at the door of the employer.<sup>6</sup> In the case at bar no substantial evidence exists to over-come said presumption. And, even if the medical report is considered, since the report itself admits that the real cause of duodenal ulcer is unknown, the presumption established by law would still apply as against a mere opinion on the non-causal connection between duodenal ulcer and the nature of Magalona's employment.

WHEREFORE, the appealed resolution of the Workmen's Compensation Commission en banc and the Commissioner's decision are hereby reversed, and the award of the hearing officer granting claimant P2,745.60 as death benefits; P200.00 as burial expenses; P1,645.60 as medical expenses; and P138.25 as attorney's fees, is affirmed. No costs.

**SO ORDERED.**

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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[1] National Development Co. v. WCC, L-20504, March 31, 1965; Industrial Textile Manufacturing Co. of the Phil. v. Florzo WCC, L-21969, Aug. 31, 1966.

[2] National Development Co. v. WCC, L-18922, Nov. 29, 1964.

[3] Rule 9, Sec. 1 of the Rules of the WCC.

[4] Rule 22 of Sec. 3, Rules of the WCC.

<sup>5</sup> Justiniano v. WCC, L-22774, Nov. 21, 1966, citing Agustin v. WCC, L-19957, Sept. 29, 1964.

<sup>6</sup> Industrial Textile Manufacturing Co. v. Florzo, *supra*.

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