

**ANTONIO CABAÑERO (DECEASED), SUBSTITUTED BY EVELYN
MABINI CABAÑERO, PETITIONER, VS. EMPLOYEES' COMPENSATION COMMISSION AND GOVERNMENT SERVICE
INSURANCE SYSTEM (INTEGRATED NATIONAL...**

G.R. No. 50255. January 30, 1982

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a petition to review the decision of respondent Employees' Compensation Commission (ECC) affirming the decision of the Government Service Insurance System denying entitlement to income benefit for disability filed by Antonio Cabañero (deceased), under Presidential Decree No. 626, as amended.

Petitioner Antonio Cabañero was a policeman in the Cebu City Integrated National Police. On August 4, 1976, he did not report for work because of an illness which was diagnosed as "adenocarcinoma of the right kidney." He underwent an operation at the Southern Islands Hospital, Cebu City and was treated for said ailment by Dr. Bonifacio Cabahug, Jr.

Petitioner filed a claim for income benefits with the respondent GSIS as provided in P.D. 626, as amended. The claim was, however, denied on the ground that his illness is not an occupational disease. According to the GSIS, "adenocarcinoma of the kidney is a malignant tumor of the said organ. It occurs during childhood and after the age of forty. The incidence is considerably higher in males. The renal tumors of childhood are developmental in origin while those occurring later in life are associated with calculi or stones and infection" (p. 74, rec.). The respondent GSIS claims that petitioner's illness is not even casually related to his duties and conditions of work. Petitioner asked for a reconsideration of the decision but the same was denied in a letter-decision dated June 2, 1979.

Petitioner filed an appeal with respondent Employees' Compensation Commission from the decision of respondent GSIS, the appeal docketed as ECC Case No. 1065. As indicated earlier, respondent ECC rendered a decision dated February 8, 1979, sustaining the denial of petitioner's claim for income benefits, primarily because "the appellant's ailment indicates that the same is in no way traceable to his employment" and that there was no proof that the risk of contracting the ailment was increased by his working conditions.

Pertinent portions of respondent Employees' Compensation Commission's decision state the following:

"A cursory examination of the evidence on record will disclose that the conclusion arrived at by respondent System is justified. Nothing in the record will support the contention of the claimant-appellant, except for his conjectural statement that the ailment in question was 'contracted in the line of his duties'. A close scrutiny of the appellant's ailment indicates that the same is in no way traceable to his employment. The research conducted by the Medical Division of this Commission on the medical etiology of adenocarcinoma of the kidney is as follows: Adenocarcinoma of the Kidney (granitz' tumor; hypernephroma): About four fifths of renal neoplasms are adenocarcinomas, and two thirds of these occur in men. Because adenocarcinomas

produce symptoms relatively late, prognosis is poor. Etiology. - There has been considerable disagreement over the origin of adenocarcinomas. Granitz thought they arose from intrarenal adrenal rests, and the term 'hypernephroma' was coined to describe them. The leading opinion now, however, is that they arise from the cells of the renal tubules or from the benign adenomas. This theory is based on the histological findings. Most tumors of true adrenal tissues are 'functioning', whereas adenocarcinomas are not. Smoking has been suspected as a cause of adenocarcinoma of the kidney (Ref. D.R. Smith; General Urology: Lange; Japan; 6th edition 1969; pp. 244-245).

"Adenocarcinoma does not fall under the list of occupational diseases. As such, it was necessary to present proof of the ailment's causal relationship with the employee's occupation as a policeman. However, none was presented. Neither was there proof that the risk of contracting the same was increased by his working conditions. In fact, his attending physician's certification fails to elicit a favorable answer to the question as to whether or not the illness was directly caused by employee's duties.

"It cannot be said therefore that the conclusion arrived at by the respondent System is bereft of support both in law and evidence. While we are not unmindful that Presidential Decree No. 626, as amended, is a social legislation designed to protect the workingman, the same cannot however be stretched so as to cover situations beyond the pale of its compensability, such as the present case.

"Supporting further our conclusion is the recommendation of our Medical Division, which we hereby adopt. To quote:

"There is no proof to show that a direct causal relationship exists between the above disease and the employee's occupation as policeman. Neither was there an increased risk of contracting the above disease in the working conditions. This case is not compensable and it is therefore recommended that the decision of the GSIS denying the claim be affirmed." (pp. 6-8, rec., underscoring supplied).

Hence, this petition.

At the outset, it must be pointed out that while petitioner herein presumably may have had the initial advice of a lawyer in pursuing his claim, it is, however, obvious from the records of this case that petitioner was not assisted by a regular counsel of record. Understandably, this Court takes notice of the fact that important details wanting in the records of this case, particularly in the discussion of the issues raised in the petition, are to be attributed to such lack of assistance of a lawyer who could have discussed and expounded with thoroughness on the merits of the issues and other matters raised by petitioner herein.

At any rate, the records show that petitioner Antonio Cabanero was a patrolman of the Cebu City Integrated National Police since the year 1953. On August 4, 1976, he failed to report for work because of an illness diagnosed as "adenocarcinoma of the right kidney." He later underwent an operation at the Southern Islands Hospital, Cebu City. Subsequently, petitioner retired from the service because of his illness.

In his petition, petitioner averred that his duties as patrolman involved exposure to the elements and assignments in night patrol duties in Cebu City and suburbs resulted in his illness. Petitioner further advanced the argument that since the cause and origin of his illness has not been positively known, all doubts in the interpretation of our labor laws should be resolved in favor of the working man.

WE find merit in the petition. It may be noted that the late Antonio Cabañero worked for twenty-three (23) years as policeman of Cebu City. While his illness may not have been directly caused by his employment, however, the risk of contracting the same was greatly increased by the working conditions appurtenant to his duties as a patrolman of the Cebu City Integrated National Police. Being exposed to the elements and assigned to night patrol duties in the city and suburbs, petitioner's physical constitution became prone to excessive fatigue and general body weakening, thus hastening the growth and development of the disease. In the case of *Cerezo vs. Employees'*

Compensation Commission, 93 SCRA 680, 683, which is similar to the case at bar -- the petitioner therein being a security guard -- the Court upheld the following contentions of the petitioner:

"x x x. It is true that as security guard, the nature of my duties as well as the working conditions of my employment could not have directly caused my ailment. But in the discharge of my duties especially when I am on night duty or even during my afternoon duties, I was exposed to cold during the nights and these are the exposures that really took place. There are times when it rains at night, there are times of cold seasons which persist until the summer starts. All these contributed to have caused my sickness.

"With all these exposures to cold, does it not make a condition more changed or altered thus wear and tear results more to a cumulated trauma of everyday life? Temperature and humidity abnormalities during my tour of duty as a guard in the night did more trauma to me which really contributed to my physiologic process of aging. If I should not have been exposed to such abnormalities of temperature and humidity, I know I should not have acquired such a given condition than this that I acquired at this time of my life."

Medical authorities state:

"Hypernephroma. Renal cell carcinoma with its protean presentations has been appropriately called the internist's tumor. Hypernephroma is the most frequent of all renal malignancies. It occurs three times more often in men than in women, with a peak incidence after age 50. Metastases often occur early in hematogenous or lymphatic routes or by direct invasion.

"x x x. Most often the tumor presents as a systemic or hormonal syndrome. The various presentations are (1) Fever of unknown origin. The fever is usually high spiking and intermittent, and it may or may not be associated with weight loss or fatigue. (2) Hypercalcemia. These cases are most often associated with the production of a parathyroid hormone like substance by the tumor and, therefore, have a low normal or low serum phosphorous level. (3) Peripheral neuropathy or myopathy. The neurologic process is usually a polyneuropathy, often presenting with progressive weakness or dysesthesias. (4) Secondary amyloidosis. (5) Refractory anemia. The anemia is most often normochromic, normocytic, and frequently associated with an elevated erythrocyte sedimentation rate. (6) Polycythemia. This is a secondary erythrocytosis due to the production of erythropoietin by the tumor. (7) Congestive heart failure. x x x. (8) Cushing's syndrome. x x x. (9) Nonmetastatic liver dysfunction. x x x. (10) Vascular syndromes. x x x. (11) Finally, the initial presentation may be in association with Lindau-von Hippel disease or as a metastatic lesion or lesions to the lung, liver, or brain with or without associated dysfunctions" (p. 423, Manual of Clinical Problems in Internal Medicine, Annotated with Key References, Jerry L. Spivak, M.D. and H. Verdain Barnes, M.D., Second Edition, 1978; underscoring supplied).

"This is the commonest neoplasm of the kidney in adults. One or more of the classic triad of hematuria, flank pain, and abdominal mass is present in about half the cases, but not infrequently the first symptoms arise from metastases to lung, bone, liver, or brain.

"Systemic symptoms. Obscure fever together with a moderate leukocytosis, without infection, is a fairly common presenting symptom. Occasionally gastrointestinal symptoms are prominent. x x x" (p. 1473, Harrison's Principles of Internal Medicine, 8th Edition, 1978, underscoring supplied.)

In the instant case, it is indubitable that the duties of a policeman involves so much body fatigue, irregular working hours, exposure to sudden change of temperature, not to mention psychological stress and other similar conditions which affect the normal functioning of vital organs of the body.

Furthermore, it would be absurd to require the petitioner to show the actual causes or factors which led to the development of the disease, when even the respondent ECC itself admits that "there has been considerable disagreement over the origin of adenocarcinoma." In the case of Cristobal vs. WCC, et al. (L-49280, April 30,

1980), this Court said:

"Therefore, to require the petitioner to show the actual causes or factors which led to decedent's rectal malignancy would not be consistent with this liberal interpretation. It is of universal acceptance that practically all kinds of cancer belong to the class of clinical diseases where the exact etiology, cause or origin is unknown."

It would be subverting the social justice policy of our Constitution which underlies all the social legislations of the State if WE are to uphold, in the circumstances above set forth, the denial of the claim of herein petitioner who had served the government for twenty-three years. The government should set an example in giving meaning and substance to the benevolent constitutional guarantees in favor of the ordinary working man, with the end in view that "those who have less in life should have more in law."

On the oft-repeated assertion of respondent GSIS that petitioner has no cause of action against it because its decision is not under judicial review, WE held in *Lao vs. Employees' Compensation Commission*, 97 SCRA 782, 793 that:

"x x x, this Court is of the opinion that respondent System, as the ultimate implementing agency of the ECC's decision, is a proper party in this case. The fact that this Court chose to require the respondent GSIS to comment is an indication that it is a necessary party. It must be noted that the law and the rules refer to the said System in all aspects of employee compensation, including enforcement of decisions (Article 182 of Implementing Rules)."

On February 11, 1981, petitioner Antonio Cabañero died of myocardial infarction which was apparently generated by his illness.

WHEREFORE, THE DECISION APPEALED FROM IS HEREBY REVERSED AND RESPONDENT GOVERNMENT SERVICE INSURANCE SYSTEM IS HEREBY ORDERED:

1. TO PAY THE HEIRS OF PETITIONER THE SUM OF TWELVE THOUSAND (P12,000.00) PESOS AS COMPENSATION BENEFITS;
2. TO REIMBURSE THE HEIRS THEIR MEDICAL EXPENSES DULY SUPPORTED BY PROPER RECEIPTS; AND
3. TO PAY THE HEIRS THE SUM OF ONE THOUSAND (P1,000.00) PESOS AS BURIAL EXPENSES.

SO ORDERED.

Teehankee, (Chairman), Fernandez, Guerrero, and Plana, JJ., concur.

Melencio-Herrera, J., For the reasons that "adenocarcinoma" is not an occupational disease, nor was the risk of contracting the same increased by the deceased's (a policeman) working conditions, requisites that the law clearly prescribes for compensability, votes to affirm the decision of respondent Commission.

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