

**NORMA B. NAJERA (DECEASED) SUBSTITUTED BY HER HUSBAND
MANUEL NAJERA, PETITIONER, VS. EMPLOYEES' COMPENSATION COMMISSION AND GOVERNMENT SERVICE
INSURANCE SYSTEM, RESPONDENTS.**

G.R. No. 52133. June 23, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This Petition for Review on Certiorari seeks to set aside the decision of the Employees' Compensation Commission, dated March 31, 1976, in ECC Case No. 0056, which affirmed the denial by the Government Service Insurance System of the compensation claim under Presidential Decree No. 626 of deceased petitioner Norma B. Najera.

Norma B. Najera was employed as a ward nurse at the National Orthopedic Hospital on April 1, 1968. In 1973, she was found suffering from cancer of the cervix (adenocarcinoma) for which she was operated on at the University of Santo Tomas Hospital. Subsequently, she was given cobalt and radium treatment. The records do not disclose when she reported back to work, but from June 1975, she was unable to work again. She was hospitalized on September 16, 1975 at the United Doctors Medical Center for treatment of recto-vaginal fistula, post radiation, or the bleeding and passage of feces through the vagina as a result of cobalt and radium therapy. She underwent sigmoid colostomy and was discharged from the hospital on October 1, 1975 to recuperate at home.

On November 5, 1975, petitioner filed her claim with the GSIS for income, medical and other benefits under PD 626 as amended.[1] The GSIS disapproved her compensation claim stating that her ailment was not the direct result of the nature of her duties, nor was the risk of contracting it increased by her working condition, but was the inevitable consequence of the treatment for adenocarcinoma of the cervical stump, which is neither an occupational disease and, therefore, not compensable.[2]

Petitioner moved for reconsideration alleging that she was afflicted with adenocarcinoma in 1973 before the effectivity of the New Labor Code, and continued to suffer from the same since then; that the nature of her work as a nurse exposed her to all kinds of diseases/infections and irritations which directly caused/aggravated her illness; and that her ailment, which was already under control, recurred because of the nature of her work.[3] The GSIS denied reconsideration averring that her ailment is not peculiar to her type of work as she could have suffered from the same had she been employed in another field of occupation. Petitioner appealed to respondent Commission.

On March 10, 1976, petitioner died at the UST Hospital. The cause of her death was "(a) Adenoca, cervix. Due to (b) uremia. Due to (c) ureteral occlusion." [4]

On March 31, 1976, the Commission affirmed the decision of the GSIS and dismissed petitioner's claim. It was

only on December 5, 1979 that petitioner's husband, Manuel Najera, allegedly obtained a copy of the Commission's decision. He filed the present petition with this Court On December 14, 1979 raising the following issues:

- "(1) Whether or not Presidential Decree No. 626, as amended, is reasonable and just and not unduly oppressive and discriminatory, and hence, upholds the constitutional mandate of due process and equal protection of laws;
- (2) Whether or not the doctrine of presumption of compensability is still applicable to the petitioner's claim;
- (3) Whether or not petitioner's disability and subsequent death is compensable."

This Court, on Jan. 7, 1980, required respondents to comment on the petition and directed Manuel Najera, husband and counsel of deceased petitioner, to substitute her with her legal heirs. On February 2, 1980, Manuel Najera filed a Motion for Substitution praying that he and their minor child, Ann Catherine Najera, be substituted as party petitioners. This Court allowed substitution in its Resolution of February 18, 1980. On April 25, 1980, the petition was given due course and the parties were required to submit their respective memoranda. Only the respondents complied.

The determination of which law, - the Workmen's Compensation Act or the New Labor Code - will apply to the deceased petitioner's claim is the main issue in this case.

Respondents maintain that petitioner's claim is governed by the New Labor Code as her illness, which subsequently led to her death, supervened in 1975; that under the said Code, her illness is not compensable; that granting that her claim comes under the Workmen's Compensation Act, it has already been barred by her failure to file the same on or before March 31, 1975.[5]

Under the New Labor Code, Norma's ailment is not listed among the occupational diseases for which compensation may be granted. However, it is not disputed that she was found suffering from adenocarcinoma in 1973 in the course of her employment as a ward nurse at the National Orthopedic Hospital, for the treatment of which she underwent cobalt and radium therapy. She was hospitalized for the second time in 1975 for recto-vaginal fistula, post radiation, a complication of the cervical cancer and the effect of radiation therapy.[6] The foregoing data clearly shows that her illness supervened in 1973 so that her cause of action accrued prior to the effectivity of the New Labor Code, or when the Workmen's Compensation Act was still in full force and effect. Although she did not file her claim on or before March 31, 1975 in accordance with Section 4 (b), Rule 11, Book VII of the Rules and Regulations Implementing the Labor Code, this Court has held in *Corrales vs. ECC*[7] and in subsequent cases, that where injury or illness has its onset prior to January 1, 1975, the same shall be decided under the Workmen's Compensation Act, and not under the New Labor Code, and the fact that the claim was filed after March 31, 1975 will not bar the application of said law as the prescriptive period of said claim is 10 years, it being a right founded on statute. It was also held in *Corrales* that the fact that the claim was filed with the GSIS, instead of with the appropriate regional office of the Department of Labor, does not militate against the claim.

Consequently, the provisions of the Workmen's Compensation Act, as amended, on the presumption of compensability or presumption of work-connection or work aggravation; waiver of non-jurisdictional defense due to non-controversion; and the 10-year prescriptive period apply to the present case.[8]

The fact that Norma was healthy at the time of her employment and that her illness supervened during the course of employment appear not to have been controverted by her employer. The records do not disclose any proof of controversion. Hence, under the Workmen's Compensation Act, she was freed from the burden of proving that her illness was caused or aggravated by the nature of her work.[9] There exists in her favor the rebuttable

presumption of compensability and the burden to overcome such presumption is shifted to the door of the employer which the latter must do by substantial evidence[10], but which the employer in this case has failed to do. So rigid is the rule that even where the cause of the employee's death is unknown the right to compensation subsists[11], the reason being that the Workmen's Compensation Act is a social legislation, designed to give relief to the working man, and, therefore, to effectuate its purposes, it must be liberally construed.[12]

The medical opinion that:

". Predisposing factors such as chronic cervical irritation, childbirth, abortion, sexual intercourse and early marriage may bear some etiological relationship to cancer of cervix although the exact relationship of any or all of these factors has not been elucidated. Menstrual irregularities, metrorrhagia and post coital bleeding are most frequent presenting symptoms. A watery vaginal discharge maybe the only complaint of patient with early cervical cancer. Irradiation is the treatment of choice. Direct extension of cancer to the parametrial and para-vaginal tissues is the cause of death.

Recto-vaginal fistula, post radiation-is an abnormal communication or passage between the rectum and the vagina whereby contents of the colon pass through the same. This is a complication of the cervical cancer and the effects of radiation therapy.

Considering the factors that predispose to cervical cancer, it is therefore unlikely that the occupation of claimant has any relation to that of her work."[13]

cannot prevail over the presumption established by law.[14]

With the conclusion arrived at, we find no need to discuss the issue of constitutionality of PD 626.

WHEREFORE, the Decision of the Employees' Compensation Commission, dated March 31, 1976, is hereby reversed and set aside, and the National Orthopedic Hospital is hereby directed

- To pay herein petitioner the sum of P6,000.00 as compensation benefits of deceased Norma B. Najera;
- To refund deceased petitioner's medical and hospital expenses duly supported by proper receipts; and
- To pay administrative costs.

SO ORDERED.

Teehankee (Chairman), Plana, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

[1] p. 9, ECC Records.

[2] p. 10, *ibid*.

[3] pp. 11-12, *ibid*.

[4] p. 31, Rollo.

[5] . . . Workmen's compensation claims accruing prior to the effectivity of this Code and during the period from November 1, 1974 up to December 31, 1974, shall be filed with the appropriate regional offices of the Department of Labor not later than March 31, 1975; otherwise they shall be forever barred. These claims shall be processed and adjudicated in accordance with the law and rules at the time their causes of action accrued. (Article 292, Title II), Book VII, The New Labor Code.

[6] p. 15, ECC Records.

[7] 88 SCRA 547 (1979).

[8] Segismundo vs. GSIS, G.R. No. 50941, March 28, 1983.

[9] G.B. Francisco, Inc. vs. WCC, 87 SCRA 22 (1978).

[10] Caoili vs. Republic & WCC, 88 SCRA 736 (1979).

[11] Industrial Textile Manufacturing Co. of the Philippines vs. Florzo, et al., 17 SCRA 1104 (1966); Vallo vs. WCC & Republic, 73 SCRA 623 (1976).

[12] *ibid.*

[13] p. 15, ECC Records.

[14] Villasas vs. Republic, 104 SCRA 102 (1981); Flores vs. WCC, 89 SCRA 89 (1979).

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