

GREGORIO MEDINA, PETITIONER, VS. EMPLOYEES' COMPENSATION COMMISSION, GOVERNMENT SERVICE INSURANCE SYSTEM (BUREAU OF DOMESTIC TRADE), RESPONDENT.

G.R. No. 62406. March 22, 1984

Ponente: MAKASIAR, Actg. C.J.

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MAKASIAR, Actg. C.J.:

This is a petition for review of the decision of the Employees' Compensation Commission in ECC Case No. 1924, of October 21, 1982 affirming the decision of the Government Service Insurance System which denied compensation benefits to herein petitioner Gregorio Medina under the provisions of the New Labor Code for permanent total disability.

Petitioner Gregorio Medina had served the government since 1947. At the time of his retirement on December 1, 1980, he was holding the position of a senior trade promotion and regulation officer at the Bureau of Domestic Trade assigned in Batangas City (p. 8, rec.).

The records disclose that on July 18, 1980, petitioner attended a conference at their head office in Quezon City and on his way home on the same date at 5:30 P.M., he met an accident at Barrio Payapa, Lemery, Batangas. As a result, he sustained head injuries medically described as subdural hematoma, fronto parietal (R) and underwent craniotomy at the Makati Medical Center. He was confined from August 29 until September 11, 1980 (p. 8, rec.).

Due to the nature of his injury, petitioner was forced to retire at the age of 55 years. He received the amount of P45,516.53 as retirement benefits (p. 14, rec.).

Thereafter, petitioner filed a claim for disability compensation under P.D. 626, as amended, with respondent GSIS. He was granted income benefits amounting to P1,500.00 corresponding to temporary total disability. Petitioner protested this decision and his case was re-studied. The respondent GSIS re-classified petitioner's disability into permanent partial disability and granted him additional income benefits in the amount of P14,634.60 covering a period of 15 months, from July, 1980 to September, 1981. Petitioner received a total award amounting to P16,134.60 (pp. 14-15, rec.).

Petitioner filed a second motion for reconsideration which respondent GSIS denied, but reimbursed petitioner's hospital expenses in the amount of P5,708.22 (pp. 14-15, rec.; p. 15, rec.).

When the third and final motion for reconsideration was again denied, petitioner appealed to respondent Employees' Compensation Commission.

Respondent ECC affirmed the findings of respondent GSIS and pertinent portions of the decision state the following:

"After carefully weighing the facts of the case and the evidence submitted, we concur with the respondent System. Indeed, appellant's present physical condition does not to our mind warrant an award of PTD benefits

notwithstanding the certification of his attending physician. On the contrary, his disability -- functional loss due to hemiparesis -- is rated only as permanent partial (PPD) under the group of non-scheduled disabilities with a percentage rating of 25% non-scheduled disability (NSD). However, the period of 15 months should be increased to 19 months pursuant to Sec. 7 of PD 1368, further amending PD 626, as amended.

"Inasmuch as appellant had already received the benefits corresponding to the above-stated period in the total amount of P14,634.60, appellant should be further entitled to the remaining four (4) months or the amount of P3,902.56" (pp. 13-14, ECC rec.; p. 16, rec.).

Hence, this petition.

The only issue to be resolved is whether petitioner's disability would entitle him to compensation benefits corresponding to permanent total disability under Article 192 of the New Labor Code or to permanent partial disability under the group of non-scheduled disabilities established by the GSIS.

Petitioner contends that based on the findings of his attending physician, Dr. Romeo Gustilo, a well-known neurologist and chairman of the Department of Neurological Sciences at the Makati Medical Center, his disability was classified by said doctor in a guarded prognosis as total disability and that because of an extensive hemorrhagic pathology, he may, in the future, develop mental and neurological deficits.

With such findings, petitioner avers that he suffered mental lapses which forced him to seek an early retirement on December 1, 1980 at the age of 55 years. He asserts that considering that he was forced to retire from the service due to his inability to continue with his work, he should be entitled to benefits due for permanent disability (Galang vs. WCC, 72 SCRA 454). An employee forced to retire ahead of his compulsory retirement, not due to old age, but due to his illness, is entitled to compensation for the remaining days before his retirement, aside from his retirement benefits (Cayaba vs. WCC, 102 SCRA 346; Hernandez vs. WCC, 14 SCRA 219).

Furthermore, petitioner contends that from the time he retired on December 1, 1980 up to the present, more than 120 days had elapsed and under Article 192 of the New Labor Code, a disability lasting continuously for more than 120 days is compensable as a permanent total disability.

He also contends that he has not been able to work since the time he retired. Permanent total disability does not mean a state of absolute helplessness, but means disablement of an employee to earn wages in the same kind of work, or work of similar nature, that he was trained for or any work which a person of his mentality and attainments could do (Riesenfield X Maxsell, Modern, p. 301, cited in Quiazon and Fernandez, Labor Law Series, Vol. IV, p. 87, 1964 ed.). Permanent total disability means an incapacity to perform gainful work which is expected to be permanent. This status does not require condition of complete helplessness (Marte vs. ECC, 96 SCRA 884). Evidence that claimant has been able to earn occasional wages or perform certain kinds of gainful work does not necessarily rule out a finding of total disability nor require that it be reduced to partial disability (The Law of Workmen's Compensation, A. Larson, Vol. II, p. 25, 1975 ed.).

On the other hand, respondent ECC maintains that the disability of petitioner -- functional loss due to hemiparesis -- is not covered by Article 192 of the New Labor Code on permanent total disability. Respondent contends that petitioner does not suffer from total paralysis nor does the medical certificates of his attending physician prove that at the time of evaluation of his disability, petitioner was already suffering from mental and neurological deficit which might serve as basis for petitioner to qualify for permanent total disability benefits.

Respondent ECC further contends that its decision is not without substantial evidence. Its findings were based on the reports of the doctors of respondent GSIS as reviewed by the Medical Officer of the ECC, which doctors actually conducted a physical examination on petitioner. It was only after then that petitioner's disability was

classified as permanent partial based on the schedule of disabilities formulated specially to provide standard for calculation of disabilities of injured workers patterned after various countries where application was successful in solving problems of industrial physicians and revisions and improvements made to enlarge coverage and give increased benefits to the injured workers.

Respondent ECC reiterates in its contentions that the findings of fact by an administrative agency is conclusive upon the courts.

WE find for the petitioner.

Petitioner's claim that he is suffering from a permanent total disability is not without substantial evidence. The certificate of his attending physician (p. 17, rec.) dated October 21, 1980 and submitted to respondent GSIS, reads as follows:

"Diagnosis: Subdural Hematoma(R) Fronto Parietal Post Traumatic

Prognosis: Guarded

xx xx xx

As date of this examination, do you believe that the patient is still incapacitated from engaging in any gainful occupation? If so, how long in your opinion will the patient be still unable to engage in any gainful occupation? -- -Total Disability."

Thus, as per his physician's opinion, petitioner is totally incapacitated and incapable of engaging in any gainful occupation.

In the case of *Marte vs. ECC* (96, SCRA 884), the Supreme Court ruled: "Doctor's certification as to the nature of claimant's disability may be given credence as he would not normally make a false certification for the sake of a slowly school teacher." The findings, however, of the doctors and the Chief Medical Officer of respondents GSIS and ECC, respectively, are not binding on this Court as they are not considered experts. Opinion of the medical rating officer who did not physically examine the claimant cannot be relied upon (*Nuguid vs. WCC*, 93 SCRA 374). Physician's report that the injury caused the workmen's temporary disability rebuts WCC's findings of claimant's suffering no disability during his employment with respondent (*Abordo vs. WCC*, 84 SCRA 385).

The attending physician of herein petitioner is Dr. Romeo Gustilo, a well-known neurologist. He is a neurosurgeon and the chairman of the Department of Neurological Sciences at the Makati Medical Center, one of the biggest and the best hospitals in the country. Dr. Gustilo is an expert in his chosen field of practice and his opinion as to the nature of petitioner's injury must be respected. According to the earlier decisions of this Court, where physician's report of sickness established not only the causal relation between claimant's work and his complained sickness but also his permanent and total disability, petitioner's claim for permanent total disability should be granted (*Francisco vs. WCC*, 83 SCRA, 536). The physician's report of sickness or accident substantiates the disability claim (*Relente vs. Republic*, 106 SCRA 505; *Octavio vs. WCC*, 87 SCRA 416; *Bandayan vs. WCC*, 77 SCRA 305; *Caling vs. WCC*, 77 SCRA 309; *Evangelista vs. WCC*, 77 SCRA 497; *Romeo vs. WCC*, 77 SCRA 482; *Sudario vs. Republic*, 77 SCRA 337).

In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity (*Ulibas vs. Republic*, 83 SCRA 819; *Roma vs. WCC*, 80 SCRA 170).

Suffering from mental lapses which made him unfit for work, petitioner was forced to seek an early retirement on December 1, 1980 at the age of 55 years. From that time to the present, he has not been able to work nor engage

in any gainful occupation. In *Marcelino vs. Seven-Up Bottling Co.* (47 SCRA 343), petitioner was considered permanently, and totally disabled to work when he was incapacitated or disabled to perform any substantial amount of labor in the line of work where he was formerly engaged or any other kind of work to which he could be assigned. Total disability does not mean a state of absolute helplessness, but disablement of an employee to earn wages in the same kind of work, or a work of similar nature, that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainments could do (*Landicho vs. WCC & Canlubang Sugar Estate*, 89 SCRA 147).

The second medical certificate issued by petitioner's attending physician, dated December 12, 1981, states that "he may, in the future develop neurological and mental deficit." Respondents now contend that such findings do not prove that petitioner is already suffering from mental and neurological deficit. They further contend that petitioner's disability is not total and permanent because there is no complete paralysis nor does it fall under any of the cases enumerated under paragraph c, Article 192 of the Labor Code, as amended. But permanent total disability, when not defined by the statute, must depend on the circumstances of each particular case and it has been held that claimant must have been rendered wholly and permanently incapable of work at a gainful occupation at least without endangering his health. An award for permanent total disability is not limited to cases in which claimant suffers actual loss of members of the body, although the statutory provision for total disability benefits specifies that loss of such members shall be total disability, since this is not exclusive (99 C.J.S. *Workmen's Compensation* 299, pp. 1068-1-69, 1958 ed.). Permanent and total disability is further defined as lack of ability to follow continuously some substantially gainful occupation without serious discomfort or pain and without material injury to health or danger to life (footnote no. 97, 99 C.J.S. *Workmen's Compensation* 299, p. 1068, 1958 ed.).

The approval of claimant's application for optional retirement for disability although he has not yet reached the compulsory retirement age, is an indication of his physical incapacity to render further efficient service (*Romero vs. WCC*, 77 SCRA 482; *Ybañez vs. WCC*, 77 SCRA 501).

Thus, it is the conclusion of this Court that the nature of petitioner's disability is one of permanent total disability.

WHEREFORE, THE DECISION OF THE EMPLOYEES' COMPENSATION COMMISSION IS HEREBY MODIFIED AND THE GOVERNMENT SERVICE INSURANCE SYSTEM IS HEREBY ORDERED TO PAY PETITIONER THE COMPENSATION BENEFITS AS PROVIDED FOR IN ARTICLE 192 OF P.D. 626, AS AMENDED, FOR PERMANENT TOTAL DISABILITY, EFFECTIVE AS OF FEBRUARY, 1982.

SO ORDERED.

Concepcion, Jr., Guerrero, Abad Santos, De Castro and Escolin, JJ., concur.

Aquino, J., no part.

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