

NONITA C. BUENCONSEJO, PETITIONER, VS. EMPLOYEES' COMPENSATION COMMISSION AND GOVERNMENT SERVICE INSURANCE SYSTEM, RESPONDENTS.

G.R. No. 63279, May 25, 1989

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

In this petition for review on certiorari, petitioner seeks the reversal of the decision of Employees' Compensation Commission in ECC Case No. 1953 entitled "Nonita Buenconsejo v. G.S.I.S. (Ministry of Foreign Affairs) which affirmed the denial of death benefits under P.D. No. 626 as amended, by the G.S.I.S. for the demise of petitioner's husband.

The sole issue presented before Us is whether or not the disease contracted by the deceased Felix B. Buenconsejo is work-connected.

Felix B. Buenconsejo started his career in the government on September 24, 1970 when he was extended a casual appointment as accounts clerk in the Department of Foreign Affairs.

On October 17, 1975 he was promoted to the position of Finance Officer at the Philippine Embassy in Islamabad, Pakistan. Among his duties were the preparation of cash vouchers, payrolls and financial reports of the Embassy. He also performed functions for the Bureau of Internal Revenue.[1]

In 1980, Felix Buenconsejo sought medical treatment at the Armed Forces of the Philippines Medical Center, where he was confined prior to his death. His attending physician, Lt. Col. Nicanor Paragas, made the following medical findings:

"The present condition started a year prior to admission as easy fatigability of the right upper extremity and with associated tremors. This was noted by the patient every time he types for some time. He also noted that there were limitations of movement as when he raises his arm. The arm has lost strength whenever he handles objects (which are a little bit heavy) and when the arms are outstretched. He also noted that there was involuntary movement of the muscles of the arm. Six months later, there was also involvement of the left arm with same manifestations. It was also 6 months prior to admission that the patient noted gradual progressive diminution in muscle size of both upper extremities. A private physician was consulted and "negriton" tabs (1 tab TID) were prescribed. He took said medication for a month for which the easy fatigability of the upper extremity was relieved. Two weeks prior to admission patient sought consultation with LTC Pajarillo in which "neurobion" was prescribed and the latter advised the patient on hospitalization. Thus, patient came in for further evaluation and management".

Lamentably, hospitalization proved futile. On January 8, 1981, just a few weeks after his discharge from the hospital, Felix Buenconsejo succumbed to his illness diagnosed as Progressive Muscular Dystrophy, limb-girdle type. He was 55 years of age.

Petitioner Nonita Buenconsejo, decedent's surviving spouse, filed a claim for death benefits with the Government

Service Insurance System (GSIS for brevity) impleaded as a respondent herein. On the basis of the recommendation given by its medical evaluation and underwriting group (Rec.) GSIS denied said claim on the ground that decedent's ailment was not due to circumstances of the performance of the duties and responsibilities of his employment.

After her motion for reconsideration was denied, petitioner elevated her case to the respondent Employees' Compensation Commission (ECC for brevity). Her appeal likewise proved inutile. Hence, this petition.

Petitioner argues that when decedent entered the public service in 1970, Felix Buenconsejo was found to be in perfect health and fit for work; that he was constantly subjected to physical and mental stress brought about by the rigors of his employment; that being the lone finance officer at the embassy, he had to spend long hours of overtime work; that he was exposed to adverse climatic conditions since his place of work, Islamabad, is known for its extremes of temperature; that these employment factors must have conspired to reduce the body resistance of the deceased and played a significant role in the development of his ailment culminating in his death.[2]

The decisive factor in this case is whether or not petitioner's claim is covered by the Workmen's Compensation Act or by P.D. 442 as amended.

Under the law and latest jurisprudence, the Workmen's Compensation Act shall apply only to injury, sickness, disability or death which occurred before January 1, 1975. For injury, sickness, disability or death occurring on or after January 1, 1975, P.D. 442 as amended, shall apply.

Petitioner alleged that in 1974 the deceased's health began to deteriorate. He started to experience easy fatigability of the right upper extremity with associated tremors especially whenever he was typing. Subsequently, the left upper extremity was also involved and then atrophy of both upper extremities ensued. He sought medical treatment at the AFP Medical Center under the professional care of Dr. Paragas who diagnosed Felix Buenconsejo's malady as "progressive muscular dystrophy".[3]

Her claim was supported by a medical certificate issued by Dr. Florliza J. Garcia of the AFP Medical Center on December 7, 1982, that the deceased "Felix Buenconsejo was under the medical care of Major Nicanor Paragas of the Neurology Department of this Medical Center in 1974 for Progressive Muscular Dystrophy which was contracted (sic) by the deceased while employed at the Ministry of Foreign Affairs".[4]

It will be noted that neither the G.S.I.S. nor the E.C.C. questioned the above certification much less rebutted the presumption of regularity thereof. On the contrary, public respondents laid too much stress on the medical evaluation of the disease as follows:

"The limb-girdle type of progressive muscular dystrophy involves the shoulder and pelvic girdles. It occurs usually in the second and third decade of life and occasionally late in the first decade or in middle life. It is transmitted as an autosomal recessive characteristics.

"Primary involvement of the shoulder and girdle is noted with spread to the other after a variable period. Severe disability is usually present 20 years after onset. Muscular contraction and skeletal deformity come on late in the course of the disease. Most patients become severely disabled in middle life and the life span is shortened."[5]

This served to corroborate petitioner's statement that the onset of her husband's ailment was in 1974, much earlier than in 1980 when he was confined in the hospital and eventually succumbed to his ailment.

As stated in the above-cited medical evaluation, the disease "occurs usually in the second and third decade of life and occasionally late in the first decade or in middle life." The deceased died at the age of 55 years, giving credence to petitioner's claim that her husband's early symptoms were noticed in 1974. By the very nature of the

ailment, it could not have been instantly acquired in 1980. When the deceased was hospitalized, severe disability had already set in, the last stages of the disease which by the very findings of the G.S.I.S and ECC is usually present 20 years after onset. Clearly then, subject illness occurred prior to January 1, 1975, before the effectivity of the Labor Code.

It is a settled principle that the governing law in the prosecution of a cause of action which has accrued prior to the effectivity of a new law shall be the law enforced at the time of the accrual of said cause of action.[6] Since the Workmen's Compensation Law was in full force and effect then, it should govern the present case based on the principle that "rights accrued and vested while a statute was in force ordinarily survive its repeal." [7]

Under the WCA, when there is a showing that the ailment was contracted and/or aggravated in the course of one's employment, presumption of compensability arises and the burden of destroying this presumption is upon the employer.[8]

There is no showing that respondent employer complied with Sections 37 and 45 of the WCA, as amended, by filing with the WCC or later with the ECC a notice of the deceased's initial illness and subsequent death. Neither is it alleged that respondent controverted the right to compensation within the prescribed period.

We have repeatedly ruled that failure to comply with said sections constitutes a renunciation of the employer's right to controvert the claim resulting in the waiver of all its non-jurisdictional defenses, such as the non-compensability of the claim.[9]

Finally, petitioner invokes the ruling of the ECC in *Supnet v. GSIS*; ECC Case No. 1964, where said Commission, taking note of the contributory causes of progressive muscular atrophy as to include fatigue, exposure to cold, infection, lead poisoning and exposure to gasoline fumes, decided in favor of a deceased teacher afflicted with the same ailment.

Public respondents in opposing the application of the aforesaid ruling to the case at bar, cited the fact that the *Supnet* case involved physical activity aside from the regular work of a teacher in the classroom. They claim that no analogy can be drawn to the work of a Finance Officer of the Philippine Embassy in Islamabad since the same did not necessarily require exposure to the climatic changes in his place of work.

Verily, such argument appears untenable. Both deceased performed multifarious functions which generated stress and fatigue. In the case at bar, while the deceased was generally confined in the office and was not directly exposed to the elements, the extremes of temperature in Islamabad which are undisputed, and incomparable to the climate of our country, cannot but affect *Buenconsejo* who obviously had also to go out, in going to and returning from work and in attending to his duties, which cannot be reasonably presumed to be done exclusively within the four walls of the building.

In any event, the Solicitor General admits that under the previous law on workmen's compensation, the circumstance that the illness supervened during the period of employment may be considered as basis for the legal presumption of compensability.[10]

Finally, in consonance with the spirit of social justice and the humane character of the law, We ruled that the exact cause of the ailment suffered by the claimant is not significant, and the possibility that factors other than the employment may have contributed to the development of the ailment, is not a drawback; for what is material and decisive is that the employment contributed even in a small degree in aggravating the ailment.[11]

Thus, while it is well-established in this jurisdiction that findings of administrative agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but even

finality;[12] one of the recognized exceptions to the general rule is that, when such findings and the conclusions derived therefrom are not supported by substantial evidence.[13]

WHEREFORE, the decision sought to be reviewed is reversed and set aside and respondent ECC is hereby ordered to pay the petitioner the benefits allowed by the Workmen's Compensation Law.

SO ORDERED.

Feliciano, Bidin, and Cortes, JJ., concur.
Gutierrez, Jr., J., in the result.

[1] Rollo, p. 16.

[2] Petition, pp. 8-11, Rollo.

[3] Rollo, p. 9.

[4] Records, underscoring supplied.

[5] Rollo, pp. 17-18.

[6] *Cenabre v. ECC*, 97 SCRA 338, April 28, 1980, L-46802; Article 294, Labor Code of the Philippines.

[7] *Balatero v. ECC, et al.*, L-46634, January 28, 1980, 95 SCRA 608; *De los Angeles v. GSIS*, 94 SCRA 308 [1979]; *Villones v. ECC, et al.*, 92 SCRA 320 [1979]; *Corrales v. ECC, et al.*, 88 SCRA 548 [1979]).

[8] *De los Angeles v. GSIS*, *supra*.

[9] *Villones v. ECC*, *supra*; *Paraiso v. Castelo-Sotto*, 85 SCRA 419 [1978]; *Republic v. ECC*, 85 SCRA 107 [1978]; *Lamco v. WCC*, 84 SCRA 401 [1978]; and *Canonero v. WCC*, 81 SCRA 712 [1978].

[10] Rollo, p. 33.

[11] *Balatero v. ECC*, *supra*, pp. 609-610.

[12] *Rosario Bros. Inc. v. Ople*, 131 SCRA 74 [1984]; *Special Events & Central Shipping Office Workers Union v. San Miguel Corp.*, 122 SCRA 557 [1983].

[13] *Franklin Baker Company of the Phil. v. Trajano* 157 SCRA 423 [1988]; *Baby Bus Inc. v. Minister of Labor* 158 SCRA 225 [1988]).

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