

Issues on work-related illnesses under the new POEA contract

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When is a work-related illness compensable under the new POEA contract?

There are four factors to be considered in determining whether an illness is compensable or not. These are:

- a. Did the illness occur during the term of the contract?
- b. Is the illness pre-existing?
- c. Is the illness occupational (listed under Section 32A of the contract) and,
- d. If the illness is not listed under Section 32A, can the employer overcome the presumption that it is work-related?

During the Term of the Contract. The illness must have occurred during the term of the contract. The POEA contract begins from the point-of-hire, usually Manila and ends also at the point-of-hire, usually Manila. If a seafarer is repatriated due to illness at any time during the term of employment, it is considered as occurring during the term of the contract and thus such illness may be compensable. It is quite safe to presume that if a seafarer is medically repatriated, such illness occurred during the term of the contract.

Not Pre-existing Illness. The seafarer is required to disclose in his PEME (pre-employment medical examination) a past medical condition, disability or history. If the seafarer does not disclose such a condition, he is disqualified from any compensation and benefits. However, it is required that such past medical condition must be known to the seafarer. For example, if a seafarer does not know that he has an existing heart illness and such illness was the cause of his repatriation, he is not disqualified from claiming his compensation and benefits provided of course that the illness is work-related. However, a seafarer who has knowledge that he has a brain tumor during his PEME and failed to report such tumor will not be compensated as the same is a pre-existing illness which he “knowingly concealed”.

Occupational Disease. Section 32 A of the POEA contract list some 21 illnesses which are considered work-related provided the conditions therein are met. Some of the 21 illnesses listed are deafness, cardio-vascular diseases, peptic ulcer, hernia, pneumonia, viral hepatitis, pulmonary tuberculosis, essential hypertension, etc. However, there are certain conditions that must be satisfied in order for the illness to be considered work-related. For example in the case of cardio-vascular diseases, the following conditions must be met:

- a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.

- b. The strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute casual relationship.
- c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a casual relationship.

Thus, the conditions for cardio-vascular diseases as listed under Section 32-A must be present in order that the illness is considered occupational and thus, compensable.

Disputably Presumed Work-Related. Those illnesses not listed under Section 32-A (such as, diabetes, appendicitis) are in a sense also considered occupational since they are presumed to be work-related. However, the employer can dispute the presumption by presenting proof to show that that said illness is not work-related. In one case recently decided by a NLRC Labor Arbiter the illness of cancer of the bladder was considered not work-related. The Labor Arbiter cited one Supreme Court decision which ruled that: "cancer is a disease of still unknown origin which strikes people in all walks of life, employed or unemployed. Unless it is shown that a particular form of cancer is caused by specific working conditions (e.g. chemical fumes, nuclear radiation, asbestos dust, etc.), the court cannot conclude that it was the employment which increased the risk of contracting the disease". However, in another case the Court of Appeals ruled that a provision master who died from myocardial infarction should be compensated as his illness was due to his working conditions as his job description required a lot of responsibilities. To summarize, an illness not listed under Section 32 A is still considered work-related unless proven otherwise by the employer.

Who determines whether an illness is work-related? Under the contract, it is the company designated physician who determines whether the illness is work-related or not. However, the seafarer may hire his own physician to dispute such findings. If disputed, the two physicians, that is, the company-designated physician and the seafarer's physician may choose a third doctor to determine work-relation. If the parties cannot agree on a third doctor, the NLRC Labor Arbiter has ruled that the company-designated physician's findings must prevail. In any event, any dispute as to findings can be referred to the NLRC (National Labor Relations Commission) for compulsory arbitration or to the NCMB (National Conciliation and Mediation Board) for voluntary arbitration.

Recent Decisions. Some decisions on work-related illnesses have recently been handed down by the Court of Appeals and the NLRC. These are:

- a. Hemolytic Anemia. Chief Engineer was diagnosed to be suffering from "autoimmune hemolytic anemia." He died due to said illness. The Court of Appeals ruled that the illness is work-related as there is a reasonable connection between seafarer's work and his illness. As Chief Engineer, he usually stayed in

the engine room and repaired mechanical and electrical machinery among others which caused his illness.

- b. Right Inguinal Hernia. Third Officer suffered “right inguinal hernia” due to lifting of airbags. After repatriation and treatment, he was declared “fit to work” by the company designated physician. He file a claim for permanent disability benefits as his own doctor found him unfit to work due to “pain on his operative side”. The NLRC ruled that the illness is not compensable as the contract gives probative value to the findings of the company-designated physician and not of the seafarer’s doctor. Also “pain on operative side” does not mean permanently disabled.
- c. Myocardial Infarction. A master who has been employed for three years was medically repatriated due to “cardiac arrhythmia, carginic shock and acute myocardial infarction.” The seafarer was found to be suffering from diabetes milletus prior to boarding the vessel. The Court of Appeals ruled that the illness was work-related as the master’s nature of work increased the risk of his sickness and that diabetes milletus could not have been the only caused of his death.
- d. Cancer of the Bladder. Seafarer has been employed by his manning agency for nine years. Prior to his last contract, he suffered on board “mild bouts of painful urination”. He was given medicine and was “cured”. He finished his contract. Two months after his disembarkation, he was diagnosed with “advanced cancerous tumor” on his bladder. He had an operation and was certified “fit to work”. He died a year later. His claim for death benefits was denied by the NLRC Labor Arbiter. The Arbiter ruled that cancer is a “disease of unknown origin which strikes people in all walks of life, employed or unemployed. To conclude that the illness is work-related, there must be proof that the particular form of cancer is caused by specific working conditions.
- e. Hypertensive cardio-vascular disease. A provision master had worked with the manning agency for twenty years. On finishing his last contract, he was repatriated. The next morning, he “had sudden left-sided weakness upon waking up. He was diagnosed to have “hypertensive cardio-vascular disease”. The Court of Appeals ruled that the illness is work-related. His task included lifting heavy provisions which aggravated his health. He had a clean bill of health before joining the vessel and his illness was diagnosed within twenty four hours from leaving the vessel. In any event, any doubt should be resolved in favor of labor.

Conclusion. To determine whether an illness is work-related, a) it must occur during the term of the contract, b) it must not be pre-existing, c) it must be listed under Section 32A of the contract with the conditions therein satisfied and, d) if not listed, the employer is unable to prove that it is not work-related. If these conditions are present, the illness is considered work-related and thus compensable. Philippine courts have looked at the actual work performed by the seafarer, the working conditions and the type of

illness in determining whether an illness is to be considered work-related and thus compensable.