DEL ROSARIO PANDIPHIL Inc.

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By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., December 8, 2014 (Issue 2014/24)

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Supreme Court prescribes procedures for claiming disability compensation; rules ampullary carcinoma not work-related as no evidence of work-relation

Seafarer was employed as 4th Engineer under a duly approved POEA Contract and was likewise covered by the TCCC/IMEC IBF Collective Bargaining Agreement *(CBA).*

While on board the vessel, seafarer suffered extreme abdominal discomfort and pain, accompanied by chills, diarrhea, general feeling of weakness and muscle spasms. He was repatriated to the Philippines on 12 May 2007 but went directly to his hometown in Iloilo. Seafarer went to a hospital in Iloilo City where the doctors found a mass in his *ampullary* area and he underwent a series of tests.

On 17 May 2007, seafarer informed the company that he had to undergo *Whipple* surgery. Seafarer and the company agreed that the former shall shoulder the medical expenses for the surgery, subject to reimbursement by the latter. Seafarer then underwent the surgery and he was subsequently diagnosed to be suffering from *adenocarcinoma* or cancer of the *ampullary* area.

On 18 June 2007, seafarer reported to the company and he was referred to the latter's designated doctor. After examination and the review of seafarer's records and his illness, the company-designated doctor opined that seafarer's illness was not work-related.

The company denied seafarer's claim for disability benefits for which reason the latter filed a complaint for disability benefits with the Labor Arbiter.

The Labor Arbiter granted the claim of the seafarer and awarded US$125,000.00, as disability benefits based on the CBA. The Labor Arbiter ruled that seafarer did not need to establish causal connection between his work and his illness. As 4th Engineer, seafarer was responsible for the operation, troubleshooting, repair and maintenance of shipboard engines and other machinery of the vessel. Seafarer had to maintain a high degree of alertness at all times and was constantly exposed to different weather conditions. The combination of physical, mental and emotional pressure and strain to which seafarer was exposed, led the Labor Arbiter A to conclude that seafarer had increased his risk of contracting the illness.

The NLRC set aside the decision of the Labor Arbiter and dismissed the claim. According to the NLRC, seafarer failed to prove, by substantial evidence that his illness was work-related, particularly in the light of the certification issued by the company-designated physician that his illness - *adenocarcinoma* of the *ampullary* area - was not work-related. To the NLRC, aside from his bare allegations that "exposure to various substances over the years caused his disease", seafarer did not present any evidence to prove that indeed his illness was either work-related or work-aggravated. That he contracted the illness during his employment contract does not automatically translate to its work-relatedness.

The Court of Appeals reinstated the decision of the Labor Arbiter but reduced the award from US$125,000 to US$60,000. According to the appellate court, the seafarer only needs to show that his work and/or his working conditions contributed, even in a small degree, to the development or aggravation of his disease. In seafarer's case, he reasonably proved that his working conditions exposed him to factors that aggravated his medical condition. Seafarer argued, among others, that the food on board the vessel consisted mainly of frozen red meat and processed food, all of which contributed to the risk of contracting or aggravating his illness. The CA pointed out that while the possible causes of his condition - cancer of the *ampullary* area which is a type of pancreatic cancer - are poorly understood, experts have advised that to prevent its growth, avoiding fatty foods and maintaining a well-balanced diet rich in fruits and vegetables help. The appellate court nevertheless found the CBA not applicable and based the award on the POEA Contract.

Upon further petition, the Supreme Court again denied the claim and reinstated the decision of the NLRC.

The prescribed procedures to claim disability compensation and to prove the required connection or aggravation between the illness and work conditions

The Supreme Court again cited Section 20 B of the POEA-SEC (now Section 20 A of the 2010 POEA Contract) as the primary basis to determine compensability of the medical condition and compliance with the prescribed procedure for disability determination.

The Court noted that in the POEA-SEC, the procedure to claim disability benefits is that the seafarer should submit himself to the company-designated physician within 3 days from repatriation. Thereafter, if an assessment is issued by the company-designated doctor to whom he disagrees, he can seek consult with a physician of his own choice. Should there be a disagreement between the findings of the doctors, a third doctor may be mutually appointed by the parties whose decision shall be final and binding.

On the other hand, Section 20-B of the POEA-SEC governs the compensation and benefits for work-related injury or illness that a seafarer on board sea-going vessels may have suffered during the term of his employment contract. This provision should be read together with Section 32 A of the POEA-SEC that enumerates the various diseases deemed occupational and therefore compensable. Thus, for a seafarer to be entitled to the compensation and benefits under Section 20 B, the illness or injury must be one of those listed under Section 32-A.

Of course, the law recognizes that under certain circumstances, certain diseases not otherwise considered as an occupational disease under the POEA-SEC may nevertheless have been caused or aggravated by the seafarer's working conditions. In these situations, the law recognizes the inherent paucity of the list and the difficulty if not the outright improbability, of accounting for all the known and unknown diseases that may be associated with, caused or aggravated by such working conditions.

Hence, the POEA-SEC provides for a disputable presumption of work-relatedness for illnesses not listed as an occupational disease. This disputable presumption is made in the law to signify that the non-inclusion in the list of compensable diseases/illnesses does not translate to an absolute exclusion from disability benefits. In other words, the disputable presumption does not signify an automatic grant of compensation and/or benefits claim; the seafarer must still prove his entitlement to disability benefits by substantial evidence of his illness' work-relatedness.

In the case of a seafarer claiming entitlement to disability benefits under the provisions of the POEA-SEC, this burden of proof obviously lies with the seafarer.

Thus, in situations where the seafarer seeks to claim the compensation and benefits that Section 20-B grants to him, the law requires the seafarer to prove that: (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational disease or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable.

Seafarer failed to comply with the requirements for compensability of his illness

First, seafarer failed to comply with the procedural requirements of Section 20-B of the POEA-SEC.

Under Section 20-B(3), paragraph 2, a seafarer who was repatriated for medical reasons must, within 3 working days from his disembarkation, submit himself to a post-employment medical examination to be conducted by the company-designated physician. Failure of the seafarer to comply with this 3 day mandatory reporting requirement shall result in the forfeiture of his right to claim the POEA-SEC granted benefits.

In this case, seafarer was repatriated on 12 May 2007; he reported to the company only on June 18, 2007 or more than one (1) month from the time of his disembarkation. Without doubt, seafarer failed to comply with his three-day reporting duty under the POEA-SEC.

The reporting requirement, of course, is not absolute as in certain exceptional circumstances. The facts of this case, unfortunately, do not support a disregard of the three-day reporting role for as soon as he disembarked in Manila, seafarer immediately went to his hometown in Iloilo which is at a considerable distance from Manila, compared with the company's office which is in Manila.

Even if he had been physically incapacitated, it would have been easier for him to contact the company in Manila than to go home in Iloilo. We note that he took three days to consult with a doctor in Iloilo City and five days to inform the petitioners of his illness and the scheduled *Whipple* surgery.

What made matters worse for the seafarer was his failure to offer an adequate explanation that could have excused his non-reporting within the three-day period. He simply claimed that "he opted to go straight home to Iloilo when no agents from the company were present to fetch him and attend to his medical need." Yet, he did not explain why, this absence notwithstanding, he did not go to and report directly and personally to the company or to its designated-physician for the mandatory medical check-up. Note that this duty to report to the company-designated physician for the required medical examination lies with him; the POEA-SEC did not impose on the company any duty to meet him upon his arrival and bring him to the company-designated physician for the medical examination. Thus, assuming that no company employee picked him up upon his arrival, the absence did not excuse him from complying with his reporting duty within the three -day mandated period.

In addition, there is absolutely no evidence on the record showing a determination of total or partial permanent disability with the corresponding determination of the appropriate disability grading that would be the basis for his disability claims. Under Section 20-B (3), the company-designated physician initially determines either the fitness-to-work or the degree of the permanent disability of the seafarer who suffered and was repatriated for work-related illness or injury. The seafarer, of course, is not irretrievably bound by such determination. Should he disagree with the determination of the company-designated physician, the POEA-SEC allows him to seek a second opinion from an independent physician of his choice. If the assessment of his chosen physician conflicts with those of the company-designated physician, the seafarer and the employer may agree on a third doctor whose determination shall be final and binding on them.

In this case, neither the company-designated doctor nor seafarer's chosen physician made any determination of disability. In fact, seafarer's physician did not even certify that he was no longer fit-to-work, or at the very least determine the appropriate disability grading; he simply stated that *"he must not be away from a treatment area for an indefinite period of time."* On the other hand, the company-designated doctor certified that seafarer's

illness is not at all work-related.

Second, Ampullary cancer is not an occupational disease.

Section 32-A of the POEA-SEC considers only two types of cancers as compensable occupational disease: (1) cancer of the epithelial lining of the bladder; and (2) cancer, epitheliomatous or ulceration of the skin or of the corneal surface of the eye due to certain chemicals.

While the Labor Arbiter and the Court of Appeals may have correctly afforded seafarer the benefit of the legal presumption of work-relatedness, the legal correctness of such appreciation of seafarer's claim, however, ends here for as pointed out already, Section 20-B (4) affords only a disputable presumption that should be read together with the conditions specified by Section 32-A of the POEA-SEC which must be satisfied by the seafarer for the illness to be compensable.

Seafarer failed to prove the work-relatedness of his *ampullary* cancer as he did not enumerate his specific duties as a 4th engineer or the specific tasks which he performed on a daily basis on board the vessel.

Also, he did not show how his duties or the tasks that he performed caused or contributed to the development of, or aggravated his *ampullary* cancer. He likewise did not specify the substances or chemicals which he claimed he was exposed to.

Further, he failed to prove that he had, indeed been exposed to the chemicals/substances he claimed he was exposed to during his employment contract; how these substances/chemicals could have caused his *ampullary* cancer; or measures that the company did or did not take to control the hazards occasioned by the use of such substances/chemicals, to prevent or to lessen his exposure to them.

To be exact, he simply claimed that "his assignment had always been on the engine room" and that "exposure to various substances over the years caused his disease." These bare allegations, however, are not the equivalent of the substantial evidence that the law requires of seafarer to adduce for the grant of his disability benefits claim.

For failing to prove with substantial evidence that his ampullary carcinoma is work-related, seafarer's claim was denied.

Jebsen Maritime, Inc., Apex Maritime Ship Management Co. LLC. And/or Estanislao Santiago vs. Wilfredo E. Ravena; G.R. No. 200566, September 17, 2014; Second Division; Associate Justice Arturo Brion, Ponente (Attys. Gina Guinto and Charles Dela Cruz of Del Rosario & Del Rosario handled for vessel interests).

"Del Rosario & Del Rosario is more or less unrivalled when it comes to maritime work in the Philippines" from Asia-Pacific, The Legal 500, 2014, p. 497

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