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Supreme Court rules that diabetes mellitus suffered 6 days into employment not compensable; the duty to obtain a third independent medical opinion rests on the seafarer

Prior to being engaged, seafarer underwent the mandatory pre-employment medical examination (PEME) which he passed. As such, the seafarer was engaged as cook on-board the vessel. This was already the fourth time that the company hired the seafarer.

Only **six days after embarkation,** he complained of increased urination and having a constant feeling of thirst. He consulted the doctor on board and was initially diagnosed with possible *Diabetes Mellitus* Type II (DM Type II). Subsequently, the doctor referred him to an on-shore physician. The on-shore physician confirmed that seafarer was indeed suffering from DM Type II. On 15 August 2004, he was repatriated for further medical treatment.

The seafarer was referred to the doctors designated by the company where he underwent series of medical tests and he was confirmed to have DM Type II. On follow-up check-ups, the company-designated doctor the seafarer was found to be **asymptomatic.** Nonetheless, the attending physician advised him to continue with his medication. Upon further medical tests, it was found that seafarer's fasting blood sugar and hemoglobin levels were already normal. Because of the positive developments, the company-designated physician opined on 2 February 2005 that seafarer's DM Type II was already under control. The physician also declared him "fit to work".

Seafarer was paid his illness allowance from the time of his disembarkation on 15 August 2004 until 2 February 2005, the date when he was declared "fit to work" by the company-designated physician. Despite the "fit to work" declaration of the company-designated physician, seafarer was not rehired by the company. Dissatisfied with the company-designated physician's medical opinion, seafarer sought a second opinion from his doctor. After conducting a series of tests, seafarer's doctor gave the assessment that seafarer is suffering from a grade "6" disability and his illness is work-aggravated/work-related and is unfit to work as a seaman in any capacity.

Based on said opinion of his doctor, the seafarer filed a complaint with the Labor Arbiter for disability benefits, illness allowance, reimbursement of medical expenses, damages and attorney's fees, against the company.

The company argued that there was no basis for seafarer's claim under the POEA-SEC because his illness was not work-related and did not arise during the term of his contract with the company. Seafarer was merely on his sixth day on board when he felt the symptoms for DM Type II and this condition is pre-existing. The company also argued that the illness is not work-related.

On the other hand, the seafarer contended that his disease was work-related and that although he exhibited the symptoms for DM Type II merely six days after boarding, he had been under the employ of the company during his previous three completed contracts. Hence, his disease actually developed during the period of these contracts.

Seafarer also claimed entitlement to a Grade 1 impediment rating notwithstanding the Grade 6 rating given to his

disability by his own doctor. He argued that his inability to work as a result of his illness lasted for more than 120 days and as such should be considered as totally and permanently disabled.

The Labor Arbiter ruled that seafarer's disease is work-related and, therefore, compensable as his work as cook was strenuous and stressful enough to trigger his affliction with DM Type II. Since the disease took more than 120 days to be treated, it could already be characterized as a permanent and total disability, entitling him to a Grade 1 impediment rating.

Upon appeal to the NLRC, the decision of the Labor Arbiter was reversed and denied compensation to the seafarer. The NLRC found seafarer's disease not to be work-related. It considered the period of six days from seafarer's embarkation as an insufficient period of exposure to contract a disease. The NLRC also gave credence to the company's assertion that *Diabetes Mellitus* is essentially a hereditary, and not an occupational disease.

Upon petition, the Court of Appeals reinstated the decision of the Labor Arbiter. The appellate court held that for an illness or injury to be compensable, it is enough that reasonable proof of work-connection and not direct causal relation be proven by the claimant. This was what the seafarer was able to prove. Moreover, and notwithstanding the findings of the company-designated physician that seafarer was already "fit to work," the appellate court ruled that seafarer must still be declared to have permanent and total disability as he was not able to perform his customary work for more than 120 days.

On further petition to the Supreme Court, the claim was denied.

The illness cannot be considered as an occupational disease

Section 32-A of the POEA Contract states that for an occupational disease and the resulting disability or death from it to be compensable, all of the following conditions must first be satisfied: (1) The seafarer's work must involve the risks described herein; (2) The disease was contracted as a result of the seafarer's exposure to the described risks; (3) The disease was contracted within a period of exposure and under such other factors necessary to contract it; and, (4) There was no notorious negligence on the part of the seafarer.

An examination of the surrounding facts and circumstances regarding seafarer's sickness will show that the third condition from the above enumeration is absent in this case. Seafarer started exhibiting the symptoms of DM Type II barely six days after embarkation. If his disease had been acquired because of his exposure to different kinds of work-related stress, it is very unusual that it developed in a very short span of time.

Successive employment contracts does not prove work-relation of the illness

Seafarer claimed that he had already finished three previous contracts with the company. In effect, he argues that his exposure to the work-related risks had been long enough to trigger his DM Type II. Unfortunately, the seafarer failed to state the respective dates and durations of his three previous employment contracts with the company. The absence of this evidence leaves the Court at a loss for supporting data on when he started working for the company or if there had been long intervals in between his previous contracts to break their continuity. The records do not even disclose how long the interim period was in between his last and most present contract with the company. As such, there is always the possibility that he acquired his disease at some other time when he was not on board and working in any of the company’s vessels.

PEME not exploratory

Seafarer pointed out that his PEME results cleared him from pre-identified diseases including *Diabetes Mellitus* and in effect argues that his DM Type II was suffered because of his employment. The Supreme Court rejected this argument and noted that it is an accepted rule that PEMEs are usually not exploratory in nature. The tests conducted are not intended to be an in-depth and thorough examination of an applicant's medical condition. They merely determine whether the examinee is "fit to work" at sea or "fit for sea service" and they do not describe the real state of health of an applicant.

Thus, seafarer cannot rely on his PEME results alone to support his claim that his disease only developed after embarkation. This is particularly true since several points during his treatment, his DM Type II was found to be asymptomatic, *i.e,* as *symptomless* or *presenting no subjective evidence of disease.* Thus, it is probable that seafarer's disease was already preexisting even before he boarded the vessel and his diabetes was not detected

because it was asymptomatic.

Findings of company-designated doctor upheld as more credible; procedure to contest the same was not followed

The company-designated physicians have declared seafarer as "fit to work" after 172 days of treatment from his disembarkation. On the other hand, seafarer's chosen physician came out with the findings that the illness had rendered him "unfit to resume work as a seaman in any capacity," with a Grade 6 disability rating.

Under the POEA-SEC, the applicable provision to resolve the issue of conflicting medical findings is Section 20-B (3), which states that if a doctor appointed by the seafarer disagrees with the assessment of the company-designated doctor, a third doctor may be agreed jointly between the employer and the seafarer whose decision shall be final and binding on both parties.

The glaring disparity between the findings of the company-designated physicians and seafarer's doctor calls for the intervention of a third independent doctor, agreed upon by the parties. In this case, no such third-party physician was ever consulted to settle the conflicting findings of the first two sets of doctors.

After obtaining the assessment from his personal doctor, the seafarer proceeded to file his complaint for disability benefits. This move totally disregarded the mandated procedure under the POEA-SEC requiring the referral of the conflicting medical opinions to a third independent doctor for final determination.

The duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits as he is the one who knows that there is a conflict between the findings of the company-designated doctor and his personal doctor. In this case, the seafarer was the only one who knew of the conflicting results between his doctor's findings with that of the company-designated physicians. The company had no reason to consider a third doctor because they were not aware that seafarer secured a separate independent opinion regarding his disability. Thus, the obligation to comply with the requirement of securing the opinion of a neutral, third-party physician rested on seafarer's shoulders. By failing to observe the required procedure under the POEA-SEC, he clearly violated its terms. And without a binding third-party opinion, the fit-to-work certification of the company-designated physicians prevails over that of seafarer's doctor's unfit-to-return-to-work finding.

Lastly, the Supreme Court observed that seafarer's doctor only examined the seafarer once. We take this is in comparison with the series of tests and treatments made by the company-designated physicians to seafarer. Between the two, the latter's medical opinion deserves more credence for being more thorough and exhaustive.

Seafarer declared fit within 240 days

Seafarer claims that his inability to resume his usual work as a cook for a period exceeding 120 days, automatically entitles him to permanent and total disability benefits based on a Grade 1 impediment rating.

It had already been cleared by the Supreme Court that for the duration of the treatment but in no case lo exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA SEC. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

A finding by the company-designated doctor that the seafarer needs further treatment beyond the initial 120-day period results in the extension of the period for the declaration of the existence of a permanent partial or total disability to 240 days. Thus, contrary to seafarer's claim, his inability to resume work after the lapse of more than 120 days from the time he suffered his illness does not by itself automatically entitle him to permanent and total disability benefits.

In this case, seafarer's several consultations with the company-designated doctors revealed that his DM Type II was asymptomatic. Because of this finding, the company-designated doctors had to conduct further treatments and prescribe his continuous medication before finally concluding that he was fit to return to work on 2 February 2005, or 172 days from his disembarkation. The period is 68 days short of the 240 days period.

The argument of failure to rehire without merit

Seafarer raised the issue that the company failed to rehire him despite the declaration of the company-designated physician that he is already "fit to resume work". Seafarer's contract shows that the period of his employment with the company is for ten months. His contract effectively started on 21 July 2004 the date he boarded the vessel. Thus, his contract should have only ended on 17 May 2005 or 300 days from his embarkation. The seafarer was subsequently declared fit to resume work on 2 February 2005. Hence, he should have been taken back by the company since he still had 104 days left before his contract's expiration. But as alleged by the seafarer, he was not hired again. He contended that his non-rehiring shows that his disability was really permanent and total.

The Supreme Court held that there is no merit in this argument and held that they can only surmise the company's reasons for not re-employing the seafarer despite the effectivity of his contract. However, they cannot accept his argument that his non-rehiring translates to the permanent and total character of his disability.

For one, it was already determined that DM Type II was not a work-related disease for failure to comply with the POEA-SEC's requisites for compensability. Likewise, the findings of seafarer's chosen physician cannot also be considered due to the absence of the medical opinion of a third independent physician.

Also this argument was only raised in seafarer's motion for reconsideration with the NLRC. This was never reiterated in his pleadings with the appellate court and the Supreme Court.

At the very least, seafarer could have used his non-rehiring to support the argument that his contract was prematurely terminated by the company. He was declared fit to work but he was not re-accepted in his former or a similar position despite the remaining 104 days in his contract.

But seafarer never made an issue out of this. Even at the level of the labor tribunals, his pleadings focused solely on the classification of his disability as permanent and total.

Thus, it cannot be ruled that seafarer's contract had been pre-terminated without any just or valid cause, and hold him entitled to payment of his salaries for the unexpired portion of his contract. Otherwise we would be violating the company's due process rights. The company never controverted such claim precisely because the seafarer never raised it as an issue.

SC cites new provision in 2010 POEA-SEC

The Supreme Court noted that under the amendment to the 2010 POEA-SEC, it is now stated that:

"In case of permanent total or partial disability of the seafarer caused by either injury or Illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract.

Computation of his benefits arising from an illness *or* disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.

The Supreme Court held that the above amendment finally clarifies the basis for the declaration of a temporary or permanent disability of a seafarer. For work-related illnesses acquired by seafarers from the time the 2010 amendment to the POEA-SEC took effect, the declaration of disability should no longer be based on the number of days the seafarer was treated or paid his sickness allowance, but rather on the disability grading he received, whether from the company-designated physician or from the third independent physician, if the medical findings of the physician chosen by the seafarer conflicts with that of the company-designated doctor.

Author's Note: There two parts of this decision which are of particular interest. The first is the holding of the Supreme Court that the seafarer could have used his non-rehiring to support the argument that his contract was prematurely terminated by the company and thus may have been entitled to claim the unexpired portion of the

contract for the remaining 104 days. The author humbly submits that this is erroneous considering that under the POEA-SEC, one of the reasons for a valid termination of employment is due to medical repatriation. Once the seafarer is medically repatriated, then his employment contract is terminated. As such, even if he was eventually declared fit to work later on, he cannot, as a matter of right, demand that he be re-employed to finish the "remaining period of his unexpired contract".

The second is the introduction of the Supreme Court of the amendments in the 2010 POEA-SEC on the provision of declaration of disability not being determined by number of days. This is the first time that the Supreme Court has categorically held that because of such amendment, the declaration of disability should no longer be based on number of days of treatment or entitlement to sickwages but rather on the degree of disability as assessed by the doctors. Hopefully, this now signals the end of the 120 days / 240 days rule which started since 2004.

Magsaysay Maritime Corporation et.al. vs. Henry M. Simbajon; G.R. No. 203472; Second Division; July 9, 2014 ; Supreme Court Associate Justice Arturo D. Brion, Ponente.

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