DEL ROSARIO PANDIPHIL Inc.

"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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By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., September 23, 2014 (Issue 2014/17)

Concealment of pre-existing illness ground for denial of benefits; diabetes mellitus is not work-related

Prior to embarkation, the seafarer underwent a pre-employment medical examination (PEME) where he denied any history of diabetes. Thereafter,, after being declared fit in the PEME, seafarer was hired as Chief Engineer for a period of nine months which was later on extended. During employment, seafarer complained of loss of appetite. He was sent to a shore hospital where he was diagnosed with "*Renal Insufficiency: Diabetes Mellitus; IHD Blood+CBC+Anemia*." He was then repatriated but did not report to the company and instead rested because of his physically weak condition. Nevertheless, it was claimed that seafarer's wife called up someone from the company to inform them of the weak condition of the seafarer. Six days later, the seafarer was brought to a hospital to undergo examination and was later determined to be suffering from "*End Stage Renal Disease 2 Diabetic Nephropathy*". The seafarer underwent periodic dialysis and became bedridden. As the seafarer allegedly never received any assistance from the company, they filed a claim for payment of disability benefits.

On the part of the company, they argued that the seafarer never reported to them within the 3 days period stated in the POEA Contract for post-employment medical examination. As such, the seafarer should not be entitled to any benefits under the employment contract.

A case was filed before the Labor Arbiter and during the hearings, the parties agreed to have the seaman referred to the company-designated doctor who diagnosed the condition to be not work-related. The company-designated doctors likewise determined that seafarer was diagnosed with diabetes six years ago and was taking metformin as maintenance medication. With this finding, the company denied the claim.

During the pendency of the case with the Labor Arbiter, the seafarer died due to cardiovascular accident and was substituted by his heirs in the claim.

Both the Labor Arbiter and the NLRC denied the claim on the ground that the illness of the seafarer is not work-related and that he failed to comply with the 3 days mandatory reportorial requirement under the POEA Contract.

With the Court of Appeals, the claim was granted. The Court of Appeals held that the seafarer was exempt from the 3 days mandatory reportorial requirement under the POEA Contract considering that he was already in a state of failing health and he could not be expected to prioritize such reporting over his medical needs. Moreover, the company was ably notified of the seafarer's condition through a phone call from the wife.

The appellate court further ruled that seafarer's cause of death (cardiovascular accident) is actually listed as an occupational disease under the POEA-SEC. While seafarer's renal disease is not similarly listed, it is nonetheless disputably presumed work-related pursuant to the POEA Contract. Further, seafarer's employment contributed to the development and exacerbation of his illness considering that he was on board the vessel for 14 months during which he was exposed to stress, different climates and erratic time zones.

The matter reached the Supreme Court where the claim was denied.

3 days rule dispensed with

The Supreme Court ruled that a medically repatriated seafarer is required to submit himself to a post-employment medical examination by the company's designated physicians within three (3) working days upon his return. The purpose of the rule is to allow the employer's doctors a reasonable opportunity to assess the seafarer's medical condition in order to determine whether his illness is work-related or not. Equally outlined in the provision is the single instance which exempts a medially repatriated seafarer from complying with the 3-day mandatory reporting rule that is – when he is physically incapacitated to do so, in which case a written notice of such fact to the employer within the same period shall be deemed as sufficient compliance.

The factual circumstances of the case call for a dispensation of the 3 days rule. The company was already put on sufficient notice about the failing health condition of the seafarer because they knew very well that he was diagnosed with a serious illness in the foreign port. The strategic opportunity which the 3-day period grants to an employer within which to subject the seafarer to a post-employment medical examination was not sullied since the findings of the doctors in the foreign port were merely confirmed by the findings of the company-designated physicians in the Philippines when seafarer was finally examined by the latter. Work-relatedness can be competently determined based either on the initial diagnosis in UAE or the medical report of company-designated physicians after seafarer's medical repatriation.

Concealment of a known pre-existing illness

The Court ruled that the seafarer (and eventually his heirs) is disqualified from receiving compensation benefits for knowingly concealing his pre-existing illness of diabetes. Notwithstanding that his failure to report within 3-days is excusable, seafarer is still disqualified from receiving any compensation or benefits for his illness because he did not disclose during his PEME that he was suffering from diabetes. The fact that seafarer passed his PEME cannot excuse his willful concealment nor can it preclude the company from rejecting his disability claims. The Court held that the PEME is not exploratory and does not allow the employer to discover any and all pre-existing medical condition with which the seafarer is suffering and for which he may be presently taking medication. The PEME is nothing more than a summary examination of the seafarer's physiological condition; it merely determines whether one is "fit to work" at sea or "fit for sea service" and it does not state the real state of health of an applicant. The "fit to work" declaration in the PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment. Thus, for knowingly concealing his diabetes during the PEME, seafarer committed fraudulent misrepresentation which under the POEA-SEC unconditionally barred his right to receive any disability compensation or illness benefit.

Moreover, even if the Court disregarded seafarer's fraudulent misrepresentation, his claim will still fail. It is evident from the foregoing medical reports that when seafarer applied for and was given employment by the petitioners on July 26, 2005, he was already afflicted with diabetes. This means that he did not acquire his illness while working in the petitioner's vessel and thus his diabetes is not work-related.

Illness not suffered during term of employment; Diabetes mellitus not work-related

As the evidence proved that the seafarer was already suffering from diabetes 6 years prior to his employment, this means that he did not acquire his illness while working on-board the vessel and thus his diabetes is not work-related.

The rule is that the pre-existence of an illness does not irrevocably bar compensability because disability laws still grant the same provided the seafarer's working conditions bear causal connection with his illness. However, this rule cannot be asserted by the claimant as it is incumbent upon him to prove, by substantial evidence, as to how and why the nature of his work and working conditions contributed to and/or aggravated his illness. The claimant failed to discharge this burden of proof in this case.

No evidence is on record showing the specific essential facts on how and why seafarer's working conditions exacerbated his diabetes which in turn gave rise to its various complications, one of which led to his death. The claimant failed to particularly describe his working conditions while on sea duty. Also, no expert medical opinion was presented regarding the causes of his diabetes.

On record are mere general statements presented as self-serving allegations which were not validated by any written document visibly demonstrating that the working conditions on board the vessel served to worsen the seafarer's diabetes. At the very least, these general statements surmise mere possibilities but not the probability required by law for disability compensation. Mere possibility will not suffice and a claim will still fail if there is only a possibility that the employment caused or aggravated the disease. Even considering that the claimants have shown probability,

their basis is, nonetheless incompetent for being uncorroborated. Probability of work-connection must at least be anchored on credible information and not on self-serving allegations.

Likewise deficient is the one-line statement of seafarer's personal doctor in his Medical Report that "seafarer's illness is considered work aggravated/related" as it did not supply the specific cause of seafarer's diabetes.

Moreover, the very nature of diabetes does not indicate work-relatedness. The World Health Organization defines diabetes mellitus as a metabolic disorder of multiple etiology characterized by chronic hyperglycemia with disturbances of carbohydrate, fat and protein metabolism resulting from defects in insulin secretion, insulin action, or both. It is a metabolic and a familial disease to which one is pre-disposed by reason of heredity, obesity or old age. Definitely, work-relatedness cannot be deduced from heredity and old age.

The medical findings presented by both parties uniformly show that seafarer's renal ailment was contracted as a complication of his diabetes from which he has been suffering for 6 years prior to his employment with the company. Thus, it cannot be said that his risk of contracting renal insufficiency or cardiovascular accident was increased by his working conditions because irrespective thereof, his complications would have set in because of his diabetic condition.

Status Maritime Corp., et al. vs. Spouses Margarito Delalamon and Priscila Delalamon; G.R. No. 198097, July 30, 2014; First Division; Associate Justice Bienvenido Reyes, Ponente (Attys. Denise Luis Cabanos and Herbert Tria handled for vessel interests).

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