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SECOND DIVISION

[G.R. No. 50295. October 23, 1979]

ALBERTO C. CEREZO, *petitioner, vs.* **EMPLOYEES' COMPENSATION COMMISSION and GOVERNMENT SERVICE INSURANCE SYSTEM (Regional Health No. 2, Tuguegarao, Cagayan),** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION ACT; ILLNESS; THEORY OF AGGRAVATION; APPLICATION.— We have kept in mind that the social and humane character of the law leans towards compassion and compensability. Advancing age, as in this case, may have caused or contributed to the development of the ailment but it is not a drawback for what is material and decisive is that the employment contributed even in a small degree in aggravating the ailment.

D E C I S I O N

ABAD SANTOS, *J.*:

This case came to us by a simple letter addressed to the Chief Justice. In his letter, Alberto C. Cerezo sought assistance in connection with his claim for compensation which was denied by the Employees' Compensation Commission in ECC Case No. 0934. Mindful of the constitutional injunction that, "Free access to the courts shall not be denied to any person by reason of poverty," (Art. IV, Sec. 23) we directed the petitioner to seek the assistance of the Citizens' Legal Assistance Office (CLAO) in filing an appropriate petition and, if necessary, to litigate as a pauper.

In due time a motion to litigate as pauper was filed and granted; the petition for review on *certiorari* of the decision in ECC

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0934 was duly received and respondents were required to submit comments which they did in due time.

On July 20, 1979, we issued the following resolution: "Considering the allegations contained, the issues raised and the arguments adduced in the petition for review on *certiorari*, as well as the respective comments of the respondents, the Court resolved: (a) to treat the herein petition for review as a special civil action for *certiorari*; (b) to consider: (1) respondents' comments as ANSWERS to the petition; and (2) the case SUBMITTED for decision."

In its comment, the Government Service Insurance System says in part:

"Respondent GSIS respectfully reiterates its submission in the other employees' compensation cases before this Honorable Court that petitioner has no cause of action against it since it is only the decision of the ECC, not the GSIS' action of denial, that is under judicial review. Petitioner himself only asks for review and prays for the reversal of the ECC decision (Petition, pp. 1 and 5). Article 181 of the Labor Code, as amended by Presidential Decree 626, provides as follows:

> 'ART. 181. *Review*. — Decisions, orders or resolutions of the *Commission* may be reviewed on *certiorari* by the Supreme Court on questions of law upon petition of an aggrieved party within ten days from notice thereof.' (Emphasis supplied.)

Evidently, whatever was the original action of the GSIS is of no legal significance, much like the decision of the trial court in relation to the decision of the Court of Appeals. Only the latter court is made a party respondent upon elevation of the case on appeal to this Honorable Court. Even in such a case, the inclusion of the Court of Appeals as a party respondent is not required. (Concurring Opinion of Mr. Justice Aquino in *Nilsen vs. Commissioner of Customs*, L-27149, March 14, 1979).

Neither can the GSIS be deemed a necessary party because this proceeding merely involves a judicial review of an administrative decision. The GSIS, as Administrator of the State Insurance Fund, will naturally pay as a matter of course if the ECC decision is set aside and supplanted by another decision favorable to the herein petitioner.

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It is noteworthy to mention that in previous employees' compensation cases before this Honorable Court (*e.g.*, L-45942, L-45919, L-46271, L-46554 and L-46412), this Honorable Court dispensed with the comment of the GSIS, the principal respondent ECC being duly impleaded in those cases. In L-45846, this Honorable Court dispensed likewise with the filing of the memorandum by the GSIS.

The thrust of the foregoing is that the GSIS should be dropped as a party respondent in these proceedings.

This point is particularly important to the lawyers of the GSIS and the Office of the Government Corporate Counsel who, to their mind, are unnecessarily burdened with numerous ECC cases in addition to their heavy workload."

We believe that the stand of the GSIS is well-taken and accordingly it is hereby dropped from this case as a party respondent.

Petitioner Alberto Cerezo started to work for the government as a laborer in 1941; on August 25, 1959, he rose to the rank of security guard of Regional Health Office No. 2 in Tuguegarao, Cagayan. When he suffered from degenerative osteoarthritis which incapacitated him, he retired on July 24, 1975, after 30 years of service. Thereafter, he applied for compensation under the Labor Code, more specifically for income benefits under P.D. No. 626 which took effect on January 1, 1975. The provision of that law which is relevant in this case reads: "'Sickness' means any illness definitely accepted as an occupational disease listed by the Commission, or any illness caused by employment subject to proof by the employee that the risk of contracting the same is increased by working conditions." [Art. 166 (1), Labor Code, as amended by P.D. No. 626.]

Petitioner's claim was denied by the Senior Assistant Manager for Underwriting and Claims of the GSIS on the ground that his ailment is not an occupational disease. A motion for reconsideration was denied. Thereafter, petitioner went to the ECC which dismissed the claim which is the subject of this review.

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Preliminarily, it is noted that osteoarthritis is not listed by the ECC as a compensable occupational disease. It remains therefore to be determined whether petitioner's illness was caused by his employment and the risk of its contraction was increased by his working conditions.

The ECC took the position that petitioner's ailment is not an occupational disease for it has no specific cause and employment factors are discounted in the development of the disease. Upon the other hand, petitioner contends:

"x x x. It is true that as security guard, the nature of my duties as well as the working conditions of my employment could not have directly caused my ailment. But in the discharge of my duties especially when I am on night duty or even during my afternoon duties, I was exposed to cold during the nights and these are the exposures that really took place. There are times when it rains at night, there are the times of cold seasons which persists until the summer starts. All these contributed to have caused my sickness.

With all these exposures to cold, does it not make a condition more changed or altered thus wear and tear results more to a cummulated trauma of everyday life? Temperature and humidity abnormalities during my tour of duty as a guard in the night did more trauma to me which really contributed to my physiologic process of aging. If I should have not been exposed to such abnormalities of temperature and humidity, I know I should not have acquired such a given condition than this that I acquired at this time of my life."

We uphold petitioner's contention. In *Fortunata Cadongog vs. Government Service Insurance System*, ECC Case No. 0571, decided on May 10, 1978, the ECC held that although osteoarthritis is not one of the occupational diseases listed in Annex "A" of the Rules implementing P.D. No. 626, as amended, it could be an occupational disease at least under the theory of increased risk.

In that case, Fortunata Cadongog started her government service in 1962 as a laborer in the Veteran's Memorial Hospital in Quezon City up to the time of her disability in 1976. She worked in different capacities such as, laundry helper, gardener, laundry machine operator and presser-operator. Receiving a

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meager salary of ₱334.00 a month, she had been working under conditions not conducive to health as she was exposed to excessive fatigue, irregular hours of work, extremes of temperature, missing of meals and other similar conditions, like prolonged standing position.

Relying on the opinion of Shryock and Swartout in their book YOU AND YOUR HEALTH, Vol. II, 1970 ed., p. 224, as follows:

"Osteoarthritis usually develops slowly and gradually in the latter half of life. It involves degeneration and in one sense is a part of the aging process of the people affected by it. Impaired circulation is probably a causative factor; and improvement of the circulation in general, as well as in the joints, is one aim in treatment. The condition shows a distinct hereditary tendency; but injuries, excessive body weight, and over exertion of a sort that brings increased pressure on the joint, cartilages also have a causative influence. The joints of the spine hips, knees, and fingers are most commonly affected."

the ECC concluded that Fortunata's actual work experience played a major role in the development of her ailments, particularly osteoarthritis. As a result she was awarded income benefits for disability.

Petitioner's work experience as narrated above justifies the same conclusion which was reached in ECC Case No. 0571. In making this conclusion, we have kept in mind that the social and humane character of the law leans towards compassion and compensability. Advancing age, as in this case, may have caused or contributed to the development of the ailment but it is not a drawback for what is material and decisive is that the employment contributed even in a small degree in aggravating the ailment. (See *Natividad vs. Workmen's Compensation Commission*, No. L-42340, Aug. 31, 1978, 85 SCRA 115.)

WHEREFORE, the decision appealed from is hereby reversed and the petitioner is awarded income benefits for disability, after proper computation, in accordance with P.D. No. 626, as amended. No costs.

SO ORDERED.

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Barredo (Chairman), Concepcion Jr., and *Santos, JJ.*, concur.

Antonio, J., I agree in the opinion of Justice Aquino that osteoarthritis is not an occupational disease. However, in the case at bar, his existing infirmity was aggravated by the nature of his work. I, therefore, concur in the result.

Aquino, J., I concur in the result. Although I agree with the opinion of the Employees Compensation Commission and the Solicitor General that osteoarthritis is not an occupational disease, nevertheless, considering the plight of the petitioner, the government, his employer, should set an example of doing social justice by disregarding technicalities and paying him workmen's compensation, following the shibboleth that he who has less in life should have more in law.

SECOND DIVISION

[Adm. Matter No. 28-MJ. October 30, 1979]

FRANCISCO AWA-AO, *complainant, vs.* **JUDGE RAMON SISON, JR., Mercedes, Eastern Samar,** *respondent.*

SYLLABUS

LEGAL AND JUDICIAL ETHICS; JUDGES; DISCIPLINARY PROCEEDINGS; JUDGE IN CASE AT BAR GUILTY OF CONDUCT UNBECOMING.— In any event, the Court is not fully satisfied that respondent acted entirely without any fault not only in the delay in disposing of the motion for reconsideration of complainant but also in dismissing outrightly their complaint. It may well be quite correct that he initially refused to act thereon because it was unverified, but his insistence that the residence certificates used by complainants, perhaps in their hurry, when they submitted their verification,