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FIRST DIVISION

[G.R. No. L-43066. December 29, 1978]

CRESENCIANO G. LEGASPI, *petitioner, vs.* **PROVINCE OF NEGROS OCCIDENTAL (Doña Corazon Locsin Montelibano Memorial Hospital) and THE WORKMEN'S COMPENSATION COMMISSION,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION; COMPENSABLE DISEASES; ASTHMA; INDICATIONS** — Asthma is a disease marked by recurrent attacks of paroxysmal dyspnea, with wheezing cough, and a sense of constriction, due to spasmodic contraction of the bronchi. The paroxysms last from a few minutes to several days, and they may result from direct irritation of the bronchial mucous membrane or from reflex irritation. Many cases of asthma are allergic manifestation in sensitized persons. It may be due to absorption of some substance to which the patient is hypersensitive or it may be caused by inhalation of dust found in houses, in streets, or in trades. It may also be due to bacterial infection or any other factor in the environment. Or it may be due to nervous impulses solely.

2. **ID.; ID.; ID.; PETITIONER'S ASTHMA AGGRAVATED BY HIS EMPLOYMENT.** — As nursing attendant in a hospital, petitioner was in frequent contact with infected patients. He was required to carry patients to the Operating Room, or even new arrivals in emergency cases. He carried and delivered food trays to the patients. In addition to this, he was assigned to the contagious section of respondent hospital. He also took turns in cleaning the hospital by constantly scrubbing and sweeping the floor, inhaling therefore flying dust, dirt and germs. Working 5 days a week on an 8-hour rotation tour of duty, it becomes apparent that day in and day out, petitioner was incessantly exposed to conditions or risks possibly responsible for the aggravation of his asthma. Even if the Court were to accept that petitioner had recurrent attacks of asthma previous to his employment with respondent hospital, or that asthma is

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an allergic and hereditary disease, respondent hospital has not shown by any proof that his asthma, on the contrary, could not have been aggravated by his employment.

3. **ID.; ID.; DISABILITY BENEFITS; REIMBURSEMENT OF MEDICAL EXPENSES, PROPER.** — Where petitioner's asthma has been shown convincingly to have been aggravated by the working conditions of his employment, he is entitled to reimbursement of his medical expenses with proper receipts as well as to medical services and appliances as the nature of his sickness and progress of his recovery may require and that which will promote his early restoration to the maximum level of his physical capacity pursuant to Section 13 of the Workmen's Compensation Act.

4. **ID.; ID.; ID.; NO COMPENSATION WHERE THERE IS NO LOSS OF EARNING POWER.** — The fact that petitioner received the full salary corresponding to the days when he was absent from work militates against his right to disability compensation; because the very term implies that the compensation must be for loss or diminution of salary by reason of illness incurred in or aggravated by his employment.

5. **ID.; ID.; ID.; AWARD FOR COMPENSATION BENEFITS COVERS LOSS OF EARNING CAPACITY DUE TO THE DISABILITY.** — Under the Workmen's Compensation Act, the basis of computation is reduction of earning power. Medical disability, without an accompanying decrease in earning capacity, is not compensable. The term disability as used in the Act does not refer to the injury nor to the pain and suffering it has occasioned, but to the loss or impairment of earning capacity due to an injury or illness arising out of and in the course of employment or aggravated thereby. The Act classifies various kinds of disabilities — temporary total disability, total and permanent disability, temporary partial disability, and permanent partial disability which includes non-scheduled disability under Sec. 18 of the Act. Whatever kind of disability is found compensable, i.e. whether the disability falls under Section. 14 of the Act or under Sec. 18 thereof, the award of compensation benefits covers the loss of earning capacity due to such disability.

6. **ID.; ID.; AWARD OF DISABILITY BENEFITS FOR ASTHMA PURSUANT TO SEC. 18 OF THE ACT HAS NO BASIS.** — Sec. 18 of the Workmen's Compensation Act refers to

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amputation and non-scheduled disability. Specifically, it mentions amputations of hands and feet, disfigurement of face or head, and "other cases of this kind of disability." Asthma cannot be in any way considered as a disability similar to amputation and disfigurement to come within the purview of the phrase "other cases of this kind of disability." Therefore, the award by the referee to petitioner of benefits under Sec. 18 of the Act, based on the 48% N.S.D. given by the Compensation Rating Medical Officer under said section, has no basis. Asthma is not a disease subject of a percentage rating for non-scheduled disability.

APPEARANCES OF COUNSEL

Constencio G. Legaspi & Anastacio C. Rupon for petitioner.

Quirino V. Bat-og, Jr. for respondent Province of Negros Occidental.

D E C I S I O N

GUERRERO, *J.*:

This is a petition for review[1] of the decision of the Workmen's Compensation Commission dated January 15, 1976 denying petitioner's claim for lack of merit.

Petitioner Cresencio G. Legaspi filed on October 16, 1973 before the Department of Labor, Sub-Regional Office No. VII, Bacolod City, a claim for compensation and other benefits under the Workmen's Compensation Act, as amended, based on the ground that his illness, diagnosed as Asthma, supervened in the course of employment, or at the very least, was aggravated by the conditions under which he worked as a nursing attendant in respondent hospital, resulting in disability for work on two occasions, from April 13 to 20, 1973 and from June 8 to 21, 1973, respectively, during which periods he was admitted for medical treatment in respondent hospital.

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[1] Treated as a special civil action per Resolution of May 26, 1976.

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Upon a memorandum presented by its Compensation Evaluation Committee, respondent hospital controverted the claim on the following grounds: (1) petitioner had recurrent attacks of bronchial asthma before his employment with the hospital; (2) asthma is not a contagious or communicable disease; rather, it is an allergic disease and hereditary in nature; (3) the disability percentage of Asthma is not listed in the "New Schedule of Compensation"; and (4) during the 16 days that he was absent from work due to his Asthma, petitioner was paid the full corresponding compensation therefor, thereby causing no loss of income to him.

Based on the evidence on record and the disability evaluation of 48% N.S.D. under Section 18 of the Workmen's Compensation Act by Dr. Antonio M. Habana, Compensation Rating Medical Officer, Referee Cesar D. Sideño rendered on October 8, 1975 a decision granting the claim. The Referee ruled that "(G)ranting that asthma could have been a hereditary disease, however, it is inescapable that it was aggravated due to claimant's duties and constant exposure to flying germs and bacteria," and ordered respondent (1) to continue to provide claimant with such supplies, services and appliances as the nature of his disability and the process of his recovery may require and that which will promote his early restoration to the maximum level of his physical capacity pursuant to Section 13 of the Act, (2) to pay to claimant compensation for his 48% N.S.D., in the amount of Three Thousand One Hundred Ninety-Three Pesos and 78/100 (₱3,193.78), pursuant to Section 18 of the Act, (3) to pay claimant's counsel attorney's fees in the amount of One Hundred Fifty-Nine Pesos and 68/100 (₱159.68) pursuant to Section 31 of the Act, and (4) to pay the administrative fees.

Upon an appeal brought by respondent hospital, the entire record of the case was elevated to the Workmen's Compensation Commission for review. On January 15, 1976, respondent Workmen's Compensation Commission, *en banc*, rendered the decision under review which reversed the referee's award and dismissed the claim for lack of merit, the pertinent portion of which states:

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"We find on review that although claimant suffered temporary total disability for the period covered by his sick leave of absences he was paid the salary corresponding to said periods of time and therefore he did not suffer impairment or loss of earning power during the time he was temporarily disabled. As to the rating of 48% N.S.D. given to his illness by the Compensation Rating Medical Officer which was made the basis for the computation of the award in question, on referral to the Evaluation Division of this Commission the latter agreed that asthma is not included as a disease subject of a percentage rating of non-scheduled disability under Section 18 of the WCA (permanent partial disability) hence the rating of 48% N.S.D. given by Compensation Rating Medical Officer of the Unit has no basis especially so that after his leave of absence for only 16 days in all, with full pay, he was able to resume his work." (Decision, WCC, p. 3).

Hence, this petition for review filed by petitioner seeking the reversal of respondent Commission's decision and the reinstatement of the award granted by the referee.

A close scrutiny of the nature of petitioner's duties affirms the finding of the Referee in its decision dated October 8, 1975, that petitioner's asthma was aggravated by his employment. Asthma is a disease marked by recurrent attacks of paroxysmal dyspnea, with wheezing, cough, and a sense of constriction, due to spasmodic contraction of the bronchi. The paroxysms last from a few minutes to several days, and they may result from direct irritation of the bronchial mucous membrane or from reflex irritation. Many cases of asthma are allergic manifestations in sensitized persons. It may be due to absorption of some substance to which the patient is hypersensitive or it may be caused by inhalation of dust found in houses, in streets, or in trades. It may also be due to bacterial infection or any other factor in the environment. Or it may be due to nervous impulses solely.[2] As correctly pointed out in the Referee's decision, petitioner's attacks of asthma could have been brought about by his constant exposure to dust or to bacterial infection. Said exposure is to be expected when working, as petitioner does, as nursing attendant in a hospital. As such, petitioner was in frequent contact with infected patients. He was required

[2] Dorland's Illustrated Medical Dictionary, 24th ed., pp. 154-155.

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to carry patients to the Operating Room, or even new arrivals in emergency cases. He carried and delivered food trays to the patients. In addition to this, he was assigned to the contagious section of respondent hospital. He also took turns in cleaning the hospital by constantly scrubbing and sweeping the floor, inhaling therefore flying dust, dirt and germs. Working 5 days a week on an 8-hour rotation tour of duty, it becomes apparent that day in and day out, petitioner was incessantly exposed to conditions or risks possibly responsible for the aggravation of his asthma. Even if the Court were to accept that petitioner had recurrent attacks of asthma previous to his employment with respondent hospital, or that asthma is an allergic and hereditary disease, respondent hospital has not shown by any proof that his asthma, on the contrary, could not have been aggravated by his employment.

However, as correctly pointed out by the respondent Commission, the fact that petitioner received the full salary corresponding to the days when he was absent from work militates against his right to disability compensation; because the very term implies that the compensation must be for loss or diminution of salary by reason of illness incurred in or aggravated by his employment.[3]

Therefore, the petitioner's insistence that the referee's award of disability benefits was granted pursuant to Section 18 of the Workmen's Compensation Act and not for loss of earning capacity under Section 14 of the same Act (petition, p. 7), is not tenable. Under the Workmen's Compensation Act, the basis of computation is reduction of earning power. Medical disability, without an accompanying decrease in earning capacity, is not compensable. The term *disability* as used in the Act does not refer to the injury nor to the pain and suffering it has occasioned, but to the loss or impairment of earning capacity due to an injury or illness arising out of and in the course of employment or aggravated thereby. The Act classifies various kinds of disabilities — temporary total disability, total and permanent disability, temporary partial disability, and permanent partial

[3] *Victoriano F. Corales v. ECC and GSIS*, L-44063, August 25, 1978.

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disability which includes non-scheduled disability under Section 18 of the Act.[4] The important point is: Whatever kind of disability is found compensable, *i.e.* whether the disability falls under Section 14 of the Act or under Section 18 thereof, the award of compensation benefits covers the loss of earning capacity due to such disability.

Section 18 of the Workmen's Compensation Act refers to amputation and non-scheduled disability. Specifically, it mentions amputations of hands and feet, disfigurement of face or head, and "other cases of this kind of disability." Verily, asthma cannot be in any way considered as a disability similar to amputation and disfigurement to come within the purview of the above phrase "other cases of this kind of disability." Therefore, as correctly stated by the Commission, the award by the referee to petitioner of benefits under Section 18 of the Act, based on the 48% N.S.D. given by the Compensation Rating Medical Officer under said section, has no basis. Asthma is not a disease subject of a percentage rating for non-scheduled disability.

However, since petitioner's asthma has been shown convincingly to have been aggravated by the working conditions of his employment, petitioner is entitled to reimbursement of his medical expenses with proper receipts as well as to medical services and appliances as the nature of his sickness and progress of his recovery may require and that which will promote his early restoration to the maximum level of his physical capacity pursuant to Section 13 of the Act.

WHEREFORE, the decision of respondent Workmen's Compensation Commission is hereby modified and respondent Doña Corazon Locsin Montelibano Memorial Hospital is hereby ordered,

(1) To reimburse petitioner his expenses for medical services duly supported by proper receipts;

(2) To furnish him such medical services and appliances as the nature of his sickness and progress of his recovery may

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[4] Comments and Annotations on the Workmen's Compensation Act, as amended, Pucan and Besenga, 1971 Ed., pp. 254-255.

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require and that which will promote his early restoration to the maximum level of his physical capacity; and

(3) To pay the administrative fees in the amount of Sixty-One (₱61.00) Pesos.

SO ORDERED.

Teehankee(Chairman) , Makasiar, Santos, and *Fernandez, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-43150. December 29, 1978]

ENRIQUE LIM and DOLORES MONTEMER LIM, *petitioners, vs.* **WORKMEN'S COMPENSATION COMMISSION and LA SUERTE CIGAR & CIGARETTE FACTORY,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION; PRESUMPTION OF COMPENSABILITY; APPLICATION. — Where the illness supervened during the employment, there is a legal albeit disputable presumption that the illness was caused by or aggravated by the employment and, therefore, compensable. Although, the physician's report states that the illness was not caused by deceased's employment, the fact that the report also states that the cause of the illness is not known, the presumption in favor of the compensability of the illness cannot be said to have been rebutted.

APPEARANCES OF COUNSEL

Santillan, Serrano & Associates for petitioners.
Natividad, Lobregat & Associates for private respondent.