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Consequently, even on the merits of the issue of compensability, respondent employer's position cannot be sustained.

**WHEREFORE**, THE DECISION OF THE RESPONDENT COMMISSION IS HEREBY REVERSED AND RESPONDENT EMPLOYER IS HEREBY ORDERED.

1. TO PAY PETITIONER THE AMOUNT OF SIX THOUSAND (₱6,000.00) PESOS AS DISABILITY BENEFITS;
2. TO REIMBURSE PETITIONER HIS MEDICAL EXPENSES DULY SUPPORTED BY RECEIPTS;
3. TO PAY ATTORNEY'S FEES EQUIVALENT TO TEN PERCENT (10%) OF THE AWARD: AND
4. TO PAY THE SUCCESSOR OF THE DEFUNCT COMMISSION ADMINISTRATIVE FEES:

**SO ORDERED.**

*Teehankee (Chairman), Fernandez, Guerrero, De Castro*, and *Melencio-Herrera, JJ.*, concur.

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**FIRST DIVISION**

[G.R. No. L-43139. December 28, 1979]

**MELANIO PEREZ,** *petitioner, vs.* **WORKMEN'S COMPENSATION COMMISSION and REPUBLIC OF THE PHILIPPINES (Bureau of Public Highways),** *respondents.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION ACT; THE PROXIMITY OF THE DATE AN EMPLOYEE STOPPED WORKING AND HIS HOSPITALIZATION BY REASON OF TUBERCULOSIS**

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**MAKES IT IMPERATIVE TO PRESUME THAT HE WAS DISABLED BY SUCH ILLNESS.**— There is therefore a rational basis for the petitioner's observation that the proximity of the date he stopped working and his hospitalization by reason of his tuberculosis makes it imperative to decisively presume that he was disabled by his aforesaid tuberculosis.

2. **ID.; ID.; THE COURT MAY TAKE JUDICIAL NOTICE OF THE FACT THAT MANY EMPLOYEES AFFLICTED WITH PTB PERSIST IN WORKING DESPITE THEIR AILMENT.**— The fact that petitioner did not go on sick leave at any time from 1967, the year he claimed to have contracted his ailment of PTB, and December 15, 1969 when he stopped working, is not a sufficient basis to conclude that he was not sick of PTB during that period. For, the Court can take judicial notice of the fact that many employees afflicted with PTB, specially at its incipient or early stage, persist in working despite their ailment, by reason of their sheer determination to continue earning a living for themselves and their families.

3. **ID.; ID.; LEGAL PRESUMPTION OF COMPENSABILITY APPLIED IN CASE AT BAR; EFFECT.**— Because it is now indubitable that petitioner's ailment supervened in the course of employment, the presumption is that the illness of the petitioner either arose out of or was at least aggravated by said employment. With this legal presumption, the burden of proof shifts to the employer, and the employee is relieved of the burden to show causation. The respondent employer has not adduced, even at this late stage, any substantial evidence to overthrow the aforesaid presumption. This presumption of compensability is further reinforced by Section 2 of the Workmen's Compensation Act, as amended, which expressly mentions tuberculosis as a compensable illness when contracted in the course of employment, be it "directly caused by such employment of either aggravated by or the result of the nature of such employment".

**APPEARANCES OF COUNSEL**

*Petitioner* in his own behalf.

*Solicitor General Estelito P. Mendoza, Assistant Solicitor General Santiago M. Kapunan and Solicitor Diosdado Saavedra* for respondents.

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## DECISION

**MAKASIAR, *J.*:**

Petition for review on *certiorari* of the February 13, 1976 decision of the respondent Commission reversing the October 1, 1975 award of its Acting Referee in RO4 WC Case No. 159497, a compensation claim filed by herein petitioner.

The records disclose that petitioner filed on September 6, 1974 with the Department of Labor, Regional Office No. 4 a notice of injury and claim for compensation. The claim alleged *inter alia* that in the course of his employment with respondent employer, he contracted pulmonary tuberculosis; that he stopped working on December 15, 1969, by reason of his illness; and that he notified in December, 1969 his superior of his ailment (p. 61, WCC rec.).

Attached to and made an integral part of the claim were the:

(1) Physician's Report of Sickness or Accident signed by petitioner's attending physician stating that the ailment was diagnosed as pulmonary tuberculosis and was caused by stress and strain of employment; that the ailment was the result of the nature of and aggravated by employment; that he first administered treatment to petitioner in August, 1967 and continues up to the present; that the ailment caused petitioner indefinite total disability for work; and that if petitioner cannot resume his former occupation, he can do only light household chores [p. 30. WCC rec.];

(2) Petitioner's 1970 Quezon Institute Case Record which revealed that he was confined in said Institute from November 27, 1970 to December 21, 1970; that the final diagnostic finding was PTB minimal right, bronchitis, and the results: T.B. active improved [p. 47, WCC rec]; and

(3) Petitioner's service record which showed that he was hired by respondent employer on February 1, 1949, resigned in May, 1953, re-employed on January 1, 1954 and his last day of service as December 15, 1969 [p. 41, WCC rec.].

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On October 1, 1975, the Acting Referee rendered a decision ordering respondent employer to pay the sum of six thousand (₱6,000.00) pesos as disability benefits of petitioner under Section 14 of the Workmen's Compensation Act, as amended; the sum of three hundred (₱300.00) pesos as attorney's fees; and sixty-one (₱61.00) pesos as administrative fees. The aforesaid award was principally anchored on his finding that the claim was uncontroverted and that the subject illness supervened in the course of employment, thus:

"Respondent Department of Public Highways or (the) Office of the Solicitor General failed to file an employer's report or any controversion whatsoever making the instant claim as uncontested.

"The case was called for trial on the merits with respondent Office of the Solicitor General duly notified. On (the) scheduled hearing, no appearance was made for the respondent. Upon motion of counsel for claimant, the case was submitted for decision on the basis of the records, affidavit and evidence(s) on hand.

"The records show that sometime in 1949, the claimant was employed by the respondent as carpenter. As such his duty was to construct or repair bridges and buildings. He was last receiving ₱9.30 per day, working 6 days a week. After working for several years he develop(ed) an ailment. In 1967 he contracted PTB and he underwent medication. He continued working but his physical condition continued to deteriorate. Unable to perform his work well due to illness and pursuant to the advice of his physician he stopped working on December 15, 1969 and (is) still disabled up to the present.

"It is very unfortunate that the respondent failed to file an employer's report or register any controversion whatsoever. No appearance was even made during the scheduled hearing despite due notice. This being the case, with the foregoing environmental facts, the noble task of deciding as to whether or not the instant claim is within the area of (the) compensatory provision of the Workmen's Compensation Act, as amended, is pass(ed) on to us.

"There is no doubt that the claimant was in good health when he started his employment with the respondent. The nature of his employment exposed him to various elements like heat of the sun, sudden rain, sudden change of temperature, dust, dirt, the fact that his work required exertion of too much effort and also the fact that

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he used to perspire profusely which (sic) elements were derogatory to health. After working for several years he developed pulmonary tuberculosis minimal which disabled him for labor at the age of 55. It is, therefore, clear that claimant's illness supervened in the course of his employment and was aggravated by the same.

"The time-honored principle of causation and aggravation find(s) its best application in this case. According to the Supreme Court in one of the leading cases: 'The precise medical causation of the illness is not significant. As long as the illness supervened in the course of employment, the presumption of causation and aggravation applies; the burden to overthrow the presumption, by substantial evidence, to disconnect the sickness from the employment is laid by the statute at the door of the employer' (*Magalona vs. WCC, et al.*, G.R. L-21849, Dec. 11, 1967).

"In this case respondent failed to present substantial evidence to prove that claimant's illness was not and could not have been caused by the nature of his employment. For failure to present such substantial evidence to overcome the abovementioned presumption, compensability of the instant claim is beyond question.

"In the light of the foregoing principles x x x, we find the instant claim meritorious, hence compensable under the Workmen's Compensation Act, as amended x x x" (pp. 15-17, WCC rec.).

From the decision of the Acting Referee, respondent employer, through its counsel, the Solicitor General, filed on November 10, 1975 a motion for reconsideration seeking the reversal of the same on the grounds that the illness contracted by claimant is not compensable as it does not disable him for labor; that the instant claim was filed beyond the period provided for in Section 24 of the Workmen's Compensation Act, as amended; that the injuries or diseases that are compensable are those which produce disability, and thereby affect the earning power of the employee; that optional retirement without disability does not give the retiree a right to compensation under the Workmen's Compensation Act, as amended; that in such a case there being no longer any employee-employer relationship respondent is not required to controvert the right of the claimant to compensation; and finally, that the illness having been contracted after claimant had already

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retired from the service of the respondent, the Workmen's Compensation Act, as amended, does not apply (pp. 11, 12, WCC rec.).

On January 19, 1979, Assistant Chief of Section Danilo L. Reynante denied for lack of merit the aforesaid motion, but ordered the elevation of the records of the claim to the respondent Commission for review, it appearing that the said motion was filed within the reglementary period (p. 7, WCC rec.).

On February 2, 1976, respondent Commission, although maintaining the basic factual findings of the Acting Referee, thus:

"A perusal of the records of this case disclosed that claimant was a carpenter of the respondent, receiving ₱9.30 a day who stopped working on December 14, 1969 due to illness which he contracted sometime in 1967 diagnosed as Pulmonary Tuberculosis and other related diseases. In support of such claim, claimant submitted the hospital record of the Quezon Institute for the year 1970 where it is reflected that he has been finally diagnosed for PTB minimal, right and bronchitis. Per service record, he had been connected with the respondent since February 1, 1949 until December 15, 1969."

nevertheless reversed the October 1, 1975 decision of the Acting Referee, reasoning as follows:

"We observe that the record does not disclose of claimant having been ill of PTB in 1969. He was diagnosed to have PTB already in 1970. There is no evidence on record that he was disabled from work by reason of PTB while he was still employed. We therefore find that he contracted the disabling illness after his retirement and therefore not within the ambit of the compensatory provision of Section 2 of the Act.

"In the light of the foregoing, we are constrained to reverse the decision appealed from for we find that the claimant became ill when already retired and did not suffer any disability by reason of the illness of PTB while still an employee of the herein respondent negates an award for compensation" (pp. 5-6, WCC rec.).

Hence, this recourse.

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Petitioner contends that the respondent Commission gravely abused its discretion in concluding that his PTB ailment was contracted by him after he retired from the service; and in dismissing his case without factual or legal basis.

WE agree.

I

1. Indeed, respondent Commission's finding that petitioner contracted his tuberculosis after he retired from the service, is not only bereft of any evidentiary support but is likewise patently contrary to the undisputed evidence of petitioner.

To begin with, there is nothing in the record to show that petitioner had already been retired from his work, nor is there any evidence to that effect ever presented by the respondent employer. On the contrary, the uncontradicted evidence tends to show that petitioner contracted his ailment before, or in 1967, and stopped working at the age of 55 by reason thereof on, December 15, 1969. The report of petitioner's attending physician to that effect is not refuted by any evidence of respondent employer, except perhaps its *bare allegation* to the contrary. Such unsupported allegation cannot prevail over the documented stand of petitioner that he stopped working by reason of his ailment of tuberculosis (*Enriquez vs. WCC*, G.R. No. L-42640, September 28, 1979). It is thus surprising how the respondent Commission arrived at its questioned conclusion in the light of the aforestated facts, not to mention the fact that respondent employer never appeared in the hearing of the case, hence, it could not have submitted any rebutting evidence. From the factual circumstances obtaining in this case, it can be reasonably concluded that petitioner stopped working on December 15, 1969 by reason of his PTB ailment. It could not have been otherwise as it is incontrovertible that petitioner did not retire nor resign on that date; and respondent employer had not ventured any cause or reason — like abandonment or absence without leave — why petitioner had to stop working on that date if he were not actually disabled by reason of his ailment. For considering his services with respondent employer of about 20

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years, he could not have just stopped working without any compelling reason. As a matter of fact, petitioner had to be subsequently confined at the Quezon Institute from November 27, 1970 to December 21, 1970 (p. 47, WCC rec.). There is therefore a rational basis for the petitioner's observation that the proximity of the date he stopped working and his hospitalization by reason of his tuberculosis makes it imperative to decisively presume that he was disabled by his aforesaid tuberculosis (p. 61, rec.); and that furthermore, that at the time he stopped working on December 15, 1969, he was already afflicted therewith (*Bautista vs. WCC*, 88 SCRA 121, 130-131 [1979]; *Lorenzo vs. WCC*, 85 SCRA 440, 441 [1978]); because tuberculosis is not an instantaneous disease as it is caused by an imperceptible germ that feeds on the lungs, whose presence in the body cannot be easily discerned and its incipient stage may not be readily discovered (*ibid*).

2. The fact that petitioner did not go on sick leave at any time from 1967, the year he claimed to have contracted his ailment of PTB, and December 15, 1969 when he stopped working, is not a sufficient basis to conclude that he was not sick of PTB during that period. For, WE can take judicial notice of the fact that many employees afflicted with PTB, specially at its incipient or early stage, persist in working despite their ailment, by reason of their sheer determination to continue earning a living for themselves and their families (*Romero vs. WCC*, 77 SCRA 482, 489 [1977]). Thus, in the case of *Manila Railroad Company vs. Ferrer and WCC* (109 Phil. 716 [1960]), the worker was found on November 19, 1953 to be afflicted with a moderately advanced PTB, but he was able to continue working until a few months before he died on January 27, 1958 of said illness. In *Lambino vs. del Rosario* (6 SCRA 1017 [1962]) the employee was found in April, 1952 to be afflicted with a far advanced PTB, but he was able to work up to the time of his death on May 7, 1953, by reason of said ailment. Again, in *Manila Railroad Company vs. Vda. de Chavez,* (12 SCRA 142 [1964]), the laborer was confined in the hospital from November 22, to December 2, 1956 for PTB, after which he was able to work briefly only to be confined again; and he died

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on August 10, 1957 of the aforesaid illness. Finally, in *Corales vs. Employees Compensation Commission* (84 SCRA 764 [1978]; 88 SCRA 547 [1979]), the employee continued working up to his compulsory retirement in 1975 despite his ailment of tuberculosis contracted way back in 1965.

II

Consequently, because it is now indubitable that petitioner's ailment supervened in the course of employment, the presumption is that the illness of the petitioner either arose out of or was at least aggravated by said employment. With this legal presumption, the burden of proof shifts to the employer, and the employee is relieved of the burden to show causation. The respondent employer has not adduced, even at this late stage, any substantial evidence to overthrow the aforesaid presumption. This presumption of compensability is further reinforced by Section 2 of the Workmen's Compensation Act, as amended, which expressly mentions tuberculosis as a compensable illness when contracted in the course of employment, be it "directly caused by such employment or either aggravated by or the result of the nature of such employment" (*Aninias vs. WCC*, G.R. No. L-43021; *Redoblado vs. WCC*, G.R. No. L-44391, 83 SCRA 806; 4 PHILAJUR, 657 [1978]). Indeed, in numerous cases involving the same and/or substantially similar nature of work as well as conditions or circumstances of work as that of herein petitioner, WE ruled that tuberculosis is an occupational disease, hence compensable (*Bautista vs. WCC*, 88 SCRA 121, 129 [1979], citing several cases).

III

Finally, the right of petitioner to compensation was uncontroverted. Hence, respondent employer's defenses, if any, are barred (*Delos Santos vs. WCC*, 88 SCRA 134 [1978]). Respondent employer's contention that its duty to controvert is excused, lacks factual basis in view of the decisive fact that, as shown above, contrary to its assertion, the ailment of petitioner supervened in the course of his employment with respondent employer.

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**WHEREFORE**, THE DECISION OF THE RESPONDENT COMMISSION IS HEREBY REVERSED AND SET ASIDE AND RESPONDENT EMPLOYER IS HEREBY ORDERED TO PAY.

1. PETITIONER.
   - A. THE AMOUNT OF SIX THOUSAND (₱6,000.00) PESOS AS DISABILITY BENEFITS;
   - B. HIS MEDICAL EXPENSES PROPERLY SUPPORTED BY RECEIPTS; AND
   - C. ATTORNEY'S FEES EQUIVALENT TO FIVE (5) PERCENT* OF THE TOTAL AWARD; AND.

2. THE SUCCESSOR OF THE DEFUNCT RESPONDENT COMMISSION, ADMINISTRATIVE FEES.

**SO ORDERED.**

*Teehankee (Chairman), Fernandez, Guerrero, De Castro,* and *Melencio-Herrera, JJ.*, concur.

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**SECOND DIVISION**

[G.R. No. L-46541. December 28, 1979]

**THE OVERSEAS BANK OF MANILA,** *petitioner-appellant, vs.* **HON. AMBROSIO M. GERALDEZ, Presiding Judge of Branch I, Court of First Instance of Manila, TEODOSIO VALENTON and ANDRES A. JUAN,** *respondents-appellees.*

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* No increase in the amount becasuse petitioner was not represented by counsel in this appeal.