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FIRST DIVISION

[G.R. No. L-41998. April 30, 1979]

SEVERINA DULAY, *petitioner, vs.* **WORKMEN'S COMPENSATION COMMISSION and JUANITO LAPITAN,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATIION; WORKMEN'S COMPENSATION; PRESUMPTION OF COMPENSABILITY; APPLICATION.** — Where the illness of the employee supervened during his employment, there is a disputable presumption that the claim is compensable, and the employee is relieved from the burden of proving causation.

2. **ID.; ID.; ID.; EFFECT OF FAILURE TO CONTROVERT.** — Where the employer did not controvert the claim, he is deemed to have renounced all non-jurisdictional defenses.

3. **ID.; ID.; DISABILITY BENEFITS; INCLUDES MEDICAL EXPENSES.** — In addition to the disability benefits to which the claimant is entitled, he should also be reimbursed all medical expenses which he can prove by proper receipts. He is also entitled to attorney's fees equivalent to 10% of the benefits awarded to him.

APPEARANCES OF COUNSEL

Briccio A. Almeda for petitioner.

Enrique V. Espanol & Victoriano A. Miguel for respondent WCC.

Antonio O. Pescador for private respondent.

D E C I S I O N

FERNANDEZ, *J.*:

This is a petition to review the decision of the Workmen's Compensation Commission in ROI-WCU Case No. 3195 entitled

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"*Severina Dulay,* Claimant, *versus, Juanito Lapitan,* Respondent" dismissing the award granted by the Chief of the Workmen's Compensation Section in the Baguio City Sub-Regional Office.[1]

The petitioner was allegedly a laborer of both the Island Redrying Plant in San Fernando, La Union and its contractor, Juanito Lapitan, and was assigned in the plant's chemical drying area of tobacco leaves. On June 2, 1969, while in the performance of her work, the petitioner vomitted blood. She was brought to the La Union Provincial Hospital for treatment and was found with "calcified bronchus and hilar glands, tenting left diaphragm." She was confined and was incapacitated for work from June 2, 1970 to July 26, 1970. The Island Redrying Plant was immediately notified of the illness of the petitioner on the date that she was confined.

On December 26, 1974, petitioner was again treated at the Bethany Hospital for the same illness and was found to have an aggravated "minimal exudative, bilateral with cavitation left."

The petitioner filed a claim for disability compensation with the Baguio City Sub-Regional of the Department of Labor against the Island Redrying Plant. The case was docketed as Case No. 3017. On October 19, 1974, the Chief of the Sub-Regional Office awarded to petitioner the amount of ₱2,430.00 as total compensation for the disability and illness incurred. No appeal was taken by the Island Redrying Plant in said Case No. 3017. However, no payment was made to the petitioner by the Island Redrying Plant.

On January 19, 1975, the petitioner again filed a Notice of Injury or Sickness and Claim for Compensation, this time against Juanito Lapitan, based on the initial injuries sustained which in the course of petitioner's employment was allegedly aggravated into pulmonary tuberculosis. The Workmen's Compensation Unit in Baguio City sent on January 19, 1975 to Juanito Lapitan copies of the Notice of Injury or Sickness and Claim for

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[1] Decision, *Rollo*, pp. 22-25.

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Compensation. Said Juanito Lapitan did not controvert the claim and right of petitioner to compensation.[2]

The Chief of the Workmen's Compensation Section of Baguio City rendered an award granting to the claimant the following benefits:

"Under the Workmen's Compensation Act, as amended, the following benefits should be extended to the claimant:

1. Medical, surgical and hospital services and supplies as the nature of the injury may require, pursuant to Section 13 of the Act and to the reimbursement of the amount of ONE HUNDRED TEN PESOS (₱110.00) which she incurred for her medical treatment;

2. Compensation for temporary total disability for labor equivalent to 60% of her average weekly wages for the period she was incapacitated for labor, pursuant to Section 14 of the Act. In this case, she was disabled for work from June 2, 1969 to February 28, 1975, or 850 days or 121 3/7 weeks. Sixty per centum of her average weekly wage which was ₱35.00 equals ₱21.00 and for 121 3/7 weeks, she is entitled to TWO THOUSAND FIVE HUNDRED FORTY SEVEN (P2,547.00) PESOS;

3. Compensation for the 90% N.S.D. (Non-Scheduled Disability)-157.2 weeks (actual findings of Dr. Santiago P. Estrada) to 50% of her average weekly wage for 187.2 weeks pursuant to Section 17 of the Act. Fifty per centum of his average weekly wage which was ₱35.00 equals ₱17.50 and for 187.2 weeks, she is entitled to THREE THOUSAND TWO HUNDRED SEVENTY SIX PESOS (₱3,276.00).

Under Sections 13, 14 and 17 of the Act, the claimant of the aforementioned compensation benefits, and the respondent is directed to pay the following:

1. To the claimant, thru this Office, the sum of FIVE THOUSAND NINE HUNDRED THIRTY THREE PESOS (₱5,933.00).

2. To this Office, the amount of FIFTY NINE PESOS (₱59.00), as fee pursuant to Section 55 of the Act.

SO ORDERED."[3]

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[2] Memorandum for Petitioner, *Rollo*, pp. 66-67.

[3] *Rollo*, pp. 26-27.

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The respondent, Juanito Lapitan, filed on April 23, 1975 a motion for the reconsideration of the award in Case No. ROI-WCU No. 3195 on the ground that the petitioner had already waived her right to said award when she executed an affidavit of desistance before Atty. Pedro L. Fernandez, then Hearing Officer and Chief of the Workmen's Compensation Unit in Dagupan City on August 17, 1970 in ROI-WCC Case No. 5277 *which is different from the instant case.*

On June 30, 1975, the Regional Office at Baguio City denied the motion for reconsideration of Juanito Lapitan and elevated the case for review to the Workmen's Compensation Commission, which rendered on October 29, 1975 a decision dismissing the award not only in Case No. 3195 but the award issued in Case No. 3017 which had long become final.

The petitioner assigns the following errors:

"I

RESPONDENT COMMISSION COMMITTED A GRAVE ERROR IN DISTURBING AWARD IN CASE ROI-WCC NO. 3017 RENDERED ON JUNE 6, 1969.

II

RESPONDENT COMMISSION COMMITTED A GRAVE ERROR IN REVERSING REFEREE'S AWARD IN CASE NO. ROI-WCC NO. 3195 ON THE GROUND THAT PETITIONER FAILED TO ESTABLISH A LINK BETWEEN THE ILLNESS SHE CONTRACTED AND THE NATURE OF THE WORK)"[4]

The award in ROI-WCC No. 3017 rendered on October 19, 1974 has long become final and is not involved in ROI-WCU No. 3195. However, the petitioner cannot recover twice for the same sickness.

The Workmen's Compensation Commission erred in finding that the petitioner has failed to lay the basis for her claim by means of convincing proof.[5]

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[4] *Rollo*, p. 14.

[5] *Rollo*, p. 24.

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It is a fact that the illness of the petitioner supervened during her employment with Juanito Lapitan and the Island Redrying Plant. Hence, there is disputable presumption that the claim is compensable.[6]

In *Agustin vs. Workmen's Compensation Commission*,[7] this Court held that "the laborer is relieved from the burden of proving causation once the injury is shown to have arisen in the course of the employment x x x. The disease having arisen in the course of the employment, it is presumed by law that it arose out of it."

Moreover, petitioner did not rely on the presumption alone. She presented evidence to show that on June 2, 1969, while in the performance of her work, she vomitted blood; and that she was brought to the La Union Provincial Hospital where she was treated and was found "with calcified bronchus and hilar glands, tenting left diaphragm." The petitioner presented a radiological report issued by Dr. Santiago P. Estrada, Jr. of the La Union Provincial Hospital on June 6, 1969. On December 26, 1974, the petitioner was again treated at the Benthany Hospital for the same illness and X-ray findings show "minimal exudative, bilateral with cavitation left" as shown by the radiological report dated December 26, 1974 issued by Dr. Faustino A. Nufable of the Bethany Hospital. The petitioner also adduced evidence that she incurred medical expenses.

The respondent, Juanito Lapitan, did not controvert the claim. In view thereof, said respondent is deemed to have renounced all non-jurisdictional defenses.[8]

In addition to the benefits awarded by the Chief of the Workmen's Compensation Section, the petitioner should be

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[6] Section 44, Workmen's Compensation Act, as amended; *Justiniano vs. Workmen s Compensation*, 18 SCRA 677.

[7] 12 SCRA 55, 58.

[8] *Lominog Dinaro vs. Workmen's Compensation Commission, et al.*, 70 SCRA 292.

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reimbursed all medical expenses which she can prove by proper receipts. She is also entitled to attorney's fees equivalent to 10% of the benefits awarded to her.

WHEREFORE, the decision of the Workmen's Compensation Commission sought to be reviewed is hereby set aside, and the respondent, Juanito Lapitan, is ordered:

1) To pay the petitioner the amount of Two Thousand Five Hundred Forty Seven Pesos (₱2,547.00) as compensation for temporary total disability for the period from June 2, 1969 to February 28, 1975;

2) To pay the petitioner the amount of Three Thousand Two Hundred Seventy Six Pesos (₱3,276.00) as benefit for non-scheduled disability;

3) To reimburse the petitioner of medical expenses supported by proper receipts;

4) To pay the petitioner the sum of Five Hundred Ninety Three Pesos and Thirty Centavos (₱593.30) as attorney's fees; and

5) To pay the successors of the Workmen's Compensation Commission the amount of Sixty-One Pesos (₱61.00) as administrative fee.

SO ORDERED.

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