



DEL ROSARIO PANDIPHIL Inc.

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By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., November 20, 2015 (Issue 2015/22)

“Del Rosario & Del Rosario is often first port of call for employment law within the maritime industry, where it represents shipowners, agents, insurers and port owners.” Asia-Pacific, The Legal 500, 2014, p. 494

In this issue:

Supreme Court denies claim for full disability benefits by malingering seafarer

Supreme Court rules cardiovascular disease is compensable as it is listed as an occupational disease under the POEA Contract

Firm News

Supreme Court denies claim for full disability benefits by malingering seafarer

Seafarer was hired as Able Bodied Seafarer on board the vessel. During his employment, seafarer complained of intermittent pain on the left buttock radiating to the lower back and left groin. When he was examined in a port clinic, he was diagnosed with “acute lumbago with left sided sciatica r/o disc prolapsed.” He was declared unfit for duty and later on repatriated for examination and treatment by the company-designated doctor.

The company designated doctor found seafarer to be suffering from “paralumbar spasm and limitation of movement due to pain.” He prescribed medication and physical therapy at three sessions per week. Seafarer was continuously examined and everytime, he would report extreme pain. An MRI scan was recommended as well as epidural steroid injection and further physical therapy. The MRI results revealed generally normal findings. However, the seafarer still complains of pain.

The company-designated doctor requested that the seafarer undergo EMG-NCV testing. When the results came out, the company-designated doctor stated that the low back pain intensity is not commensurate with the alleged symptoms of back pain so that a Provocative Discography is recommended. Seafarer then underwent Provocative Discography where the findings again were that the pain complained of is not commensurate with the Discography. It was further noted by the specialist that as the pain is not commensurate with the discography, personality reasons should be evaluated to rule out malingering and seafarer was advised to undergo the Minnesota Multiphasic Personality Test for this purpose. Seafarer took the Minnesota Multiphasic Personality Inventory and the results showed that there are indicators that seafarer is malingering and exaggerating his symptoms. On the 127th day of treatment, the company-designated doctor suggested a disability grade “11” to the seafarer.

The seafarer consulted other doctors where he was assessed with grade “6” disability due to the pain he is

experiencing. On this basis, the seafarer filed a complaint for disability benefits.

The Labor Arbiter awarded full disability benefits to the seafarer as his treatment lasted for more than 120 days and he was not yet declared fit. The NLRC however modified said award and held that seafarer is entitled only to US\$7,465 which is the equivalent of a grade "11" disability issued by the company-designated doctor. On the other hand, the Court of Appeals affirmed the reasoning of the Labor Arbiter in awarding full disability benefits to the seafarer. Upon reaching the Supreme Court, it was held that seafarer is entitled only to US\$7,465 disability benefits.

The Supreme Court again explained that the 120 day period to assess the medical condition of the seafarer may be extended up to 240 days if further treatment is required. Here, the assessment that seafarer is suffering from a grade "11" disability issued by the company-designated doctor within the 240 day period should be considered.

The Court likewise noted that after obtaining a second medical opinion, the seafarer did not request for the appointment of a third doctor, in accordance with the POEA-SEC, whose decision shall be final and binding on the parties. Such misstep should prove costly to the seafarer. Since seafarer was the one pursuing a claim, then it was he who should have taken the initiative to secure the opinion of a third physician prior to seeking intervention by the labor tribunals. Seafarer's disregard for the conflict resolution procedure in the POEA-SEC would only mean that the company-designated doctor's assessment stands.

On a last note, the Court held that there was no reason to doubt the company-designated doctor's medical opinion regarding seafarer's condition. Prior to his final declaration, he took pains to address seafarer's condition and did his best to reconcile the conflicting medical evidence with seafarer's declared symptoms. His objective resolve led him so far as to require seafarer to undergo a comprehensive battery of tests – EMG NCV test, provocative discography, and even MMPI-2 – just to make sure that seafarer's complaints are addressed, while at the same time ensure that an objective diagnosis of his illness is obtained. ***There is thus merit in the company-designated doctor's finding that seafarer is malingering; medical evidence obtained after the battery of tests is to the effect that seafarer's supposed excruciating back pain is not supported by or commensurate to the results of the provocative discography and MMPI-2 tests. Being scientific medical procedures, the accuracy and reliability of these tests cannot be doubted; besides, they have not been questioned in these proceedings.***

Maersk Filipinas Crewing, Inc./A.P. Moller A/S v. Rommel Rene Jaleco, G.R. No.201945, September 21, 2015, Second Division, Associate Justice Mariano Del Castillo, Ponente.

Supreme Court rules cardiovascular disease is compensable as it is listed as an occupational disease under the POEA contract

Seafarer was engaged as Chief Cook on-board the vessel. Prior to embarkation, the seafarer was declared fit to work in his pre-employment medical examination. During employment, seafarer complained of breathing difficulty, weakness, severe fatigue, dizziness, and grogginess. Upon referral to a portside hospital, he was recommended for medical repatriation. Following his repatriation, seafarer was referred to the company designated physicians for further evaluation and medical treatment. After several tests, he was diagnosed with "Hypertensive Cardiovascular Disease" and "Diabetes Mellitus II".

Seafarer then filed a complaint for disability benefits arguing that his illnesses are work-related/work-aggravated as confirmed by his personal doctor. The company rejected the claim on the basis that seafarer's diabetes mellitus is not work-related and that his hypertensive cardiovascular disease was a result of the diabetes which would also make it not related to his work.

The Labor Arbiter granted the claim of the seafarer which was affirmed by the NLRC. The Court of Appeals though dismissed the complaint. On further petition, the Supreme Court affirmed the NLRC's award of disability benefits.

The Supreme Court held that the POEA-SEC defines "*work-related illness*" as any sickness resulting to

disability or death as a result of an occupational disease listed in the POEA Contract with the conditions set therein satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
4. There was no notorious negligence on the part of the seafarer.

Further, Section 32-A (11) of the POEA-SEC expressly considers Cardiovascular Disease (CVD) as an occupational disease if it was contracted under any of the following instances, to wit:

- (a) If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.
- (b) The strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of cardiac insult to constitute causal relationship.
- (c) If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.

Consequently, for CVD to constitute as an occupational disease for which the seafarer may claim compensation, it is incumbent upon said seafarer to show that he developed the same under any of the three conditions identified above.

Records reveal that sometime during the performance of his duties as Chief Cook on board the vessel, seafarer complained of breathing difficulty, weakness, severe fatigue, dizziness, and grogginess, necessitating portside medical intervention and consequent medical repatriation. Shortly after repatriation, he was diagnosed with Hypertensive Cardiovascular Disease, also known as hypertensive heart disease, which refers to a heart condition caused by high blood pressure.

Seafarer's condition was apparently asymptomatic since he manifested no signs and symptoms of any cardiac injury prior to his deployment onboard and was, in fact, declared fit for sea duty following his PEME. Notably, seafarer's physical discomforts on-board the vessel already bore the hallmarks of CVD for which he was eventually diagnosed upon his repatriation. The said diagnosis was recognized by both the company-designated doctors and seafarer's own doctor, and was well documented. Thus, absent any showing that seafarer had a pre-existing cardiovascular ailment prior to his embarkation, the reasonable presumption is that he acquired his hypertensive cardiovascular disease in the course of his employment pursuant to Section 32-A (11) (c) of the POEA-SEC, which recognizes a "causal relationship" between a seafarer's CVD and his job, and qualifies his CVD as an occupational disease.

The fact that seafarer was also diagnosed as having Diabetes Mellitus II was of no moment since the incidence of a listed occupational disease, whether or not associated with a non-listed ailment, is enough basis for compensation, although modern medicine has in fact recognized that diabetes, heart complications, hypertension and even kidney disorders are all inter-related diseases.

Jose Rudy Bautista v. El Burg ShipManagement Philippines, Inc., Augustea Shipmanagement Italy and/or Capt. Antonio Nombrado, G.R. No.206032, August 19, 2015, First Division, Associate Justice Estela Perlas-Bernabe, Ponente. Attys. Rene Pilapil and Charles Dela Cruz handled for vessel interests

Firm News

Ruben Del Rosario was panelist at recently concluded 2015 Philippine Manning Convention

Managing Partner Ruben Del Rosario was a panelist at the 2015 Philippine Manning Convention which was held last 10-11 November 2015 at the Manila Hotel. Ruben was asked to provide his insight to the remarks of speakers Commissioner Grace Tan of the NLRC, Director Tess Audea of the NCMB and Congressman Jesus Manalo of the Angkla Party List.

Pedrito Faytaren speaker at Lauritzen Maritime Conference

Managing Associate Pedrito Faytaren was a speaker at the Lauritzen Maritime Conference last 6 November 2015 which was held at Makati Diamond Residences. He spoke on health issues on ships and updates on crew claims jurisprudence. The conference was attended by senior officers of Lauritzen.

The firm would like to thank Lauritzen as well as their agents Phoenix Maritime and New Century for the invitation to be part of this special event.

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This publication aims to provide commentary on issues affecting the manning industry, analysis of recent cases and updates on legislation. It is meant to be brief and is not intended to be legal advice. For further information, please email ruben.delrosario@delrosario-pandiphil.com.

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