



# ***DEL ROSARIO PANDIPHIL Inc.***

***“Del Rosario & Del Rosario is more or less unrivalled when it comes to maritime work in the Philippines” from Asia-Pacific, The Legal 500, 2014, p. 497***

## **Philippine Shipping Update – Manning Industry**

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., April 10, 2014 (Issue 2014/06)

### **Concealment is cause for denial of disability benefits; passing PEME does not rule out misrepresentation of health condition**

Seafarer was hired as Fitter. Prior to engagement, the seafarer did not disclose any medical condition relating to his eye and only divulged that he was merely wearing corrective lens. Thereafter, he was declared fit to work and allowed to sail.

Four months into his employment, seafarer was repatriated due to an eye condition. According to the seafarer, paint drops hit his left eye while doing repair works. When the seafarer was referred to the company-designated doctor, he was diagnosed with *"right eye- posterior subs capsular cataract"* and *"left eye- pseudophakia, posterior capsule opacification"*. According to the company-designated doctor, the condition of the seafarer commonly occurs after a cataract operation and is not associated with the claim that the paint injured his eye.

Seafarer filed a claim for disability benefits with the Labor Arbiter arguing that his eye condition is work-related. The Labor Arbiter denied the claim on the ground that there is no proof that the illness is work-related. This was affirmed by the NLRC.

However, the Court of Appeals awarded full disability benefits to the seafarer reasoning that the eye condition of the seafarer is work-related and the paint that hit the eye while doing repair works is independent of the cataract operation. Also, the Court of Appeals held that since the PEME is sufficiently exhaustive, this will excuse seafarer's non-disclosure of the cataract operation.

The Supreme Court reinstated the decision of the NLRC and held that the seafarer is not entitled to disability benefits.

#### ***Substantial proof not presented to prove work-relation of the eye condition***

The Supreme Court held that seafarer did not present substantial proof that his eye ailment was work-related. Other than his bare claim that paint droppings accidentally splashed on an eye causing blurred vision, he did not present any note or recording of the supposed accident. Nor did he present any record of some medical check-up, consultation, or treatment that he had undergone. Besides, while paint droppings can cause eye irritation, such fact alone does not *ipso facto* establish compensable disability.

The Court gave credence to the findings of the company-designated physician, that it was cataract extraction, not paint droppings that caused seafarer's ailment based on medical literature.

#### ***The cataract operation was not disclosed during the PEME and as such, considered as wilfully concealed***

Even if it would be assumed that seafarer's eye ailment was work-related, the Court said that he still cannot claim

disability benefits since he concealed his true medical condition during the PEME. In his PEME, the seafarer represented that he was merely wearing corrective lens which was untrue because he belatedly admitted after repatriation, that he had a cataract operation in 2005. This wilful concealment of vital information in his PEME disqualifies the seafarer from claiming disability benefits pursuant to Section 20(E) of the POEA-SEC.

### ***Passing PEME does not rule out misrepresentation***

The Court held that there is no basis in holding that seafarer's PEME is sufficiently exhaustive as to excuse his non-disclosure of a previous cataract operation. The fact that he was physically and psychologically ascertained to be fit for sea duties does not rule out misrepresentation. A PEME is generally not exploratory in nature, nor is it a totally in-depth and thorough examination of an applicant's medical condition. It does not reveal the real state of health of an applicant. Since it is not exploratory, its failure to reveal or uncover the seafarer's eye disability cannot shield him from the consequences of his wilful concealment.

*Vetyard Terminals & Shipping Services, Inc./ Miguel Perez, Seafix, Inc. vs. Bernardino Suarez; G.R. No. 199344; Third Division; March 5, 2014; Supreme Court Associate Justice Roberto Abad, Ponente.*

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***“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***

***“This unparalleled shipping firm remains at the forefront of the market.” “They are in a league of their own.” “They are the runaway leaders in shipping.” Chambers Asia Pacific, 2012 p. 832***

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