



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

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

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., March 20, 2014 (Issue 2014/04)

### **Supreme Court denies claim for disability benefits: Diabetes Mellitus not proven to be work-related; Hypertension was concealed during PEME**

Seafarer was employed as Chief Engineer. Prior to embarkation, the seafarer underwent a pre-employment medical examination (PEME) where he disclosed that he had Diabetes Mellitus. However, when asked if he suffered from high blood pressure (Hypertension), he answered in the negative. With these representations, the PEME clinic declared the seafarer “FIT FOR SEA DUTY.”

On the fifth month of his employment contract, the seafarer suddenly lost his sense of hearing while on duty in the engine room, and only heard a continuous ringing noise. He rested but when he woke up, he felt like his surroundings were spinning, he vomited, lost consciousness, and was later found lying on the floor.

Upon reaching port the seafarer was confined at the hospital and eventually repatriated to the Philippines for further medical treatment and examination with the company-designated doctor. It was determined that the seafarer had Hypertension and Diabetes Mellitus. The said illnesses were declared by the company-designated doctors to be both not work-related. The company-designated doctor also noted that seafarer knew he had Hypertension even prior to his employment as he was taking maintenance medications for this condition.

Seafarer did not agree with the company-doctor’s opinion and thus consulted his own doctor who declared him to be suffering from Hypertension and Diabetes Mellitus and declared him unfit for sea duty in any capacity. Thereafter, the seafarer filed a formal complaint with the NLRC.

The Labor Arbiter granted disability benefits to the seafarer on the reasoning that the company assumed the risk of liability when they hired the seafarer knowing that he had Diabetes Mellitus and in a weakened condition. The Labor Arbiter likewise did not give credence to the opinion of the company-designated doctor as they were general statements unsupported by medical tests.

The above reasoning was also affirmed by the NLRC.

With the Court of Appeals, the seafarer’s claim was dismissed on the ground that work-relation of the illnesses were not duly proven. Also, the seafarer failed to follow the procedure in the POEA contract on the appointment of a third doctor to resolve the findings of the company designated doctor and his personal doctor.

The Supreme Court agreed with the ruling of the Court of Appeals.

### ***Diabetes Mellitus was not properly established by substantial evidence to be work-related.***

The seafarer was not able to prove that his Diabetes Mellitus was related to his work as Chief Engineer during the course of his employment. It is well-settled that for a disability to be compensable, the seafarer must establish that there exists “a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.”

In other words, ***not only must the seafarer establish that his injury or illness rendered him permanently or partially disabled, it is equally pertinent that he shows a causal connection between such injury or illness and the work for which he had been contracted.***

The company's subsequent hiring of the seafarer, despite knowledge of his Diabetes Mellitus, did not make them guarantors of his health nor did it warrant outright compensation in favor of the seafarer. Indeed, despite the pre-existing nature of his Diabetes Mellitus and the concomitant disputable presumption that it is work-related, ***the seafarer still had the burden to prove the causal link between his Diabetes Mellitus and his duties as Chief Engineer.***

As the seafarer failed to establish the work-relatedness of his Diabetes Mellitus through substantial evidence, his claim for disability benefits therefor should not have been granted by the NLRC.

#### ***The seafarer concealed his Hypertension during the PEME***

The Court noted that the seafarer, despite the fact that he was taking maintenance medications for his Hypertension, ***did not disclose the same during the PEME.*** The same was only revealed after his repatriation and this constitutes ***fraudulent concealment*** which pursuant to the POEA Contract will disqualify him from claiming disability benefits.

Even if the Hypertension was not concealed, still, the requirements for the same to be compensable under the POEA Contract were not met as he failed to show any laboratory reports which would show that the Hypertension has caused impairment of function to his body organs that would result into a permanent disability.

#### ***The seafarer failed to follow the procedure in contesting the findings of the company-designated doctor***

Lastly, the Court noted that the seafarer failed to comply with the procedure laid down under Section 20(B)(3) of the POEA Contract which provides that "if a doctor appointed by the seafarer disagrees with the assessment of the company doctor, a third doctor may be agreed jointly between the Employer and the seafarer," and that "the third doctor's decision shall be final and binding on both parties." In a previous case, the Court held that the seafarer's non-compliance with the said conflict-resolution procedure results in the affirmance of the fit-to-work certification of the company-designated physician.

In this case, the findings of company designated physicians that seafarer's illnesses were not work-related were, in tum, controverted by seafarer's personal doctor stating otherwise. In light of these contrasting diagnoses, seafarer prematurely filed his complaint before the NLRC without going through the conflict-resolution procedure under the POEA Contract. Thus, consistent with previous jurisprudence, the Court upheld the opinion of the company-designated doctors that seafarer's illnesses were pre-existing and not work-related, hence, non-compensable.

***Author's Note:*** This is another case wherein the Supreme Court has sustained the position that despite the disputable presumption that seafarer's illness is work-related under the POEA Contract, he still has the burden to prove the causal link between the illness and his employment. This had also been the position of the Supreme Court in *Quizora v. Denholm Crew Management Phils., Inc.*, G.R. No. 185412, November 16, 2011, *Casomo v. Career Philippines Shipmanagement Inc.*, GR 191606, August 1, 2012 and *Sea Power Shipping Ent., Inc. v. Salazar*, G.R. No. 188595, August 28, 2013.

Further, the Supreme Court dismissed the claim of the seafarer because of his failure to follow the procedure laid down in the POEA Contract that in the event of conflicting findings of the company-designated doctor and seafarer's personal doctor, a third doctor may be appointed whose findings shall be final and binding

*Martin Ayungo vs. Beamko Shipmanageemnt Corporation, Eagle Maritime Rak Fze and Juanito Salvatierra, Jr. ; G.R. No. 203161; Second Division; February 26, 2014 ; Supreme Court Associate Justice Estela Perlas-Bernabe, Ponente (Attys. Lovereal Ocampo and Joseph Rebano of Del Rosario & Del Rosario handled for vessel interests).*

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***“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***

***“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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