

FIRST DIVISION

[G.R. No. 216795, April 01, 2019]

**MAERSK-FILIPINAS CREWING INC.; AND A.P. MOLLER A/S,
PETITIONERS, V. EDGAR S. ALFEROS, RESPONDENT.**

D E C I S I O N

BERSAMIN, C.J.:

The assessment made by the company-designated physician of the condition of the seafarer is controlling on the determination of the claim for disability benefits for the seafarer. The filing of a claim based on the assessment of his condition by the seafarer's chosen physician without his having given to the employer notice of his intent to submit his condition for assessment by a third physician is premature and in violation of the provisions of the POEA-Standard Employment Contract (POEA-SEC).

The Case

This appeal stems from the claim for disability benefits, sick wages, damages, and attorney's fees filed by the respondent against the petitioners. The latter hereby appeal the decision promulgated on November 10, 2014,^[1] whereby the Court of Appeals (CA) dismissed their petition for certiorari docketed as C.A.-G.R. SP No. 136293 and upheld the decision dated April 30, 2014^[2] rendered by the National Labor Relations Commission (NLRC) affirming the award of US\$60,000.00 representing the respondent's permanent total disability benefits plus attorney's fees.

Antecedents

The petitioners had employed the respondent as an Able Seaman without interruption since 1995. They had redeployed him each time under a new contract upon being subjected to the Physical Employment Medical Examination (PEME) that always found him fit for work. For his last employment contract, he was again hired by the petitioners as an Able Seaman on board the vessel M/S Laura Maersk with a basic salary of US\$585.00/month for a period of six months commencing on May 10, 2012. Upon completion of his contract, the parties mutually extended his services because there was no person available to take over his position on board the vessel.^[3]

On December 20, 2012, he suddenly felt pain in his lower back and abdomen while in the performance of his duty. He also experienced difficulty and pain when urinating. He reported his condition to his superior officer, who brought him to the Dulsco Medical Clinic in Dubai, which, upon medical examination, diagnosed his condition as "Dysuria, with loin pain and back pain." He was treated thereat, and was later on discharged and allowed to return to the vessel. However, despite

treatment in Dubai, his condition did not improve but became worse. He was medically repatriated and was disembarked on January 12, 2013.

The company-designated physicians, Dr. Karen Frances Hao-Quan (Dr. Quan) and Dr. Robert D. Lim (Dr. Lim), referred him to an urologist. According to the medical report, the respondent complained of "pain in urination accompanied with urinary frequency and back discomfort since December 2012 on board the sea vessel and was diagnosed to have dysuria with loin pain and back pain; urinalysis showed red blood cells; kidney, urinary bladder and prostate gland ultrasound showed focal cortical calcification, right kidney and Grade 1 prostate hypertrophy; he was recommended to undergo CT Stonogram and was given medications.^[4] He was to return on January 31, 2013 for re-evaluation, and the impression was "Prostatitis rule out Urolithiasis."^[5]

In the medical report dated January 31, 2013 prepared by Dr. Quan and Dr. Lim, the earlier impression was restated, and the respondent was asked to return on February 4, 2013 for re-evaluation.

In the follow-up medical reports dated February 4, 2013 and February 18, 2013, the respondent was advised to continue his medications. In the medical report dated March 5, 2013, the company-designated physician pronounced the respondent as already fit to resume sea duties as of said date inasmuch as his prostatitis had already been resolved. The petitioners then made him sign a document entitled "Certificate of Fitness to Work" dated March 5, 2013, with his company-designated physician as witness.^[6]

Not feeling fit to resume sea duties despite the final diagnosis by the company-designated physician, and despite having been made to sign the "Certificate of Fitness for Work," the respondent submitted himself for examination by another physician. The records show that on March 19, 2013 he sought further medical evaluation and management at the Supercare Medical Services (Supercare), as shown by the "Agreement to Proceed with Further Evaluation and Management" signed by him.^[7]

On further evaluation of his health condition, the respondent was diagnosed to be suffering from kidney stones and vertigo. Due to such diagnosis, he was referred to St. Luke's Medical Center on April 29, 2013, where he was diagnosed to be suffering from nephrolithiasis by Dr. Jaime C. Balingit (Dr. Balingit). He was then further referred to Dr. Manuel C. Jacinto (Dr. Jacinto) for further examination, and the latter diagnosed him to be suffering with nephrolithiasis, diabetic nephropathy, osteoarthritis, lumbosacral spine radiculopathy, and benign positional vertigo. Dr. Jacinto issued a medical assessment in writing declaring the respondent's condition as rendering him physically unfit to return to work as a seafarer.^[8]

Subsequently, the respondent filed a complaint with the Arbitration Office of the National Labor Relations Commission (NLRC) to recover permanent disability compensation pursuant to the collective bargaining agreement (CBA), payment of sick wages for 120 days, moral and exemplary damages, attorney's fees and other benefits under the law.

Decision of the Labor Arbiter

On September 16, 2013, Labor Arbiter Enrique Flores Jr. (LA) rendered his decision granting the claim and ordering the petitioners to pay to the respondent: (1) the amount of US\$60,000.00, representing permanent total disability benefit; and (2) attorney's fees equivalent to 10% of the total award.^[9]

Ruling of the NLRC

On appeal, the NLRC rendered its ruling on April 30, 2014 affirming the decision of the Labor Arbiter, to wit:

A closer look at the medical assessment of the company-designated physician reveals that the said physician confined his treatment solely to his diagnosis of *PROSTATITIS* and simultaneously *RULE OUT UROLITHIASIS*. There was no further mention at all about the cause of *Dysurea with Loin Pain and Back Pain* being suffered by complainant as earlier diagnosed by the physician who initially examined him in Dubai and for which complainant was medically repatriated. Neither was there any pronouncement at all whether other ailments such as *Dysurea* was completely resolved as well. We further took note of respondent-appellants contention that complainant was repatriated due only to *Dysuria With Loin Pain and Back Pain*, and did not include other ailment such as *Nephrolithiasis, Diabetic Nephropathy; Osteoarthritis; Degenerative Changes of Lumbar Spine with Minimal L3-L4 caudad to L5-S1 Disc Protrusion; and Benign Positional Vertigo*. To our mind, respondent-appellants were evading these medical issues in their haste to declare complainant as fit to work to free themselves from the obligation of paying the complainant's claim for permanent total disability compensation.^[10]

After their motion for reconsideration was denied, the petitioners assailed the ruling of the NLRC on *certiorari* in the CA.

Decision of the CA

The petitioners contended in C.A.-G.R. SP No. 136293 that the NLRC had gravely abused its discretion amounting to lack or excess of its jurisdiction in affirming the findings of the Labor Arbiter and awarding the respondent with permanent total disability compensation notwithstanding the findings of the company-designated physician to the effect that he had already been declared fit to resume his seafaring duties; and in relying on the assessment of the second physician contrary to the "third doctor appointment" procedure stipulated in the POEA-Standard Employment Contract (POEA-SEC).

On November 10, 2014, however, the CA promulgated the assailed decision dismissing the petition for *certiorari* and upholding the NLRC, viz.:

WHEREFORE, premises considered, the Petition is **DENIED**. Costs against petitioners.

SO ORDERED.^[11]

Issue

In this appeal, the petitioners submit that the CA erred in upholding the ruling of the NLRC based on the findings of the respondent's second physician, thereby disregarding Section 20-A(3) of the POEA-SEC that required the parties to jointly appoint a third physician in the event of the conflicting assessments between their respective nominated physicians.

Ruling of the Court

The appeal is meritorious.

In upholding the decision of the NLRC,^[12] the CA observed that the findings of Labor Arbiter and NLRC about the respondent being entitled to permanent total disability benefits were anchored on substantial evidence; that after the company-designated physician had given him the fit-to-work assessment, he had again undergone the PEME at Supercare, which provided medical services to the seafarers to be employed by the petitioners; that Supercare found him to be suffering from kidney stones and benign positional vertigo, thereby rendering him unfit to work as a seafarer; and that the fit-to-work declaration by the company-designated physician was not reflective of the true state of health of the respondent.

Given the provisions of the POEA-SEC, the Court disagrees with the observations of the CA.

Under the POEA-SEC, when the seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work should be determined by the company-designated physician. However, if the physician appointed by the seafarer makes a finding contrary to that of the assessment of the company-designated physician, a third physician might be agreed upon jointly by the employer and the seafarer, and the third physician's decision would be final and binding on both parties. The Court has held in *TSM Shipping Phils., Inc. v. Patiño*^[13] that the non-observance of the requirement to have the conflicting assessments determined by a third physician would mean that the assessment of the company-designated physician prevails.^[14]

According to *C.F Sharp Crew Management, Inc. v. Taok*,^[15] a seafarer may have a basis to pursue his claim for total and permanent disability benefits under any of the following conditions, namely:

- (a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;
- (b) 240 days had lapsed without any certification issued by the company designated physician;
- (c) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;