

SECOND DIVISION

[G.R. No. 201945, September 21, 2015]

**MAERSK-FILIPINAS MAERSK-FILIPINAS CREWEVG, INC.,
INC./A.P. MOLLER A/S, PETITIONERS, VS. ROMMEL RENE O.
JALECO, RESPONDENT.**

DECISION

DEL CASTILLO, J.:

Assailed in this Petition for Review on *Certiorari*^[1] are: 1) the March 13, 2012 Decision^[2] of the Court of Appeals (CA) granting the Amended and/or Supplemental Petition for *Certiorari* in CA-G.R. SP No. 118688; and 2) the CA's May 21, 2012 Resolution^[3] denying reconsideration of its assailed Decision.

Factual Antecedents

On December 4, 2006, respondent Rommel Rene O. Jaleco was hired by petitioner Maersk-Filipinas Crewing, Inc. (Maersk), on behalf of its foreign principal and co-petitioner herein, A.P. Moller A/S (Moller), as Able Bodied Seaman on board the vessel "M/T Else Maersk."^[4] Respondent boarded "M/T Else Maersk" on January 16, 2007 and commenced his work.

Sometime in February 2007, respondent complained of intermittent pain on the left buttock radiating to the lower back and left groin.^[5] When examined in Singapore on April 13, 2007, his lumbosacral spine x-ray generated normal results but he was diagnosed as having "suspected prolapsed intervertebral disc." Nonetheless, he was declared fit to sail.^[6]

On April 29, 2007, respondent was once more examined in Dubai, United Arab Emirates, where the doctor diagnosed him with "acute lumbago with left-sided sciatica r/o disc prolapsed."^[7] He was advised to obtain an MRI^[8] scan of the lumbar spine, undergo neurosurgical review, and to avoid lifting heavy objects for one week. Moreover, he was declared unfit for duty.^[9]

Respondent was repatriated on May 1, 2007 and was immediately referred to the company-designated physician, Dr. Natalio Alegre II (Dr. Alegre), who examined him on May 2 and 3, 2007. He found respondent to be suffering from "paralumbal spasm and limitation of movement due to pain. Straight leg raise is normal and sensation intact."^[10] He prescribed medication and physical therapy at three sessions per week.^[11]

On May 17, 2007, respondent was again examined, and found to still have "left buttock pain radiating to his lower back and lateral side of his left thigh which is

most severe at 8/10 on a pain scale x x x (which) is slightly relieved with intake of his pain medications." MRI scan was recommended^[12] as well as epidural steroid injection and further physical therapy.

When respondent was examined on June 4, 2007, Dr. Alegre found that he "still has low back pain radiating to his left lower extremity even with physical therapy. This is associated with numbness on the lateral aspect of his left leg and paralumbar spasm is still present."^[13] Thus, further medication, physical therapy and epidural steroid injection were recommended.

Respondent was confined at the St. Luke's Medical Center from June 13 to 19, 2007 and from July 24 to 27, 2007.¹⁴ On June 16, 2007,^[14] he underwent epidural steroid injection,^[15] as well as electromyogram and nerve conduction velocity (EMG-NCV) testing.^[16]

Respondent returned on June 20, 2007, complaining of headache and low back pain. He was diagnosed with stage 1 hypertension and given medication.^[17]

On June 29, 2007, respondent was evaluated by a spine surgeon who recommended provocative discography to find out whether he will need a disc replacement.^[18]

In his July 9, 2007 Progress Report,^[19] Dr. Alegre noted the evaluation of respondent by a spine surgeon who declared that the EMG-NCV tests returned normal^[20] and "beginning L5S1 disc herniation." Dr. Alegre further stated:

The low back pain intensity is not commensurate with the alleged symptoms of back pain so that a Provocative Discography is recommended and the schedule will follow as the operating room right now is fully book [sic].

Likewise an incidental note of a probable small cyst in the left kidney was noted. Since this is only an incidental finding, we would need your approval to evaluate Ms.^[21]

On July 26, 2007, respondent underwent Provocative Discography^[22] at the St. Luke's Medical Center which generated the following result:

Finding: There is midposterior Grade 1 annular tear with contrast medium leakage more to the left.

CONCLUSION: ELICITED AREAS ARE NOT CONCORDANT WITH USUAL PAIN BASED ON PATIENT'S EXPERIENCE.^[23]

On July 27, 2007, Dr. Alegre issued another Progress Report^[24] stating essentially as follows:

Objective Findings:

Tenderness over the loose paralumbar muscles.
Truncal mobility restricted.
Small Cyst in the left kidney.

Assessment:

Beginning Disk Deseccation, L5S1
Small Cyst, Left

Urology evaluated the small kidney cyst and opined that it will be observed as it is small and no impairment of kidney function is noted.

Provocative Discography was done on 26 July 2007 and showed leakage of contrast material at the midposterior aspect of the disk more towards the left thru a mild posterior annular tear. It was opined by Interventional Radiology that the pain complained of is not commensurate with the Discography.

Plans:

As the pain is not commensurate with the discography, personality reasons should be evaluated to rule out malingering is for your approval the form of [sic] Minnesota Multiphasic Personality Test. Approximate cost is Php10,000.00.^[25]

On August 15, 2007, respondent took the Minnesota Multiphasic Personality Inventory - 2 Test^[26] (MMPI-2) at the St. Luke's Medical Center. The results of the test are contained in Dr. Alegre's August 30,2007 Progress Report,^[27] thus:

The MMPI-2 Test provides a number of validity indices that are designed to provide an assessment of factors that could distort the results of testing. Such factors could include failure to complete test items properly, carelessness, reading difficulties, confusion, exaggeration, malingering or defensiveness.

During the interview phase, he was highly defensive finishing the test in more than 5 hours which is normally completed within P/2 hours. He expressed doubts as to whether his injury or back pain will be cured doubting about his capacity and fitness to return to work. He already approached an attorney for disability claims and he is expecting a large sum of money from his claim. According to him, he was informed and-encouraged by the ship's "Master" on board regarding disability benefits.

The test showed that he tried to create a favorable impression of himself by not being honest in responding to the items. He reported a number of vague physical complaints and the development of physical problems occur when he is under stress. The medical history is characterized by excessive and vague physical complaints, weakness and pain. He tends

to rely on hysterical defenses or exaggeration in the face of conflict. The test also showed Mr. Jaleco converting psychological conflict into physical complaints.

Based on the test protocol and interview, there are indicators that Mr. Jaleco is malingering and exaggerating hi [sic] symptoms. The essential feature is the intentional production of exaggerated physical symptoms motivated by external incentives - obtaining financial compensation and avoiding work.^[28]

On September 4, 2007, respondent underwent another check-up. The results thereof are contained in Dr. Alegre's Progress Report^[29] of even date, thus:

Subjective Complaints:

Complained of persistence of back pains

Objective Findings:

1. Slightly spastic paraspinal muscles
2. Truncal mobility functional
3. Straight leg raising test normal
4. Personality test (MMPI) indicates malingering and exaggeration of symptoms

Assessment:

Mild Disc Dessication, L5S1

Plans:

Physical therapy

If a disability is to be assessed now, a disability grade of 11 [would be obtained] based on the POEA Contract, Chest-Trunk-Spine #6 - *Slight Rigidity or 1/3 loss of motion or lifting power of the trunk.*^[30]

On February 8, 2008, respondent underwent physical examination by an independent physician, Dr. Ramon Santos-Ocampo (Dr. Santos-Ocampo), at the Department of Radiology of the Makati Medical Center. Dr. Santos-Ocampo's Clinical Abstract^[31] of the examination reads as follows:

Physical Examination:

There is no tenderness elicited when pressing on the left buttock. Slight tenderness and radiating pain was noted when the L5-S1 facet joints were pressed.

Assessment;

Sacro-iliitis, left and Bilateral facet joint arthropathy, L5-S1

Plan:

Local anesthesia injection into the left sacro-iliac joint to determine significance of the sacro-iliitis. If there is a slight improvement or complete improvement, then the sacro-iliac joint will be injected with steroids and long-acting local anesthesia. Then bilateral facet joint injections at L4-5 and L5-S1 will be performed on the same day.^[32]

On April 28, 2008, respondent consulted another independent physician, Dr. Alan Leonardo R. Raymundo (Dr. Raymundo) - an orthopedic surgeon of the Philippine Orthopedic Institute - who issued a Medical Report^[33] which states:

This 37-year-old seaman was repatriated here last May 2007, because of low back pain after carrying a heavy load while on board a ship. He was first seen at St. Luke's Medical Center when he was repatriated x x x and has undergone an epidural shot for his low back pain. His MRI plates show no significant disc protrusion that might be impinging on the nerve and his EMG NCV results were also normal. However he continuous [sic] to have low back pain whenever he would walk for long distances and whenever he would sit for long periods. He claims that his pain is actually in the area of the sacroiliac joint radiating down the buttock area and posterior to the thigh when this would occur.

He was referred to Dr. Ramon Santos Ocampo to look for the pain generator and injection of the Facet Joint and the Sacroiliac Joint of the Lumbar Spine were done. After the procedure the pain was relieved, however after three weeks the pain recurred.

Because of the recurrence of the pain and considering the nature of his job as a seaman, I told him that it would be impossible for him to return to his previous work duties. I would therefore declare him not fit for duty.

^[34]

On October 8, 2009, respondent underwent a second MRI of the lumbar spine at the Makati Medical Center. The results are as follows:

Examination of the sagittal imaging demonstrates normal alignment of the vertebral bodies. The lumbar curvature is maintained. The conus medullaris is seen to be normal and ends at T12-L1 level. No abnormal signal is seen within the conus.

Focal T1W/T2W hyperintensity is noted in the anterosuperior corner of the L3 vertebral body. There is also a T1 W/T2W hyperintense focus in the L5 vertebral body. Examination of the intervertebral disc reveals no signal abnormality. No paraspinal or intraspinal mass noted.

T12-L1: No evidence of disc bulge or herniation.