

## SECOND DIVISION

[ G.R. No. 201536, September 09, 2015 ]

**GRACE MARINE SHIPPING CORPORATION AND/OR CAPT. JIMMY BOADO, PETITIONERS, VS. ARON S. ALARCON, RESPONDENT.**

### DECISION

**DEL CASTILLO, J.:**

Assailed in this Petition for Review on *Certiorari*<sup>[1]</sup> are: 1) the December 8, 2011 Decision<sup>[2]</sup> of the Court of Appeals (CA) dismissing the petition for review in CA-G.R. SP No. 109238; and 2) the CA's April 12, 2012 Resolution<sup>[3]</sup> denying reconsideration of its assailed Decision.

#### ***Factual Antecedents***

In 2006, respondent Aron S. Alarcon was hired by petitioner Grace Marine Shipping Corporation (Grace Marine Shipping) for its foreign principal, Universal Marine Corporation. He was assigned as Messman onboard the vessel "M/V Sunny Napier II." His nine-month Employment Contract<sup>[4]</sup> dated November 28, 2006 stated among others that he was to receive a monthly salary of US\$403.

After undergoing the mandatory pre-employment medical examination, respondent was declared fit to work and, on January 11, 2007, he boarded "M/V Sunny Napier II."

As Messman, respondent maintained messroom sanitation, washed clothes and dishes, cleaned the area on board and was in charge of general cabin sanitation. He used cleaning agents such as surfactants, alkalines, phosphates, acids, complexing and bleaching agents, enzymes and other strong chemical substances.<sup>[5]</sup>

On August 6, 2007, while aboard "M/V Sunny Napier II," respondent developed a skin condition. He was examined by a physician in New Zealand, and was diagnosed as having "infected fungal dermatitis."<sup>[6]</sup> On August 27, 2007, respondent was diagnosed by another doctor as having "eczema squamosum" and declared unfit for duty.<sup>[7]</sup>

Respondent was repatriated on August 29, 2007 and was immediately referred to the company-designated physician, Dr. Nicomedes G. Cruz (Dr. Cruz). On August 30, 2007, respondent was diagnosed with "nummular eczema" on his arms, body, legs and scalp by the company-designated dermatopathologist, Dr. Eileen Abesamis-Cubillan (Dr. Abesamis-Cubillan).

Respondent underwent treatment, but his condition was characterized by recurring lesions all over his body.

On January 21, 2008, Dr. Cruz declared respondent's condition as a Grade 12 disability - "slight residuals or disorder of the skin."<sup>[8]</sup>

On January 31, 2008, respondent was declared fit to work, although it was noted that he still had "minimal and resolving" skin lesions. In his letter-report<sup>[9]</sup> to petitioner Capt. Jimmy Boado (Capt. Boado), Grace Marine Shipping's General Manager for Crewing, Dr. Cruz wrote:

Patient was repatriated due to skin lesions incurred last July 2007 x x x.

He had his follow-up today. The skin lesions are minimal and resolving. Our dermatologist have [sic] cleared him to go back to work.

DIAGNOSIS:

Nummular Eczema,  
Psoriasis

RECOMMENDATION:

He is fit to work effective January 31, 2008

Likewise, in a January 31, 2008 letter<sup>[10]</sup> to Dr. Cruz, Dr. Abesamis-Cubillan wrote:

Lesions are resolving but due to inability to procure meds, residual lesions are present. Patient may resume work at this time but is advised to continue medications so as to completely resolve lesions and to continue treatment while on board.

In February 2008, respondent again consulted with Dr. Abesamis-Cubillan, who certified that respondent was suffering from nummular dermatitis which can be recurrent depending on exposure to various factors such as cold temperature, use of harsh soaps like detergents and dishwashing soaps, use of chemicals, and stress.  
<sup>[11]</sup>

In April 2008, respondent consulted an independent physician, Dr. Glenda A. Fugoso (Dr. Fugoso), who declared that he was unfit to work and was suffering from subacute to chronic spongiotic dermatitis which may require lifetime treatment.<sup>[12]</sup>

In another letter<sup>[13]</sup> to Capt. Boado dated June 4, 2008, Dr. Cruz wrote:

This is in response to your query about the above patient.<sup>[14]</sup>

Our dermatologist said that the patient's condition was due to the sensitivity of his skin. The dermatologist also noted that there was recurrence and flare-up of lesions even when the patient is not on board ship.

During the patient's last follow-up, when he was cleared for work, the

lesions were minimal and are resolving hence he was advised to continue his medication while on board for the lesion to completely resolve.

Petitioners offered to compensate respondent in the amount of US\$5,225.00 based on a Grade 12 disability rating, but respondent claimed entitlement to Grade 5 disability benefits with a higher indemnity. Petitioners insisted on their offer.

### ***Ruling of the National Conciliation and Mediation Board***

Respondent filed a complaint against petitioners for the recovery of US\$60,000.00 permanent total disability benefits; P100,000.00 moral and exemplary damages; and 10% attorney's fees before the National Conciliation and Mediation Board (NCMB). The case was docketed as MVA Case No. AC-890-36-05-07-08.

In his Position Paper<sup>[15]</sup> and Reply,<sup>[16]</sup> respondent stated that his illness entitles him to permanent and total disability benefits and other claims. He argued that such illness is work-related, dermatitis being an occupational disease under Section 32-A of the Philippine Overseas Employment Administration- Standard Employment Contract (POEA-SEC); that his illness was caused by his handling of and exposure to chemical agents at work; and that said chemicals are skin irritants and sensitizers which triggered his condition. He averred that prior to his employment, he was not suffering from skin disease as shown by the results of his pre-employment medical examination which declared him as fit to work for petitioners. He asserted that the company-designated doctor's January 31, 2008 declaration of his fitness to work is not valid, since it is stated therein that he still had to continue medication and treatment to completely resolve his lesions which were not yet healed. Considering that he was medically advised to avoid working in an environment that would aggravate his condition, this meant that he may no longer return to duty under the same conditions he was exposed to.

Petitioners, on the other hand, claimed in their Position Paper<sup>[17]</sup> and Reply<sup>[18]</sup> that respondent is not entitled to his claims since his ailment - nummular eczema -was caused by his "innate skin sensitivity" and not his work on board "M/V Sunny Napier II." They pointed out that respondent had been declared fit for work by Drs. Cruz and Abesamis-Cubillan; also it cannot be said that respondent's ailment was work-related since it recurred even after he was no longer exposed to the working conditions on board the vessel. They claimed that assuming respondent is entitled to disability benefits, such is limited to only US\$5,225.00 in accordance with the Grade 12 disability assessment issued by Dr. Cruz; and that respondent is not entitled to damages and attorney's fees since he has no valid claim against them. Petitioners thus prayed for dismissal of the complaint, and in the alternative, that they be held liable only to the extent of US\$5,225.00.

On May 22, 2009, the NCMB issued its Decision,<sup>[19]</sup> decreeing as follows:

The main issue to be resolved is whether or not complainant is entitled to disability benefit and attorney's fees.

The Panel of Voluntary Arbitrators herein supports complainant's view.

Indeed Complainant's illness manifested during the term of his employment with respondents as messman as he was exposed to surfactant, alkaline, phosphates, acids, complexing agents, bleaching agents, enzymes and other strong chemical substances. Complainant was also constantly exposed to stress and strain because of long hours of work and low staffing level thus contributing to the decline of his health and resistance to the illness.

Our own research confirms that complainant's illness can be reasonably related to his work as messman and not everyone who has the gene mutations gets nummular eczema or dermatitis as there are several forms of eczema or dermatitis that people can develop. Certain "environmental triggers" play a role in causing skin disorder in people who have the gene mutations. Also, psychological stress has long been understood as a trigger for skin flares, but scientists are still unclear about exactly how this occurs. Studies do show that not only can a sudden, stressful event trigger a rash or worsen; daily hassles of life can also trigger a flare. In addition, one study showed that people who are categorize [sic] as "huge worriers" were almost two times less likely to respond to treatment compared to "low worriers." Sometime [sic] even mild injuries to the skin such as abrasions can trigger skin flares. This is called the koebner<sup>[20]</sup> phenomenon.

The Panel of Voluntary Arbitrators finds no convincing evidence to show that complainant's illness was caused by genetic predisposition or drug addiction. Having ruled out these reasons, what remain [sic] is the environmental factor such as complainant's constant exposure to chemicals while on board the vessel such as surfactant, alkaline, phosphates, acids, complexing agents, bleaching agents, enzymes and other strong chemical substances that caused the skin injury in addition to the stress and strain which are present in his work area.

While treatment can help control symptoms of Nummular Eczema/Psoriasis, there is yet no cure for the illness. Complainant's continued employment on board is deleterious to his health because he will again be exposed to factors that increases [sic] the risk of further recurrence and aggravation of the skin problem such as strong chemical substances, stress and including changes in season and climate.

This office finds merit in the contention of complainant that as a result of his work-connected illness, he suffered permanent disability as he could not return to his work as messman and earn wages in the same kind of work of similar nature [sic] that he was trained for. In awarding disability compensation, it is not the injury which is compensated, but rather the incapacity to work resulting in the impairment of one's earning capacity.

The High Tribunal consistently ruled that neither is it necessary, in order for an employee to recover compensation, that he must have been in perfect condition or health at the time he recurred the injury [sic], or that he be free from disease. Every workingman brings with him to his employment certain infirmities, and while the employer is not the insurer of the health of his employees, he takes them as he finds them, and

assumes the risk of having a weakened condition aggravated by some injury which might not hurt or bother a perfectly normal, healthy person (More Maritime Agencies, Inc. vs. NLRC, 307 SCRA 189).

As ruled in Marcopper Manning Corporation vs. NLRC, 200 SCRA 167, the Arbitration Branch is mindful that all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer, contractual rights and duties, such as these arising from the provisions of the POEA Standard Employment Contract and/or the Collective Bargaining Agreement, should be voluntarily stipulated in good faith and must constitute the law between the parties.

Despite the inability to resume sea duty, this Panel award [sic] Grade 5 disability only to complainant. He is still physically capable of performing other tasks or jobs besides being a messman even with the skin disorder although not of the same position as messman. To this panel, despite declaration of fitness to resume work by the company-designated physician in his 11<sup>th</sup> report, there is no concrete evidence indicated that respondent allowed him to resume sea duty on January 31, 2008. Likewise, both the company-designated physician and the independent dermatologist consulted by complainant agree that the illness is recurrent and would be considered as unemployable as this illness would entail lifetime treatment. With that, we considered his inability to resume x x x sea duty as justification to award x x x disability compensation based on Grade 5 as evaluated by his attending physician.

For having been compelled to litigate and incur expenses, complainant's claim for attorney's fees is also granted. Other claims however are dismissed for lack of factual and legal basis.

WHEREFORE, premises considered, respondents are hereby ordered to pay complainant jointly and severally the amount of US\$29,480.00 representing his disability benefit based on the POEA Standard Employment Contract plus (10%) ten percent attorney's fees, Philippine Currency or the amount of US\$2,948.00 at the rate of exchange prevailing at the time of actual payment. All other claims are dismissed.

SO ORDERED.<sup>[21]</sup> (Underscoring in the original.)

### ***Ruling of the Court of Appeals***

In a Petition for Review<sup>[22]</sup> filed with the CA and docketed therein as CA-G.R. SP No. 109238, petitioners sought to set aside the above NCMB Decision, reiterating mainly their arguments in their pleadings filed with the NCMB. In addition, petitioner claimed that the NCMB did not provide the medical basis for its findings; that there is no basis to conclude that respondent is entitled to benefits corresponding to a Grade 5 disability; that on the contrary, it is the opinion of the company-designated physician, Dr. Cruz, that is the best and most reliable determinant of respondent's fitness to work or degree of disability. Petitioners argued that the NCMB committed grave abuse of discretion in disregarding the opinion of Dr. Cruz; and that the