

SIXTEENTH DIVISION

[CA-G.R. SP NO. 76831, August 18, 2006]

PRIMITIVO C. COLLARGA, PETITIONER, VS. EMPLOYEES COMPENSATION COMMISSION AND SOCIAL SECURITY SYSTEM, RESPONDENTS.

D E C I S I O N

DIMARANAN-VIDAL, J.:

In this Petition for Review under Rule 43 of the Revised Rules of Court, Petitioner PRIMITIVO C. COLLARGA (hereinafter Petitioner) is seeking the reversal of the Decision^[1] dated 26 March 2003 of the Employees Compensation Commission (ECC) in ECC Case No. SM-174354-802 which affirmed the decision^[2] of the Social Security System (SSS) denying Petitioner's claim for the compensation benefits under P.D. 626.

THE FACTS

As synthesized by the ECC:

The appellant, Primitivo Collarga (SSS No. 03-3217975-1), was employed by Solid Cement Corp., Sitio Quarry, Tagbac, Antipolo City as a Crusher Operator from December 4, 1987 to February 28, 1998. As a Crusher Operator, the duties he performed were:

1. Operates and tends crusher and its auxiliary equipment for both limestone and silica lines;
2. Monitors operation gauges and metering devices and ensures that the standard operating parameters are maintained;
3. Prepares and submits to immediate superior daily production logsheet and other pertinent documents relating to crusher operation;
4. Counterchecks and co-approves limestone delivery receipts;
5. Visually inspects operation for abnormalities and/or equipment defects;
6. Takes corrective action and/or informs Supervisors of abnormalities noted;
7. Initiates or assists in trouble shooting mechanical problems, gives suggestions on equipment modifications or improvements on existing operating procedures;
8. Prepares and submits schedules of activities to be done during scheduled preventive maintenance;
9. Performs minor repairs and maintenance work such as tightening or adjusting of nuts, bolts and screws;
10. Maintains cleanliness in immediate work area;

11. Accounts for tools assigned to him;
12. Performs other related tasks which may be assigned by superior from time to time; and
13. Coordinates with quarry contractor to ensure continuous and normal delivery of materials from quarry.

During the course of his employment, the appellant developed **Pulmonary Tuberculosis** (PTB), minimal in 1995. However, chest x-ray results dated August 9, 1996 and September 1, 1997 showed “**essentially normal chest**”, respectively. He availed of the early retirement program of the company on February 28, 1998 at the age of forty-two (42). However, his service record does not indicate that he stopped working by reason of disability.

It appears that on July 22, 1999 and August 8, 2000, appellant had a chest x-ray examination which showed PTB minimal and PTB, moderately advanced respectively. On account of his PTB, he was granted SSS (under SSS law) Permanent Partial Disability (PPD) benefits for twenty-three months that commenced on September 18, 2000.

Believing that his ailment was service-connected, appellant herein filed a claim for compensation benefits under P.D. 626, as amended in 2002. The System denied his claim reasoning that:

“there is no longer an employee-employer relationship on July 22, 1999 and at the time he qualified for SSS PPD benefits on September 18, 2000; member's PTB in 1995 while still employed cannot also be considered due to late filing, claim for EC benefits was filed only in 2002 which is already beyond the three year prescriptive period pursuant to Art. 201 of P.D. 626, as amended”^[3]

On 26 March 2003, the ECC rendered the assailed decision, the decretal portion of which reads:

WHEREFORE, the appealed decision is DENIED and the claim is DISMISSED for lack of merit.^[4]

Evidently, the ECC denied the petition on the ground that 1) no employer-employee relationship existed between the Petitioner and his former employer, Solid Cement Corporation, at the time of the filing of the claim for compensation benefit under P.D. 626; 2) the three-year period for filing the claim has already prescribed.

Aggrieved, the Petitioner comes now before Us raising the following issues:

I

WHETHER OR NOT PETITIONER'S AILMENT OF PTB AFTER HIS RETIREMENT COULD STILL BE ATTRIBUTED TO HIS EMPLOYMENT.

II