THIRD DIVISION

JERRY M. FRANCISCO,	**G.R. No. 190545**
Petitioner,	
	Present:
- versus -	
	CARPIO MORALES, *Chairperson, J.,*
	BRION,
BAHIA SHIPPING SERVICES, INC. and/or CYNTHIA C. MENDOZA, and FRED OLSEN CRUISE LINES, LTD.,	BERSAMIN,
	VILLARAMA, JR., and
	SERENO, *JJ.*
Respondents.	
	Promulgated:
	November 22, 2010

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D E C I S I O N

CARPIO MORALES, *J.*

Jerry M. Francisco (petitioner) entered into a shipboard employment contract on April 5, 2004 with respondent Bahia Shipping Services, Inc. (Bahia Shipping) to work for its co-respondent foreign principal Fred Olsen Cruise Lines Ltd. as ordinary seaman on board the ocean-going vessel *M/S Black Prince* for a period of nine (9) months, with a monthly guaranteed pay of US$467.00, inclusive of basic salary, fixed overtime and leave pay.[1][1] This was the fourth contract of petitioner with respondents since May 2002.[2][2]

On April 20, 2004, petitioner went through the mandatory Pre-Employment Medical Examination (PEME) with Maritime Clinic for International Services, Inc., (the Clinic) which noted that he was repatriated in January 2004 while serving under a previous contract with respondents due to a *Generalized Tonic-Clonic Type Seizure Disorder* which was possibly alcohol-induced;[3][3] that during the repatriation, petitioner was treated from January 9, 2004 up to January 30, 2004 by the company-designated physician Dr. Robert Lim (Dr. Lim) who assessed him "to

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1[1] National Labor Relations Commission (NLRC) records, p.3.

2[2] Id. at 171.

3[3] Id. at 173.

consider seizure disorder."[4][4] The Clinic nevertheless found him fit to work, hence, he, on April 24, 2004, boarded the vessel for the fourth time.

Petitioner boarded the vessel on April 24, 2004 but was repatriated on June 3, 2004, after his *tonic-clonic seizures* recurred, having suffered four to five fits of seizures nighttime of May 26, 2004, and the ship doctor having found that petitioner was not fit to continue employment at sea.[5][5]

Following his repatriation, he was attended by Dr. Lim who advised him to undergo 21 Channel EEG and cranial CT scan, and referred him to a neurologist.[6] [6]

Dr. Lim found the *Seizure Disorder, Generalized Tonic-Clonic Type*[7][7] with which petitioner was affected was not work-related.[8][8]

4[4] Id. at 180.

5[5] Id. at 177.

6[6] Id. at 179-180.

7[7] Id. at 179-181.

8[8] Id. at 181.

Petitioner continued to avail of his follow-up check-ups and re-evaluations with the company-designated physicians from June to September 2004.[9][9] After the lapse of the 120-day period following petitioner's repatriation, respondents informed him that further medical expenses would be on his own account.

On October 14, 2004, respondents paid petitioner his full sickness benefit amounting to ₱104,234.40.[10][10]

On April 21, 2005, petitioner consulted a private, independent physician, Dr. Efren R. Vicaldo (Dr. Vicaldo), who issued a Medical Certificate declaring him to be suffering from a seizure disorder with an Impediment Grade X (20.15%).[11][11] Dr. Vicaldo deemed petitioner's illness as work-aggravated, found him unfit to resume work as seaman in any capacity and was not expected to land a gainful employment.[12][12]

Petitioner thus filed on May 9, 2005 a Complaint with the National Labor Relations Commission (NLRC) for payment of disability benefits, illness

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9[9] Id. at 182-185.

10[10] Id. at 186.

11[11] Id. at 66.

12[12] Id. at 67.

allowance, reimbursement of medical expenses, damages and attorney's fees against respondents.[13][13]

Respondents disclaimed that petitioner's illness is compensable, the same not being an occupational disease and was pre-existing.[14][14]

By Decision of December 19, 2005,[15][15] the Labor Arbiter ruled in favor of petitioner, holding that he got ill during the effectivity of his employment contract, hence, entitled to disability benefits. Had the illness been pre-existing, the Labor Arbiter held that it could have been discovered during the PEME.

By Decision of March 31, 2008,[16][16] the NLRC **overturned** the Labor Arbiter's Decision holding that the illness of petitioner was pre-existing in nature because it was the same illness for which he was medically repatriated under a previous contract with respondents;[17][17] that petitioner was fit to work at the time of his engagement could not be the basis to grant compensation as the results of

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13[13] Id. at 51.

14[14] Id. at 76.

15[15] *Rollo*, pp.94-102.

16[16] Id. at 140-148.

17[17] Id. at 144.

PEME is not a measure of the seafarer's true state of health;[18][18] and it was error for the Labor Arbiter to award sickness wages, as it was manifest from the records that petitioner was duly paid therefor on October 14, 2004.[19][19]

The Court of Appeals upheld the decision of the NLRC, by Decision[20][20] of August 13, 2009, holding that under the 2000 Philippine Overseas Employment Authority (POEA) Standard Employment Contract, for disability to be compensable, it must be the result of work-related injury or illness, unlike in the 1996 POEA Standard Employment Contract in which it was sufficient that the seafarer suffered injury or illness during his term of employment;[21][21] that the 2000 POEA Standard Employment Contract defines a work-related illness as any sickness resulting in disability or death as a result of an occupational disease listed under Section 32-A of the Contract with the conditions set therein satisfied; and that while any illness not listed in Section 32 is disputably presumed to be work-related, such disputable presumption was sufficiently rebutted when the company-designated doctors categorically stated that petitioner's seizure disorder was not work-related.

18[18] Id. at 144-145.

19[19] Id. at 147.

20[20] Id. at 180-193.

21[21] Id. at 189.

The appellate court noted that no substantial evidence was presented by petitioner to show that there is a reasonable connection between the nature of his employment or working conditions and his illness;[22][22] and that the findings of the company-designated physicians deserve greater weight *viz-a-viz* the conclusion of petitioner's private doctor which was arrived at after only one consultation.[23] [23]

His motion for reconsideration of the appellate court's decision having been denied,[24][24] petitioner lodged the present petition for review on certiorari, arguing in the main that his illness is presumed to be work-related.

The petition fails.

Petitioner's illness was already existing when he commenced his fourth contract of employment with respondents, hence, not compensable.[25][25] Given that the employment of a seafarer is governed by the contract he signs every time he is rehired and his employment is terminated when his contract expires,[26][26]

22[22] Id. at 190.

23[23] Id. at 191.

24[24] Id. at 210-211.

25 [25] *NYK-Fil Ship Management, Inc, v. National Labor Relations Commission*, G.R. No. 161104. September 27, 2006, 503 SCRA 595.

petitioner's illness during his previous contract with respondents is deemed pre-existing during his subsequent contract.

That petitioner was subsequently rehired by respondents despite knowledge of his seizure attacks does not make the latter a guarantor of his health. A seafarer only needs to pass the mandatory PEME in order to be deployed on duty at sea. Notably, petitioner was consistently declared "fit to work" at sea after every PEME. However, while PEME may reveal enough for respondents to decide whether a seafarer is fit for overseas employment, it may not be relied upon as reflective of petitioner's true state of health. The PEME could not have revealed petitioner's illness as the examinations were not exploratory.[27][27]

But even granting *arguendo* that petitioner's illness was not pre-existing, he still had to show that his illness not only occurred **during the term of his contract** but also that it resulted from a **work-related** injury or illness, or at the very least aggravated by the conditions of the work for which he was contracted for.[28][28] Petitioner failed to discharge this burden, however.[29][29]

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26 [26] *Millares v. National Labor Relations Commission*, G.R. No. 110524, July 29, 2002, 385 SCRA 306.

27 [27] Supra note 25 at 60.

28 [28] *Masangcay v. Trans-Global Maritime Agency, Inc.,* G.R. No. 172800, October 17, 2008, 569 SCRA 592, 593

29 [29] *See Estate of Poseido Ortega vs. Court of Appeals*, G.R. No. 175005, April 30, 2008, 553 SCRA 649.

That the exact and definite cause of petitioner's illness is unknown cannot be used to justify grant of disability benefits, absent proof that there is any reasonable connection between work actually performed by petitioner and his illness.

It bears noting that the company-designated physician of respondent who monitored petitioner's condition and treatment for several months categorically stated that petitioner's illness is not work-related was controverted by petitioner's own physician, however. Section 20 (B) of the POEA Standard Contract provides that *[I]f a doctor appointed by the seafarer* ***disagrees with the assessment,*** *a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.* This procedure however was not availed of by the parties.

While the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA Standard Contract, it cannot allow claims for compensation based on surmises. When the evidence presented then negates compensability, the claim must fail, lest it causes injustice to the employer.[30][30]

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

30[30] Ibid.

CONCHITA CARPIO MORALES

Associate Justice

WE CONCUR:

ARTURO D. BRION

Associate Justice

LUCAS P. BERSAMIN

Associate Justice

MARTIN S. VILLARAMA, JR. **MARIA LOURDES P. A. SERENO**

Associate Justice *Associate Justice*

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CONCHITA CARPIO MORALES

Associate Justice

Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above decision had

been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

RENATO C. CORONA

Chief Justice