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# SECOND DIVISION

# [ G.R. No. 206758, February 17, 2016 ]

## MARICEL S. NONAY, PETITIONER, VS. BAHIA SHIPPING SERVICES, INC., FRED OLSEN LINES AND CYNTHIA MENDOZA, RESPONDENTS.

## D E C I S I O N

**LEONEN, J.:**

In some cases, illnesses that are contracted by seafarers and are not listed as occupational diseases under the 2000 Philippine Overseas Employment Administration-Standard Employment Contract may be disputably presumed to be work-related or work-aggravated. The relation of the disease contracted to the work done by the seafarer, or that the work aggravated the disease, must be sufficiently proven by substantial evidence. Otherwise, the claim for disability benefits cannot be granted.

Bahia Shipping Services, Inc., (Bahia Shipping), for and on behalf of Fred Olsen Cruise Lines, Ltd., hired Maricel S. Nonay (Nonay) in 2008.[1]

From July 16, 2008 to May 15, 2009, Nonay worked on board the M/S Braemer as Casino Attendant/Senior Casino Attendant.[2] Nonay was re-hired by Bahia Shipping as Casino Attendant on June 8, 2009[3] for a period of nine (9) months.[4] She re-boarded the M/S Braemer on August 1, 2009.[5]

When she boarded the M/S Braemer, she was assigned to work "as an Assistant Accountant (Night Auditor) until January 20, 2010."[6] On January 21, 2010, she was assigned to work as Senior Casino Attendant.[7]

Around the middle of February 2010, Nonay "experienced profuse and consistent bleeding[,] extreme dizziness and . . . difficulty in breathing."[8] She went to the ship's clinic and was given medication.[9] The next day, Nonay experienced severe headache. She again went to the ship's clinic, and was prescribed a different medication, which worsened her headache. Thus, she stopped taking the medicine.[10]

Nonay's bleeding intensified. She was later advised by the ship's physician to rest. However, her condition did not improve so she went to a clinic in Barbados. A transvaginal ultrasound conducted on Nonay revealed that she had two (2) ovarian cysts. She returned to the ship and was assigned to perform light duties.[11]

On March 20, 2010, Nonay was medically repatriated. Bahia Shipping referred her to the company-designated physician at the Metropolitan Medical Center in Manila.[12]

On March 22, 2010, Nonay "was placed under the care of an obstetrician-gynecologist[,]"[13] also a company-designated physician. The obstetrician-gynecologist diagnosed Nonay with "Abnormal Uterine Bleeding Secondary to a[n] Adenomyosis with Adenomyoma."[14] Nonay underwent endometrial dilatation and curettage as part of her treatment.[15]

Nonay was not declared fit to work by the end of the 120-day period from March 20, 2010, the date of her repatriation,[16] but she was declared "fit to resume sea duties" [17] within the 240-day period.[18]

On September 8, 2010, she filed a Complaint "for payment of disability benefit, medical expenses, moral and exemplary damages and attorney's fees."[19] She sought to claim permanent disability benefits based on the collective bargaining agreement she signed. [20]

The Labor Arbiter ruled in favor of Maricel S. Nonay.[21] The dispositive portion of the Decision reads:

> WHEREFORE, premises all considered, judgment is hereby rendered as follows:
>
> Ordering respondents to pay complainant her permanent disability compensation in accordance with the CBA in the amount of US$80,000.00; and 10% of the award by way of attorney's fees.
>
> SO ORDERED.[22] (Citation omitted)

Bahia Shipping appealed to the National Labor Relations Commission, which affirmed the Labor Arbiter's Decision.[23] The National  Labor Arbite Labor Relations Commission ruled as follows:

> **WHEREFORE**, premises considered, the appeal of the respondents-appellants is hereby DENIED and the Decision of Labor Arbiter Valentin Reyes dated January 18, 2011 is hereby AFFIRMED.
>
> SO ORDERED.[24] (Emphasis in the original, citation omitted)

Bahia Shipping moved for reconsideration, but the Motion was denied.[25]

Bahia Shipping filed a Petition for Certiorari before the Court Appeals arguing that the National Labor Relations Commission committed grave abuse of discretion when it ruled that "[Nonay's] illness is work-related despite substantial evidence to the contrary[.]" [26]

The Court of Appeals granted the Petition for Certiorari and held that the National Labor Relations Commission gravely abused its discretion in affirming the Labor Arbiter's ruling.[27] It found that Nonay failed to provide substantial evidence to prove her allegation that her illness is work-related.[28] The Court of Appeals gave greater weight to the findings of the company-designated physician holding that the company-designated physician "had acquired detailed knowledge and was familiar with [Nonay's] medical condition."[29]

The dispositive portion of the Court of Appeals Decision[30] states:

> **WHEREFORE**, the present petition is **GRANTED**. The Resolutions dated September 28, 2011 and November 29, 2011 of public respondent National Labor Relations Commission are **NULLIFIED and SET ASIDE**. The complaint of private respondent Maricel S. Nonay is **DISMISSED**.
>
> For humanitarian considerations, petitioners are **ORDERED** to pay private respondent financial assistance in the amount of P50,000.00.
>
> **SO ORDERED**.[31] (Emphasis in the original)

Nonay moved for reconsideration, but the Motion was denied by the Court of Appeals in the Resolution[32] dated April 12, 2013.

While the Petition for Certiorari was pending before the Court of Appeals, Bahia Shipping paid Nonay the amount of P3,780,040.00 pursuant to the final and executory Decision of the National Labor Relations Commission.[33] Thus, the Court of Appeals also stated in its April 12, 2013 Resolution that:

> The manifestation of petitioners in their comment that "they paid the amount of Php 3,780,040.00 to Private Respondent based on the judgment award of the Third Division of Public Respondent NLRC," with their prayer "that Private Respondent be ordered to return to Petitioners the judgment award less the Php 50,000.00 humanitarian award granted by this Honorable Court in her favor," is merely noted. The same pertains to execution and must be threshed out before the labor arbiter at the execution stage when the Court's judgment becomes final and executory.[34] (Citation omitted)

On June 5, 2013, Nonay filed a "Petition for Certiorari"[35] before this court, but the contents of her Petition indicated that it was a petition for review on certiorari under Rule 45 of the Rules of Court.[36]

In the Resolution[37] dated July 17, 2013, this court required the respondents to

comment on the Petition within 10 days from notice.

Bahia Shipping filed a Motion for Extension of Time to File Comment[38] on September 13, 2013. The Comment[39] was filed on October 14, 2013.

Nonay filed her Reply[40] on January 30, 2014, which was noted by this court in the Resolution[41] dated March 12, 2014. In the same Resolution, this court required the parties to submit their memoranda within 30 days from notice.[42]

Nonay argues that the National Labor Relations Commission did not gravely abuse its discretion when it found that her illness was work-related and work-aggravated since more than 120 days lapsed without any declaration from the company-designated physician that she was fit to work.[43] Thus, her illness was compensable.[44]

She also argues that she underwent the required pre-employment medical examination and was certified fit to work. The fit-to-work certification shows that when she boarded the vessel, she was in perfect health. However, she was repatriated for medical reasons. Thus, her illness developed in the course of her work onboard the M/S Braemer.[45]

Nonay points out that the test in claims for disability benefits is "not the absolute certainty that the nature of employment. . . caused the illness of the worker."[46] Instead, the test only requires "the probability that the nature of employment of the worker . . . caused or contributed in the enhancement, development[,] and deterioration of such illness."[47] Further, "in case of doubt as to the compensability of an ailment, the doubt is always settled in favor of its compensability."[48] It is not the gravity of the injury that is compensated but the loss of earning capacity.[49]

She alleges that she can no longer obtain employment and has lost her capacity to earn income as a seafarer.[50] Thus, she is entitled to disability compensation as provided under the Collective Bargaining Agreement.[51] She alleges that under her Collective Bargaining Agreement, "all . . . illnesses of a medically repatriated seafarer ... are presumed work related."[52]

Nonay cites the 2000 Philippine Overseas Employment Agency-Standard Employment Contract (POEA Standard Employment Contract), suppletory to the Collective Bargaining Agreement, which provides that "all other illnesses acquired by the seafarers onboard the vessel including those not listed as occupational disease are presumed work related and work aggravated."[53]

She further argues that the company-designated physician is biased in favor of Bcihia Shipping.[54] On the other hand, her personal physician, Dr. Manuel C. Jacinto, Jr. (Dr. Jacinto) is "an independent general medical practitioner and he has no special relationship to petitioner other than doctor-patient relationship only."[55]

She claims that the Petition filed before the Court of Appeals should have been considered moot and academic since the judgment award was fully settled.[56]

On the other hand, Bahia Shipping argues that the Petition should be dismissed because petitioner raised questions of facts that are not allowed in petitions for review on certiorari.[57]

Bahia Shipping also argues that Nonay is not entitled to total and permanent disability benefits because she "was declared fit to work within the 240-day period[.]"[58] She filed the Complaint before the Labor Arbiter without complying with the mandated procedure that the medical assessment be referred to a third doctor in the event that the company-designated physician and the personal physician differ in their findings, as in this case.[59]

In addition, Nonay's personal physician, Dr. Jacinto, did not show how prolonged walking and standing could result to adenomyoma.[60] Nonay consulted Dr. Jacinto only once. Further, he is an orthopedic surgeon and not an obstetrician-gynecologist.[61]

We resolve the following issues:

First, whether the satisfaction of the judgment award rendered the Petition for Certiorari before the Court of Appeals moot and academic;

Second, whether the Petition should be dismissed for allegedly raising questions of fact;

Third, whether the Court of Appeals erred in granting the Petition for Certiorari and setting aside the Decision of the National Labor Relations Commission;

Fourth, whether petitioner Maricel S. Nonay is entitled to full disability benefits under the Norwegian Collective Bargaining Agreement;

Fifth, whether the employee has the burden to prove to the court that the illness was acquired or aggravated during the period of employment before the disputable presumption that the illness is work-related or work-aggravated arises; and

Lastly, whether petitioner is permanently and totally disabled because the company-designated physician failed to certify that she is fit to work after the lapse of 120 days.

This court denies the Petition and affirms the Decision of the Court of Appeals.

**I**

Payment of the judgment award in labor cases does not always render a petition for certiorari filed before the Court of Appeals, or a petition for review on certiorari filed before this court, moot and academic. A similar issue was decided in *Eastern Shipping Lines, Inc., et al. v. Canja.*[62] In Eastern Shipping, the Decision of the National Labor Relations Commission became final and executory and was satisfied during the

pendency of the Petition for Review on Certiorari filed before the Court of Appeals.[63] The Court of Appeals modified the Decision of the National Labor Relations Commission.[64] Eastern Shipping filed a Petition for Review before this court, arguing that the final and executory Decision of the National Labor Relations Commission cannot be modified by the Court of Appeals.[65] This court held that:

> Section 14, Rule VII of the 2011 NLRC Rules of Procedure provides that decisions, resolutions or orders of the NLRC shall become final and executory after ten (10) calendar days from receipt thereof by the parties, and entry of judgment shall be made upon the expiration of the said period. In *St. Martin Funeral Homes v. NLRC,* however, it was ruled that judicial review of decisions at the NLRC may be sought via a petition for certiorari before the CA under Rule 65 of the Rules of Court; and under Section 4 thereof, petitioners are allowed sixty (60) days from notice of the assailed order or resolution within which to file the petition. ***Hence, in cases where a petition for certiorari is filed after the expiration of the 10-day period under the 2011 NLRC Rules of Procedure but within the 60-day period under Rule 65 of the Rules of Court, the CA can grant the petition and modify, nullify and reverse a decision or resolution of the NLRC***.[66] (Emphasis in the original)

Thus, a petition for certiorari assailing a decision of the National Labor Relations Commission is allowed even after the National Labor Relations Commission's Decision has become final and executory, provided that the petition is filed before the expiration of the 60-day reglementary period under Rule 65.

The reason for this rule was discussed in *Leonis Navigation Co., Inc., et al. v. Villamater and/or The Heirs of the Late Catalino U. Villamater, et al.*,[67] where one of the issues was whether the Court of Appeals erred in ruling that final and executory decisions of the National Labor Relations Commission can no longer be questioned.[68] This court discussed:

> Further, a petition for certiorari does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for certiorari, which is merely confined to issues of jurisdiction or grave abuse of discretion. It is, thus, incumbent upon petitioners to satisfactorily establish that the NLRC acted capriciously and whimsically in order that the extraordinary writ of certiorari will lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically.
>
> The CA, therefore, could grant the petition for certiorari if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of

> discretion by capriciously, whimsically, or arbitrarily disregarding evidence that is material to or decisive of the controversy; and it cannot make this determination without looking into the evidence of the parties. Necessarily, the appellate court can only evaluate the materiality or significance of the evidence, which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record. *Notably, if the CA grants the petition and nullifies the decision or resolution of the NLRC on the ground of grave abuse of discretion amounting to excess or lack of jurisdiction, the decision or resolution of the NLRC is, in contemplation of law, null and void ab initio; hence, the decision or resolution never became final and executory*.[69] (Emphasis supplied, citation omitted)

**II**

The Petition in this case does not raise questions of fact. The difference between a question of fact and a question of law was discussed in *Century Iron Works, Inc. v. Bañas*:[70]

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.
>
> Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[71] (Citations omitted)

Contrary to respondent Bahia Shipping Services, Inc.'s argument, petitioner raised only questions of law. The arguments in this Petition for Review[72] show that petitioner does not question the findings of fact of the labor tribunals and the Court of Appeals. The main issue raised by petitioner is whether she is entitled to total and permanent disability benefits based on the factual findings of the labor tribunals. The other issue raised by petitioner is whether the Court of Appeals erred in finding grave abuse of discretion on the part of the National Labor Relations Commission.

Clearly, the issues raised by petitioner do not require the evaluation of the evidence presented before the labor tribunals. The resolution of the issues raised by petitioner entails a review of applicable laws and not whether the alleged facts are true.

**III**

To resolve a Rule 45 petition for review of a Court of Appeals decision on a Rule 65 petition for certiorari, the question of law that this court must determine is whether the Court of Appeals properly determined the "presence or absence of grave abuse of discretion."[73]

This court shall determine whether the Court of Appeals was correct in ruling that there was grave abuse of discretion on the part of the National Labor Relations Commission and in granting the Petition for Certiorari filed before the Court of Appeals.

Petitioner's Norwegian Collective Bargaining Agreement provides that:

> **Article 15 - Death and Disability Insurance**
>
> xxx xxx xxx
>
> 2. Disability:
>
> *A Seafarer who suffers injury as a result of an accident* from any cause whatsoever whilst in the employment of the Owner/Company, regardless of fault, including accidents occurring whilst traveling to and from the Dhip [sic] and whose ability to work is reduced as a result thereof, shall in addition to his sick pay, be entitled to compensation according to the provisions of this Agreement.[74] (Emphasis supplied)

Petitioner alleges that she "experienced profuse and consistent bleeding . . . felt extreme dizziness and ha[d] difficulty in breathing"[75] but she never alleged any accident that resulted to her illness. Thus, the provision in her collective bargaining agreement is not applicable.

Considering that petitioner was hired in 2009, the 2000 POEA Standard Employment Contract applies.

The 2000 POEA Standard Employment Contract defines work-related illness as:

> **Definition of Terms:**
> . . . .
> 12. Work-Related Illness - any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied.

Section 20(B) of the Standard Employment Contract provides:

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to [sic] repatriated.

   However, if after repatriation, the seafarer still requires medical attention arising from said injury
   or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company- designated physician but in no case shall this period exceed one hundred twenty (120) days.

   For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

   If 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.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.
   ....

Adenomyoma is not included in the list of occupational diseases under the POEA Standard Employment Contract; however, Section 20(B)(4) provides that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work related."

Section 32-A of the POEA Standard Employment Contract provides:

> **SECTION 32-A OCCUPATIONAL DISEASES**
>
> For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:
>
> 1. The seafarer's work must involve the risks described herein;
> 2. The disease was contracted as a result of the seafarer's exposure to the described risks;
> 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;
> 4. There was no notorious negligence on the part of the seafarer.

To grant petitioner's claim for disability benefits, the following requisites must be present:

> (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational disease[s] or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 3 2-A for an occupational disease or a disputably-presumed work-related disease to be compensable.[76]

This court has also recognized that in cases involving claims for disability benefits, the nature of the employment need not be the only cause of the seafarer's illness. In *Dayo v. Status Maritime Corporation,*[77] this court reiterated the rule on compensability of illnesses as follows:

> Settled is the rule that for illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.[78]

While the law recognizes that an illness may be disputably presumed to be work-related, the seafarer or the claimant must still show a reasonable connection between

the nature of work onboard the vessel and the illness contracted or aggravated.

In *Quizora v. Denholm Crew Management (Phils.), Inc.,*[79] Quizora argued that he did not have the burden to prove that his illness was work-related because it was disputably presumed by law.[80] This court ruled that Quizora "cannot simply rely on the disputable presumption provision mention in Section 20 (B) (4) of the 2000 POEA-SEC."[81] This court further discussed that:

> At any rate, granting that the provisions of the 2000 POEA-SEC apply, the disputable presumption provision in Section 20 (B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. Contrary to his position, he still has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of his employment contract. He cannot simply argue that the burden of proof belongs to respondent company.
>
> > For disability to be compensable under **Section 20 (B) of the 2000 POEA-SEC**, two elements must concur: (1) the injury or illness must be **work-related**; and (2) the work-related injury or illness must have **existed during the term of the seafarer's employment contract**. In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.
> >
> > The 2000 POEA-SEC defines "work-related injury" as "injury[ies] resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 3 2-A of this contract with the conditions set therein satisfied.[82] (Emphasis in the original)

The ruling in *Quizora* was restated in *Ayungo v. Beamko Shipmanagement Corporation*: [83]

> In other words, not only must the seafarer establish that his injury or illness rendered him permanently or partially disabled, it is equally pertinent that he shows a causal connection between such injury or illness and the work for which he had been contracted.[84] (Citation omitted)

The rule on the burden of proof with regard to claims for disability benefits was also reiterated in D*ohle-Philman Manning Agency, Inc., et al. v. Heirs of Gazzingan*:[85]

> [T]he 2000 POEA-SEC has created a presumption of compensability for those illnesses which are not listed as an occupational disease. Section 20 (B), paragraph (4) states that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." Concomitant with this presumption is the burden placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease and only a reasonable proof of work-connection, not direct causal relation is required to establish compensability of illnesses not included in the list of occupational diseases.[86] (Citation omitted)

The rule that a seafarer must establish the relation between the illness and the nature of work was applied in *Teekay Shipping Philippines, Inc. v. Jarin.*[87] In Teekay Shipping, Exequiel O. Jarin (Jarin) was hired as Chief Cook onboard the M.T. Erik Spirit. During the term of his employment contract, he was diagnosed with rheumatoid arthritis. Jarin was able to finish his contract and upon return to the Philippines, he immediately reported to Teekay Shipping's office. He was referred to Dr. Christine O. Bocek, a company-designated physician.[88] Jarin was diagnosed with "moon facies and bipedal edema secondary to steroid intake, [rjheumatoid arthritis, resolving and upper respiratory tract infection."[89] He was subsequently referred to Dr. Dacanay, another company-designated physician,[90] who issued a medical report stating that "Jarin's rheumatoid arthritis was not work-related[.]"[91] Jarin filed a complaint for payment of total and permanent disability benefits before the National Labor Relations Commission.[92] He argued in his position paper that his rheumatoid arthritis was related to his work as Chief Cook. He explained that as Chief Cook, he would spend several hours inside the ship's freezer to check the food inventory and to prepare the food for the day. After spending several hours inside the freezer, he would cook dinner. Jarin summarized that the nature of his work exposed him to extremely cold and extremely hot temperatures.[93] This court ruled that Jarin sufficiently proved the relation between his work as Chief Cook and his rheumatoid arthritis, thus granting his claim for disability benefits.[94]

In this case, however, petitioner was unable to present substantial evidence to show the relation between her work and the illness she contracted. The record of this case does not show whether petitioner's adenomyoma was pre-existing; hence, this court cannot determine whether it was aggravated by the nature of her employment. She also failed to fulfill the requisites of Section 32-A of the 2000 POEA-SEC for her illness to be compensable, thus, her claim for disability benefits cannot be granted.

Petitioner argues that her illness is the result of her "constantly walking upward and downward on board the vessel carrying loads"[95] and that she "acquired her illness on board respondents' vessel during the term of her employment contract with

respondents as Casino [Attendant] [.]"[96]

However, petitioner did not discuss the duties of a Casino Attendant. She also failed to show the causation between walking, carrying heavy loads, and adenomyoma. Petitioner merely asserts that since her illness developed while she was on board the vessel, it was work-related.

In *Cagatin v. Magsaysay Maritime Corporation, et al*.,[97] Cagatin was hired as a cabin steward.[98] He alleged that his injuries were due to the hazardous tasks he was made to perform, which were beyond the job description in his contract.[99] This court held that since Cagatin did not allege what the tasks of a cabin steward were, there was no means by which the court could determine whether the tasks he performed were, indeed, hazardous.[100]

In the same manner, this court has no means to determine whether petitioner's illness is work-related or work-aggravated since petitioner did not describe the nature of her employment as Casino Attendant.

Petitioner also argues that since the company-designated physician did not declare her fit to work after 120 days, she is thus entitled to total and permanent disability benefits.[101]

The determination of whether a disability is permanent and total is provided under Article 192(c)(l) of the Labor Code:

> **Art. 192. Permanent total disability.**
> ....
> (c) The following disabilities shall be deemed total and permanent:
>
> 1. Temporary total disabilities lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;
> ....

Rule VII, Section 2(b), and Rule X, Section 2(a) of the Amended Rules on Employees' Compensation provides:

> **RULE VII - BENEFITS**
>
> ....
>
> **SECTION 2. Disability**....
>
> (b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of

these Rules.

....

**RULE X - TEMPORARY TOTAL DISABILITY**

**SECTION 2. Period of entitlement**, (a) The income benefit shall be paid beginning on the first day of such disability. *If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid*. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. (Emphasis supplied)

In *C.F. Sharp Crew Management, Inc. v. Taok*,[102] this court clarified the apparent conflict between Section 20(B)(3) of the POEA Standard Employment Contract and Rule X, Section 2 of the Amended Rules on Employees' Compensation:

While it may appear under Paragraph 3, Section 20 of the POEA-SEC and Article 192(c)(l) of the Labor Code that the 120-day period is non-extendible and the lapse thereof without the employer making any declaration would be enough to consider the employee permanently disabled, interpreting them in harmony with Section 2, Rule X of the AREC indicates otherwise. *That if the employer's failure to make a declaration on the fitness or disability of the seafarer is because of the latter's need for further medical attention, the period of temporary and total disability may be extended to a maximum of 240 days*....

....

Based on this Court's pronouncements in *Vergara*, it is easily discernible that the 120-day or 240-day period and the obligations the law imposed on the employer are determinative of when a seafarer's cause of action for total and permanent disability may be considered to have arisen. Thus, a seafarer may pursue an action for total and permanent disability benefits if: (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 being 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; (d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) the company-designated physician recognized that he

> is totally and permanently disabled but there is a dispute on the disability grading; (f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work; (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and (h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.[103]

The company-designated physician was justified in not issuing a medical certificate on whether petitioner was fit to work after the lapse of 120 days because petitioner's treatment required more than 120 days. Petitioner's illness could not be automatically considered total and permanent simply because there was no certification that she is fit to work after 120 days.

**IV**

The Court of Appeals did not err when it held that the Complaint should have been dismissed due to lack of cause of action.[104] It found that petitioner's treatment would exceed 120 days, as follows:

> Firstly, she was prescribed and given monthly Luprolex injection for six (6) months. The first injection was administered on March 30, 2010, twelve (12) days after her repatriation, and was completed on August 27, 2010. Secondly, she underwent endometrial dilatation and curettage on July 22, 2010. Thirdly, from July 28, 2010 up to September 6, 2010, she was treated for bacterial vaginosis and candidiasis. Fourthly, she underwent repeat transvaginal ultrasound on September 28, 2010 for re-evaluation of her medical condition and was last seen by the OB-GYNE on October 21, 2010.
>
> It bears stressing that if the employer's failure to make a declaration on the fitness or disability of the seafarer is due to the latter's need for further medical attention, the period of temporary and total disability may be extended to a maximum of 240 days. Thus, the filing by private respondent of the complaint for permanent disability compensation benefits on September 8, 2010, or 174 days after she was medically repatriated on March 18, 2010, was premature. As such, the labor arbiter should have dismissed at the first instance the complaint for lack of cause of action.[105] (Citations omitted)

The Court of Appeals also determined that petitioner held the position of Night Auditor from August 1, 2009 to January 20, 2010.[106] She assumed the position of Casino Attendant on January 21, 2010. Petitioner argued that it was her duties as Casino

Attendant that caused her to fall ill. When she experienced profuse bleeding, she had only been a Casino Attendant for at least a month.[107] The Court of Appeals held that because of this short span of time, then the presentation of evidence showing the relation between her work as Casino Attendant and her illness becomes all the more crucial.[108]

There was likewise no error on the part of the Court of Appeals when it gave greater weight to the assessment of the company-designated physician.

The POEA Standard Employment Contract provides for a procedure to resolve the conflicting findings of a company-designated physician and personal physician, specifically:

> **SECTION 20. COMPENSATION AND BENEFITS**
> ....
> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> 3. ....
>
> If 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.

In *Transocean Ship Management (Phils.), Inc., et al. v. Vedad*,[109] the reason for the third-doctor referral provision in the POEA Standard Employment Contract is that:

> In determining whether or not a given illness is work-related, it is understandable that a company-designated physician would be more positive and in favor of the company than, say, the physician of the seafarer's choice. It is on this account that a seafarer is given the option by the POEA-SEC to seek a second opinion from his preferred physician. And the law has anticipated the possibility of divergence in the medical findings and assessments by incorporating a mechanism for its resolution wherein a third doctor selected by both parties decides the dispute with finality, as provided by Sec. 20 (B) (3) of the POEA-SEC quoted above.[110]

In *Montierro v. Rickmers Marine Agency Phils., Inc.*,[111] one of the issues that was resolved was "whether it is the opinion of the company doctor or of the personal doctor of the seafarer that should prevail.["][112]

This court held that non-observance of the procedure under Section 20(B)(3) of the POEA Standard Employment Contract would mean that the assessment of the company-designated physician prevails.[113] This rule was reiterated in *Veritas*

*Maritime Corporation, et al. v. Gepanaga, Jr.*:[114]

> Gepanaga failed to observe the prescribed procedure of having the conflicting assessments on his disability referred to a third doctor for a binding opinion. Consequently, the Court applies the following pronouncements laid down in Vergara:
>
> > The POEA Standard Employment Contract and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. If the physician appointed by the seafarer **disagrees** with the company-designated physician's assessment, the opinion of a **third doctor** may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.
> >
> > Thus, **while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure**. Unfortunately, the petitioner did not avail of this procedure; hence, **we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail**, x x x.
>
> Indeed, for failure of Gepanaga to observe the procedures laid down in the POEA-SEC and the CBA, the Court is left without a choice but to uphold the certification issued by the company-designated physician that the respondent was "fit to go back to work."[115] (Emphasis in the original, citation omitted)

In the earlier landmark case of *Philippine Hamrnonia Ship Agency, Inc. v. Dumadag,* [116] to disregard the third-doctor referral provision in the POEA Standard Employment Contract without any explanation is grave abuse of discretion because it is tantamount to failure to uphold the law between the parties.[117]

However, the rule that the company-designated physician's findings shall prevail is not a hard and fast rule. This court has recognized that the company-designated physician may be biased in favor of the employer. In *HFS Philippines, Inc., et al v. Pilar*,[118] this court upheld the findings of the seafarer's personal physician because it was supported by the medical records of the seafarer.[119] This court also noted that the company-designated physician downgraded the seafarer's illness:[120]

> The company-designated physician declared respondent as having suffered a major depression but was already cured and therefore fit to work. On the

> other hand, the independent physicians stated that respondent's major depression persisted and constituted a disability. More importantly, while the former totally ignored the diagnosis of the Japanese doctor that respondent was also suffering from gastric ulcer, the latter addressed this. The independent physicians thus found that respondent was suffering from chronic gastritis and declared him unfit for work.[121]

Based on jurisprudence, the findings of the company-designated physician prevail in cases where the seafarer did not observe the third-doctor referral provision in the POEA Standard Employment Contract. However, if the findings of the company-designated physician are clearly biased in favor of the employer, then courts may give greater weight to the findings of the seafarer's personal physician. Clear bias on the part of the company-designated physician may be shown if there is no scientific relation between the diagnosis and the symptoms felt by the seafarer, or if the final assessment of the company-designated physician is not supported by the medical records of the seafarer.

In this case, petitioner was referred by respondent to an obstetrician-gynecologist,[122] while Dr. Jacinto, petitioner's personal physician, is an orthopaedic surgeon.[123] It is not disputed that petitioner was diagnosed as suffering from Abnormal Uterine Bleeding secondary to Adenomyosis with Adenomyoma.[124] Thus, between the two physicians, the obstetrician-gynecologist is more qualified to assess petitioner's condition.

Dr. Jacinto simply stated that "conditions started at work and aggravated by the performance of her duties characterized as prolonged standing and walking"[125] but did not discuss the causal connection between prolonged standing and walking and the development of petitioner's illness.

Further, the company-designated physician was able to closely monitor petitioner's condition from the time she was repatriated in March 2010 until the date of her last check-up in October 2010.[126]

On the other hand, Dr. Jacinto merely evaluated the results of "petitioner's medication, treatment and examination[.]"[127] Petitioner did not allege how she was examined and treated by her personal physician, and how her personal physician arrived at the conclusion that she is unfit to work as seafarer.

*Monana v. MEC Global Shipmanagement*[128] involved a claim for disability benefits. The company-designated physician and the personal physician had different findings.[129] This court affirmed the Decision of the Court of Appeals, which gave greater weight to the findings of the company-designated physician because "as between the company-designated doctor who has all the medical records of petitioner for the duration of his treatment and as against the latter's private doctor who merely examined him for a day as an outpatient, the former's finding must prevail."[130]

Considering that the company-designated physician closely monitored petitioner from March 2010 until she completed her treatment,[131] and also considering that petitioner

did not observe the third-doctor referral provision, no error can be attributed to the Court of Appeals when it gave greater weight to the findings of the company-designated physician.

**VI**

On a final note, the POEA Standard Employment Contract was amended in 2010.[132] One amendment provides that a disability grading shall no longer depend on the number of days of treatment, specifically:

> SECTION 20. COMPENSATION AND BENEFITS
>
> A. COMPENSATION AND BENEFITS FOR INJURY OR
>
> ILLNESS
>
> 6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.
>
> The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid. (Emphasis in the original)

**WHEREFORE**, premises considered, the petition is **DENIED** and the Decision of the Court of Appeals in CA-G.R. SP No. 123163 is **AFFIRMED.**

**SO ORDERED.**

*Carpio, (Chairperson), Del Castillo,* and *Mendoza, JJ*., concur.
*Brion, J.,* on leave.

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[1] *Rollo*, p. 135, Maricel S. Nonay's Memorandum.

[2] Id. at 49, Court of Appeals Decision.

[3] Id.

[4] Id. at 135-136, Maricel S. Nonay's Memorandum.

[5] Id. at 136.

[6] Id. at 49, Court of Appeals Decision.

[7] Id.

[8] Id. at 136, Maricel S. Nonay's Memorandum.

[9] Id.

[10] Id.

[11] Id.

[12] Id

[13] Id. at 50, Court of Appeals Decision.

[14] Id. at 137, Maricel S. Nonay's Memorandum.

[15] Id.

[16] Id.

[17] Id. at 51, Court of Appeals Decision.

[18] Id. Nonay was declared "fit to resume sea duties" on October 26, 2010.

[19] Id.

[20] Id. at 14, Petition for Certiorari. The Petition states that she has an "IBF-AMOSUP/IMEC TCCC CBA[.]"

[21] Id. at 51, Court of Appeals Decision.

[22] Id. at 52.

[23] Id.

[24] Id.

[25] Id.

[26] Id. at 53.

[27] Id. at 76-77.

[28] Id. at 70.

[29] Id. at 74.

[30] Id. at 48-78. The Petition for Certiorari was docketed as CA-G.R. SP No. 123163 and was decided on February 12, 2013. The Decision was penned by Associate Justice Fernanda Lampas Peralta (Chair) and concurred in by Associate Justices Francisco P. Acosta and Angelita A. Gacutan of the Tenth Division.

[31] Id. at 77.

[32] Id. at 80-81. The Resolution was penned by Associate Justice Fernanda Lampas Peralta (Chair) and concurred in by Associate Justices Angelita A. Gacutan and Victoria Isabel A. Paredes of the Special Tenth Division.

[33] Id.

[34] Id.

[35] Id. at 8-46.

[36] Id. at 8.

[37] Id. at 82.

[38] Id. at 83-85.

[39] Id. at 88-101.

[40] Id. at 107-130.

[41] Id. at 107-130.

[42] Id. at 133.

[43] Id. at 144.

[44] Id. at 145, Maricel S. Nonay's Memorandum.

[45] Id.

[46] Id. at 147.

[47] Id.

[48] Id. at 148.

[49] Id. at 149.

[50] Id.

[51] Id.

[52] Id. at 128, Maricel S. Nonay's Reply. Id. at 150, Maricel S. Nonay's Memorandum.

[54] Id. at 151.

[55] Id. at 153.

[56] Id. at 158.

[57] Id. at 166-167, Bahia Shipping's Memorandum.

[58] Id. at 179.

[59] Id. at 172.

[60] Id. at 176-177.

[61] Id. at 177.

[62] G.R. No. 193990, October 14, 2015 [Per J. Peralta, Third Division].

[63] Id. at 3-4.

[64] Id.

[65] Id. at 4.

[66] Id. at 4-5, citing *Philippine Transmarine Carriers, Inc. v. Legaspi,* 710 Phil. 838, 845 (2013) [Per J. Mendoza, Third Division].

[67] 628 Phil. 81 (2010) [Per J. Nachura, Third Division].

[68] Id. at 89.

[69] Id. at 92-93.

[70] G.R. No. 184116, June 19, 2013, 699 SCRA 157 [Per J. Brion, Second Division].

[71] Id. at 166-167.

[72] Petitioner captioned the petition filed before this court as "Petition for Certiorari," but the contents of the petition show that it is a Rule 45 petition for review on certiorari.

[73] *Dayo v. Status Maritime Corporation*, G.R. No. 210660, January 21, 2015 5 [Per J. Leonen, Second Division].

[74] Rollo, pp. 62-63, Court of Appeals Decision.

[75] Id. at 136, Maricel S. Nonay's Memorandum.

[76] *Jebsen Maritime, Inc. v. Ravena,* G.R. No. 200566, September 17, 2014, 735 SCRA 494, 511-512 [Per J. Brion, Second Division].

[77] G.R. No. 210660, January 21, 2015 [Per J. Leonen, Second Division].

[78] Id. at 8, citing *Magsaysay Maritime Services, et al. v. Laurel,* 707 Phil. 210, 225 (2013) [Per J. Mendoza, Third Division].

[79] 676 Phil. 313 (2011) [Per J. Mendoza, Third Division].

[80] Id. at 320.

[81] Id. at 326.

[82] Id. at 327, citing *Magsaysay Maritime Corporation, et al. v. National Labor Relations Commission (Second Division), et al*, 630 Phil. 352, 362-363 (2010) [Per J. Brion, Second Division].

[83] G.R. No. 203161, February 26, 2014, 717 SCRA 538 [Per J. Perlas-Bernabe, Second Division].

[84] Id. at 548-549.

[85] G.R. No. 199568, June 17, 2015 [Per J. Del Castillo, Second Division].

[86] Id. at 10.

[87] G.R. No. 195598, June 25, 2014, 727 SCRA 242 [Per J. Reyes, First Division].

[88] Id. at 244.

[89] Id.

[90] Id. at 244-245.

[91] Id. at 245.

[92] Id. at 247.

[93] Id. at 253-254.

[94] Id. at 253-256.

[95] *Rollo*, p. 21, Petition for Certiorari.

[96] Id. at 137, Maricel S. Nonay's Memorandum.

[97] G.R. No. 175795, June 22, 2015 [Per J. Peralta, Third Division].

[98] Id. at 2.

[99] Id. at 8.

[100] Id. at 16.

[101] *Rollo*, pp. 144-145, Maricel S. Nonay's Memorandum.

[102] G.R. No. 193679, July 18, 2012, 677 SCRA 296 [Per J. Reyes, Second Division].

[103] Id. at 313-315.

[104] *Rollo*, p. 66, Court of Appeals Decision.

[105] Id.

[106] Id. at 49.

[107] Id. at 136. Maricel S. Nonay's Memorandum. Nonay alleged that she began to experience bleeding and dizziness around the middle of February 2010.

[108] Id. at 71-72, Court of Appeals Decision.

[109] 707 Phil. 194 (2013) [Per J. Velasco, Jr., Third Division].

[110] Id. at 207.

[111] G.R. No. 210634, January 14, 2015 [Per CJ. Sereno, First Division].

[112] Id. at 5.

[113] Id. at 7, citing *Vergara v. Hammonia Maritime Services, Inc., et al,* 588 Phil. 895, 914 (2008) [Per J. Brion, Second Division].

[114] G.R. No. 206285, February 4, 2015 [Per J. Mendoza, Second Division]. See also *Gargallo v. DOHLE Seafront Crewing (Manila), Inc., et al*, G.R. No. 215551, September 16, 2015 10 [Per J. Perlas-Bernabe, First Division].

[115] *Veritas Maritime Corporation, et al. v. Gepanaga, Jr.*, G.R. No. 206285, February 4, 2015 10 [Per J. Mendoza, Second Division].

[116] G.R. No. 194362, June 26, 2013. 700 SCRA 53 [Per J. Brion, Second Division].

[117] Id. at 66.

[118] 603 Phil. 309 (2009) [Per J. Corona, First Division].

[119] Id. at 317-320.

[120] Id. at 320.

[121] Id.

[122] *Rollo*, p. 50, Court of Appeals Decision.

[123] Id. at 71.

[124] Id. at 50, Court of Appeals Decision; 134, Maricel S. Nonay's Memorandum; and 164, Bahia Shipping's Memorandum.

[125] Id. at 71, Court of Appeals Decision.

[126] Id. at 73.

[127] Id. at 25, Petition for Certiorari.

[128] G.R. No. 196122, November 12, 2014 [Per J. Leonen, Second Division].

[129] Id. at 2-3.

[130] Id. at 10. :

[131] Id. at 73, Court of Appeals Decision.

[132] POEA Memorandum Circular No. 10, Series of 2010. Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships.

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