THIRD DIVISION

[G.R. No. 225847, July 03, 2019]

DANILO L. PACIO, PETITIONER, V. DOHLE-PHILMAN MANNING AGENCY, INC., DOHLE (IOM) LIMITED, AND/OR MANOLO T. GACUTAN, RESPONDENTS.

D E C I S I O N

A. REYES, JR., J.:

Challenged before this Court *via* this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the Decision[2] dated January 22, 2016 of the Court of Appeals, and its Resolution[3] dated July 10, 2016, in CA-G.R. SP No. 138514, which reversed the Decision[4] dated September 30, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC NO. 07-000557-14-OFW.

The Antecedent Facts

The facts are as follows:

On July 4, 2012, respondent Dohle-Philman Manning Agency, for and in behalf of its principal, Dohle (IOM) Limited (respondents), hired Danilo L. Pacio (petitioner) to work as an Able Seaman in vessel MV Lady Elisabeth.[5] On June 21, 2012, the petitioner underwent a pre-employment medical examination (PEME) at the Angelus Medical Clinic in Makati City. The medical certificate issued subsequent and as a result of the PEME reflected that the petitioner had disclosed that he had been suffering from hypertension since 2011.[6]

Despite this revelation, he was certified fit for sea duty, though he was made to sign an undertaking where he acknowledged that he was given appropriate advice and medication for his pre-existing hypertension consisting of 270 capsules of amlodipine (Dailyvasc) 5 milligrams to be taken once a day for nine months. Aside from the acknowledgment, the petitioner was also asked to give the following declarations: (1) That he shall religiously take his medications as advised and diligently follow the doctor's advice; failure to do so will warrant the termination of his contract subject to the discretion of the agency/principal/employer; and (2) that in the event of a disabling sickness resulting from his hypertension, said ailment shall be deemed preexisting and non-compensable; consequently, no claim can be made against the company/employer.[7]

On July 10, 2012, the petitioner departed from the Philippines and commenced employment. Five months later, on December 10, 2012, the petitioner complained of high blood pressure and dizziness, prompting his referral to a medical facility in

Romania.[8] The Romanian physicians declared him unfit for sea duties and recommended his repatriation. As a result, he was repatriated four days later and was immediately endorsed to respondent agency's appointed physicians at the Marine Medical Services of the Metropolitan Medical Center (MMC) in Sta. Cruz, Manila for a thorough medical examination.[9]

The results of the medical report read:

> Laboratory examination showed decreased hemoglobin, hematocrit, white blood cell (complete blood count), normal fasting blood sugar, HBA1C, blood urea nitrogen, creatinine, triglyceride, HDL, thyroid function test, VLDL, SGPT, sodium, potassium, urinalysis, elevated uric acid, cholesterol, LDL and creatine kinase.
>
> He underwent chest x-ray, 12 Lead ECG, 2D Echo Study, Carotid Duplex Scan, Treadmill Stress Test and 24-Hour Hotter Monitoring for further evaluation.
>
> He will undergo Cranial MRA with MRI on December 24, 2012.
>
> He was given medications for his condition (Bezam, Clopidogrel and Cholestad).
>
> The etiology/cause of hypertension is not work-related. It is multifactorial in origin, which includes generic predisposition, poor lifestyle, high salt intake, smoking, Diabetes Mellitus, age and increased sympathetic activity.
>
> Transient Ischemic Attack is due to disturbance of brain function secondary to microvascular occlusions causing temporary deficiency in the brain's blood supply. Symptoms are similar to stroke but are temporary and reversible.
>
> Risk factors include age, Hypertension, Carotid Artery Disease, smoking, Diabetes Mellitus, obesity, alcohol, all of which are not work-related.
>
> Patient is presently unfit for duty for approximately four (4) months.
>
> He is to come back on January 10, 2013 for re-evaluation.
>
> Impression-Hypertension
>
> To Consider Transient Ischemic Attack[10]

Despite the notation that the latter's condition was not work-relate the respondents shouldered the expenses for the petitioner's medical evaluation. They did not hear any response from the petitioner for almost a year, which, for the respondents, signaled acceptance of the medical assessment.[11]

However, on November 11, 2013, the respondents received a Notice of Conference from the Philippine Overseas Employment Administration (POEA) requiring them to appear in a conciliation conference pursuant to the Request for Assistance filed by the petitioner.[12] During the hearing, the petitioner expressed his desire to be hired again

as "he feels strong enough to work."[13] He stressed that if the respondents would deny his reemployment, he should be compensated for the long years of service he had rendered for them. The respondents denied these claims for alleged lack of basis.

For failure of the parties to settle the case amicably, the hearing officer terminated the conciliation proceedings. On December 16, 2013, the petitioner filed a claim for permanent total disability benefits, damages and attorney's fees with the Regional Arbitration Branch No. 1 of the NLRC in San Fernando, La Union.

On April 21, 2014, Executive Labor Arbiter (ELA) Irenarco R. Rimando rendered a Decision[14] against the respondents, the dispositive portion reading, thus:

> IN VIEW THEREOF, judgment is hereby rendered directing respondents DOHLE PHILMAN MANNING AGENCY, INC. AND CAPT. MANOLO GACUTAN to jointly and severally pay US$60,000.00 to DANILO L. PACIO, as his permanent and total disability benefits, plus 10% thereof as attorney's fees.
>
> SO ORDERED.[15]

The respondents' appeal to the NLRC was struck down for lack of merit, with the NLRC affirming the findings of the ELA in a Decision[16] promulgated on September 30, 2014. The respondents' Motion for Reconsideration was similarly denied, prompting the respondents to seek a reprieve with the CA.[17]

In a Decision[18] dated January 22, 2016 granting the respondents' appeal, the CA found merit in the respondents' assertion that the labor tribunals gravely abused their discretion in disregarding the pertinent provisions of the Labor Code, the POEA Standard Employment Contract (POEA SEC), and the Collective Bargaining Agreement (CBA) in granting the petitioner permanent total disability benefits.

The CA found that the respondents were cognizant of the petitioner's history of high blood pressure, as the latter had fully disclosed his condition during the PEME and even admitted that he was on maintenance medication.[19] This also indicated that the petitioner had been suffering from the pre-existing condition of hypertension at the time his services were engaged by the respondents. While not discounting the possibility that the pre-existing condition, which caused the petitioner's transient ischemic attack, may have progressed during the term of his employment, the CA held that there was no compliance with the prescribed procedure for disability compensation.[20] The dispositive portion of the Decision reads, to wit:

> WHEREFORE, premises considered, the instant petition is GRANTED. The Decision dated September 30, 2014 of the National Labor Relations Commission (NLRC) - Fifth Division in NLRC RAB-I-OFW-(S)-12-1125-13 (SFLU) and NLRC LAC No. 07-000557-14-OFW and its Resolution dated October 30, 2014 are REVERSED and SET ASIDE.
>
> SO ORDERED.[21]

The petitioner's Motion for Reconsideration was denied by the CA its Resolution[22] dated July 10, 2016. Hence, this Petition.

The Issue and the Parties' Arguments

The issue herein is simply, whether or not the CA committed serious error of law in reversing the Decision and Resolution of the NLRC, the latter having affirmed the findings of the ELA that the petitioner is entitled to permanent total disability benefits.

As his contention, the petitioner alleges that, prior to the commencement of his employment with the respondents, he was declared Fit for Sea Duty after going through the PEME. It was in the performance of his sea duties that the petitioner began to experience "high blood pressure" and "dizziness," and shortly thereafter, suffered paralysis on half of his body, affecting his lower and upper right limbs, which allegedly resulted from a straight, rigorous duty on port watch and aggravated by the fact that the crew was undermanned on board the vessel.[23]

The petitioner narrates that when he reported his state of health to the Chief Mate and Captain of the MV Lady Elisabeth, he was signed off in Turkey for medical reasons with an indication on the Medical Examination Report issued by the ship captain - Scenikov Viktor that "PATIENT [was] UNFIT FOR DUTY."[24] Upon his arrival in the Philippines, he reported immediately to the MMC for evaluation and supposed treatment, however, while a Magnetic Resonance Angiogram (MRA) was performed on him, the results were not disclosed and he was readily discharged as an outpatient.[25] Barely a month after his repatriation, the respondents discontinued the petitioner's treatment, and despite follow-ups, the petitioner was only told that his treatment had been stopped and his condition was labeled as "Risky." The petitioner was, thus, constrained to consult with Dr. Nelson Gundran (Dr. Gundran), who diagnosed the petitioner with "Hypertension State II" and advised the petitioner to avoid strenuous activities, limit work load, and take the medicine prescribed.[26]

The petitioner argues that he has suffered from permanent disability, though he may not have lost the use of his body because of his inability to perform his job for more than 120 days, as defined under jurisprudence, particularly the cited case of *Quitoriano v. Jebsens Maritime, Inc./Gutay and/or Atle Jebsens Management A/S*.[27]

On the other hand, the respondents allege that the petitioner had recognized his pre-existing hypertension, and voluntarily executed an Oath of Undertaking[28] acknowledging his condition and the doctor's advice for him to regularly take medication. As to the petitioner's assertion that suffered paralysis on half of his body after a straight, rigorous duty on port watch confounded by the undermanned crew on board, the same is bare and self-serving as the evidence on record shows that the symptoms that prompted the medical examination pertained to high blood pressure and dizziness, which were transient and did not cause permanent and total disability.[29]

The respondents point to the fact that the petitioner consulted with his private doctor before he was examined by the company-designated physician, thus, it was erroneous for him to state that he was constrained to obtain medical advice from his own

physician due to the alleged haphazard and incomplete medical attention received from the company-designated physician.[30] The respondents, likewise, call attention to the petitioner's arrival in the Philippines on December 14, 2012, and that he only reported to the respondents five (5) days later or on December 19, 2012.[31] Per the petitioner's own admission, he consulted with his physician, Dr. Gundran, a day before the company physician's own diagnosis, with Dr. Gundran diagnosing him with Hypertension Stage II.[32]

As for the petitioner's averment that over a year passed without any assessment of fitness/unfitness of non-work relation, the respondents allege that the declaration of the company-designated physician on December 21, 2012 was duly communicated to him, and that if it were true that there was no assessment, it is improbable and highly irregular that the petitioner waited a year before calling the respondents' attention on such a matter and only when the complaint had already been filed.[33]

Ruling of the Court

Both parties come to the Court with their own versions of the factual antecedents that birthed the herein controversy. As a general rule, the Court is disinclined to review these factual allegations due to the particular scope of its judicial review, which is limited to deciding only questions of law brought up on appeal. This rule, however, is replete with exceptions which would not only allow, but in fact necessitate a second look at the evidence of records. In *Maria Vilma G. Doctor and Jaime Lao, Jr. v. NII Enterprises and/or Mrs. Nilda C. Ignacio*,[34] it was held, thus:

> At the outset, the Court reiterates that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, its jurisdiction is generally limited to reviewing errors of law. The Court is not a trier of facts, and this applies with greater force in labor cases. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record. However, it is equally settled that one of the exceptions to this rule is when the factual findings of the quasi-judicial agencies concerned are conflicting or contrary with those of the Court of Appeals, as in the present case. Thus, the Court proceeds with its own factual determination herein based on the evidence of the parties.[35]

The exception applies in this case as the findings of fact of the lower tribunals, the LA and the NLRC, contradict those of the CA. In this regard, the Court takes a closer look at the records and finds in favor of the respondents. The evidence on record clearly shows that the CA did not err in reversing the factual findings of the LA and the NLRC that the petitioner is entitled to disability benefits.

This case is predicated on whether or not the petitioner is entitled to disability benefits based on his allegation that his work with the respondents resulted in his total and permanent disability. In the absence of a CBA between the petitioner and the

respondents, it is the POEA SEC as well as relevant labor laws which will govern the petitioner's claim, especially as these are deemed written in the contract of employment between the parties.[36]

As provided by Article 198, formerly Article 192 of the Labor Code of the Philippines, the following disabilities shall be deemed total and permanent: (1) Temporary total disability lasting continuously for more than 120 days, except as otherwise provided for in the Rules; (2) Complete loss of sight of both eyes; (3) Loss of two limbs at or above the ankle or wrist; (4) Permanent complete paralysis of two limbs; (5) Brain injury resulting in incurable imbecility or insanity; and (6) Such cases as determined by the Medical Director of the System and approved by the Commission.

In the petitioner's case, he anchors his claim for total and permanent disability on his alleged inability to perform his job for more than 120 days as a result of his work-aggravated hypertension. To that effect, he believes himself entitled to the payment of permanent total disability benefits, damages and attorney's fees. Relevantly, the process and grounds outlined in the same are found in Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code, to wit:

> **Sec. 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 wan-anted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

In determining the possible existence of permanent disability, the law does not leave the choice to either the petitioner him or herself or the employer, but to their respective medical experts. Section 20(B)(3) of the POEA SEC provides that:

> 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.

This flux of provisions highlights that in order to claim disability benefits, it is not enough to merely allege an injury. The aforestated must be read in harmony with each

other, as cited in *TSM Shipping Phils., Inc., et al. v. Patiño*:[37]

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.**[38] (Emphasis Ours and italics in the original)

In the case at bar, the petitioner failed to comply with the outlined, statutory process for a valid disability claim, despite the respondents' efforts to adhere to the same. The records show that the company-designated physician was in fact able to give an assessment[39] of the petitioner's illness within the allotted time, contrary to the petitioner's allegations that the respondents did not give a full report as to his condition. The Court finds as strange the petitioner's questioning the report of the company-designated physician, while at the same time utilizing that same report as basis for his contention that he is unfit for duty for approximately four months, in an attempt to show that his disability status exceeds the time allowed by law. Thus, there can be no other conclusion that the petitioner has accepted, at the absolute least, the completeness of the report of the company-designated physician, notwithstanding his own claim that his own chosen physician has rendered a finding contrary to that of the respondents and in support of the petitioner's own perceived view of his medical status.

Aside from the foregoing, the Court finds as self-serving the petitioner's accusation that the assessment of the company-designated physician was insubstantial, especially considering that the petitioner himself did not cooperate fully in ensuring that the report would be as spotless as possible. The records reveal that the petitioner had refused to go back to the company-designated physician for further tests and instead spent almost one year out of the respondents' sights before filing the complaint. After declaring a finding that the petitioner was unfit for duty for approximately four months, the medical report stated that the petitioner was asked to come back on January 10, 2013 for re-evaluation, however, the respondents did not hear from him afterwards. They did not even know that the petitioner had consulted his own medical expert as the petitioner did not reach out until many months later, to file the instant case.

While the petitioner claims he followed up with the respondents concerning his medication, he was unable to show any tangible proof that he did so, in the form of any correspondence with the respondents, in the absence of anything but his self-serving declaration, the Court is inclined to adhere to the respondents' version of the events

leading up to the filing of the complaint, especially as it is more in line with the strange and belated filing of the disability claim.

The petitioner's refusal to cooperate, his decision not to mention to the respondents that he was questioning the latter's medical findings and seeking recourse with his own physician, and his belated filing of the complaint which was actuated almost a full year after the medical checkup with the respondents prompt the Court to find that there is a palpable lack of good faith in the petitioner's handling of the claim, especially as the same contravenes the POEA SEC. In *Splash Philippines, Inc., et al. v. Ruizo*,[40] the Court denied disability benefits to a seafarer who refused to return to the company for further treatment, refused to return to work, and instead filed a complaint, in contravention of the POEA SEC:

> Ruizo's non-compliance with his obligation under the POEA-SEC is aggravated by the fact that while he was still undergoing treatment under the care of Dr. Cruz, he filed the present complaint on May 26, 2006. Moreover, after he failed to return for further ESWL and without informing the agency or Dr. Cruz, he consulted Dr. Vicaldo who examined him only for a day or on May 7, 2007, certified him unfit to work, and gave him a disability rating of *Impediment Grade VII (41.8%)*. This aspect of the case bolsters the LA's conclusion that Ruizo was merely making excuses for his failure to report to Dr. Cruz and had become indifferent to treatment as he was determined to claim and obtain disability benefits from the petitioners. It also lends credence to the petitioners' submission that he abandoned his treatment under Dr. Cruz. Worse, it validates the LA's opinion that his inability to work and the persistence of his kidney ailment could be attributed to his own willful refusal to undergo treatment. Under the POEA-SEC, such a refusal negates the payment of disability benefits.[41]

In actuality, the petitioner's act of refusing to cooperate not only makes his claim questionable, but also vitiates the validity of his own assertions as well as that of his own doctor that his disability is such to entitle him to the corresponding benefits. Since the petitioner did not inform the respondents that he was contesting their findings, and did not even draw their attention to the fact that he had in hand conflicting findings, the statutory recourse of looking for a third physician to bind the parties was never effected, an omission that the Court finds as prejudicial to the petitioner.

The law dictates that if there is a disparity in the medical findings of the parties, a possible answer to the stalemate is through the seeking of recourse to a third physician agreed upon by both parties. Under Section 20(A)(3) of the 2010 POEA SEC, if a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer, whose decision shall be final and binding on both parties.[42] This is important as an employer/agency may insist on its own disability assessment even against a different opinion by another doctor, unless the seafarer signifies his or her intent to submit the disputed assessment to a third physician.[43]

Crucially, the duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits, and he or she must actively or expressly request for it.[44]

In the case at bar, the petitioner did not make use of this remedy since, at the pain of reiteration, he immediately filed the complaint without even informing the respondents as to his physician's contrary findings. As a consequence, despite the divergence in opinion between the company physician and the petitioner's own, the parties were not able to address the same due to the lack of knowledge of the respondents and the lack of action on the part of the petitioner, which should stand as another reason to deny the latter's claim. In *Veritas Maritime Corporation v. Gepanaga, Jr.*:[45]

> Gepanaga failed to observe the prescribed procedure of having the conflicting assessments on his disability referred to a third doctor for a binding opinion.
>
> x x x x
>
> 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.[46]

Paralleling *Gepanaga, Jr.*, the Court has no option but to hold the respondents' assessment of the petitioner's disability as final and binding, in the absence of a third and binding opinion. This especially, as a perusal of the company-designated physician's findings will show that the same is complete and without any apparent infirmity. The petitioner was unable to proffer any counter-evidence showing that the company-designated physician was unable to come up with an indefinite and un-arbitrary ruling on the petitioner's medical status. Considering it was the petitioner's inaction in securing a third physician and his lack of proof in assailing the respondents' own medical report, the Court finds that the CA did not err in ruling in favor of the respondents.

At the basic core of the matter, it was incumbent on the petitioner to show through substantial evidence proof that his condition was aggravated by his work, and not just merely rely on the presumption that his illness is work-related. 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 on board the vessel and the illness contracted or aggravated.[47] Thus, the burden is placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease.[48]

As explained in *Espere v. NFD International Manning Agents, Inc., et al.*,[49] another case involving hypertension:

> In other words, 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 on board the vessel and the illness contracted or aggravated. Thus, the burden is placed upon the

> claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease.
>
> In this case, however, petitioner relied on the presumption that his illness is work-related but he was unable to present substantial evidence to show that his work conditions caused or, at the least, increased the risk of contracting his illness. Neither was he able to prove that his illness was preexisting and that it was aggravated by the nature of his employment. Thus, the LA and the CA correctly ruled that he is not entitled to any disability compensation. [50] (Citations omitted)

In this case, the petitioner failed to substantiate by clear evidence the causal connection between the strain of work, with the disability he alleges Aside from citing increased work due to lack of manpower, the petitioner was unable to show that it was the work itself that led to his difficult condition, especially considering that he himself admitted that he already had a pre-existing condition, as embodied in the findings of the PEME. While a pre-existing condition does not absolutely bar the chance that it could have been aggravated during the course of employment, the petitioner in this case failed to prove that it was exacerbated by the unusual strain brought about by the nature of his work. In *Villanueva, Sr. v. Baliwag Navigation, Inc., et al*.,[51] the Court held that a complainant must satisfy by substantial evidence the condition laid down in the contract that if the heart disease, such as the one herein, was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain brought about by the nature of his work.[52] The petitioner failed to do so, and for this and his lack of cooperation in fulfilling the procedural and substantive requirements in alleging total and permanent disability, the Court finds that the CA did not err in denying his disability claims.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is hereby **DENIED**. The Decision dated January 22, 2016 of the Court of Appeals, and its Resolution dated July 10, 2016, in CA-G.R. SP No. 138514, are hereby **AFFIRMED**.

SO ORDERED.

Peralta (Chairperson), Leonen, Lazaro-Javier,[*] and *Inting, JJ*., concur.

July 30, 2019

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on **July 3, 2019** a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on July 30, 2019 at 2:59 p.m.

Very truly yours,

(SGD.) WILFREDO V. LAPITAN
Division Clerk of Court

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[*] Designated additional Member per Raffle dated June 26, 2019 *vice* Associate Justice Ramon Paul L. Hernando.

[1] *Rollo*, pp. 8-35.

[2] Penned by Associate Justice Jose C. Reyes, Jr. (now a Member of this Court), with Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando (now a Member of this Court), concurring; id. at 36-45A.

[3] Id. at 46-47.

[4] Rendered by Commissioner Mercedes R. Posada-Lacap, with Presiding Commissioner Grace E. Maniquiz-Tan and Commissioner Dolores M. Peralta-Beley concurring; id. at 93-102.

[5] Id. at 36-37.

[6] Id. at 37.

[7] Id.

[8] Id.

[9] Id.

[10] Id. at 38

[11] Id.

[12] Id.

[13] Id.

[14] Id. at 104-122.

[15] Id. at 40.

[16] Id. at 93-102.

[17] Id. at 40.

[18] Id. at 36-45A.

[19] Id. at 41.

[20] Id. at 44-45.

[21] Id. at 45-45A

[22] Id. at 46-47.

[23] Id. at 11.

[24] Id.

[25] Id. at 12.

[26] Id.

[27] 624 Phil. 523 (2010).

There are three kinds of disability benefits under the Labor Code, as amended by P.D. No. 626: (1) temporary total disability, (2) permanent total disability, and (3) permanent partial disability. Section 2, Rule VII of the Implementing Rules of Book V of the Labor Code differentiates the disabilities as follows:

> Sec. 2. *Disability*.- (a) A total disability is temporary if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period not exceeding 120 days, except as otherwise provided for in Rule X of these Rules.
>
> (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.
>
> (c) A disability is partial and permanent if as a result of the injury or sickness the employee suffers a permanent partial loss of the use of any part of his body.
>
> In *Vicente v. ECC* (G.R. No. 85024, January 23, 1991, 193 SCRA 190, 195):
>
> x x x the **test** of whether or not an employee suffers from 'permanent total disability' is a showing of the capacity of the employee to continue performing his work notwithstanding the disability he incurred. Thus, if by reason of the injury or sickness he sustained, the employee is unable to perform his customary job **for more than 120 days** and he does not come within the coverage of Rule X of the Amended Rules on Employees Compensability (which, in more detailed manner, describes what constitutes temporary total disability), then the said employee undoubtedly suffers from 'permanent total disability' regardless of whether or not he loses the use of any part of his body.

A **total** disability does not require that the employee be absolutely disabled or totally paralyzed. What is necessary is that the injury must be such that **the employee cannot pursue his usual work and earn therefrom** (*Austria v. Court of Appeals*,

G.R. No. 146636, Aug. 12, 2002, 387 SCRA 216, 221). On the other hand, a **total** disability is **considered permanent if it lasts continuously for more than 120 days**. Thus, in the very recent case of *Crystal Shipping, Inc. v. Natividad* (G.R. No. 134028, December 17, 1999, 321 SCRA 268, 270-271), we held:

> Permanent disability is inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body. x x x.
>
> Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity. x x x
>
> Id. at 530-531. (Emphases and underscoring in the original)

[28] *Rollo*, p. 511.

3. I undertake to religiously comply with this medication and diligently follow the Doctor's advice. Failure on my part to do this requirement will warrant the termination of my contract, subject to the discretion of the Agency/Principal/Employer;

4. In the event of a disabling sickness resulting from the above named ailment, I hereby declare that the said ailment is pre-existing and also NOT COMPENSABLE. I will not hold the Company/Employer accountable and shall NOT make any claims arising from said ailment;

5. This shall forever bar myself, or any of my legal heirs, ascendants or descendants, or any representative from claiming any Medical or Disability Benefits or any other benefits as a consequence of or arising from said illness/disease or any condition related thereto, from any courts of law or any administrative tribunal not only in the Philippines but also in any other jurisdiction.

[29] Id. at 518.

[30] Id. at 519.

[31] Id

[32] Id. at 520.

[33] Id

[34] G.R. No. 194001, November 22, 2017.

[35] Id.

[36] *TSM Shipping Phils., Inc., et al. v. Patiño*, 807 Phil. 666, 676 (2017).

[37] 807 Phil. 666 (2017).

[38] Id. at 677-678, citing *Vergara v. Hammonia Maritime Services, Inc., et al*., 588 Phil 895, 912 (2008).

[39] Laboratory examination showed decreased hemoglobin, hematocrit, white blood cell (complete blood count), normal fasting blood sugar, HBA1C, blood urea nitrogen, creatinine, triglyceride, HDL, thyroid function test, VLDL, SGPT, sodium, potassium, urinalysis, elevated uric acid, cholesterol, LDL and creatine kinase.

He underwent chest x-ray, 12 Lead ECG, 2D Echo Study, Carotid Duplex Scan, Treadmill Stress Test and 24-Hour Holter Monitoring for further evaluation.

He will undergo Cranial MRA with MRI on December 24, 2012.

He was given medications for his condition (Bezam, Clopidogrel and Cholestad).

The etiology/cause of hypertension is not work-related. It is multifactorial in origin, which includes generic predisposition, poor lifestyle, high salt intake, smoking, Diabetes Mellitus, age and increased sympathetic activity.

Transient Ischemic Attack is due to disturbance of brain function secondary to microvascular occlusions causing temporary deficiency in the brain's blood supply. Symptoms are similar to stroke but are temporary and reversible.

Risk factors include age. Hypertension, Carotid Artery Disease, smoking, Diabetes Mellitus, obesity, alcohol, all of which are not work-related.

Patient is presently unfit for duty for approximately four (4) months.

He is to come back on January 10, 2013 of (sic) re-evaluation.

Impression-Hypertension

To Consider Transient Ischemic Attack

[40] 730 Phil. 162 (2014).

[41] Id. at 178.

[42] *Generato M. Hernandez v. Magsaysay Maritime Corporation, Saffron Maritime Limited and/or Marlon R. Roño*, G.R. No. 226103, January 24, 2018.

[43] Id.

[44] Id.

[45] 753 Phil. 308 (2015).

[46] Id. at 319-320.

[47] *Espere v. NFD International Manning Agents, Inc., et al*., 814 Phil. 820, 838 (2017).

[48] Id.

[49] 814 Phil. 820 (2017).

[50] Id. at 838.

[51] 715 Phil. 299 (2013).

[52] Id. at 303.
