FIRST DIVISION

[G.R. No. 210955, August 14, 2019]

DANILO A. LERONA, PETITIONER, VS. SEA POWER SHIPPING ENTERPRISES, INC. AND/OR NEDA MARITIME AGENCY CO., LTD., AND/OR MS. ANTONETTE A. GUERRERO, RESPONDENTS.

D E C I S I O N

JARDELEZA, J.:

We deny the seafarer's claim for disability benefits due to fraudulent misrepresentation and medical abandonment, as provided under the 2000 Philippine Overseas Employment Administration Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (2000 POEA-SEC).

On February 27, 2009, respondent Sea Power Shipping Enterprises, Inc. employed petitioner Danilo A. Lerona on behalf of respondent Neda Maritime Agency Co., Ltd. to work as a fitter on board M/V Penelope (the vessel) with a monthly salary of US$550.00. Petitioner's contract was for a period of three months, extendible for one month upon mutual consent of the parties.[1] Prior to his deployment, petitioner underwent pre-employment medical examination (PEME) where he was declared "FIT TO WORK AS SEAMAN." He boarded the vessel on March 6, 2009.[2] On August 1, 2009, he felt severe chest pains and dizziness, which prompted him to request for a medical checkup. He was brought to a hospital in China, but the doctor who examined him did not prescribe any medication or recommend hospitalization or repatriation.[3] Notwithstanding this, petitioner was repatriated to the Philippines on August 13, 2009. He was confined at the De Los Santos Medical Center the following day, and examined by respondents' team of accredited physicians.[4] In his initial medical report, Dr. Jose Emmanuel F. Gonzales (Dr. Gonzales), respondents' company-designated physician, stated that petitioner's chief complaint was body weakness. Petitioner disclosed that he had been hypertensive and is taking Norvasc tablet for two years. In consultation with a cardiologist, Dr. Gonzales declared that petitioner might have Coronary Arterial Disease for which pertinent laboratory and diagnostic examinations should be conducted.[5]

Petitioner's laboratory tests showed that he had a high level of triglycerides, although his electrocardiogram (ECG) tracing had no significant findings. The cardiologist requested for petitioner to undergo Stress-Thallium Test to confirm the status and function of his heart's blood vessels before he can be given medical clearance.[6] The test revealed that petitioner has a mild reversible defect in the apical to basal inferior wall of his heart's blood vessels. His blood pressure was also 130/80. Consequently, he was given additional maintenance drugs on top of his previous oral anti-hypertensive

medication. Thereafter, the cardiologist suggested a coronary angiogram to verify the findings of the Stress-Thallium Test.[7] Results showed that petitioner was negative for any vessel abnormality. He did not need any surgical intervention, just medical treatment and modification of his lifestyle to address his hypertension.[8]

Significantly, in his Medical Report dated October 15, 2009, Dr. Gonzales stated that the cardiologist cleared petitioner of Coronary Arterial Disease. Nevertheless, petitioner was referred to an ear, nose and throat specialist because he was complaining of dizziness. He later underwent Pure Tone Audiometry with Tympanometry, the result of which revealed that he has mild sensori-neural hearing loss on both ears. No surgical procedure was required but he was prescribed to take Vitamin B complex regularly. Petitioner was placed under observation for another week prior to the issuance of a medical clearance. He was required to come back for a follow-up checkup on October 23, 2009.[9] However, he did not show up. Consequently, Dr. Gonzales declared him to have absconded.[10]

Unknown to respondents, petitioner consulted an independent physician on December 17, 2009. Dr. Efren R. Vicaldo (Dr. Vicaldo) of the Philippine Heart Center gave petitioner the following diagnosis: Hypertensive Cardiovascular Disease, Angina Pectoris, Impediment Grade VII (41.80%).[11] Dr. Vicaldo declared, among others, that: (1) petitioner is permanently unfit to resume work as a seaman in any capacity; (2) his illness is considered work aggravated/related; and (3) he is not expected to land gainful employment given his medical background.[12]

On January 14, 2010, petitioner filed a complaint for recovery of disability benefits, reimbursement of medical expenses and attorney's fees against respondents. During the mandatory conference before the labor arbiter (LA), respondents manifested that petitioner failed to report back to their company-designated physician for final assessment. Thus, upon respondents' insistence, petitioner went back to Dr. Gonzales on April 21, 2010, at which time he was declared "Fit to Resume Sea Duties."[13]

In his position paper, petitioner claimed that he is entitled to total and permanent disability benefits because he was unable to work for more than 120 days as a result of his illness.[14] For their part, respondents claimed that petitioner was declared fit for sea duty by their company-designated physician, hence, he is not entitled to any disability benefit. Further, petitioner failed to disclose that he has hypertension during his PEME. The concealment of his pre-existing condition disqualifies him from any compensation and benefit under Section 20(E) of the 2000 POEA-SEC. Also, the findings of Dr. Gonzales should prevail over the declarations of Dr. Vicaldo, who only examined petitioner once.[15]

On August 2, 2010, the LA rendered a Decision[16] ordering respondents to jointly and severally pay petitioner permanent and total disability benefits in the amount of US$60,000.00 and attorney's fees equivalent to 10% of the total monetary award.[17] The LA held that Dr. Gonzales did not issue any disability rating/grading to petitioner within the mandatory 120-day period. He declared petitioner "fit to resume sea duties"

on April 21, 2010, long after Dr. Vicaldo pronounced him "unfit to resume sea duties in any capacity" on December 17, 2009.[18] Furthermore, if it were true that petitioner had already become fit to work, then why was he not re-engaged by respondents?[19] The LA also ruled that petitioner's pre-existing hypertension does not disqualify him from claiming disability benefits. Respondents were estopped from denying that in all of petitioner's six previous contracts with them, including the last one, the company doctors always declared him fit to work after his PEME. Finally, respondents' defense that petitioner absconded from his checkup does not avail since respondents could have easily issued the result to petitioner and told him to report for duty.[20]

On appeal, the National Labor Relations Commission (NLRC) reversed the LA through its February 8, 2011 Decision.[21] It held that the medical examination of respondents' accredited doctors, Dr. Gonzales and Dr. Ana Ma. Luisa D. Javier, the internist-cardiologist, was more extensive than the examination made by Dr. Vicaldo on petitioner. The latter's findings were not supported by laboratory results or diagnostic examinations. No proof was presented to show that petitioner has a cardiovascular disease that was acquired during the term of his employment.[22] Moreover, the doctors on both sides of the case had the same medical findings as regards petitioner's hypertension. Under Section 32(A)(20) of the 2000 POEA-SEC, hypertension is compensable if it causes impairment of functions of body organs like kidneys, heart, eyes and brain, resulting to permanent disability as substantiated by certain documents. However, petitioner's ECG tracing revealed no significant findings. His coronary angiogram was also negative for any vessel abnormalities.[23] Finally, the NLRC held that petitioner failed to observe the third doctor referral rule under the 2000 POEA-SEC. Consequently, his claim for disability compensation must be denied.[24]

Acting on petitioner's motion for reconsideration, the NLRC reversed itself and reinstated the ruling of the LA. In its June 24, 2011 Resolution,[25] it held that the 2000 POEA-SEC does not require the parties to at all times assign a third doctor to assess the seafarer's disability. Hence, a seafarer is not precluded from filing a complaint before the NLRC even if the parties failed to secure the opinion of the third doctor. More, the record is bereft of showing that petitioner's health condition was restored to its *status quo* so as to enable him to return to his former work as a fitter. The fact that petitioner did not need to undergo any surgical procedure or intervention does not conclusively show that he is already fit to work.[26] The NLRC held that at the time petitioner filed the case on January 14, 2010, five months after his repatriation, he is still unable to return to his work as a fitter for respondents. His inability to perform his customary work for more than 120 days constitutes total and permanent disability.[27]

Respondents filed a motion for reconsideration, but the NLRC denied it through its Resolution[28] dated October 24, 2011.

Undaunted, respondents filed a petition for *certiorari* with the Court of Appeals (CA), docketed as CA-G.R. SP No. 122984. In its assailed Decision[29] dated October 2, 2013, the CA set aside the NLRC Resolution for having been issued with grave abuse of

discretion and reinstated its initial decision to dismiss petitioner's complaint. It ruled that the findings of the LA, as affirmed by the NLRC, are not supported by substantial evidence.[30] It is undisputed that petitioner's hypertension was a pre-existing condition, yet, he did not indicate it in his PEME form. Thus, petitioner committed misrepresentation which disqualifies him from recovering any disability benefits under Section 20(E) of the 2000 POEA-SEC.[31]

Even assuming that petitioner did not conceal his condition, the CA held that a seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered illness is not a magic wand that would automatically warrant the grant of total and permanent disability benefits. None of the instances when a seafarer may be allowed to pursue an action to claim total and permanent disability exists. Dr. Gonzales pronounced petitioner fit to work on April 10, 2010, or approximately 200 days after his repatriation. The delay was solely attributable to petitioner since he failed to report after his 5th medical examination. The fit to work certification could have been issued earlier had he not absconded.[32]

Moreover, the CA held that there is no reason to depart from the settled rule that it is the company-designated physician who is entrusted with the task of assessing the seafarer's disability. The medical finding of petitioner's doctor of choice was made on the same day that petitioner consulted him. Petitioner was not required to undergo medical tests to confirm the doctor's diagnosis. On the other hand, the findings of the company-designated physician were made after petitioner underwent laboratory examinations.[33] Finally, the CA noted that petitioner did not follow the third doctor-referral rule under the 2000 POEA-SEC.[34]

Petitioner moved for reconsideration,[35] but the CA denied it through the assailed January 22, 2014 Resolution.[36] Hence, this petition.

The issue for consideration is whether petitioner is entitled to total and permanent disability benefits.

We hold that he is not.

Preliminarily, the Court's power of review in a Rule 45 petition is limited to resolving matters pertaining to perceived legal errors that the CA may have committed in issuing the assailed decision. Hence, We generally do not review factual issues.[37] Nevertheless, the Court will proceed to probe and resolve factual issues when exceptional circumstances are present. The conflicting rulings of the LA and NLRC on one hand, and of the CA on the other, in this case is one such exception to the general rule. It is thus imperative to review the records to determine which finding is more conformable to the evidentiary facts.[38]

I.

Petitioner cannot claim disability benefits because he committed fraudulent misrepresentation.

The contract of employment between the parties is subject to the terms and conditions of the 2000 POEA-SEC,[39] Section 20(E) of which provides that deliberate concealment by a seafarer of a pre-existing medical condition in his PEME constitutes fraudulent misrepresentation which shall disqualify him from any disability compensation and benefits. Thus:

> E. A seafarer who knowingly conceals and does not disclose past medical condition, disability and history in the pre-employment medical examination constitutes fraudulent misrepresentation and shall disqualify him from any compensation and benefits. This may also be a valid ground for termination of employment and imposition of the appropriate administrative and legal sanctions.

As correctly observed by the CA, petitioner did not indicate in the appropriate box in his PEME form that he has hypertension, although he had been taking Norvasc as maintenance medicine for two years. He only disclosed his pre-existing medical condition after he was repatriated to the Philippines. Petitioner claims that he did not reveal his hypertension during his PEME out of an honest belief that it had been "resolved."[40] However, this is not persuasive. That petitioner continues to take maintenance medicine indicates that his condition is not yet resolved. Additionally, within the two years that petitioner had been taking maintenance medication for his hypertension, he had boarded respondents' ships four times.[41] Since PEME is mandatory before a seafarer is able to board a ship, it goes to show that petitioner concealed his hypertension no less than four times as well. This circumstance negates any suggestion of good faith that petitioner makes in defense of his misdeed.

The Court had on many occasions[42] disqualified seafarers from claiming disability benefits on account of fraudulent misrepresentation arising from their concealment of a pre-existing medical condition. This case is not an exception. For knowingly concealing his hypertension during the PEME, petitioner committed fraudulent misrepresentation which unconditionally bars his right to receive any disability compensation from respondents.

Even if We disregard petitioner's misrepresentation, his claim for disability benefits would still fail. Section 32(A)(20) of the 2000 POEA-SEC provides for certain requirements before hypertension may be considered a compensable occupational disease. Thus:

> 20. Essential Hypertension.
>
> Hypertension classified as primary or essential is considered compensable if it causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability; *Provided*, that the following documents substantiate it: (a) chest x-ray report, (b) ECG report, (c) blood chemistry report, (d) funduscopy (*sic*) report, and (f) (*sic*) C-T scan.

Here, there is no showing that petitioner's hypertension impaired the functioning of any of his vital organs, resulting in permanent disability. Moreover, petitioner did not submit

any of the enumerated medical test results. Petitioner's physician, Dr. Vicaldo, did not subject him to any tests. He concluded that petitioner was permanently unfit to resume work as a seaman in any capacity, without stating the basis for his prognosis other than an elevated blood pressure.

On the contrary, petitioner's ECG tracing showed no significant findings[43] and his coronary angiogram gave negative results for vessel abnormalities.[44] Having failed to satisfy the requisites under Section 32(A)(20) of the 2000 POEA-SEC, petitioner's hypertension is not compensable.

Finally, We reject petitioner's argument that respondents are estopped from denying him disability benefits because he passed his PEME. A "fit to work" declaration in the PEME is not a conclusive proof that a seafarer is free from any disease prior to his/her deployment. *Status Maritime Corporation v. Spouses Delalamon*[45] is instructive, *viz*.:

> **The fact that Margarito passed his PEME cannot excuse his willful concealment nor can it preclude the petitioners from rejecting his disability claims. PEME is not exploratory and does not allow the employer to discover any and all pre-existing medical condition with which the seafarer is suffering and for which he may be presently taking medication.** The PEME is nothing more than a summary examination of the seafarer's physiological condition; it merely determines whether one is "fit to work" at sea or "fit for sea service" and it does not state the real state of health of an applicant. The "fit to work" declaration in the PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment.[46] (Citations omitted; emphasis supplied.)

II.

Petitioner also cannot claim disability benefits because he committed medical abandonment.

In *C.F. Sharp Crew Management, Inc. v. Orbeta*,[47] We held that a seafarer commits medical abandonment when he fails to complete his treatment before the lapse of the 240-day period, which prevents the company physician from declaring him fit to work or assessing his disability.[48] Section 20(D) of the 2000 POEA-SEC provides that "[n]o compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or **intentional breach of his duties**. x x x"[49] A seafarer is duty-bound to complete his medical treatment until declared fit to work or assessed with a permanent disability rating by the company-designated physician.[50]

In this case, after undergoing several tests, petitioner was placed under observation. Dr. Gonzales advised him to return for his medical clearance on October 23, 2009, or 71 days from his repatriation, but petitioner did not do so. He argues that he could still feel the symptoms of his ailment despite having been cleared by respondents' cardiologist from coronary arterial disease on October 15, 2009. Hence, he was

prompted to consult another doctor. However, while indeed a seafarer has the right to seek the opinion of other doctors under Section 20(B)(3) of the 2000 POEA-SEC, this is on the presumption that the company-designated physician had already issued a certification on his fitness or disability and he finds this disagreeable.[51] As case law holds, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or to determine his disability within a period of 120 or 240 days from repatriation. The 120-day period applies if the duration of the seafarer's treatment does not exceed 120 days. On the other hand, the 240-day period applies in case the seafarer requires further medical treatment after the lapse of the initial 120-day period. In case the company-designated doctor failed to issue a declaration within the given periods, the seafarer is deemed totally and permanently disabled.[52] When petitioner chose not to show up at the appointed date of consultation, effectively preventing Dr. Gonzales from making a fitness or disability assessment, he breached his duty under the 2000 POEA-SEC. Without any final assessment from the company-designated physician, petitioner's claim for permanent total disability benefits must fail.

Indeed, when petitioner filed his complaint before the LA on January 14, 2010, or 154 days after his repatriation, he had no cause of action against respondents because Dr. Gonzales has not yet issued an assessment on his fitness or unfitness for sea duty. The 240-day maximum period for treatment has not yet lapsed. We cannot subscribe to petitioner's theory that the company-designated physician only had 120 days from repatriation to issue a disability assessment. Case law teaches that the 120-day rule applies only when the complaint was filed prior to October 6, 2008. However, if the complaint was filed from October 6, 2008 onwards, as in this case, the 240-day rule applies.[53] It was thus error on the part of petitioner to reckon his entitlement to permanent and total disability benefits based on the 120-day rule.

All told, the CA did not err in reversing the rulings of the LA and the NLRC. Petitioner cannot claim total and permanent disability benefits against respondents because he committed fraudulent misrepresentation and medical abandonment, both of which disqualify a seafarer from any disability compensation.

WHEREFORE, the petition is **DENIED** for lack of merit. The October 2, 2013 Decision and January 22, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 122984 are hereby **AFFIRMED**.

SO ORDERED.

Bersamin, C. J., (Chairperson), Perlas-Bernabe, (Working Chairperson), Gesmundo, and *Carandang, JJ.*, concur.

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[1] *Rollo*, p. 47.

[2] *Id.* at 361, 428.

[3] *Id.* at 361, 431.

[4] *Id.* at 361.

[5] *Id.* at 361, 432-433.

[6] *Id.* at 361, 434.

[7] *Id.* at 435.

[8] *Id.* at 362, 436.

[9] *Id.* at 362, 437.

[10] *Id.* at 362, 438.

[11] *Id.* at 55, 363.

[12] *Id.* at 56.

[13] *Id.* at 363-364, 443.

[14] *Id.* at 66, 364.

[15] *Id.* at364.

[16] *Id.* at 144-153; penned by Labor Arbiter Felipe P. Pati.

[17] *Id.* at 152-153.

[18] *Id.* at 149.

[19] *Id.* at 150.

[20] *Id.* at 151-152.

[21] *Id.* at 203-218; penned by Commissioner Angelo Ang Palana with Presiding Commissioner Herminio V. Suelo and Commissioner Numeriano D. Villena, concurring.

[22] *Id.* at 215.

[23] *Id.* at 216.

[24] *Id.* at 217.

[25] *Id.* at 238-246.

[26] *Id.* at 241-242.

[27] *Id.* at 244.

[28] *Id.* at 247-248.

[29] *Id.* at 360-371; penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Andres B. Reyes, Jr. and Rodil V. Zalameda (both now Members of this Court), concurring.

[30] *Id.* at 367.

[31] *Id.* at 367-368.

[32] *Id.* at 368-369.

[33] *Id.* at 370-371.

[34] *Id.* at 370.

[35] Id.at 372-382.

[36] *Id.* at 384.

[37] *Philman Marine Agency, Inc. (now DOHLE-PHILMAN Manning Agency, Inc.) v. Cabanban*, G.R. No. 186509, July 29, 2013, 702 SCRA 467, 481-482.

[38] *Status Maritime Corporation v. Spouses Delalamon*, G.R. No. 198097, July 30, 2014, 731 SCRA 390, 401.

[39] See the parties' Contract of Employment dated February 27, 2009, *rollo* p 427.

[40] *Id.* at 31.

[41] *Id.* at 48.

[42] *Ayungo v. Beamko Shipmanagement Corporation*, G.R. No. 203161, February 26, 2014, 717 SCRA 538; *Philman Marine Agency, Inc. (now DOHLE-PHILMAN Manning Agency, Inc.) v. Cabanban, supra* note 37; *Status Maritime Corp. v. Spouses Delalamon, supra* note 38.

[43] See Medical Report dated August 17, 2009, *rollo*, p. 434.

[44] See Medical Report dated September 29, 2009, *id.* at 436.

[45] *Supra* note 38.

[46] *Id.* at 407.

[47] G.R. No. 211111, September 25, 2017, 840 SCRA 483.

[48] *Id.* at 501. Citation omitted.

[49] Emphasis supplied.

[50] See *New Filipino Maritime Agencies, Inc. v. Despabeladeras*, G.R. No. 209201 November 19, 2014, 741 SCRA 375, 391.

[51] *C.F. Sharp Crew Management, Inc. v. Taok*, G.R. No. 193679, July 18, 2012, 677 SCRA 296, 316.

[52] *Magsaysay Maritime Corp. v. Cruz*, G.R. No. 204769, June 6, 2016, 792 SCRA 344, 356.

[53] *Wallem Maritime Services, Inc. v. Quillao*, G.R. No. 202885, January 20, 2016, 781 SCRA 477, 488, citing *C.F. Sharp Crew Management, Inc. v. Obligado*, G.R. No. 192389, September 23, 2015, 771 SCRA 369.
