

SECOND DIVISION

[G.R. No. 192034, January 13, 2014]

**ALPHA SHIP MANAGEMENT CORPORATION/JUNEL M. CHAN
AND/OR CHUO-KAIUN COMPANY, LIMITED, PETITIONERS, VS.
ELEOSIS V. CALO, RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

An employee's disability becomes permanent and total when so declared by the company-designated physician, or, in case of absence of such a declaration either of fitness or permanent total disability, upon the lapse of the 120- or 240-day treatment period, while the employee's disability continues and he is unable to engage in gainful employment during such period, and the company-designated physician fails to arrive at a definite assessment of the employee's fitness or disability.

Assailed in this Petition for Review on *Certiorari*^[1] are the December 17, 2009 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 105550 which reversed and set aside the March 31, 2008 Decision^[3] of the National Labor Relations Commission (NLRC) and reinstated the March 30, 2007 Decision^[4] of the Labor Arbiter, and its April 26, 2010 Resolution^[5] denying reconsideration thereof.

Factual Antecedents

Respondent Eleosis V. Calo worked for petitioners – Alpha Ship Management Corporation, Junel M. Chan and their foreign principal, Chuo-Kaiun Company Limited (CKCL) – since 1998 under seven employment contracts. On February 17, 2004, respondent was once more hired by petitioners as Chief Cook on board CKCL's vessel, MV Iris. Respondent commenced his duties as Chief Cook aboard MV Iris on March 5, 2004.

On July 13, 2004, while MV Iris was in Shanghai, China, respondent suffered back pain on the lower part of his lumbar region and urinated with solid particles. On checkup, the doctor found him suffering from urinary tract infection and renal colic, and was given antibiotics. When respondent's condition did not improve, he consulted another doctor in Chile sometime in August 2004, and was found to have kidney problems and urinary tract infection but was declared fit for work on a "light duty" basis.^[6]

On September 19, 2004, respondent suffered an attack of severe pain in his loin area below the ribs radiating to his groin. At the Honmoku Hospital in Yokohama, Japan, respondent was diagnosed with suspected renal and/or ureter calculus.^[7] He was declared "unfit for work" and advised to be sent home and undergo further detailed examination and treatment.^[8]

Respondent was thus repatriated on October 12, 2004 and was referred by petitioners to Dr. Nicomedes G. Cruz (Dr. Cruz), the company-designated physician.

On October 20, 2004, Dr. Cruz examined respondent, and thereafter, in his Medical Report,^[9] Dr. Cruz wrote:

The patient was seen today in our clinic. The IVP x-ray showed mild prostate enlargement with signs suggestive of cystitis. He was seen by our urologist and repeat urinalysis was requested.

DIAGNOSIS:

To consider Ureterolithiasis, right

MEDICATION:

Buscopan

Advised to come back on November 10, 2004^[10]

Respondent was examined once more on November 10, 2004, and his Medical Report^[11] for such examination reads as follows:

The patient was seen today in our clinic. The urinalysis done was normal. He complains of right lumbosacral pain which is probably secondary to lumbosacral muscular strain. He was seen by our urologist and ultrasound of the KUB-P was requested.

DIAGNOSIS:

To consider Ureterolithiasis, right

MEDICATION:

Mobic

Advised to come back on November 17, 2004

Respondent returned to Dr. Cruz for check-up on November 17, 2004. His Medical Report^[12] for such appointment states:

The patient was seen today in our clinic. The ultrasound of the KUB showed the following 1) small, mild calyceal non-obstructing stone his [sic] left kidney 2) cortical cyst at the inferior pole of the left kidney 3) small parenchymal calcification in the mid portion of the right kidney and 4) mild prostatic enlargement with concretion. Our urologist recommended medical dissolution of the left kidney stone since it is small. However, he recommended lumbosacral x-ray of the back to evaluate the right lower back pain.

DIAGNOSIS:

Ureterolithiasis, left

MEDICATION:

Sambong

Acalka

Macrochantin

Advised to come back on December 15, 2004^[13]

On December 15, 2004, respondent returned to Dr. Cruz for check-up, and in his Medical Report^[14] he wrote:

The patient was seen today in our clinic. There is occasional low back pain. The x-ray showed mild lumbar osteophytes. He is for urinalysis and ultrasound of the kidneys.

DIAGNOSIS:
Ureterolithiasis, left

MEDICATION:
Sambong
Acalca
Macrochantin

Advised to come back on January 5, 2005^[15]

Dr. Cruz's Medical Report^[16] for January 5, 2005 reads as follows:

The patient was seen today in our clinic. The latest ultrasound of the kidneys showed the persistence of non-obstructing calculus located at the middle calyx of the left kidney. The right kidney is normal. The urinalysis showed microhematuria. Clinically, he still has occasional low back pain. Our urologist recommended KUB x-ray with bowel preparation.

DIAGNOSIS:
Nephrolithiasis, left

MEDICATION:
Sambong
Acalca
Macrochantin

Advised to come back on January 12, 2005^[17]

Further Medical Reports^[18] indicate that respondent returned to Dr. Cruz for additional check-ups on January 12 and 17, 2005; February 7, 14 and 18, 2005; March 4, 9 and 30, 2005; April 4, 20 and 27, 2005; May 11 and 18, 2005; June 8, 20 and 27, 2005; July 18, 25 and 27, 2005; August 3, 22 and 31, 2005; September 14, 2005; and October 5 and 14, 2005.

Meanwhile, on July 28, 2005, respondent – who felt that his condition has not improved – consulted another specialist in internal medicine, Dr. Efren R. Vicaldo (Dr. Vicaldo), who issued the following diagnosis contained in a two-page Medical Certificate:^[19]

July 28, 2005

TO WHOM IT MAY CONCERN:

This is to certify that Eleosis V. Calo, 57 years of age, of Parañaque City was examined and treated as out[-]patient/confined in this hospital on/from July 28, 2005 with the following findings and/or diagnosis/diagnoses:

Hypertension I
Nephrolithiasis, left
Impediment Grade X (20.15%)

(signed)

EFREN R. VICALDO, M.D.

JUSTIFICATION OF IMPEDIMENT GRADE X (20.15%) FOR SEAMAN
ELEOSIS V. CALO

- » This patient/seaman presented with a history of passing sandy material in the urine noted sometime August of 2004. He had a check up in Shanghai and he was diagnosed [with] UTI. He had another check up in Peru with the same diagnosis of urinary tract infection. He had episodes of lumbar pain, cold sweats and abdominal pain for which he had a check up in Japan [in] September, 2004. He underwent abdominal ultrasound, urinalysis and Xray of the KUB.
- » He was subsequently repatriated [in] October, 2004 and he underwent several laboratory work up. He was diagnosed [with] hypertension and nephrolithiasis, left.
- » When seen at the clinic, his blood pressure was elevated at 130/90 mmHg; the rest of his PE findings were unremarkable.
- » He is now unfit to resume work as seaman in any capacity.
- » His illness is considered work aggravated/related.
- » He requires maintenance medication to control his hypertension to prevent other cardiovascular complications such as coronary artery disease, stroke and renal insufficiency.
- » With his nephrolithiasis, he is prone to develop ascending urinary tract infection so that he has to monitor his urinalysis and be treated for any signs of infection.
- » He may require intervention in the form of lithotripsy or surgery to remove his nephrolithiasis.
- » His renal colic may be a recurrent discomfort impairing his quality of life.
- » He is not expected to land a gainful employment given his medical background.

Thank you.

(signed)

Efren R. Vicaldo, M.D.^[20]

Respondent underwent surgery for his nephrolithiasis on August 31, 2005. On September 12, 2005, respondent took an x-ray examination which registered the following results:

ROENTGENOLOGICAL FINDINGS:

Previous film not available for comparison.

Plain radiograph of the KUB shows gas and fecal-filled bowel loops which partially obscure both renal shadows.

No opaque lithiasis noted.

Spur formations are noted on the lumbar vertebrae.

IMPRESSION:

DEGENERATIVE OSSEOUS CHANGES OF THE LUMBAR VERTEBRAE^[21]

Respondent filed a claim for disability benefits with petitioners, but the claim was denied.

Thus, on October 18, 2005, respondent filed against the petitioners a Complaint^[22] for the recovery of total permanent disability benefits, illness allowance, reimbursement of medical expenses, damages and attorney's fees.

On July 3, 2006, respondent returned to Dr. Cruz and underwent urinalysis, ultrasound and x-ray. On July 18, 2006, Dr. Cruz issued his final Medical Report,^[23] stating thus:

He (respondent) was repatriated because of right flank pain and gross hematuria. The IVP done showed mild prostatic enlargement with signs of cystitis. Ultrasound of the KUB done revealed small mild calyseal non-obstructing stone on the left side. The recent x-ray showed neither opacity nor filling defect. The IVP showed pyelitis (inflammation of the kidney). The repeat ultrasound showed decrease in the size of the echogenic focus and cyst in the upper pole of the left kidney. The right kidney is normal. Last August 31, 2005, he underwent ESWL.

He was last seen in our clinic last October 14, 2005 and was advised to come back on November 07, 2005 but failed to do so.

At present, the repeat urinalysis is normal. The ultrasound of the KUB showed left renal cortical cyst and enlarged prostate gland with concretions. Our urologist opined that Mr. Calo is now stone free and normal.

He is now fit to work as a seafarer on account of the [absence of kidney stones].

DIAGNOSIS:

Nephrolithiasis, left, treated

RECOMMENDATION:

He is fit to work.^[24]