

EN BANC

[A.M. No. P-08-2439 (Formerly OCA IPI No. 08-2733-P), June 25, 2013]

JUDGE MA. MONINA S. MISAJON, MUNICIPAL TRIAL COURT (MTC), SAN JOSE, ANTIQUE, COMPLAINANT, VS. JERENCE P. HIPONIA, CLERK II, ELIZABETH B. ESCANILLAS, STENOGRAPHER I, WILLIAM M. YGLESIAS, PROCESS SERVER, AND CONRADO A. RAFOLS, JR., UTILITY AIDE, ALL OF THE SAME COURT, RESPONDENTS.

DECISION

VILLARAMA, JR., J.:

We resolve the complaint^[1] for dishonesty and habitual absenteeism filed by Judge Ma. Monina S. Misajon, now retired, against respondent Process Server William M. Yglesias.

Records show that Yglesias was absent for 6.5 days in January 2007,^[2] 10.5 days in February 2007,^[3] 3.5 days in March 2007,^[4] 10 days in April 2007,^[5] and 13 days in May 2007.^[6] Judge Misajon recommended that Yglesias's sick leave application for his successive 6-day absence in January 2007 be disapproved on the ground that he consulted a doctor only after his illness. As regards his absences in February and March 2007, Judge Misajon pointed out that Yglesias failed to file an application for sick or vacation leave. Judge Misajon also recommended that Yglesias's applications for sick leave in April and May 2007 be respectively disapproved for late filing and lack of a supporting medical certificate.

In his comment,^[7] Yglesias claims that he is not a tardy or lazy person. He points out that his attendance in June 2007 was already perfect after Judge Misajon retired on June 12, 2007. He claims that for years, he suffered Judge Misajon's wrath due to his blood relation to retired Clerk of Court Lagrimas Feranil who was also charged by Judge Misajon. He suffered depression and erratic blood pressure due to the constant pressure, stress and tension at the office. This is the main reason why he was sometimes late and absent in the office. Judge Misajon also refused to approve his leave application forms. While he wanted to perform his duties, he preferred to suffer in silence to avoid conflict with Judge Misajon who called him incompetent, untrustworthy and lazy and who gave him unsatisfactory performance rating for more than 10 years. He adds that Judge Misajon did not allow him to serve court processes alleging that he cannot be trusted. Indeed, Judge Misajon even allowed the police to serve court processes, leaving him with nothing to do. Judge Misajon's persecution made him lose self-esteem and lowered his morale that he no longer wanted to go to the office because Judge Misajon made him feel so inept. But now, with Judge Emilio Rodolfo Y. Legaspi as their Acting Judge, he was given a chance to prove his worth. Judge Legaspi allowed him to serve court processes. After long

years of oppression, he now feels confident and "in positive spirits." He thus prays that his comment be given consideration and the complaint against him be dismissed for lack of merit.

The Investigating Judge designated by the Court found that Yglesias is guilty of habitual absenteeism and that he deserves the penalty of dismissal for having committed the offense for the second time. In its evaluation report, the Office of the Court Administrator (OCA) agreed with the Investigating Judge. The OCA found as follows:

Respondent Yglesias's applications for sick leave for the months of January and April 2007 exceeded [5] days and said leave applications were not accompanied by any medical certificate to prove that he was indeed sick during those days. Also, the leave application for the month of April 2007 was filed only on May 21, 2007, or [21] days after the last day of the sick leave already taken in violation of the x x x rule that the leave application should be filed "immediately upon employee's return from sick leave". It is noted that a Medical Certificate issued by Dr. Lino S. Hernaez was attached to the May 2007 sick leave application xxx. However, despite being absent for 13 days, respondent Yglesias failed to notify [Judge Misajon] or his immediate supervisor of such illness xxx.

In addition, the absences of respondent Yglesias for [10.5] days in February 2007 x x x and x x x [3.5] days in March 2007 xxx may be considered "unauthorized absences" as the record does not disclose that respondent Yglesias applied for sick leave or for vacation leave.

x x x [I]t is clear that Yglesias incurred unauthorized absences for more than the allowable [2.5] days monthly leave credit for [5] months which is characterized under the Leave Law as habitual absenteeism.

Respondent Yglesias did not refute these findings in his Comment and during the investigation. His only explanation was that he was sometimes late and absent because he was suffering from depression and erratic blood pressure brought on by constant pressure, stress and tension at the office for more than [10] years and that [Judge Misajon's] persecutions, calling him as incompetent, untrustworthy or lazy has made him lose his self-esteem. These reasons hardly justify said absences because he cannot put the blame on [Judge Misajon].^[8]

After our own review of the records, we find Yglesias guilty of habitual absenteeism. He incurred the following unauthorized absences: 6 days in January, 10 days in February, 10 days in April, and 13 days in May, all in the first semester of the year 2007.

Yglesias's sick leave application for 6 successive days of absence on January 2, 3, 4, 5, 8 and 9, 2007 must be denied, not on the ground that he consulted a doctor only after his illness, but for lack of the required proof – a medical certificate – attesting that he was suffering from an illness. Sick leave is granted only on account of sickness or disability on the part of the employee concerned or any member of his

immediately family. And an application for sick leave in excess of 5 successive days must be accompanied by a proper medical certificate. These rules are clearly provided for under Sections 53 and 54 of the Omnibus Rules on Leave, issued by the Civil Service Commission (CSC), as follows:

SEC. 53. *Application for sick leave.* – All applications for sick leave of absence for one full day or more shall be made on the prescribed form and shall be filed immediately upon employee's return from such leave. Notice of absence, however, should be sent to the immediate supervisor and/or to the agency head. **Application for sick leave in excess of five (5) successive days shall be accompanied by a proper medical certificate.**

Sick leave may be applied for in advance in cases where the official or employee will undergo medical examination or operation or advised to rest in view of ill health duly supported by a medical certificate. In ordinary application for sick leave already taken not exceeding five days, the head of department or agency concerned may duly determine whether or not granting of sick leave is proper under the circumstances. In case of doubt, a medical certificate may be required.

SEC. 54. *Approval of sick leave.* – **Sick leave shall be granted only on account of sickness or disability** on the part of the employee concerned or of any member of his immediately family.

Approval of sick leave, whether with pay or without pay, is mandatory provided proof of sickness or disability is attached to the application in accordance with the requirements prescribed under the preceding section. Unreasonable delay in the approval thereof or non-approval without justifiable reason shall be a ground for appropriate sanction against the official concerned. (Emphasis and underscoring supplied.)

Thus, Yglesias's absences for 6 successive days in January 2007 are unauthorized. Regarding his half-day "absence" one morning, he was not required to file a sick or vacation leave application form therefor since it was less than 1 full day. Indeed, all applications for sick leave of absence for 1 full day or more shall be made on the prescribed form and shall be filed immediately upon the employee's return from such leave. Section 51 of the Omnibus Rules on Leave also requires that all applications for vacation leave of absence for 1 full day or more shall be submitted on the prescribed form for action by the proper head of agency 5 days in advance, whenever possible, of the effective date of such leave. Now, under Memorandum Circular No. 17, series of 2010, issued by the CSC, an employee is considered tardy for his absence in the morning.

Yglesias's absences for 10 full days in February 2007 are likewise unauthorized since he did not file an application for sick or vacation leave. Regarding his half-day "absence" one afternoon, he was not required to file a sick or vacation leave application form therefor. Now, under Memorandum Circular No. 17, series of 2010, issued by the CSC, such half-day absence is considered undertime.

In March 2007, Yglesias had 2 full-day absences and 3 half-day "absences." Since he failed to file an application for sick or vacation leave for his 2 full-day absences, these are deemed unauthorized. Regarding his 3 half-day "absences" in the afternoon, he was not required to file a sick or vacation leave application form therefor. These are now considered undertime.

Yglesias was absent also for 10 days on April 4, 10, 13, 17, 19, 20, 23, 24, 25, and 30, 2007. He filed his sick leave application for said absences on May 21, 2007. Clearly, he failed to file immediately his sick leave application for his absence on April 4 and 10 when he reported on April 11, failed to file immediately his application for his absence on April 13 when he reported on April 16, failed also to file immediately his application for his absence on April 17 when he reported on April 18, and likewise failed to file immediately for his absence on April 19 to 25 when he reported on April 26. As already mentioned, all applications for sick leave of absence for 1 full day or more shall be made on the prescribed form and shall be filed immediately upon the employee's return from such leave. Thus, Yglesias's application for sick leave was filed late insofar as his absences on April 4, 10, 13, 17, 19 to 25, 2007 (9 days) are concerned. But said application was timely filed with respect to his absence on April 30, 2007 since he was absent for 13 consecutive working days from May 2 to 21, 2007.

In addition, the OCA noted that there was no medical certificate to support his application for sick leave. As stated, Yglesias should have filed such application on April 11, 16, 18 and 26, 2007. If he did, no period covered by those applications exceeded 5 successive days and supporting medical certificates would not have been a mandatory requirement. But since he filed a single application for his 10-day absence in April 2007, a period exceeding his successive 5-day absence on April 19 to 25, 2007, he needed to attach a medical certificate to his application. It cannot be overemphasized that the proper procedure is to file a sick leave application immediately upon the employee's return from such leave.

Accordingly, Yglesias incurred 10 days of unauthorized absences in April 2007 as his sick leave application must be denied for lack of a supporting medical certificate. The application was also filed late with respect to his absence for 9 days on April 4, 10, 13, 17, 19 to 25, 2007.

Regarding his absences in May 2007, Yglesias attached a proper medical certificate^[9] to his sick leave application. Judge Misajon erred that the application was filed late since it was filed immediately upon Yglesias's return on May 22, 2007. What Yglesias failed to do, the OCA noted, is to inform Judge Misajon or his immediate supervisor of his illness. Indeed, the notice requirement is a very simple rule which Yglesias failed to follow. Given his 13-day absence in May 2007, Yglesias's failure to inform Judge Misajon or his supervisor of his illness is a valid ground to deny his sick leave application.

With the foregoing clarification, we agree with the Investigating Judge and the OCA that Yglesias was habitually absent. He incurred unauthorized absences exceeding the allowable 2.5 days monthly leave credit for 4 months in the first semester of 2007: 6 days in January, 10 days in February, 10 days in April, and 13 days in May. Under Administrative Circular No. 14-2002,^[10] an officer or employee shall be considered habitually absent if he incurs unauthorized absences exceeding the