578 Phil. 338

SECOND DIVISION

[G.R. No. 176150, June 25, 2008]

IBARRA P. ORTEGA, PETITIONER, VS. SOCIAL SECURITY COMMISSION, AND SOCIAL SECURITY SYSTEM, RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

Petitioner Ibarra P. Ortega assails the Court of Appeals' August 7, 2006 Decision[1] dismissing his petition for review and upholding the denial by respondent Social Security Commission (SSC) of his application for total permanent disability benefits, and the Resolution[2] of January 16, 2007 denying his motions for reconsideration and inhibition.

Petitioner, a member of respondent Social Security System (SSS), filed claims for partial permanent disability benefits on account of his condition of Generalized Arthritis and Partial Ankylosis,[3] which claims the SSS granted for a total monthly pension of 23 months.[4]

After the expiration of his disability pension, petitioner filed with the SSS Malabon Branch Office on April 26, 2000 a claim for total permanent disability benefits.[5] His application, docketed as BO-0000-1755, was denied, however, on the ground that he was already granted disability benefits for the same illness and physical examination showed no progression of illness.[6] Dr. Juanillo Descalzo III, SSS Malabon Branch senior physician, observed that petitioner merely had a "slight limitation of grasping movement for both hands."[7]

Aggrieved, petitioner filed before the SSC an unverified Petition of June 19, 2000,[8] alleging that the SSS denied his application despite the fact that his attending physician, Dr. Rafael Recto, Jr., diagnosed him to be suffering from **Trigger finger 4th (L) and thumb (L)**[9] while another private medical practitioner, Dr. Flo dela Cruz, diagnosed him to be also suffering from **Bronchial Asthma, Hypertension and Gastro-Esophageal Reflux Disease**.[10]

Further claiming to be afflicted with rheumatoid arthritis of both hands affecting all fingers and both palms,[11] petitioner contended that the medical opinion of the SSS physician who interviewed him for less than three minutes cannot prevail over the findings of his physicians who have been treating him over a long period of time.

Before taking cognizance of his appeal, the SSC directed the exhaustion of administrative remedies, by letter of June 30, 2000. The matter was thus referred to the SSS Office of the Medical Program Director for review of petitioner's disability claim.[12]

Meanwhile, by letter of July 17, 2000, the SSS Legal Department denied a reconsideration of the denial of his claim,[13] prompting petitioner to submit a letter-opposition of August 15, 2000.[14]

Upon referral of the SSC, the SSS Medical Program Department, through Dr. Carlota A. Cruz-Tutaan and Dr. Jesus S. Tan, confirmed that, upon examination of petitioner, there was no progression of his illness,[15] prompting petitioner to submit a letter-opposition of November 11, 2000 charging the SSS medical officers of issuing fraudulent medical findings.[16] Unperturbed, the SSS Medical Program Department stood its ground and denied with finality petitioner's claim, by letter of November 22, 2000.[17]

On January 29, 2001, SSC finally docketed petitioner's June 19, 2000 petition as SSC Case No. 1-15115-2001,[18] after petitioner complied with SSC's directives[19] to verify the petition and submit certain document-annexes. SSS then filed its Answer of May 31, 2001,[20] to which petitioner submitted a Reply of June 25, 2001. [21] After the August 10, 2001 pre-hearing conference,[22] the SSS filed its Position Paper of September 7, 2001 while petitioner submitted his Reply of October 19, 2001.

By Resolution of April 3, 2002,[23] the SSC denied petitioner's claim for entitlement to total permanent disability for lack of merit. And it opined that, considering that he had reached the retirement age of 60, on March 19, 1998, with 41 contributions to his name, petitioner may opt:

> (a) [t]o continue paying to the SSS monthly contributions (including employer's share) on his own to complete the required 120 monthly contributions in order to avail of the retirement pension benefit;
>
> (b) [to] leave his monthly contributions with the SSS for his and his family's future benefits; or
>
> (c) [to a]vail of the lump sum retirement benefit.[24]

Petitioner moved for reconsideration of the Resolution. The SSC thus directed the SSS to file its comment[25] and, by a subsequent order, to conduct a domiciliary visit and physical examination on petitioner to ascertain whether he could already qualify for such benefit.[26] In compliance therewith, Dr. Rebecca Sison, SSS senior physician, examined petitioner on August 29, 2002 and found no sufficient basis to warrant the granting of total permanent disability benefits to him.[27]

Petitioner's motion for reconsideration having been denied by Order[28] of January 29, 2003, petitioner appealed via Rule 43 to the Court of Appeals[29] which promulgated in CA-G.R. SP No. 75653 the assailed issuances affirming *in toto* the SSC Resolution and Order.

There is at the outset a need to thresh out procedural issues attending the petition drafted by petitioner himself, apparently without the aid of counsel. While the

petition was admittedly filed as a petition for certiorari under Rule 65, it contains a rider averring that it was filed also as a petition for review on certiorari under Rule 45.[30]

In not granting imprimatur to this type of unorthodox strategy, the Court ruled, in a similar case,[31] that a party should not join both petitions in one pleading. A petition cannot be subsumed simultaneously under Rule 45 and Rule 65 of the Rules of Court, nor may it delegate upon the court the task of determining under which rule the petition should fall.[32] It is a firm judicial policy that the remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[33]

Palpably, petitioner crafted this unconventional two-headed petition under no other pretext but to second-guess at the appropriate remedy. His apparent bewilderment led him to later rectify a supposed typographical error in the caption such that instead of "petition for review," the title be read as a "petition for certiorari."[34] The subsequent filing of the Correction of Clerical Errors served no redeeming purpose as it only evinced petitioner's decision to consider the petition as a special civil action for certiorari, which is an improper remedy.

It bears stressing that Rule 45 and Rule 65 pertain to different remedies and have distinct applications.[35] It is axiomatic that the remedy of certiorari is not available where the petitioner has the remedy of appeal or some other plain, speedy and adequate remedy in the course of law.[36] The petition for review under Rule 45 covers the mode of appeal from a judgment, final order, resolution or one which completely disposes of the case, like the herein assailed Decision and Resolution of the appellate court. There being already a final judgment at the time of the filing of the petition, a petition for review under Rule 45 is the appropriate remedy.

Petitioner failed to carve out an exception to this rule, as he did not- and could not- illustrate the inadequacy of an appeal as a remedy that could promptly relieve him from the injurious effects of the assailed judgment.[37] In fact, by seeking the same kind of reliefs via two remedies rolled into one pleading, he implicitly admits that an appeal suffices. Moreover, the probability of divergent rulings, a scenario transpiring in *G & S Transport Corp. v. CA,*[38] is far from obtaining in this case since the assailed issuances emanated from only one court and cannot be elevated separately in different fora.

While the Court may dismiss a petition outright for being an improper remedy,[39] it may, in certain instances where a petition was filed on time both under Rules 45 and 65 and in the interest of justice, proceed to review the substance of the petition and treat it as having been filed under Rule 45.[40] Either way, however, the present petition just the same merits dismissal since it puts to issue questions of fact rather than questions of law which are appropriate for review under a Rule 45 petition.

It is settled that the Court is not a trier of facts and accords great weight to the factual findings of lower courts or agencies whose function is to resolve factual matters.[41] It is not for the Court to weigh evidence all over again.[42] Moreover, 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 respect but finality when affirmed by the Court of Appeals.[43]

The requisite quantum of proof in cases filed before administrative or quasi-judicial bodies is neither proof beyond reasonable doubt nor preponderance of evidence. In this type of cases, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[44] In this case, substantial evidence abounds.

The conclusion that petitioner is not entitled to total permanent disability benefits under the Social Security Law was reached after petitioner was examined not just by one but four SSS physicians, namely, Dr. Juanillo Descalzo III, Dr. Carlota A. Cruz-Tutaan, Dr. Jesus S. Tan and Dr. Rebecca Sison.

The initial physical examination and interview revealed that petitioner had slight limitation of grasping movement for both hands. According to Dr. Descalzo, this finding was not enough to grant an extension of benefit since petitioner had already received benefits equivalent to 30% of the body. Responding to the allegation that the April 2000 physical examination was performed in a short period of time, the doctor credibly explained that petitioner's movements were already being monitored and evaluated from a distance as part of the examination of his extremities in order to minimize malingering and overacting.[45]

Meanwhile, the medical findings of Dr. Carlota A. Cruz-Tutaan and Dr. Jesus S. Tan in August and September 2000 were summarized as follows:

> Heart:
>
> - manifest regular rhythm
> - no murmurs
>
> Lungs:
>
> - on ausculation showed no evidence of wheezing
> - breath sounds are normal and;
> - he is not in a state of respiratory distress
>
> Hypertension:
>
> - Blood Pressure is 140/80, hence, under control
>
> Extremities: (Hands)
>
> - No deformities noted except for the right small finger, the distal interphalangeal joint is bent at about 30°. No abnormal limitation of movement noted on all the fingers, grasping has improved.[46]

Contrary to petitioner's asseverations, the SSC did not ignore the certifications of petitioner's attending physicians as, in fact, it ordered the SSS in June 2001 to conduct an investigation as to the medical findings and final diagnosis by his attending physicians.[47] It was surfaced that petitioner's medical records in the custody of Dr. Flo dela Cruz could not be found as they were allegedly destroyed by inundation.[48] And it was found that the July 10, 2001 letter-certification by Dr. Rafael Recto, Jr. only narrated the recurring condition of petitioner's trigger finger, the administration to him of local steroid injections, and the performance of surgical release on his left 4th trigger finger on June 16, 1998; and that he was diagnosed on August 28, 2000 with mallet finger (R, 5th), for which he was advised to undergo reconstructive surgery.[49]

Adopting a liberal attitude and exercising sound discretion, the SSC even directed the conduct of another physical examination on petitioner to judiciously resolve his motion for reconsideration. Pursuant thereto, Dr. Sison physically examined petitioner in August 2002, the results of which were reflected in a medical report, *viz*:

> Physical Examination:
>
> General Survey: well nourished, well developed, conscious, coherent but talks with sarcasm and arrogance.
>
> | | |
> |---|---|
> | EENT: | normocephalic, pinkish conjunctiva, anicteric sclerae; negative tonsillo-pharyngeal congestion |
> | C/L: | clear breath sounds, no wheezes; (-) dyspnea |
> | Heart: | normal rate, regular rhythm. |
> | Abdomen: | negative tenderness |
> | Extremeties: | no neurological and sensory deficit |
> | | no gross deformity, (+) scar, 4th finger (L) |
> | | no loss of grasping power for large and small objects |
> | | no loss of opposition between thumb and forefingers |
> | | can bend fully to reach toes |
> | | can bend both knees fully without pain or difficulty |
> | | can raise both arms above shoulder level without pain and difficulty |
> | | can bend both elbows without limitation |
>
> The member was requested to submit recent ECG, x-rays and other laboratory work-up results but he could not locate them during visit and would still look for the said medical documents and mail them to SSS.
>
> He was then advised to come to SSS, Diliman Branch for ECG and x-ray, however he refused.
>
> He also refused to affix his signature on the medical field service form to confirm the visit of our Medical Officer.