

## THIRD DIVISION

[ G.R. No. 146636, August 12, 2002 ]

**PABLO A. AUSTRIA, PETITIONER, VS. COURT OF APPEALS AND EMPLOYEES COMPENSATION COMMISSION (SOCIAL SECURITY SYSTEM), (CENTRAL AZUCARERA DE TARLAC), RESPONDENTS.**

### DECISION

**PUNO, J.:**

This is a petition for review of the Decision of the Court of Appeals dated February 29, 2000<sup>[1]</sup> and its Resolution dated September 8, 2000<sup>[2]</sup> in CA-G.R. No. 52688 entitled "Pablo Austria vs. Employees Compensation Commission (Social Security System), Central Azucarera de Tarlac." The Court of Appeals affirmed the Decision of the Social Security System (SSS) and the Employees Compensation Commission (ECC) denying petitioner's request for conversion of his permanent partial disability benefit under PD 626 as amended<sup>[3]</sup> to permanent total disability benefit.

The facts are as follows:

Petitioner Pablo A. Austria was employed as bag piler at Central Azucarera de Tarlac from June 1, 1977 to July 20, 1997. As bag piler, his duties were to:

- (1) carry and pile sacks of refined sugar;
- (2) relocate and move stock piles for shifting or return to the refinery;
- (3) assist the production checker in random weighing of production;
- (4) clean the warehouse, piling conveyor and its surroundings;
- (5) assist in the repair and maintenance work during off-season; and
- (6) do other related work assigned to him from time to time by his superior.<sup>[4]</sup>

In 1994, petitioner began to feel severe back pain. On November 18, 1994, petitioner underwent an MRI which revealed a small disc protrusion at L4 and L5 level. Petitioner underwent Laminectomy on March 17, 1995 at the Ramos General Hospital in Tarlac, Tarlac. The x-ray photographs taken on May 23, 1997, September 3, 1998, and September 28, 1998 revealed osteoarthritis of the lumbar spine.

On account of his osteoarthritis, petitioner filed with the SSS a claim for compensation benefits under PD 626 as amended. The claim was granted and petitioner was awarded permanent partial disability benefits for eight (8) months starting September 1, 1995, a second release for seven (7) months starting May 10, 1996, and a third release for fifteen (15) months starting April 1, 1997.

Petitioner thereafter requested the SSS for conversion of his permanent partial disability benefit to permanent total disability benefit. The SSS denied the request. It reasoned:

“Based on clinical records submitted, there is no progression of your illness which was already granted under previous EC disability. Granting of extension on your claim cannot be based solely on the findings on your lumbo-sacral X-ray hence they are not related to each other or of different disease entity.”<sup>[5]</sup>

On appeal, the ECC affirmed the decision of the SSS. The ECC held that considering the degree of his disability at the time he was separated from the service, petitioner has already availed of the maximum benefits to which he is entitled on account of his osteoarthritis.<sup>[6]</sup>

Petitioner elevated the case to the Court of Appeals via petition for certiorari. The appellate court dismissed the petition, ruling that the law does not allow the conversion of permanent partial disability to permanent total disability.<sup>[7]</sup>

Petitioner filed a petition before this Court to review the decision of the CA. Petitioner raises the sole issue:

“Whether or not the Honorable Court of Appeals erred in denying the claim for additional benefits in favor of the petitioner and not allowing the conversion of his (petitioner) permanent partial disability to permanent total disability.”<sup>[8]</sup>

We find merit in the petition.

PD 626 as amended provides three types of disability benefits to qualified employees: (1) temporary total disability, (2) permanent total disability, and (3) permanent partial disability. In the case at bar, petitioner was granted by the SSS, as affirmed by the ECC, permanent partial disability benefit, but he seeks to avail of permanent total disability benefit. Under Section 2 Rule VII of the Amended Rules on Employees Compensation, 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; and 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. We held in *Vicente vs. Employees' Compensation Commission*<sup>[9]</sup> that:

“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.”