



VIRGILIO G. PUNONGBAYAN, JR.

Appellant,

-versus-

ECC CASE No. SM-19508-0504-16

SOCIAL SECURITY SYSTEM (SSS)

Appellee.

x-----x

D E C I S I O N

This appeal seeks to review the decision of the Social Security System (SSS), dated April 1, 2016, denying the appellant's claim for additional Permanent Total Disability (PPD) benefits, under the Employees' Compensation Law (P.D. No. 626, as amended), for his **Fracture, Closed, Comminuted, Distal 3rd right Tibia-Fibula S/P (Status Post) Open Reduction Internal Fixation.**

Between 1992 and 2012, the appellant, Virgilio B. Punongbayan, Jr. (SSS No. 33-1649627-9), 43 years old at the time of the filing of the claim and a resident of Sta. Ana, Manila, was employed, intermittently, as Bosun of several shipping agencies. During the time of his employment, the appellant had the following duties and responsibilities:

1. Responsible for efficient deck operation and maintenance;
2. Operation and maintenance of paint airless sprayer, pneumatic and electric tools;
3. Inventory of deck stores, paint, anti-pollution materials and requisitioning;
4. Supervision in preparing cargo holds/tank for loading and cleaning hold bilges;
5. Supervision in opening, closing and securing hatch covers/tank;
6. Inspection of all cargo gear, checking with drawings and reporting to Chief Officer;
7. Renewal of wire or other ropes for cargo gear, safety equipment and pilot ladder;
8. Preparation of vessel for sea, heavy weather and port;
9. Holding of anchor;

10. Supervision in crane operation, handling and securing of cargo;
11. Controlling of ratings with regards to safe working procedures and punctuality;
12. Preparation of tools and equipment in advance and supervising work;
13. Reporting of problems related to work and his crew to the Chief Officer;
14. Observance of safety, quality and maintenance of cost effectiveness.

On July 20, 2012, the appellant sustained multiple fractures in the right leg while he was performing his duties as Bosun in the Deck Department of a foreign cargo vessel. He was initially treated at Hospital Sao Camilo, Brazil. Due to his condition, the appellant was repatriated to the Philippines. On August 15, 2012, he was declared unfit for sea duty and was separated from his employment.

Records reveal that the appellant was granted the following EC disability benefits due to his fracture in the right leg:

Type of Disability Benefits	No. of Days/Months	Corresponding Period
Temporary Total Disability (TTD) benefits	120 days	July 21, 2012-Nov. 17, 2012
TTD benefits	60 days	Nov. 18, 2012-Jan. 16, 2013
TTD benefits	50 days	Jan. 17, 2013-March 7, 2013
Permanent Partial Disability (PPD) benefits	8 months	March 26-Oct. 2013
PPD benefits	8 months	Oct. 1, 2014-May 2015

Records further reveal that since his repatriation, the appellant is unable to perform any gainful occupation.

Believing that he is still entitled to additional EC disability benefits, the appellant filed a claim for EC PTD benefits before the SSS Manila Branch (Branch). However, the Branch denied the claim reasoning that:

“... He (the appellant) is not entitled to SS/EC total disability claim based on Manual on Ratings of Physical Impairments. SS/EC Permanent Total Disability (PTD) exemplified loss of two limbs at or above the ankle or wrist, permanent complete paralysis of two limbs, etc.”

The SSS-Medical Claims Review Committee (MedCRC) sustained the denial of the branch on the basis of non-progression of illness.

On May 3, 2016, the Secretariat received the records of the case from the SSS for review purposes. On May 6, 2016, the Secretariat wrote a letter to the appellant requesting for the submission of his medical records of consultations from 2013 onwards due to his injury and recent X-ray examination results of his right tibia. On the same day, the Secretariat wrote a letter to the SSS requesting for copies of physical examination results of the appellant which were conducted at the SSS.

On May 11, 2016, the appellant personally delivered several copies of his medical records to the Secretariat. On May 31, 2016, the SSS sent, through email, two physical examination results of the appellant showing that the nature of disability of the appellant is “partial.”

On June 10, 2016, this case was submitted to the Technical Review Committee (Committee) for initial deliberation. The Committee decided to elevate this case to the Commission with a recommendation to grant additional EC PTD benefits on the basis of Article 192 (c) of P.D. No. 626, as amended. which provides that temporary total disability lasting continuously for more than one hundred twenty days shall be deemed total and permanent and on the basis of jurisprudence that “a disability is total and permanent under the Labor Code 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 regardless of whether he loses the use of any part of his body.” (Ibarra P. Ortega vs. SSC and SSS, G.R. No. 176150, June 25, 2008 citing Vicente vs. ECC).

The appeal is meritorious.

Herein appellant’s present medical condition was considered as work-connected, and as such, the appellant was awarded EC TTD benefits for a total of 230 days and EC PPD benefits for a total of 16 months. The issue to be settled in this case is whether the appellant is entitled to EC Permanent Total Disability (PTD) benefits considering that, with his fracture in his right leg, he can no longer perform his customary work or usual task which entail the full functional use of his lower extremities.

Definition of Permanent Total Disability

Article 190 of P.D. No. 626, as amended, defines permanent total disability in this manner, to wit:

“ART. 190. Permanent Total disability. (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in permanent total disability shall for each month until his death but not exceeding five years be paid by the system during such disability an income benefit xxx

xxx

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days xxx;

xxx

Section 2 (b), Rule VII of the Implementing Rules of Title II, Book IV of the Labor Code, as amended, or the Amended Rules on Employees' Compensation partly reads:

“Sec. 2. Disability.- xxx

(b) 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”

Distinction between Permanent Partial and Permanent Total Disability

In the case of *Vicente vs. ECC* (193 SCRA 190, January 23, 1991), the Supreme Court laid down the test and distinction between Permanent Total Disability and Permanent Partial Disability in this manner, to wit:

“... while permanent total disability invariably results in an employees' loss of work or inability to perform his usual work, permanent partial disability, on the other hand occurs when an employee loses the use of any particular anatomical part of his body which disables him to continue with his former work.

“Stated otherwise, 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' Compensation (which in a more detailed manner, describes what constitutes temporary total disability), then said employee undoubtedly suffers from permanent total disability regardless of whether or not he loses the use of any part of his body."

In the case of *Bejerano vs. ECC* (G.R. No. 84777, January 30, 1992), the Supreme Court elucidates the degree of permanent total disability in this manner, to wit:

"...permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of a similar nature that she was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do.

"It does not mean state of absolute helplessness, but inability to do substantially all material acts necessary to prosecution of an occupation for remuneration or profit in substantially customary and usual manner.

"Permanent total disability is the lack of ability to follow continuously some substantially gainful occupation without serious discomfort or pain and without material injury or danger to life."

In a number of cases, the Supreme Court ruled that:

"...the early retirement of an employee due to work-related ailment proves that indeed the employee was disabled totally to further perform his assigned task, and to deny permanent total disability benefits when he was forced to retire would render inutile and meaningless the social justice precept guaranteed by the Constitution. Where an employee was forced to retire at an early age due to his illness, and illness persisted even after retirement, resulting in his present unemployment, such condition amounts to total disability which should entitle him to the maximum benefits allowed by law. (*GSIS v. CA*, 363 Phil. 585, 592 [1999]; *Ijares v. CA*, 372 Phil. 9 [1999]); *Daluyon vs. ECC*, G.R. No. 85133, Oct. 15, 1991; *Abaya v. ECC*, G.R. No. 64255, Aug. 16, 1999; *Laginlin vs. WCC*, G.R. No. L-45785; *GSIS v. CA*, G.R. No. 117572, Jan. 29, 1998; *Aquino v. ECC*, G.R. No. 89558, Aug. 22, 1991; *Bejerano v. ECC*, G.R. No. 84777, Jan. 30, 1992)

In *Austria v. Court of Appeals*, the Supreme Court held that there is nothing in the law which prohibits the conversion of PPD to PTD benefits if it is shown that the employee's ailment qualifies as such. The grant of PTD benefit to an employee who was initially compensated for PPD but is found to be suffering from PTD would not be prejudicial to the government so as to give it reason to deny the claim. The Court has in fact allowed in the past the conversion of PPD benefit to PTD benefit. These rulings are consistent with the primary purpose of P.D. No. 626, that is, to provide meaningful protection to the working class against the hazards of disability, illness and other contingencies resulting in loss of income, as well as the Constitutional mandate to afford full protection to labor. Notably, a person's disability might not emerge at one precise moment in time but rather over a period of time. It is possible that an injury which at first was considered to be temporary may later on become permanent, or one who suffers a partial disability becomes totally and permanently disabled by reason of the same cause. (G.R. No. 146636, Aug. 12, 2002 cited in *GSIS v. Casco*, G. R. No. 173430, July 28, 2008; citing *SSC and SSS v. CA and Rago*, G.R. No. 152058, September 27, 2004 citing *Vicente v. ECC* [193 SCRA 190 [1991]]; *SSS v. Maputi* [SC Resolution] G. R. No. 217867, June 17, 2015 sustaining the decision of the Court of Appeals in *Elvis Maputi v. SSS* [CA-G.R. SP No. 128393, Oct. 30, 2014]).

Inability of the appellant to perform any gainful occupation for a continuous period exceeding 120 days

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 (*SSC and SSS v. CA and Rago*, G.R. No. 152058, Sept. 27, 2004 citing *Vicente v. ECC*, 193 SCRA 190 [1991]). In this case, the appellant had not been able to continue his usual work as Bosun after he sustained his injury while performing his duty onboard a vessel. This Commission takes note of the fact that the SSS previously approved the grant to the appellant of EC TTD benefits for a total of 230 days and EC PPD benefits for a total of 16 months. The grant of EC PPD benefits is an apparent recognition that the appellant was unable to perform any gainful occupation for a continuous period exceeding 120 days.

WHEREFORE, the appealed decision is hereby **REVERSED**. The SSS is ordered to pay herein appellant the corresponding EC PTD benefits reckoned from June 2015 or after his EC PPD benefits ended on May 31, 2015.

SO ORDERED.

**CITY OF MAKATI,
June 21, 2016.**



BOARD RESOLUTION NO. 16-06-24

Approving the Recommendations of the Technical Review Committee (TRC) on three (3) EC Appealed Cases from the GSIS and One (1) EC Appealed Case from the SSS

WHEREAS, Article 180 of P.D. No. 626, as amended, partly provides:

"ART. 180. Settlement of Claims.- The System shall have original and exclusive jurisdiction to settle any dispute arising from this Title with respect to coverage, entitlement to benefits, collection and payment of contributions and penalties thereon, or any other matter related thereto, **subject to appeal to the Commission...**" (emphasis supplied)

WHEREAS, on April 20, 2016, the Technical Review Committee (TRC) has deliberated on the following EC appealed cases from the GSIS. The recommendations of the TRC are as follows:

I. GSIS

<i>Title of the Case/ Nature of Appeal</i>	<i>TRC Recommendation</i>
1.1. Bonode Susana J. vs. GSIS (GM-19510-0527-16) Nature of Claim: <i>disability benefits due to Coronary Artery Disease; S/P AMI (Acute Myocardial Infarction)</i> <i>Occupation: Agriculturist II</i>	For Award
1.2. Dela Cruz, Ma. Teresa C. vs. GSIS (GM-19509-0517-16) Nature of Claim: <i>disability benefits due to Cerebrovascular Disease (CVD), infarct, left cerebellar with Obstructive Hydrocephalus; Hypertension S/P (status-post) Ventricular Shunt (VPS)</i> <i>Occupation Public School Teacher:</i>	For Denial

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Board Secretary III

1.1. Soriano, Ma. Teresa M. vs. GSIS (GL-19511-0602-16) Nature of Claim: PTD <i>benefits due to CVD Infarct, Multiple and RMCA, Left Thalamic</i> Occupation/Position: Assistant Secretary, DOLE	For Denial
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II.SSS

Title of the Case/ Nature of Appeal	TRC Recommendation
II.1 Punongbayan, Virgilio, Jr. B. vs. SSS (SM-19508-0504-16) Nature of Claim: PTD <i>benefits due to Fracture, Tibia-Fibula, right</i> Occupation/Position: Bosun (Seaman [cargo vessel])	For Award

WHEREAS, considering that this Commission is mandated to resolved EC appealed cases within the period of 20 working days, the abovementioned EC appealed cases are deemed resolved on the date of start of routing, or on June 21, 2016, by the Secretariat of this Resolution to the other members of the Commission for purposes of compliance with the prescribed 20 working day PCT;

ON THE BASIS OF THE CONCURRENCE OF THE MEMBERS OF THE COMMISSION

This Commission **RESOLVES AS IT HEREBY RESOLVED** that the recommendations of the TRC in the following cases be approved:

I. GSIS

Title of the Case	TRC Recommendation
1.1. Bonode Susana J. vs. GSIS (GM-19510-0527-16)	For Award

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Dianne Lilibeth S. Bautista
Board Secretary III

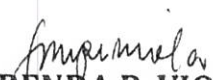
1.2. Dela Cruz, Ma. Teresa C. vs. GSIS (GM-19509-0517-16)	For Denial
1.3.Soriano, Ma. Teresa M. vs. GSIS (GL-19511-0602-16)	For Denial

II.SSS

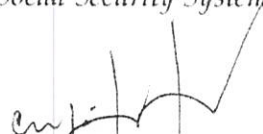
Title of the Case/ Nature of Appeal	TRC Recommendation
2.1 Punongbayan, Virgilio, Jr. B. vs. SSS (SM-19508-0504-16) Nature of Claim: PTD benefits due to Fracture, Tibia-Fibula, right Occupation/Position: Bosun (Seaman [cargo vessel])	For Award

DONE, this 21st day of June 2016, in Makati City, Philippines.


CIRIACO A. LAGUNZA III
Chairperson-Alternate
Department of Labor and Employment


BRENDA P. VIOLA
Member-Designate
Social Security System

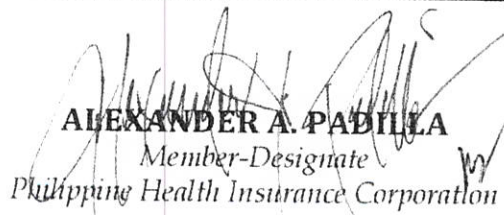

DIONISIO C. EBDANE, JR.
Member-Designate
Government Service Insurance System


CARLITO P. ROBLE
Member
Employees' Sector

Absent
MIGUEL B. VARELA
Member
Employers' Sector


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Board Secretary III

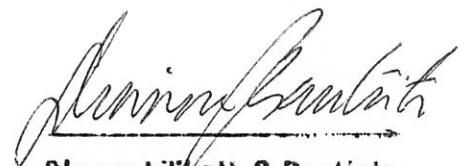
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ALEXANDER A. PADILLA
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ROBERT S. MARTINEZ
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STELLA ZIPAGAN-BANAWIS
Member
Employees' Compensation Commission - Secretariat

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