Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

EDGARDO M. PAGLINAWAN,
Petitioner,

- *versus* -

DOHLE PHILMAN AGENCY, INC., and/or DOHLE-IOM (LIMITED) and/or MANOLO T. GACUTAN,
Respondents.

G.R. No. 230735

Present:

PERLAS-BERNABE, *S.A.J.*,
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, *JJ.*

Promulgated:

APR 04 2022

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DECISION

HERNANDO, *J.*:

This petition for review on *certiorari*[1] assails the December 14, 2016 Decision[2] and March 21, 2017 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 141363, which affirmed the March 3, 2015 Decision[4] and May 25, 2015 Resolution[5] of the National Labor Relations Commission (NLRC). The

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1 *Rollo*, pp. 32-59.
2 Id. at 433-452. Penned by Associate Justice Elihu A. Ybañez, and concurred in by Associate Justices Danton Q. Bueser and Victoria Isabel A. Paredes.
3 Id. at 454-455.
4 Id. at 321-335. Penned by Presiding Commissioner Herminio V. Suelo, and concurred in by Commissioners Angelo Ang Palaña and Numeriano D. Villena.
5 Id. at 353-355. Penned by Commissioner Angelo Ang Palaña, and concurred in by Commissioner Numeriano D. Villena.

NLRC reversed and set aside the December 29, 2014 Decision[6] of the Labor Arbiter (LA) that ordered respondents Dohle Philman Agency, Inc. (Dohle), Dohle-IOM (Limited), and Manolo T. Gacutan to pay petitioner Edgardo M. Paglinawan permanent total disability compensation and attorney's fees.

The Factual Antecedents:

This case arose from a complaint[7] for the recovery of permanent and total disability benefits, sickness allowance, and attorney's fees, filed by petitioner against respondents.

Petitioner averred that Dohle employed him as engine and deck fitter for and in behalf of foreign principal Dohle-IOM (Limited) on board the vessel M/V Tamina.[8] He signed the contract of employment on March 19, 2013, which was approved by the Philippine Overseas Employment Administration (POEA) on the same day.[9]

In the course of his employment, he was constantly exposed to dust and chemicals.[10] He performed strenuous tasks from time to time.[11] His daily work hours extended up to the late hours of the night, causing tremendous strain and fatigue.[12] Extreme varying temperature (as he moved from the hot engine room to the cold engine control room and vice versa), harsh sea weather conditions, frequent adjustment to different time zones, and homesickness, likewise contributed to his stressful life on board the vessel.[13]

Sometime in July 2013, petitioner suffered loose bowel movement and bloody stool.[14] On August 11, 2013, he was brought and admitted to Hospital Velmar in Mexico City.[15] He underwent laboratory examinations and CT scan. There was a note of mass from the rectal margin, which, after biopsy, showed diffuse lymphoid hyperplasia.[16] He was discharged on August 18, 2013 and was subsequently medically repatriated.[17]

Upon repatriation, petitioner was referred to [Marine Medical Services] Metropolitan Medical Center for treatment under the care of the company-

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6 Id. at 211-222. Penned by Labor Arbiter Cheryl M. Ampil.
7 Id. at 76-77.
8 Id. at 434.
9 Id. at 66-67.
10 Id. at 435.
11 Id.
12 Id.
13 Id.
14 Id.
15 Id.
16 Id. at 435-436.
17 Id. at 436.

designated physician.[18] He underwent *laparoscopic cholecystectomy*, and was diagnosed with *lower gastro intestinal bleeding secondary to ulcerative colitis*; *iron deficiency anemia*; *cholelithiasis*; *s/p laparoscopic cholecystectomy*.[19]

Despite the treatment, petitioner maintained that he was not restored to his prior health status.[20] Thus, he sought the opinion of Dr. Bonifacio Q. Flores and of Dr. Rommel F. Galvez (Dr. Galvez), an Internist-Cadiologist; Dr. Galvez opined that petitioner was unfit in any capacity to work as a seafarer.[21] Petitioner thus sought payment of disability benefits from Dohle, but to no avail,[22] resulting to the filing of the instant complaint.

Respondents had the same narration of events up to the point of petitioner's medical repatriation.[23] Respondents aver that after arrival, petitioner was referred to the company-designated physicians at Marine Medical Services Metropolitan Medical Center under the medical coordination of Dr. Robert D. Lim (Dr. Lim).[24] Petitioner was initially examined and was subsequently referred to a gastroenterologist and surgeon.[25] The specialists recommended that petitioner be admitted for closer monitoring and further tests; petitioner then underwent laboratory examinations, CT scan, and rectal biopsy.[26]

On September 16, 2013, petitioner was diagnosed with *lower gastro intestinal bleeding secondary to ulcerative colitis*; *iron deficiency anemia*; *cholelithiasis*; *s/p laparoscopic cholecystectomy*.[27] The company-designated physician also opined that petitioner's diagnosed illnesses are not work-related.[28]

Subsequently, petitioner was again admitted at the hospital for *laparoscopic cholecystectomy*.[29] He was declared unfit for sea duties for a period of approximately three months.[30] The medical certificate dated September 27, 2013 issued by the company-designated physician states that

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18 Id.
19 Id.
20 Id.
21 Id.
22 Id.
23 Id. at 436-437.
24 Id. at 437.
25 Id.
26 Id.
27 Id.
28 Id.
29 Id. at 438.
30 Id.

petitioner's *ulcerative colitis* and the secondary illnesses are not work related.[31]

Due to the absence of work-relation, respondents terminated petitioner's further medical treatment, and paid him sickness allowance.[32]

Ruling of the Labor Arbiter:

In a December 29, 2014 Decision[33] the LA ruled in favor of petitioner. The arbiter held that petitioner's illness is work-aggravated despite absence of evidence to show work-relation.[34] The LA took into consideration respondents' alleged admission in their position paper that "factors such as stress and eating certain foods [sic] do not cause ulcerative colitis but may worsen the symptoms."[35] Thus, the LA held that the illness is work-aggravated and ordered respondents to pay petitioner USD60,000.00 as permanent total disability compensation and USD6,000.00 as attorney's fees. The *fallo* of the Decision provides:

> WHEREFORE, respondent Dohle Philman Agency, Inc. and/or respondent Dohle-IOM (Limited) and/or respondent Manolo T. Gacutan are hereby ordered to pay the complainant the following amounts:
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> 1. US$60,000.00 representing permanent total disability compensation; and
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> 2. US$6,000.00 representing attorney's fees.

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31 Id. CA *rollo*, p. 133. The pertinent portion of the medical certificate as cited in the CA Decision states:

> Ulcerative Colitis causes may be related to dietary, genetic or autoimmune-related predisposition. It is not work-related.
>
> Cholelithiasis is caused by supersaturation of bile with cholesterol salts and is not work-related.
>
> His iron deficiency anemia and thrombocytosis (elevated platelet count) were brought about by blood loss secondary to his ulcerative colitis.
>
> Prognosis for returning to sea duties is guarded due to the risk of recurrent flare up of ulcerative colitis (diarrhea, cramping abdominal pains, lower gastro-intestinal bleeding)
>
> His estimated length of further treatment is approximately 3 months before he reached [sic] maximum medical improvement.
>
> His monthly estimated cost of treatment (not including his Laparoscopic Cholecystectomy) is approximately PHP 30,000.00 (includes professional fees, medications, laboratory examinations and miscellaneous).
>
> For your perusal.

32 Id. at 439.
33 Id. at 211-222.
34 Id. at 439.
35 Id.

SO ORDERED.[36]

Aggrieved, respondents appealed to the NLRC.

Ruling of the National Labor Relations Commission:

In its March 3, 2015 Decision,[37] the NLRC reversed the LA's findings. The NLRC found that there was no reasonable connection between petitioner's work and illness.[38] The LA erred in concluding that petitioner's illness was work-aggravated on the basis of respondents' admission in their position paper that stress and onboard diet worsen the symptoms but not the illness itself—in medical terms, symptoms and illnesses are different from each other.[39] The NLRC also did not give credit to the certificate issued by petitioner's doctor that his illness is work-related as it was self-serving and bereft of evidentiary value.[40] The Pre-Employment Medical Examination likewise did not portray the seafarer's real state of health as it merely determines one's fitness for sea service upon application.[41]

The dispositive portion of the NLRC Decision reads:

> **WHEREFORE,** the foregoing premises considered, the appeal being impressed with merit, judgment of the Labor Arbiter dated December 29, 2014 is hereby **REVERSED AND SET ASIDE** and a new one entered **DISMISSING** the complaint for lack of merit.
>
> **SO ORDERED.**[42]

Petitioner filed a motion for reconsideration but was subsequently denied by the NLRC in its May 25, 2015 Resolution.[43] Thus, he filed a petition for *certiorari* before the CA.

Ruling of the Court of Appeals:

In its December 14, 2016 Decision,[44] the CA dismissed the petition for *certiorari* and affirmed the NLRC findings. Petitioner's illness, *ulcerative colitis*, is disputably presumed to be work-related for being not listed as an occupational disease under the POEA–Standard Employment Contract (POEA-

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[36] Id. at 222.
[37] Id. at 321-335.
[38] Id. at 440.
[39] Id.
[40] Id.
[41] Id. at 440-441.
[42] Id. at 334-335.
[43] Id. at 353-355.
[44] Id. at 433-452.

SEC); in this regard, respondents were able to present evidence to dispute the presumption.[45] The company-designated physician unequivocally declared that petitioner's illness is not work-related.[46] Further, petitioner filed the complaint without medical support and relied only on self-serving allegations.[47] While petitioner sought (although belatedly) the opinion of Dr. Galvez, who declared him unfit to work, the doctor failed to indicate the work-relation of his illness; it is also clear that Dr. Galvez did not examine him and based the findings only from petitioner's claim of bleeding.[48] Thus, the NLRC did not err in giving more weight to the company-designated physician's findings.

Petitioner's belated seeking of the opinion of Dr. Galvez (a month after the filing of the complaint) made his claim premature as there was still no cause of action to claim disability benefits at the time of the filing.[49]

On the claim that the illness was work-aggravated, the CA reiterated that petitioner failed to show by substantial evidence that his illness resulted from or was aggravated by his work.[50]

Petitioner moved for reconsideration, but was denied by the CA in its March 21, 2017 Resolution.[51] Hence, this petition.

The Petition:

Petitioner argues that the presumption of work-relatedness was not disputed by respondents because the company-designated physician and his team: (a) will not make a report unfavorable to the company that retains their services; and, (b) are not specialists on the medical case of petitioner.[52] Thus, the CA erred in relying on the findings of the company-designated physician.

Second, on the issue of prematurity, petitioner claims that respondents raised this issue for the first time before the CA.[53] Respondents, therefore, have waived this defense as it should have been raised at the earliest instance.[54] Assuming that petitioner indeed had no supporting medical certificate yet at the time of filing, this does not mean that petitioner was not telling the truth on his

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45 Id. at 444-445.
46 Id. at 445.
47 Id. at 446.
48 Id. at 446, 448.
49 Id. at 448.
50 Id. at 450.
51 Id. at 454-455.
52 Id. at 38-39.
53 Id. at 41.
54 Id.

medical condition.[55] Petitioner adds that as he was unable to work for 120 days, his disability should be considered permanent as provided by law.[56] He claims that his cause of action stems from the company-designated physician's failure to disclose findings and the lapse of the 120-day period without an assessment. Petitioner insists that the absence of a medical assessment from his own physician shall not render his cause of action inexistent.[57]

Third, petitioner avers that he was able to show by substantial evidence that the working conditions onboard aggravated or contributed to the advancement of his illness.[58]

Respondents, in their comment,[59] counter that the physicians who examined petitioner are privy and knowledgeable of his condition. Petitioner requested and was issued a clinical history for social security benefits.[60] This stated the symptoms he suffered from, as well as the tests conducted that became the basis for his diagnosis.[61] Dr. Esther G. Go (the Assistant Medical Coordinator in Dr. Lim's team) also issued a medical certification at the instance of petitioner.[62] Respondents add that petitioner's argument that the company-designated physician will not issue an opinion unfavorable to the company is baseless and a mere suspicion — petitioner could have easily procured a different opinion prior to the filing of the complaint.[63]

On prematurity and lack of cause of action, respondents posit that they raised the issue in their position paper filed before the LA.[64] On the 120-day rule, respondents state that the rule provides that when the company-designated physician neglects to render a final assessment within 120 days, the law comes in and creates a presumption that the seafarer suffers a permanent total disability; in this case, the company-designated physician rendered a medical report within the period.[65] As the findings here are unfavorable to petitioner, it follows that he must have obtained a contrary medical report from a doctor of his choice, and a third favorable opinion from a doctor jointly appointed with the company for his cause of action to accrue.[66]

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55 Id.
56 Id. at 42, 44.
57 Id. at 44-45.
58 Id. at 47-53.
59 Id. at 457-502.
60 Id. at 464-470.
61 Id.
62 Id.
63 Id. at 470-472.
64 Id. at 472-473.
65 Id. at 473-479.
66 Id. at 479.

Lastly, respondents submit that petitioner failed to show by substantial evidence that his illness was work-related or even work-aggravated.[67]

Petitioner filed a reply and reiterated his arguments.[68]

Issue

The issue boils down to whether petitioner is entitled to permanent disability benefits.

Our Ruling

The petition lacks merit. The Court affirms the ruling of the CA. Petitioner is not entitled to permanent disability benefits.

Pursuant to its mandate of securing the "best terms and conditions of employment of Filipino contract workers," as well as promoting and protecting "the well-being of Filipino workers overseas," the POEA formulated the standard employment contract for seafarers.[69] The POEA-SEC is deemed incorporated to petitioner's employment contract, and it governs his claim for permanent disability benefits.[70] As petitioner's employment contract was signed and approved by the POEA on March 19, 2013, POEA Memorandum Circular No. 10-10[71] (2010 POEA-SEC) applies.

Section 20 (A) of the 2010 POEA-SEC provides that for an illness to be compensable, two elements must concur: (a) the injury or illness must be work-related; and, (b) the work-related injury or illness must have existed during the term of the seafarer's employment contract.[72] The first element is the one in contention in this case.

The 2010 POEA-SEC defines a work-related illness as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."[73] Section 20 (A) further provides that "illnesses not listed in Section 32 of this Contract are disputably presumed as

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67 Id. at 483-497.

68 Id. at 507-528, citing *Remigio v. National Labor Relations Commission*, 521 Phil. 330, 346 (2006).

69 *Destriza v. Fair Shipping Corp.*, G.R. No. 203539, February 10, 2021. Executive Order No. 247, Reorganizing the Philippine Overseas Employment Administration and for Other Purposes (1987).

70 See id.

71 Memorandum Circular No. 10, Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships (2010).

72 *Razonable, Jr. v. Torm Shipping Philippines, Inc.*, G.R. No. 241620, July 7, 2020.

73 Memorandum Circular No. 10, supra note 71, Definition of Terms, Item No. 16.

work-related."[74] In other words, illnesses not listed in the POEA-SEC may still be compensable as they are treated as disputably presumed to be work-related. There is no automatic compensation, however, as the seafarer has to prove the correlation of his illness to the nature of his work and the conditions for compensability should be satisfied.[75]

Section 32-A provides for the conditions of compensability for listed occupational diseases: (a) the seafarer's work must involve risks described therein; (b) the disease was contracted as a result of the seafarer's exposure to the described risks; (c) the disease was contracted within a period of exposure and under such other factors necessary to contract it; and, (d) there was no notorious negligence on the part of the seafarer. The seafarer must prove by substantial evidence that "there is a reasonable causal connection between his illness and the work for which he has been contracted."[76] Case law teaches that these conditions apply to those illnesses not listed as an occupational disease in the 2010 POEA-SEC.[77]

In the instant case, it is undisputed that petitioner's illness, *ulcerative colitis*, is not listed as an occupational disease in the 2010 POEA-SEC. Thus, there is a disputable presumption that it is work-related. Petitioner, however, still bears the burden and must still prove by substantial evidence the reasonable causal connection between his *ulcerative colitis* and the nature of his work as engine and deck fitter. In this regard, he failed.

The Court agrees with the CA that petitioner failed to prove by substantial evidence the work-relatedness of his illness. Records do not show how his work in the vessel caused the development of his illness. There is no evidence of the link or relatedness between the illness and his work. Petitioner merely relied on bare allegations that the work conditions and diet onboard made him sick. It is settled that awards of disability compensation cannot be based on mere general averments or speculations.[78] The same analysis applies to the allegation that his illness was work-aggravated.[79] Petitioner failed to show by substantial evidence that his illness was related to or was aggravated by his work.

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74 Id. sec. 20 (A).

75 *Razonable, Jr. v. Torm Shipping Philippines, Inc.*, supra note 72.

76 Id.; *Scanmar Maritime Services, Inc. v. De Leon*, 804 Phil. 279, 288 (2017).

77 See note 75.

78 *Razonable, Jr. v. Torm Shipping Philippines, Inc.*, supra note 72; *Destriza v. Fair Shipping Corp.*, supra note 69.

79 See *Razonable, Jr. v. Torm Shipping Philippines, Inc.*, supra note 72; see *De Jesus v. Inter-Orient Maritime Enterprises, Inc.*, G.R. No. 203478, June 23, 2021.

On the other hand, the company-designated physician issued a medical report dated September 27, 2013, which clearly stated that petitioner's illness is not work-related.[80] The report of a company-designated physician is binding when not refuted by the seafarer's physician of own choice and a third doctor.[81] Petitioner failed to present a contrary medical opinion. The CA found that his availment of a second physician was belated — he consulted a second physician only after he filed the complaint for disability benefits. Further, the NLRC and appellate court found that petitioner's appointed physician, in rendering his certification, did not personally examine or diagnose petitioner; thus, his certification is not reflective of petitioner's actual condition.[82] Hence, it is proper to rely on the company-designated physician's report that petitioner's illness is not work-related.

Considering the lack of substantial evidence from petitioner's side and the great weight accorded to the company-designated physician's medical report, denial of disability benefits is only proper.

In this connection, the Court likewise agrees that petitioner's claim is premature. For a seafarer to have basis to pursue an action for total and permanent disability benefits, any of the following instances must be present:

> (a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;
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> (b) 240 days had lapsed without any certification being issued by the company-designated physician;
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> (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B (3) of the POEA-SEC are of a contrary opinion;
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> (d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;
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> (e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;

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80 *Rollo*, p. 438. CA *rollo*, p. 133.

81 See *Idul v. Alster Int'l. Shipping Services, Inc.*, G.R. No. 209907, June 23, 2021; *Philippine Transmarine Carriers, Inc. v. San Juan*, G.R. No. 207511, October 5, 2020. Referral to a third doctor presupposes a contrary opinion by the physician appointed by the seafarer.

82 *Rollo*, pp. 333-334, 446-447.

> (f) **the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;**
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> (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and
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> (h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.[83]

In *Philippine Transmarine Carriers, Inc. v. San Juan,*[84] the Court stated that the seafarer's claim therein is prematurely filed because at the time of filing, the seafarer is under the belief that he is totally and permanently disabled from rendering work as he was unable to resume work since his repatriation, and that he was not yet armed with a medical certificate from his physician of choice.[85] It was only after the filing of the complaint where the seafarer sought the opinion of his own physician, which became the basis of his claiming for permanent total disability benefits.[86] Items (a) to (c) in the enumeration were referred to in this case.

Further, in *Daraug v. KGJS Fleet Management Manila, Inc.*,[87] the Court stated that the seafarer's claim was likewise prematurely filed as he had yet to consult his own physician; on the contrary, he was armed with the company-designated physician's report that he is fit to work, and his own conclusion that the injury was work-related.[88] Item (c) in the enumeration was referred to in this case.

As can be gleaned from these cases, a claim for total and permanent disability benefits may be considered prematurely filed if there is no contrary opinion from the seafarer's physician of own choice, and a third doctor as required depending on the applicable scenario in the enumeration provided above.

Relevant to the instant case is item (f), which provides that the cause of action accrues when the company-designated physician issues a finding that the seafarer's illness is not work-related, but the physician of choice and a third doctor found otherwise that the seafarer is unfit to work. As stated, the

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83 *Guadalquiver v. Sea Power Shipping Enterprise, Inc.*, G.R. No. 226200, August 5, 2019, citing *Scanmar Maritime Services, Inc. v. Hernandez, Jr.*, 829 Phil. 624, 634 (2018). Emphasis supplied.
84 G.R. No. 207511, October 5, 2020.
85 Id.
86 Id.
87 750 Phil. 949 (2015).
88 Id. at 964.

company-designated physician in this case has issued a medical certification that petitioner's illness is not work-related. However, petitioner did not have the required contrary opinion as he only availed of a second opinion after he filed the complaint.

To recall the events based on the records: (a) September 27, 2013 – the company-designated physician issued a medical report, which clearly stated that petitioner's illness is not work-related;[89] (b) January 7, 2014 – petitioner filed the instant complaint for the recovery of permanent and total disability benefits, sickness allowance, and attorney's fees;[90] and, (c) February 19, 2014 – date of the medical certificate issued by petitioner's physician of choice (Dr. Galvez) stating that he is unfit to work as a seafarer.[91] It is thus clear that petitioner had already filed his complaint before he sought the opinion of a second physician. When he filed his complaint, he was not armed with a contrary or different opinion as required to refute the opinion of the company-designated physician; he merely relied on his bare allegations and speculations. Thus, and considering the Court's pronouncements in various case law as cited, the CA is correct in holding that petitioner's claim is premature.

Also, the Court is convinced that this issue was not belatedly raised by respondents. Respondents adequately raised the lack of a contrary opinion by a second and third doctor in their position paper filed at the LA level.[92]

The Court likewise notes that the 120-day rule is immaterial to this case. The company-designated physician rendered a final assessment on September 27, 2013, which is well within 120 days from petitioner's medical repatriation on August 20, 2013.[93]

In sum, the Court finds that petitioner is not entitled to disability benefits for his failure to timely procure a second physician's opinion, and for failing to show that his illness is work-related or work-aggravated.

WHEREFORE, the petition is **DENIED.** The December 14, 2016 Decision and March 21, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 141363 are **AFFIRMED.**

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89 *Rollo*, p. 438. CA *rollo*, p. 133.
90 Id. at 76-77.
91 Id. at 106.
92 See id. at 473-474. See CA *rollo*, pp. 82 and 99-104.
93 Id. at 437-438. Id. at 120 and 133.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice