REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **13 July 2020** *which reads as follows*:

"**G.R. No. 243783 (*NYK-Fil Ship Management, Inc./International Cruise Services Ltd. v. Federico G. Enriquez*)**. – The Court resolves to deny the petition.

We first stress that this Court is not a trier of facts. Factual issues are not proper subjects of this Court's power of judicial review. Well-settled is the rule that only questions of law can be raised in a petition for review under Rule 45 of the Rules of Civil Procedure.[1] The present petition presents both question of fact and question of law. To resolve the arguments raised by petitioners would involve a review of the facts of the case which unfortunately is not the function of this Court.

In any event, a review of the records of the case will not result in a different outcome.

Permanent disability is defined as the inability of a worker to perform his job for more than 120 days (or 240 days, as the case may be), regardless of whether or not he loses the use of any part of his body. Total disability, meanwhile, means the disablement of an employee to earn wages in the same kind of work or work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do.[2]

Article 192 (c) (1) of the Labor Code defines permanent and total disability of laborers, thus:

ART. 192. Permanent Total Disability. x x x

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[1] *NGEI Multi-Purpose Cooperative Inc. v. Filipinas Palmoil Plantation, Inc.*, 697 Phil. 433, 440 (2012).
[2] *Sunit v. OSM Maritime Services, Inc.*, 806 Phil. 505, 514 (2017).

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

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules.

The rule referred to, Rule X, Section 2 of the Amended Rules on Employees' Compensation (AREC), which implemented Book IV of the Labor Code (IRR), states:

> Sec. 2. Period of entitlement. - (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days **except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days** from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. (Emphasis supplied)

Clearly, the standard terms of the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) are intended to be read and understood in accordance with the foregoing laws.[3]

In fine, Article 192 (c) (l)[4] of the Labor Code and Rule X, Section 2 of AREC[5] provide that the company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. If he fails to do so and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled. Thus, petitioners are correct in saying that the law only requires that the company-designated physician make an assessment of the seafarer's fitness to work or degree of the seafarer's disability within the applicable 120 or 240-day period.

It is undisputed that company-designated physician Dr. Nicomedes G. Cruz (Dr. Cruz) made an assessment of Federico Enriquez's (Federico) disability after the lapse of the 120-day period but within the 240-day period. This Court pronounced in *Magsaysay Mitsui v. Buenaventura*[6] that the mere

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3 *Tamin v. Magsaysay Maritime*, 794 Phil. 286, 298 (2016).

4 Article 192. *Permanent total disability.*

x x x x

The following disabilities shall be deemed total and permanent:

Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

x x x x

5 SECTION 2. *Period of entitlement.*

(a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

6 G.R. No. 195878, January 10, 2018, 850 SCRA 256.

lapse of the 120-day period does not automatically render the disability of the seafarer permanent and total. The period may be extended to 240 days should the circumstances justify the same.

In this case, the extension of the initial 120-day period to issue an assessment was justified considering that during the interim, Federico underwent laboratory examinations and further medications and was continuously observed by Dr. Cruz.[7]

It is worthy to note that it is not disputed that Federico's illness was work-related and that he is entitled to disability compensation. Petitioners even previously made an offer to compensate Federico in the amount of USD10,450.00 which is the compensation that corresponds to disability grade 12.

The question now is whether or not Dr. Cruz's disability assessment complied with the requirement of being final and definitive.

Petitioners assert that since Dr. Cruz have assessed Federico with disability grade 12 within the 240-day period, said assessment should be considered final and definitive.

We disagree.

A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.[8]

Dr. Cruz's disability assessment reads:

x x x x

1. His diagnosed illness of acid peptic disease will not preclude sea service and will not render him totally and permanently disabled.

2. The final disability assessment is Grade 12.

Dr. Cruz assessed Federico's medical condition as disability grade 12. It was likewise stated in his assessment that Federico's Acid Peptic Disease will not preclude sea service signifying that Federico was fit to resume his sea duties. Dr. Cruz's assessment however appeared to be interim because Federico's medical condition still remained unresolved. This was shown and proven not just by the findings of Federico's personal physician, Dr. Marinela M. Cailipan (Dr. Cailipan), that Federico is still symptomatic of *Helicobacter Pylori* Infection beyond the 240-day period, experiencing on

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7 See *Magsaysay Mitsui v. Buenaventura*, supra note 6.

8 *Sunit v. OSM Maritime Services, Inc.*, supra note 2, at 519.

and off abdominal pain despite taking Omeprazole, but also by petitioners' own admission in their petition that Federico's disability rendered him unable to work, to wit:

> It would simply be absurd to require a fitness-to-work certification before the seafarer was in fact validly assessed to be suffering from a partial disability, which consequently **renders him unable to return to work**. After all, his disability is permanent, albeit PARTIAL.[9] (Emphasis supplied)

Petitioners likewise admitted in their reply to Federico's comment on the petition that Federico was not actually found fit to work by Dr. Cruz.

> 20. x x x In this case, the respondent was categorically and timely assessed a partial and permanent disability equivalent to Grade 12- x x x. **He was not found fit to work**. Neither was he found to be totally and permanently disabled.[10] (Emphasis supplied)

Petitioners are of the position that any finding of a partial and permanent disability negates the finding of the seafarer's fitness to work. In their reply to Federico's comment on the present petition, petitioners maintained that finding of partial and permanent disability and finding of fitness to work are mutually exclusive in such a way that finding of fitness to work excludes any assessment of disability.[11]

Petitioners are gravely mistaken.

In a line of cases,[12] we have consistently ruled that a partial and permanent disability presupposes a seafarer's fitness to resume sea duties before the end of the 120/240-day medical treatment period despite the injuries sustained, and works on the premise that such partial injuries did not disable a seafarer to earn wages in the same kind of work or similar nature for which he was trained. Clearly, finding of fitness to work and finding of partial and permanent disability are not mutually exclusive.

We likewise reject petitioners' claim that Dr. Cailipan's findings were based only on a 1 (one) day consultation and without subjecting Federico to any medical examination. As found by the Panel of Voluntary Artbitrators, Federico was subjected to GI endoscopy on September 23, 2016, and on September 26, 2016, Dr. Cailipan issued an assessment concluding that Federico is still suffering from Peptic Ulcer Disease and was no longer fit for sea duty and thus assessed him with disability grade 1.

Clearly, Dr. Cailipan's findings were not based on a single day consultation and Federico was in fact subjected to a medical examination.

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9 *Rollo*, pp. 11-12.
10 Id. at 115.
11 Id.
12 *Sunit v. OSM Maritime Services, Inc.*, supra note 2; *Ilustricimo v. NYK-Fil Ship Management*, G.R. No. 237487, June 27, 2018; and *Belchem Philippines, Inc. v. Zafra, Jr.*, 759 Phil. 514 (2015).

Petitioners and Dr. Cruz's wavering position regarding Federico's medical condition, and Dr. Cailipan's findings that Federico is still symptomatic of *Helicobacter Pylori* Infection beyond the 240-day period, experiencing on and off abdominal pain despite taking medicines therefor, made it evident that Federico's medical condition has not yet been resolved despite the disability grading given by Dr. Cruz. In fine, petitioners' assertion that Dr. Cruz's assessment was final and definitive was negated not just by Dr. Cailipan's findings but also by petitioners' own admission that Federico was not actually fit, and was unable to return, to work.

Even if it were true that Dr. Cailipan's findings were based on a single day consultation and without subjecting Federico to any medical examination, Dr. Cruz's assessment will still not prevail since the conclusion that Federico's medical condition has not yet been resolved was based not only on Dr. Cailipan's findings but more so on petitioners' own admission.

Dr. Cruz's assessed Federico with disability grade 12 and declared that Federico's Acid Peptic Disease will not preclude sea service signifying that Federico may resume his sea duties. Subsequently, however, petitioners took the stand that Federico was unable to return to work and was not actually found fit to work by Dr. Cruz. Too, Federico's personal physician Dr. Cailipan found him to be still symptomatic of *Helicobacter Pylori* Infection beyond the 240-day period, experiencing on and off abdominal pain despite taking medicines therefor. Accordingly, despite the disability grading given by company-designated physician Dr. Cruz, We hold that the same is still inconclusive and indefinite.

Case law states that without a valid final and definitive assessment from the company-designated physician within the 120 or 240-day period, the law already steps in to consider the seafarer's disability as total and permanent. Thus, a temporary total disability becomes total and permanent by operation of law.[13]

Here, when Federico filed the complaint for permanent and total disability benefits against petitioners sometime in October 2016, the period of 240 days had already lapsed without a valid final and definite disability assessment from Dr. Cruz. At that point, the law steps in to consider Federico's disability as permanent and total. By operation of law, Federico's initial total and temporary disability lapsed into a total and permanent disability.[14]

As Federico was actually unable to work even after the expiration of the 240-day period and there was no final and conclusive disability assessment made by the company-designated doctor on his medical condition, it would be inconsistent to declare him as merely permanently and partially disabled. It should be stressed that a total disability does not

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[13] *Gamboa v. Maunlad Trans, Inc.*, G.R. No. 232905, August 20, 2018.
[14] See *Tamin v. Magsaysay Maritime*, 794 Phil. 286 (2016).

require that the employee be completely disabled, or totally paralyzed. In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.[15]

Clearly then, the third-doctor-referral provision as provided in the POEA-SEC does not find application in the present case. As correctly observed by the Court of Appeals, Federico's cause of action arose when his disability went beyond the 240-day period without a final assessment having been issued by the company-designated physician.[16]

Even assuming without granting that Dr. Cruz's assessment was final and definitive and thus the third doctor referral provision applies since Federico obtained a contrary assessment, still Dr. Cruz's assessment cannot prevail because of petitioners' own failure to respond to Federico's willingness to seek and utilize the opinion of a third doctor.

If a doctor appointed by the seafarer disagrees with the assessment of the company-designated physician, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.[17]

This referral to a third doctor has been held by this Court to be a mandatory procedure as a consequence of the provision that it is the company-designated physician whose assessment should prevail. In other words, the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties.[18]

Upon notification that the seafarer disagrees with the company-designated physicians' assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification, the employer carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties.[19]

Here, Federico, through his counsel, sent petitioners a letter informing them of his personal physician's finding that he is totally unfit to resume his work as a seaman thus he is claiming total and permanent disability benefit. He likewise informed petitioners of his willingness to seek and to utilize the opinion of a third doctor. Attached to the said letter

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15 *Sunit v. OSM Maritime Services, Inc.*, supra note 2, at 522.
16 See *rollo*, p. 56.
17 *Philippine Hammonia Ship Agency, Inc. v. Dumadag*, 712 Phil. 507, 520 (2015), citing Section 20 (B)(3) of the POEA-SEC.
18 *Formerly INC Shipmanagement, Inc. v. Rosales*, 744 Phil. 774, 787 (2014).
19 Id. at 788.

was the medical findings and disability assessment of Federico's personal physician. The letter was admittedly received by petitioners on October 26, 2016.

Petitioners, however, claim that Dr. Cruz's disability grading prevails over the contrary opinion of Federico's personal physician since Federico failed to observe the mandatory third doctor referral provision under the POEA-SEC. Petitioners contend that Federico failed to comply with its duty to timely present his personal physician's contrary assessment in order to dispute the company-designated physician's findings. It was only after he filed his claim for total and permanent disability benefit before the National Conciliation and Mediation Board (NCMB) that he sent them his personal physician's contrary assessment together with the letter. Petitioners now claim that in the absence of a timely dispute and demand for activation of the conflict resolution provision/third doctor referral provision under the POEA-SEC, the assessment of the company-designated physician should be upheld and be the basis for Federico's entitlement to any disability compensation.

Again, petitioners are mistaken.

In *Ilustricimo v. NYK-Fil Ship Management*,[20] this Court pronounced that the POEA-SEC does not require a specific period within which the parties may seek the opinion of a third doctor, and they may do so even during the mandatory conference before the labor tribunals. Accordingly, upon being notified of the seafarer's intent to dispute the company doctors' findings, whether prior or during the mandatory conference, the burden to refer the case to a third doctor has shifted to the employer.

Here, Federico sent petitioners the letter and copy of his personal physician's assessment after filing the case before the NCMB but before the mandatory conference started. The letter and copy of the contrary assessment was admittedly received by petitioners on October 26, 2016. Applying the pronouncement in *Ilustricimo v. NYK-Fil Ship Managemement*, the burden to refer the case to a third doctor has therefore shifted to petitioners. This, petitioners failed to do so. Thus, Federico cannot be faulted for the non-referral. Consequently, the company-designated doctors' assessment is all the more not binding.

In *Orient Hope Agencies, Inc. v. Jara*,[21] this Court awarded attorney's fees to a seafarer who was compelled to litigate due to the agency's denial of his valid claim for permanent and total disability benefits.

Here, Federico was compelled to litigate his claim for permanent and total disability benefits when petitioners denied him of the same. Applying the ruling in *Orient Hope Agencies, Inc. v. Jara*, we uphold the award of

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[20] G.R. No. 237487, June 27, 2018.
[21] G.R. No. 204307, June 6, 2018, 864 SCRA 428.

10% attorney's fees to Federico.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The assailed Decision dated March 20, 2018 and the Resolution dated December 7, 2018 of the Court of Appeals in CA-G.R. SP No. 152108 are **AFFIRMED**.

SO ORDERED." (*J. Gaerlan, designated Additional Member per Special Order No. 2780 dated May 11, 2020.*)

Very truly yours,

TERESITA AQUINO TUAZON
Deputy Division Clerk of Court
15 OCT 2020 10/15

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