EN BANC

G.R. No. 253480 (***Teodoro B. Bunayog,*** *petitioner* ***vs. Foscon Shipmanagement, Inc./Green Maritime Co., Ltd./Evelyn M. Defensor,*** *respondents*).

Promulgated: April 25, 2023

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SEPARATE CONCURRING OPINION

GESMUNDO, *C.J.*:

I respectfully write this Opinion to impart my views on the exception established in the *ponencia* regarding the binding and conclusive nature of the findings of either the seafarer's physician of choice or the employer's physician of choice, depending on the origin of the failure to secure the services of a third doctor, in compensation claims.

The *ponencia* provides that the findings of either the seafarer's physician of choice or the employer's physician of choice, depending on the source of the failure to secure the services of a third doctor, shall be final and binding unless the same are tainted with bias, unsupported by medical records, or lack scientific basis, **in which case the tribunals and courts may consider the inherent merits of the respective medical findings and the totality of the evidence in deciding the case.**[1]

To my mind, it is imperative to accentuate that this exception arises from the **burden of proof concerning the degree of disability in compensation claims**.

A summary of the case and the ponencia's ruling

The instant petition arose from a complaint for total and permanent disability benefits, among others, filed by Teodoro B. Bunayog (*petitioner*) against Foscon Shipmanagement, Inc. (*Foscon*), Green Maritime Co., Ltd. (*Green*), and Evelyn M. Defensor (*Evelyn*; collectively, *respondents*). Foscon, on behalf of its foreign principal, Green, engaged petitioner as a

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[1] *Ponencia*, pp. 20-22.

chief cook onboard the vessel M/T Morning Breeze for a period of nine months. "On July 31, 2016, while onboard the vessel, petitioner experienced cough, fever and difficulty in breathing."[2] He was diagnosed in Japan with left lung pneumonia and declared unfit for sea duty. Thus, he was repatriated to the Philippines on August 4, 2016, and immediately referred to a company-designated physician. After evaluation, petitioner was diagnosed with "pneumonia with recurrent pleural effusion, left s/p thoracentesis, left."[3] Petitioner was treated until September 28, 2016, when one of the company-designated physicians declared him fit to work. Petitioner then consulted his physician of choice, who declared him unfit for sea duty due to his pleural effusion.[4]

On November 10, 2016, petitioner sent a letter to Evelyn, the President of Foscon, informing her of the findings of his doctor and expressing his willingness to undergo further medical examination to confirm his permanent disability. Respondents did not respond to his letter. Thus, petitioner filed a complaint for total and permanent disability benefits.[5]

The *ponencia* affirmed the Court of Appeals' February 21, 2020 Decision and September 16, 2020 Resolution and dismissed petitioner's complaint for lack of merit.[6]

The *ponencia* lays down guidelines to govern cases where the seafarer requests for referral to a third doctor.[7]

First, the seafarer must request, within a reasonable period of time, for referral to a third doctor if he receives a contrary medical finding from his or her own doctor. This third doctor shall be mutually agreed upon by the parties, whose findings shall be final and binding between them.[8]

Second, for such request to be considered valid, it must be in writing and must indicate the contents of the medical report or medical abstract from the seafarer's doctor.[9]

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2 Id. at 2.
3 Id.
4 Id.
5 Id.
6 Id. at 22.
7 Id. at 20-22.
8 Id. at 20.
9 Id. at 9, 20.

Third, if there is no request or such request is deemed invalid, the employer may ignore or refuse the request or demand without violating the 2010 Philippine Overseas Employment Administration-Standard Employment Contract (*POEA-SEC*), otherwise known as the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships.[10] Nonetheless, if a complaint is subsequently filed by the seafarer against the employer, the Labor Arbiter (*LA*), pursuant to National Labor Relations Commission (*NLRC*) *En Banc* Resolution No. 008-14, shall direct the parties to secure the services of a third doctor within 15 days, who in turn will have 30 days to submit a reassessment. If the parties fail to secure the services of a third doctor despite such directive, the labor tribunals shall hold the medical assessment of the company-designated physician final and binding unless the same is found to be biased, "*i.e.*, lacking in scientific basis or unsupported by medical records of the seafarer."[11] In such case, the tribunals or courts shall consider the inherit merits of the respective medical findings of the physicians. If the parties were able to secure the services of a third doctor during mandatory conference, the latter's reassessment of the seafarer's medical condition shall be final and binding.[12]

Fourth, in case of a valid request for referral, the employer shall have 10 days upon receipt of the written request to serve a written reply stating that the procedure shall be initiated by the employer. The parties shall then have 15 days to secure the services of a third doctor, who in turn will have 30 days to submit an assessment. The assessment of the third doctor shall be final and binding.[13] However, where the parties fail to mutually agree as to the third doctor, the seafarer may file a complaint for disability benefits against the employer and the labor tribunals shall consider the inherent merits of the respective medical findings of the parties' respective doctors in making a declaration as to the condition of the seafarer.[14]

Fifth, when the employer fails to respond to a valid request for referral to a third doctor within the 10-day period, the seafarer may institute a complaint against the employer. During the preliminary conference, the LA shall give the parties 15 days to secure the services of a third doctor, who will have 30 days to submit a reassessment. If a third doctor is not secured due to the employer's refusal to heed the LA's request or due to the failure of the parties to mutually agree as to a third doctor, the findings of the seafarer's physician of choice shall be final and binding. An exception to this is when the medical evaluation of the seafarer's physician is tainted with

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10 POEA Memorandum Circular No. 10, Series of 2010.
11 *Ponencia*, p. 20.
12 Id.
13 Id. at 20-21.
14 Id. at 21.

bias, not supported by medical records, or lack scientific basis, in which case the courts may decide on the basis of the totality of evidence. On the other hand, if the failure to secure a third doctor despite the LA's directive lies with the seafarer, the findings of the company-designated physician shall be conclusive between the parties, subject to the same exception stated previously. Nonetheless, if the services of a third doctor is secured during the mandatory conference, the employer's failure to respond to a valid request for referral to a third doctor is immaterial and the third doctor's findings shall be final and binding between the parties.[15]

Applying the same to the present case, the *ponencia* found that petitioner made a valid request for referral to a third doctor. However, respondents did not respond to the same. Nonetheless, the *ponencia* did not make final and binding the findings of petitioner's physician. It found the same to be bereft of scientific and medical basis as it was vague and inconclusive. Meanwhile, the *ponencia* declared as credible the findings of the company-designated physician since the latter conducted extensive medical treatment on petitioner which enabled said physician to make a final diagnosis of petitioner's health condition. This is in contrast with petitioner's physician, who only based his conclusion on popular observation and findings on petitioner's responses to treatments without requiring petitioner to undergo any medical examination. Thus, the *ponencia* affirmed the dismissal of the complaint.[16]

I concur with the *ponencia* and issue this Opinion to strengthen the rationale behind allowing the tribunals and courts to review the inherent merits of the findings of either the seafarer's physician of choice or the employer's physician of choice despite the general rule that such is conclusive and binding on the parties depending on the source of the failure to secure the services of a third doctor.

The exception provided for in the guidelines of the ponencia reflects the burden of proof as to the degree of disability in compensation claims.

The right of the seafarer to receive disability benefits is determined by the employment contract, and deemed incorporated therein are the standard provisions set out in the POEA-SEC. The pertinent provision is found in Section 20(A) thereof:

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[15] Id. at 21-22.
[16] Id. at 15-20.

> Section 20. *Compensation and Benefits.* —
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> A. *Compensation and Benefits for Injury or Illness*
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> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
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> x x x x
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> 3. x x x
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> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
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> **If a doctor appointed by the seafarer disagrees with the assessment, 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.** (Emphasis supplied)

A plain reading of the foregoing provision readily reveals that it is the findings of the company-designated physician as to the degree of disability which is relevant for the purpose of the grant of disability benefits. However, the seafarer is given an opportunity to contradict the same when a doctor of his or her choice disagrees with the assessment of the company-designated physician, in which case resort to a third doctor may be made. In short, Sec. 20(A) lays down the process for the seafarer to contradict the company-designated physician's assessment – through referral to a third doctor, whose findings shall be binding on both parties.

Thus, the Court has consistently held that referral to a third doctor is mandatory:

> Based on the above-cited provision, the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician and (2) the appointed doctor of the seafarer refuted such assessment.

> In *Carcedo*, the Court held that "[t]o definitively clarify how a conflict situation should be handled, upon notification that the seafarer disagrees with the company doctor's 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 company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties."
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> x x x Absent proper compliance, the final medical report and the certification of the company-designated physician declaring him fit to return to work must be upheld. *Ergo*, he is not entitled to permanent and total disability benefits.[17]

To properly contradict the company-designated physician's assessment, the seafarer must request for referral to a third doctor, who shall be mutually agreed upon by the parties and whose findings shall be binding between them.

Consequently, two instances may arise from this directive. The first instance is where the seafarer fails to make a valid request for referral while the second instance is where the employer fails to respond to a valid request for referral. In both instances, NLRC *En Banc* Resolution No. 008-14 mandates all LAs to give the parties in complaints for disability benefits of seafarers a period of 15 days to secure the services of a third doctor and an additional period of 30 days for the third doctor submit his or her reassessment. NLRC *En Banc* Resolution No. 008-14 exemplifies the State policy to abide by the process provided for in Sec. 20(A).

In the first instance where the seafarer fails to make a valid request for referral and the parties do not secure the services of a third doctor despite the directive of the LA, the findings of the company-designated physician shall be final and binding unless the same are found to be biased, lacking in scientific basis, or unsupported by the seafarer's medical records. In such case, the inherent merits of the respective medical findings of each doctor shall be considered by the tribunals or courts.

On the other hand, in the second instance where the employer fails to respond to a valid request for referral and the parties do not secure the services of a third doctor despite the LA's directive, the findings of the seafarer's physician shall be final and binding subject to the same exception stated above. In case such exception is availing, the tribunals or courts may

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[17] *Marlow Navigation Philippines, Inc. v. Osias*, 773 Phil. 428, 446 (2015).

consider the inherent merits of the respective medical findings of each doctor.

The exception referenced in the *ponencia* is based on the case of *Dionio v. Trans-Global Maritime Agency, Inc.*[18] (*Dionio*). Said case provides that "while failure to refer the conflicting findings between the company-designated physician and the seafarer's physician of choice gives the former's medical opinion more weight and probative value over the latter, still, it does not mean that the courts are bound by such doctor's findings, as **the court may set aside the same if it is shown that the findings of the company-designated doctor have no scientific basis or are not supported by medical records of the seafarer**. x x x **Instead, the inherent merits of the respective medical findings shall be considered**."[19]

To my mind, the rationale behind this exception and the thrust to allow the tribunals or courts to consider the inherent merits of the respective medical findings of the physicians of the seafarer and employer lies in the burden of proof on the degree of disability in compensation claims.

It is well-established that "x x x **whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence**."[20] Thus, the employee bears the burden of proof as to the degree of disability in compensation claims. In short, the employee must prove, by substantial evidence, that the assessment of the company-designated physician in relation to the degree of disability is incorrect.

At the end of the day, the exception rests on the premise that the inherent merits of the respective medical findings of each doctor would show the employee being entitled to his or her claim – in effect, that the latter has discharged his or her burden of proof.

It must be emphasized that neither the failure of the seafarer to make a valid request for referral to a third doctor nor the failure of the employer to respond to a valid request for referral results in a shift of the burden of proof from the employee to the employer. *The burden of proof never shifts*, as distinguished from the burden of evidence.

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18 843 Phil. 409 (2018).

19 Id. at 420-421.

20 *Malicdem v. Asia Bulk Transport Phils., Inc.*, G.R. No. 224753, June 19, 2019.

The 2019 Revised Rules on Evidence[21] defines *burden of proof* and *burden of evidence* in Sec. 1 of Rule 131, *viz.*:

> Section 1. Burden of proof and burden of evidence. — **Burden of proof** is the duty of a party to present evidence on the facts in issue necessary to establish his or her claim or defense by the amount of evidence required by law. **Burden of proof never shifts.**
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> **Burden of evidence** is the duty of a party to present evidence sufficient to establish or rebut a fact in issue to establish a *prima facie* case. **Burden of evidence may shift** from one party to the other in the course of the proceedings, depending on the exigencies of the case. (Emphases supplied)

While strict application of the rules of evidence is not applicable to labor cases,[22] I respectfully submit that the evidentiary concepts of *burden of proof* and *burden of evidence* are well-entrenched in Our legal system, such that their codification in the 2019 Revised Rules of Evidence merely reflects prevailing legal understanding on the matter. In addition, the Court has consistently applied the quantum of proof of *substantial evidence* in labor compensation claims: "[w]hether it is the employer or the seafarer, the quantum of proof necessary to discharge their respective burdens is substantial evidence, *i.e.*, such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise."[23]

In fact, a true example of this is the Court's ruling in the 2014 case of *Agile Maritime Resources, Inc. v. Siador*,[24] which involved a complaint for death benefits under the POEA-SEC. In resolving the issues in said case, the Court applied the rules on evidence as to *burden of proof* and *burden of evidence*.

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21 A.M. No. 19-08-15-SC (Resolution), August 10, 2019.

22 Article 227. [221] Technical rules not binding and prior resort to amicable settlement.— In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Commission or any Labor Arbiter, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner or any Labor Arbiter to exercise complete control of the proceedings at all stages.

Any provision of law to the contrary notwithstanding, the Labor Arbiter shall exert all efforts towards the amicable settlement of a labor dispute within his jurisdiction on or before the first hearing. The same rule shall apply to the Commission in the exercise of its original jurisdiction. (Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), July 21, 2015)

23 *Agile Maritime Resources, Inc. v. Siador*, 744 Phil. 693, 707 (2014).

24 Supra.

To reiterate, the *burden of proof* never shifts. Only the burden of evidence may shift, depending on the exigencies of the case. Thus, whether or not the employer responds to the seafarer's valid request for referral to a third doctor does not detract from the fact that the seafarer bears the burden of proof to establish the degree of disability. The seafarer must discharge this burden no matter what. Accordingly, while the failure of the employer to respond to a valid request for referral may lead to the application of the general rule that the findings of the seafarer's doctor of choice shall be final and binding, this general rule is subject to the exception established in *Dionio*. This is consistent with the burden of proof of the seafarer to establish his or her entitlement to disability benefits.

In fine, the exception in the *ponencia* – that the medical evaluation of either the seafarer's or employer's doctor of choice lacks scientific basis or is unsupported by the medical records of the seafarer – requires the tribunals and courts to weigh, in all instances, the evidence presented by the parties. This is because such exception may only be applied after the tribunals and courts have determined the presence of such circumstances. In short, such determination requires an assessment of the totality of evidence. The guidelines require the tribunals and courts to assess and weigh the totality of evidence.

To my mind, this conclusion is reflective of the underlying thread in all compensation claims where the degree of disability is at issue – whether such degree of disability has been established by substantial evidence.

Application to the present case

Applying the foregoing, I concur with the esteemed *ponente* that the medical conclusion arrived at by the company-designated physician is more credible and accurate than that of petitioner's physician. As noted by the *ponencia*, the records do not show the extent of the medical treatment that petitioner had received from his doctor of choice. Said doctor did not require petitioner to undergo any medical examination prior to issuing the medical certificate which declared him unfit for sea duty. He also did not treat petitioner. Petitioner's doctor merely based his conclusion on popular observation and the findings on petitioner's responses to treatment.[25]

In comparison, the company-designated physician conducted extensive medical treatment on petitioner which enabled him to make a reliable final diagnosis of petitioner's health condition. It must be noted that

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[25] *Ponencia*, pp. 15-18.

the company-designated physician examined petitioner's condition no less than five times. During that period, petitioner underwent several tests, including five chest ultrasounds on different dates. After the fifth and last ultrasound, the company-designated physician opined that petitioner was cleared from a pulmonary standpoint. Hence, the final diagnosis of "Pneumonia with Recurrent Pleural Effusion, Left – Resolved S/P Thoracentesis, Left" and petitioner was declared fit to work.[26]

Based on the foregoing, I agree that the findings of the company-designated physician are more credible and carry more weight than that of the seafarer's chosen doctor.[27] Simply, petitioner failed to discharge his burden of proof to establish, by substantial evidence, that he suffered an illness warranting the award of permanent and total disability benefits.

WHEREFORE, I vote to **DISMISS** the petition.

ALEXANDER G. GESMUNDO
Chief Justice

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[26] Id. at 18-20.
[27] Id. at 19.