Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

JEBSEN MARITIME INC., APEX MARITIME SHIP MANAGEMENT CO. LLC., AND/OR ESTANISLAO SANTIAGO,	**G.R. No. 200566**
Petitioners,	Present:
-versus-	CARPIO, *J., Chairperson,* BRION, DEL CASTILLO, VILLARAMA, JR.,* and LEONEN, *JJ.*
WILFREDO E. RAVENA, Respondent.	Promulgated: SEP 17 2014

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DECISION

BRION, *J.:*

The present petition for review on *certiorari*[1] resolves the challenge to the November 11, 2011 decision[2] and the February 9, 2012 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. Sp No. 113331.

The CA reversed and set aside the June 30, 2009 decision[4] of the National Labor Relations Commission *(NLRC)* in NLRC LAC No. (OFW-M) 07-000517-08 (NLRC NCR Case No. OFW-M 07-07815-07) which, in turn, reversed the May 26, 2008 decision[5] of the Labor Arbiter *(LA)*.

The LA granted in part the complaint filed by respondent Wilfredo E. ***Ravena*** for payment/reimbursement of salary for the unexpired portion of

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* Designated as Acting Member in lieu of Associate Justice Jose C. Mendoza, per Special Order No. 1767 dated August 27, 2014.

1 *Rollo*, pp. 43-58.

2 Penned by Associate Justice Fernanda Lampas-Peralta and concurred in by Associate Justices Normandie B. Pizarro and Agnes Reyes-Carpio, id. at 67-90.

3 Id. at 92.

4 Penned by Commissioner Gerardo C. Nograles, CA *rollo*, pp. 37-46.

5 Penned by Executive Labor Arbiter Fatima Jambaro-Franco, id. at 178-187.

the contract, disability benefits, sickwage allowance, medical expenses, loss of earning capacity, damages and attorney's fees with legal interest.[6]

The Factual Antecedents

On **September 6, 2006**, Ravena entered into a ten-month contract of employment with petitioner ***Jebsen*** Maritime Inc. and its principal, Apex Maritime Ship Management Co., LLC. (collectively, the *petitioners*). Ravena was employed as 4th Engineer on board the vessel *"M/V Tate J"* with a basic monthly salary of US$859.00, exclusive of other benefits.[7] Ravena's contract was covered by the TCCC/IMEC IBF Collective Bargaining Agreement *(CBA)*.[8] Prior to the September 6, 2006 contract, Ravena previously worked for the petitioners from March 1, 2004 to August 11, 2006[9] in the same position.

Ravena subsequently submitted himself to the required pre-employment medical examination and was declared "fit to work;" he boarded *M/V Tate J* on **September 28, 2006**.

Sometime in May 2007, and while on board *M/V Tate J*, Ravena suffered extreme abdominal discomfort and pain, accompanied by chills, diarrhea, general feeling of weakness and muscle spasms. He was repatriated to the Philippines on **May 12, 2007**. Upon arrival, Ravena went directly to his hometown in Iloilo.

On May 15, 2007, Ravena went to the St. Paul's Hospital in Iloilo City. The doctors found a mass in his *ampullary* area and he underwent a series of tests.[10]

On **May 17, 2007**, he informed the petitioners that he had to undergo *Whipple* surgery. Ravena and the petitioners agreed that the former shall shoulder the medical expenses for the surgery, subject to reimbursement by the latter. Ravena underwent the surgery on May 21, 2007;[11] he was subsequently diagnosed to be suffering from *adenocarcinoma* or cancer of the *ampullary* area.[12]

On **June 18, 2007**, Ravena reported at Jebsen's office in Manila;[13] he was referred to Dr. Nicomedes ***Cruz,*** a cancer surgeon and the company-designated physician. After examination and the review of Ravena's records and his illness, Dr. Cruz opined that Ravena's illness was not work-related.[14]

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6 Id. at 48-51.
7 Id. at 52.
8 *Rollo,* pp. 96-139.
9 Id. at 68. See also CA *rollo,* p. 69.
10 CA *rollo,* pp. 72-77.
11 Id. at 71 and 78.
12 Id. at 79
13 *Rollo,* p. 60.
14 Id. at 140-141.

The petitioners denied Ravena's claim for disability benefits. On July 23, 2007, Ravena filed his complaint for disability benefits with the LA.

The LA granted in part Ravena's complaint in the decision dated May 26, 2008.[15] She ordered the petitioners to pay Ravena the amount of US$125,000.00, as disability benefits, and US$12,500.00, as attorney's fees. She, however, denied Ravena's claim for medical reimbursement and sickness benefits as the petitioners had settled them in full.

In granting Ravena's claim for disability benefits, the LA ruled that Ravena did not need to establish causal connection between his work and his illness. She pointed out that as 4th Engineer, Ravena was responsible for the operation, troubleshooting, repair and maintenance of shipboard engines and other machinery of the vessel. Ravena had to maintain a high degree of alertness at all times and was constantly exposed to different weather conditions.

The combination of physical, mental and emotional pressure and strain to which Ravena was exposed, led the LA to conclude that Ravena had increased his risk of contracting the illness. The LA thus further concluded that Ravena's illness was caused and aggravated by the conditions present in his job during his employment with the petitioners. To arrive at these conclusions, the LA gave weight to the St. Paul Hospital medical certificate that Ravena presented, over that of Dr. Cruz which he regarded as self-serving and biased.

The NLRC's ruling

In its June 30, 2009 decision,[16] the NLRC reversed and set aside the LA's judgment and dismissed Ravena's complaint for lack of merit.

According to the NLRC, Ravena failed to prove, by substantial evidence, that his illness was work-related, particularly in the light of the certification issued by Dr. Cruz that his illness - *adenocarcinoma* of the *ampullary* area - was not work-related. To the NLRC, aside from his bare allegations that "exposure to various substances over the years caused his disease," Ravena did not present any evidence to prove that indeed his illness was either work-related or work-aggravated. That he contracted the illness during his employment contract does not automatically translate to its work-relatedness.

The NLRC denied Ravena's motion for reconsideration[17] in its resolution dated January 18, 2010.[18] Ravena elevated the case to the CA *via* a petition for *certiorari*.[19]

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15 *Supra* note 5.
16 *Supra* note 4.
17 CA *rollo*, pp. 293-306.
18 Id. at 47-48.
19 Id. at 117-133.

The CA's ruling

In its November 11, 2011 decision,[20] the CA granted Ravena's petition; it reinstated the May 26, 2008 decision of the LA but reduced the disability benefit award from US$125,000.00 to US$60,000.00.

The CA agreed with the LA that to be entitled to disability benefits under the 2000 POEA-SEC, the seafarer only needs to show that his work and/or his working conditions contributed, even in a small degree, to the development or aggravation of his disease. In Ravena's case, he reasonably proved that his working conditions exposed him to factors that aggravated his medical condition. The CA pointed out that while the possible causes of his condition - cancer of the *ampullary* area which is a type of pancreatic cancer - are poorly understood, experts have advised that to prevent its growth, avoiding fatty foods and maintaining a well-balanced diet rich in fruits and vegetables help.

Relying on the Court's ruling in *Leonis Navigation Co., Inc. v. Villamater*,[21] the CA noted that in his Answer (to the petitioners' Memorandum on Appeal) and the Motion for Reconsideration before the NLRC, Ravena argued, among others, that the food on board *M/V Tate J,* consisted mainly of frozen red meat and processed food, all of which contributed to the risk of contracting or aggravating his illness. The petitioners never controverted this allegation. Although Ravena raised this argument only in the petitioners' appeal before the NLRC, it should have been and may still be properly admitted in the interest of substantial justice. Thus to the CA, while his *adenocarcinoma* of the *ampullary* area is a non-occupational disease per the POEA-SEC, Ravena is nevertheless entitled to full disability benefits.

The CA, however, noted that the records do not support the US$125,000.00 that the LA awarded as disability benefits; the AMOSUP/IMEC TCCC CBA for 2006-2007 submitted by the petitioners in fact support an award of only US$105,000.00. Examining the provisions of the CBA further, it pointed out that the disability compensation, per the CBA, is only available to a seafarer who *"suffers permanent disability as a result of work related illness or from an injury as a result of an accident."*

Based on this CBA provisions and the 2000 POEA-SEC which defines "work-related illness" as only those listed under its Section 32-A, the CA concluded that the CBA does not cover and does not consider as Ravena's *adenocarcinoma* or cancer of the *ampullary* area to be a compensable illness. Thus, the CA reduced the amount of the disability benefits that the LA awarded to US$60,000.00, following the schedule under the 2000 POEA-SEC.

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20 *Supra* note 2.

21 614 SCRA 182, March 3, 2010.

The Petition

The petitioners maintain that Ravena failed to discharge the burden of proving, by substantial evidence, the causal connection between the nature of his work and his illness or that the risk of contracting *adenocarcinoma* or cancer of the *ampullary* area was increased by his working conditions. They point out that, *first,* Ravena did not present any evidence that the food served on board *M/V Tate J* were high in fat and low in fiber, or assuming *arguendo* that the food served had indeed been of the high-fat-low-fiber kind, that they caused or aggravated his *ampullary* cancer.

Second, the cancer of the *ampullary* area that afflicts Ravena is not one of the illnesses Section 32 of the POEA-SEC considers as occupational disease.

Third, while actual or direct proof of causal connection between the working conditions and the seafarer's illness is not required, the award of disability benefits must still have sufficient basis. This sufficient basis is still required despite the disputable presumption that the POEA-SEC attaches to those illnesses not listed in Section 32. Working conditions cannot simply be presumed to have increased the risk of contracting the disease, absent any proof that links the seafarer's working conditions and his illness.

Fourth, Ravena did not report to them or to their designated physician within the three-day POEA-SEC mandated period for the post-employment medical examination.

And *fifth,* Court rulings had already settled that the opinion of the company-designated physician will prevail in the determination of the seafarer's disability in disability benefits claims. Ravena, notably, did not even present a contrary opinion from his chosen physician.

The Case for Ravena

Ravena counters, in his comment,[22] that he has successfully proven the existence of the causal connection between his illness and the working conditions on board *M/V Tate J*, or that his working conditions had, at the least, aggravated his illness. He argues that the conditions on board the vessel - exposure to chemicals, the demands of ship duties, and dietary provisions - directly caused or aggravated his illness. This conclusion, he points out, is in line with the various Court's rulings[23] that considered cancer as compensable illness. In fact, citing *Employees Compensation*

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22 *Rollo,* pp. 147-178.

23 Ravena cites the following cases: *Raro v. ECC,* G.R. No. 58445, 254 Phil. 846 (1989); *Librea v. ECC,* G.R. No. 58879, March 6, 1992, 203 SCRA 545; *Orate v. CA,* G.R. No. 132761, 447 Phil. 654 (2003); *Sealanes v. NLRC,* G.R. No. 84812, 268 Phil. 355 (1990); *Panotes v. ECC*, 223 Phil. 188 (1985); *Bravo v. ECC,* G.R. No. L-66174, 227 Phil. 93 (1986); *Cristobal v. ECC,* G.R. No. L-49280, 186 Phil. 324 (1980); and *Employees Compensation Commission v. Court of Appeals and Heirs of Abraham Cate,* G.R. No. 124275, 566 Phil. 361 (2008). See *rollo,* pp. 153-155.

Commission v. Court of Appeals and Heirs of Abraham Cate,[24] he argues that a disability benefits claimant is not even obliged to prove causal connection between the illness and his working conditions.

He additionally argues that under Section 20-B of the POEA-SEC, illnesses not otherwise listed as an occupational disease under Section 32-A are nevertheless disputably presumed to be work-related. The burden, therefore, lies on the petitioners to rebut this disputable presumption of work-relatedness. The petitioners, he points out, failed to discharge this burden as Dr. Cruz's certification is not sufficient to overcome this presumption. He adds that they did not even give any explanation or introduced medical evidence to support their position that *adenocarcinoma* or cancer of the *ampullary* area is not work-related.

At any rate, he points out that the POEA-SEC does not require that the company-physician first declare that the seafarer's illness is work-related for illness to be compensable. In fact, the courts are not even bound by the declaration from the company-designated physician, so as to automatically preclude the seafarer from claiming disability benefits.

Further, Ravena maintains that he is entitled to attorney's fees; the petitioners' fraudulent refusal to honor their contractual obligations forced him to seek the services of his counsel to vindicate his right.

Finally, he argues that the amount of disability award should be increased to US$110,000.00 as provided under the CBA that governs his employment contract.

The Court's Ruling

We find the petition meritorious.

Preliminary considerations: jurisdictional limitations of the Court's Rule 45 review of the CA's Rule 65 decision in labor cases

The petitioners essentially argue that the evidence on record do not support the findings and conclusions of the CA. Ravena, under the proven facts, the law and jurisprudence, is entitled to disability benefits.

This argument effectively raises factual issues — *i.e.,* whether Ravena's illness — *adenocarcinoma* or cancer of the *ampullary* area — is compensable and whether Ravena has complied with the POEA-SEC prescribed procedures for determining Ravena's disability — that we cannot properly address in a Rule 45 petition for review on *certiorari.*

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[24] *Supra* note 23. See *rollo,* pp. 154-155.

We emphasize that in a Rule 45 petition, we review the legal errors that the CA may have committed in its decision, not only the jurisdictional errors that we look out for in an original *certiorari* action.

In reviewing the legal correctness of the CA decision in a labor case under Rule 65 of the Rules of Court, we examine the CA decision in the context that it determined the presence or the absence of grave abuse of discretion in the NLRC decision before it, and not on the basis of whether the NLRC decision, on the merits of the case, was correct. Grave abuse of discretion means such capricious or whimsical exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. An act, to be struck down for grave abuse of discretion, must involve abuse that is patent or gross.

In other words, in the present Rule 45 petition, we proceed from the premise that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. Within this narrow scope of our Rule 45 review, the question that we ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?[25]

Under these premises, we generally cannot address this petition's factual issues. We are, however, not unaware that under certain exceptional circumstances, the Court unavoidably has to delve into and resolve factual issues.

In situations where insufficient or insubstantial evidence have been adduced to support the findings under review, or when conclusions go beyond bare and incomplete facts submitted by the claimant, grave abuse of discretion may result and the Court is permitted to address factual issues. But, in this task, the Court's factual review power is exercised only to the extent necessary to determine *whether the CA correctly reversed for grave abuse of discretion the NLRC decision that dismissed Ravena's disability benefits claim for lack of merit.*[26]

We find the present petition to be one of the exceptional cases, to the extent that it reversed the NLRC's decision that we find to be fully in accord with the evidence, the law and the prevailing Court rulings, the CA committed reversible error that justifies the Court's exercise of its factual review power.

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[25] *Montoya v. Transmed Manila Corporation,* G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342-343.

[26] *Montoya v. Transmed Manila Corporation,* G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342-343.

The provisions governing the seafarer's disability benefits claim

The entitlement of an overseas seafarer to disability benefits is governed by the law, the employment contract and the medical findings.[27]

By law, the seafarer's disability benefits claim is governed by Articles 191 to 193, Chapter VI (Disability benefits) of the Labor Code, in relation to Rule X, Section 2 of the Rules and Regulations Implementing the Labor Code.

By contract, it is governed by the employment contract which the seafarer and his employer/local manning agency executes prior to employment, and the applicable POEA-SEC that is deemed incorporated in the employment contract.[28]

Lastly, the medical findings of the company-designated physician, the seafarer's personal physician, and those of the mutually-agreed third physician, pursuant to the POEA-SEC, govern.

Pertinent to the resolution of this petition's factual issues of compensability (of *ampullary* cancer) and compliance (with the POEA-SEC prescribed procedures for disability determination) is Section 20-B of the 2000 POEA-SEC[29] (the governing POEA-SEC at the time the petitioners employed Ravena in 2006). It reads in part:

> SECTION 20. COMPENSATION AND BENEFITS
>
> x x x x
>
> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
> The liabilities of the employer **when the seafarer suffers work-related injury or illness during the term of his contract** are as follows:
>
> x x x x
>
> 2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or repatriated
>
> **However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.**

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[27] *Vergara v. Hammonia Maritime Services, Inc.,* G.R. No. 172933, 588 Phil. 895, 908 (2008); *C.F. Sharp Crew management, Inc. v. Taok*, G.R. No. 193679, July 18, 2012, 677 SCRA 296, 309; *Jebsens Maritime, Inc. v. Undag,* G.R. No. 191491, December 14, 2011, 662 SCRA670, 676.

[28] *Vergara v. Hammonia Maritime Services, Inc., supra,* note 28, at 908.

[29] POEA Memorandum Circular No. 09, Series of 2000. Note that per the POEA Memorandum Circular No. 10, Series of 2010, the POEA amended amending for the purpose the 2000 POEA-SEC.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage **until he is declared fit to work by the company-designated physician or the degree of permanent disability has been assessed by the company-designated physician** but in no case shall it exceed one hundred twenty (120) days.

   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. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

   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.

4. **Those illness not listed in Section 32 of this Contract are disputably presumed as work related.**

x x x x

6. In case of permanent total or partial disability of the seafarer caused either by injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted. [Emphasis and underscoring supplied]

Ravena is not entitled to disability benefits; he failed to comply with the prescribed procedures and to prove the required connection or aggravation between his illness and work conditions

As we pointed out above, Section 20-B of the POEA-SEC governs the compensation and benefits for the work-related injury or illness that a seafarer on board sea-going vessels may have suffered during the term of his employment contract. This section should be read together with Section 32-A of the POEA-SEC that enumerates the various diseases deemed occupational and therefore compensable. Thus, for a seafarer to be entitled to the compensation and benefits under Section 20-B, the disability causing illness or injury must be one of those listed under Section 32-A.

Of course, the law recognizes that under certain circumstances, certain diseases not otherwise considered as an occupational disease under the POEA-SEC may nevertheless have been caused or aggravated by the seafarer's working conditions. In these situations, the law recognizes the inherent paucity of the list and the difficulty, if not the outright

improbability, of accounting for all the known and unknown diseases that may be associated with, caused or aggravated by such working conditions.

Hence, the POEA-SEC provides for a disputable presumption of work-relatedness for non-POEA-SEC-listed occupational disease and the resulting illness or injury which he may have suffered during the term of his employment contract.

This disputable presumption is made in the law to signify that the non-inclusion in the list of compensable diseases/illnesses does not translate to an absolute exclusion from disability benefits. In other words, the disputable presumption does not signify an automatic grant of compensation and/or benefits claim; the seafarer must still prove his entitlement to disability benefits by substantial evidence of his illness' work-relatedness.

In *Cootauco v. MMS Phil. Maritime Services, Inc.,*[30] we categorically declared that whoever claims entitlement to the benefits provided by law should establish his rights to the benefits by substantial evidence.[31] We reiterated this ruling in *Wallem Maritime Services, Inc. v. Tanawan*,[32] *Andrada v. Agemar Manning Agency, Inc.,*[33] *Crew and Ship Management International Inc. v. Soria,*[34] *Philman Marine Agency, Inc. v. Cabanban,*[35] and *Manota v. Avantgarde Shipping Corporation,*[36] to name a few. In the case of a seafarer claiming entitlement to disability benefits under the provisions of the POEA-SEC, this burden of proof obviously lies with the seafarer.

Thus, in situations where the seafarer seeks to claim the compensation and benefits that Section 20-B grants to him, the law requires the seafarer to prove that: (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational disease or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable.

Under these considerations, Ravena's claim must obviously fail; he failed to substantially satisfy the prescribed requirements to be entitled to disability benefits.

First, *Ravena failed to comply with the procedural requirements of Section 20-B of the POEA-SEC.*

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30 G.R. No. 184722, March 15, 2010, 615 SCRA 529, 545.

31 Substantial is defined as that amount of relevant evidence that a reasonable mind might accept as sufficient to form a conclusion, even if other equally reasonable minds might conceivably opine otherwise.

32 G.R. No. 160444, August 29, 2012, 679 SCRA 255, 269.

33 G.R. No. 194758, October 24, 2012, 684 SCRA 587, 601.

34 G.R. No. 175491, December 10, 2012, 687 SCRA 491, 503.

35 G.R. No. 186509, July 29, 2013, 702 SCRA 467, 488.

36 G.R. No. 179697, July 24, 2013, 702 SCRA 61, 70.

Under Section 20-B(3), paragraph 2, a seafarer who was repatriated for medical reasons must, within three working days from his disembarkation, submit himself to a post-employment medical examination *(PEME)* to be conducted by the company-designated physician. Failure of the seafarer to comply with this three-day mandatory reporting requirement shall result in the forfeiture of his right to claim the POEA-SEC granted benefits.

In this case, the records show that Ravena was repatriated on May 12, 2007; he reported to Jebsen only on June 18, 2007 or more than one (1) month from the time of his disembarkation. Without doubt, therefore, Ravena failed to comply with his three-day reporting duty under the POEA-SEC.

The reporting requirement, of course, is not absolute as we have allowed, in certain exceptional circumstances, a seafarer's claim despite his non-reporting within the mandated three-day period, *i.e.,* when the seafarer is physically incapacitated to comply with the reporting requirement, provided, he gives, within the same three-day period, a written notice of his incapacity to the manning agency.

The facts of this case, unfortunately, do not support a disregard of the three-day reporting rule for as soon as he disembarked in Manila, Ravena immediately went to his hometown in Iloilo which is at a considerable distance from Manila, compared with Jebsen's office which is in Manila. Even if he had been physically incapacitated, it would have been easier for him to contact Jebsen in Manila than to go home in Iloilo. We note that he took three days to consult with a doctor in Iloilo City and five days (or on May 12, 2007) to inform the petitioners of his illness and the scheduled *Whipple* surgery.

What made matters worse for Ravena was his failure to offer an adequate explanation that could have excused his non-reporting within the three-day period. In the pleadings that he submitted before the LA, the NLRC and even before the CA, he simply claimed that "he opted to go straight home to Iloilo when no agents from [Jebsens] were present to fetch him and attend to his medical need." Yet, he did not explain why, this absence notwithstanding, he did not go to and report directly and personally to Jebsens or to its designated-physician for the mandatory medical check up. Note that this duty to report to the company-designated physician for the required medical examination lies with him; the POEA-SEC did not impose on Jebsens, as the local agent of the foreign employer, any duty to meet him upon his arrival and bring him to the company-designated physician for the medical examination. Thus, assuming that no Jebsens employee picked him up upon his arrival, the absence did not excuse him from complying with his reporting duty within the three-day mandated period.

In addition, there is absolutely *no evidence on the record showing a determination of total or partial permanent disability with the corresponding determination of the appropriate disability grading* that could have formed the basis for his disability claims.

Under Section 20-B(3), the company-designated physician initially determines either the fitness-to-work or the degree of the permanent disability (total or partial) of the seafarer who suffered and was repatriated for work-related illness or injury. The seafarer, of course, is not irretrievably bound by such determination. Should he disagree with the determination of the company-designated physician, the POEA-SEC allows him to seek a second opinion from an independent physician of his choice. If the assessment of his chosen physician conflicts with those of the company-designated physician, the seafarer and the employer may agree on a third doctor whose determination shall be final and binding on them.

In this case, neither Dr. Cruz nor Ravena's chosen physician made any determination of Ravena's disability. In fact, we note that Ravena's physician did not even certify that he was no longer fit-to-work, or at the very least determine the appropriate disability grading; he simply stated that *"he must not be away from a treatment area for an indefinite period of time."* On the other hand, Dr. Cruz certified that Ravena's illness is not at all work-related.

Second, *Ampullary cancer is not an occupational disease.* Section 32-A of the POEA-SEC considers only two types of cancers as compensable occupational disease: (1) cancer of the epithelial lining of the bladder; and (2) cancer, epitheliomatous or ulceration of the skin or of the corneal surface of the eye due to certain chemicals.[37]

The LA and the CA may have correctly afforded Ravena the benefit of the legal presumption of work-relatedness. The legal correctness of the CA's appreciation of Ravena's claim, however, ends here for as we pointed out above, Section 20-B(4) affords only a disputable presumption that should be read together with the conditions specified by Section 32-A of the POEA-SEC. Under Section 32-A, for the disputably-presumed disease resulting in disability to be compensable, **all of the following conditions must be satisfied**:

1. The seafarer's work must involve the risks describe therein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;

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[37] Further, under Section 32-A of the POEA-SEC, cancer of the epithelial lining of the bladder or *papilloma* of the bladder is considered an occupational disease when the nature of the seafarer's employment involves work that subjects him to exposure to alphanaphthylamine, beta-naphthylamin or benzidine or any part of the salts; and auramine or magenta. On the other hand, cancer, epithellomatous or ulceration of the skin or of the corneal surface of the eye involves work that subjects the seafarer to exposure to, or involves the use or handling of tar, pitch, bitumen, mineral oil or paraffin, or compound product or residue of any of these substances.

3. The disease was contracted within a period of exposure and under such factors necessary to contract it; and
4. There was no notorious negligence on the part of the seafarer.

Ravena failed to prove the work-relatedness of his *ampullary* cancer as he failed to satisfy these conditions.

For one, he did not enumerate his specific duties as a 4th engineer or the specific tasks which he performed on a daily basis on board *M/V Tate J.* Also, he did not show how his duties or the tasks that he performed caused, contributed to the development of, or aggravated his *ampullary* cancer. He likewise did not specify the substances or chemicals which he claimed he was exposed to.

Further, he failed to prove that he had indeed been exposed to the chemicals/substances he claimed he was exposed to during his employment contract; how these substances/chemicals could have caused his *ampullary* cancer; or measures that the company did or did not take to control the hazards occasioned by the use of such substances/chemicals, to prevent or to lessen his exposure to them.

To be exact, he simply claimed that "his assignment had always been on (sic) the engine room" and that "exposure to various substances over the years caused his disease."[38] These bare allegations, however, are not the equivalent of the substantial evidence that the law requires of Ravena to adduce for the grant of his disability benefits claim.

We cannot also consider as substantial evidence of his disease's work-relatedness the ILO article that Ravena submitted before the LA on the duties and occupational hazards that a ship engineer encounters.[39] According to the article, these occupational hazards include "all the hazards of machine attendants or of maintenance workers," *i.e., "*entanglement in moving machinery, blows, cuts, penetration of foreign particles into eyes" etc. (accident hazards); exposure to exhaust gases, excessive heat, strong winds UV radiation, etc. (physical hazards); "dermatoses caused by lubricating and cleaning formulations," etc. and exposure to various chemicals and toxic substances (chemical hazards); and exposure to pests and communicable diseases (biological hazards).

As presented, this ILO article is simply a general list of the possible hazards that may typically attach to the duties of a ship engineer. The specific risks which a seafarer may be exposed to in the performance of his duties will still depend on the specific duties which he may be tasked to perform. Hence, this ILO article could not serve as sufficient proof that his working conditions caused, contributed to the development of, or aggravated Ravena's *ampullary* cancer. As we pointed out above, Ravena failed to

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38 CA *rollo*, p. 60.
39 Id. at 82-87.

specify his duties, the substances/chemicals to which he claimed he was constantly exposed, how these duties in relation to the substances/chemicals caused, aggravated or contributed to his *ampullary* cancer, and the measures the company did or did not take to prevent his exposure or to minimize the hazards attendant to such exposure.

No reasonable conclusion of work-relatedness can also be inferred in this case given the nature of *ampullary* cancer *vis-à-vis* the duties of and the occupational hazards that a ship engineer encounters per the ILO article. *Ampullary* cancer is malignant tumor that arises from the ampulla of Vater. The ampulla of Vater is the nipple like projection into the duodenum (the first portion of the intestine) into which the pancreatic and bile ducts open.[40] It regulates the flow of pancreatic juice and bile into the intestine through contraction and relaxation of the sphincter of Oddi located at the junction.[41] The tumor in the ampulla of Vater blocks the bile duct; instead of flowing into the intestines, the bile enters the bloodstream.[42]

The cause of *ampullary* cancer is medically unknown, although certain **risk factors are believed to contribute to its development, *i.e.*, genetic factors**, like patients with familial adenomatous polyposis, and certain **genetic alterations;**[43] **smoking; and certain diseases such as diabetes milletus**.[44] *Ampullary* cancer is a rare condition and experts are not certain what preventive steps, if any, may be taken, although it is known to be more prevalent in men than women.[45]

Hence, granting, *arguendo,* that Ravena had in fact been exposed to various, *albeit* unspecified, substances/chemicals while working on board *M/V Tate J,* his *e*xposure could still not be deemed, for purposes of disability compensation, to have caused, aggravated or contributed to the development of his *ampullary* cancer given the nature of the contributory risk factors that we cited above.

In the same manner, neither could "a diet consisting mostly of processed and red meat on board *M/V Tate J"* be reasonably considered as having caused, aggravated or contributed to the development of his *ampullary* cancer. We point out again that the medically determined risk

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40 www.surgery.usc.edu/divisions/tumor/pancreasdisease/web%20pages/biliary%20system/ampullary%20cancer.html

41 www.medindia.net/patients/patientinfo/ampullary-cancer.htm; www.nebraskamed.com/health-library/242628/ampullary-cancer

42 www.nebraskamed.com/health-library/242628/ampullary-cancer; www.urmc.rochester.edu/encyclopaedia/content.aspx?ContentTypeID=134&ContentID=37

43 www.medindia.net/patients/patientinfo/ampullary-cancer.htm

Per the article, the incidence is also higher in people with inflammatory bowel diseases. Genetic alterations that are associated with ampullary cancer include: K-ras mutations, mutations in tumor suppressor genes such as p53DPC4/SMAD4, transforming growth factor-â-receptor-II (growth factor receptor TGF- âR-II).

See also emedicine.medscape.com/article/282920-clinical#0218

44 www.parkview.com/en/health-services/cancer/pages/ampullary-cancer.aspx

45 www.nebraskamed.com/health-library/242628/ampullary-cancer; www.urmc.rochester.edu/encyclopaedia/content.aspx?ContentTypeID=134&ContentID=37

factors for the development of *ampullary* cancer are genetic factors and alterations, smoking and certain diseases. A diet high in processed and red meat is far from being related to these risk factors.

As a final word and a cautionary clarification, we do not here rule with absolute precision on the non-causing, non-aggravating, or non-contributing effect that any or all substances/chemicals and a processed-and-red-meat-rich diet may have on *ampullary* cancer. We are not experts on the matter and we recognize the considerable degree of uncertainty inherent in the field of medicine and its study. Our ruling on this petition should, therefore, be understood strictly in the light of and limited to the surrounding circumstances of this case.

Stated differently, we declare that Ravena's *ampullary* cancer is not work-related, and therefore not compensable, because he failed to prove, by substantial evidence, its work-relatedness and his compliance with the parameters that the law had precisely set out in disability benefits claim. For, while we adhere to the principle of liberality in favour of the seafarer in construing the POEA-SEC, we cannot allow claims for disability compensation based on surmises. Liberal construction is never a license to disregard the evidence on record and to misapply the law.[46]

In sum, the NLRC under the circumstances, was legally correct and acted well within its jurisdiction when it dismissed Ravena's complaint for lack of merit. Accordingly, in reversing the NLRC's decision, the CA legally erred as the NLRC did not commit grave abuse of discretion and, on the contrary, ruled in accordance with the law and jurisprudence.

WHEREFORE, in light of these considerations, we hereby **GRANT** the petition. Accordingly, we **REVERSE** and **SET ASIDE** the decision dated November 11, 2011 and the resolution dated February 9, 2012 of the Court of Appeals in CA-G.R. Sp No. 113331, and **REINSTATE** the decision dated June 30, 2009 of the National Labor Relations Commission in NLRC LAC No. (OFW-M) 07-000517-08. The complaint filed by Wilfredo E. Ravena is dismissed for lack of merit.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

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46 *Philman Marine Agency, Inc. v. Cabanban, supra,* note 36, at 494.

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

MARVIC M.V.F. LEONEN
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

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.

MARIA LOURDES P. A. SERENO
Chief Justice