SUPREME COURT
OF THE RUSSIAN FEDERATION

Case № GKPI 11-2093

DECISION

IN THE NAME OF THE RUSSIAN FEDERATION

Moscow February 1, 2012

The Supreme Court of the Russian Federation comprising

Supreme Court Judge

of the Russian Federation Petrova TA

with Secretary Ivashova OV

with the participation of Prosecutor Stepanova LE

having considered in open court the civil case at the request of Lyamin AM regarding the recognition as partially invalid paragraph 7 of the "Rules for establishing the degree of occupational disability resulting from accidents at work and occupational diseases," approved by resolution of the Government of the Russian Federation dated 16 October 2000, No. 789,

held:

paragraph 7 of the Regulation establishing the degree of occupational disability resulting from accidents at work and occupational diseases (hereinafter "the Rules"), which was approved by Government resolution № 789 dated October 16, 2000, provides that the examination of the victim carried out in the establishment of medical and social assessment must be carried out on the basis of the request of the employer (the insured), the insurer, on the basis of a court ruling (judge) or by independent request of the victim or his representative, following the submission of the report on the accident at work or the report on the occupational disease.

Lyamin AM appealed to the Supreme Court with an application for the invalidation of the above

regulatory provisions, specifically those which provide for the need to submit a report on an accident at work or a report on occupational disease whenever an individual undergoes examinations to establish the degree of occupational disability. Appellant argues that the contested provision does not comply with paragraph 5 of Part 3 of Article 8 of the Federal Act No. 181-FZ of November 24, 1995, "On Social Protection of the Disabled," which does not contain the requirements in question and does not delimit the group of persons subject to such examinations. Accordingly, he believes that his right to establish the degree of occupational disability has been violated, as he contracted his disease and became disabled as a result of the Chernobyl disaster, while participating in work to eliminate the disaster's consequences.

The Ministry of Health and Social Development of the Russian Federation, which is authorized to represent the interests of the Russian Federation in front of the Russian Federation Supreme Court -- the person concerned in this case, in the written objection submitted that paragraph 7 of the Rules reproduces the norm of paragraph 1 of Article 13 of the Federal Act No. 125-FZ of July 24, 1998, "on Compulsory Social Insurance against Accidents at Work and Occupational Diseases" and does not contradict the Federal Act "on Social Protection of the Disabled."

The disputed rules do not apply to other situations, other than the establishment of the degree of occupational disability of persons injured in accidents at work and occupational diseases.

Lyamin AM did not appear in court, and was properly informed of the time and place of the hearing.

After hearing the objections of representatives of the concerned persons Erokhina JV, Sharonova VN, having assessed the disputed part of the normative legal act for compliance with federal law and other regulatory legal acts of higher legal force, after hearing the opinion of the Russian Federation Prosecutor General Prosecutor Stepanova L. E., who argued that the appeal should fail, the Russian Federation Supreme Court finds no basis for granting the appellant's request.

The Rules, a separate provision of which is contested by the applicant, were promulgated by the Government of the Russian Federation on the basis of paragraph 3 of Article 11 of the Federal Act "on Compulsory Social Insurance against Accidents at Work and Occupational Diseases" were published in the Collection of Legislative Acts of the Russian Federation, 2000, No. 43,"Rossiyskaya Gazeta", on 31 October, 2000.

The Russian Federation Labor Code recognizes the mandatory compensation for harm caused to the employee in connection with the performance of his job duties (thirteenth paragraph of Article 2); the employee's right to work in conditions that meet the requirements of labor protection, ensuring the employee compulsory social insurance against accidents at work and occupational diseases in accordance with federal law (Article 219).

Legal regulation of relations on compulsory social insurance against accidents at work and occupational diseases on the basis of principles of the Federal Act "on Compulsory Social Insurance against Industrial Accidents and Occupational Diseases", which establishes the scope of entities eligible for insurance payments, the types of support available through insurance, as well as the foundation and purpose of insurance coverage refusal of such coverage (Articles 7 and 14); in order to create a common understanding, which creates the insurer's obligation to offer this type of insurance, defines an insured event, as a fact of damage to the insured person's health, which is confirmed in the prescribed

manner, and was occasioned by an accident at work or occupational disease (ninth paragraph of Article 3 and paragraph 1 of Article 7); an accident is defined as an event in which the insured has received in the performance of duties under an employment contract an injury or other impairment of health, resulting in the need to transfer to another job, temporary or permanent occupational disability, or death (the tenth paragraph of Article 3); occupational disease is defined by law as a chronic or acute illness of the insured, resulting from exposure to harmful occupational (manufacturing) factor(s) and which caused temporary or permanent loss of the insured professional ability to work (eleventh paragraph of article 3).

The Labour Code of Russian Federation provides that for each accident which was confirmed by the results of an investigation as an accident at work, and resulted, according to the medical opinion issued in accordance with the procedure established by federal laws and other normative legal acts of Russian Federation, in the need to transfer the victim to another job, in the loss of the victim's ability to work for at least one day, or in the death of the victim, the report of an accident at work is completed in the prescribed form, in two copies of equal legal force, in either the Russian language or in both Russian and the state language of the Republic of the Russian Federation (Article 230).

From these rules it follows that the connection between the harm to the insured person's health and the insured person's performance of job duties or the impact of harmful factors is confirmed by a duly prepared report on an accident at work or occupational disease, the presence of which report qualifies the harmful incident as an insurance case.

Paragraph 3 of Article 11 of the Federal Act "on Compulsory Social Insurance against Industrial Accidents and Occupational Diseases" requires that the degree of loss of the insured person's occupational disability is determined by a medical/social expertise establishment.

The position of the rules which is contested in part by appellant reproduces the rule of paragraph 1 of Article 13 of the Federal Act Impugned by the applicant in terms of the position of the right to reproduce the rate of paragraph 1 of Article 13 of the Federal law "on Compulsory Social Insurance against Industrial Accidents and Occupational Diseases", according to which the examination of the insured by a medical/social expertise establishment is performed by the request of the insurer, the insurance company or the insured person, or by the ruling of a judge (or court) following the submission of a report on the accident at work or report on occupational disease.

Thus, the Rules define the procedure for determination by medical/social expertise establishments of the degree of occupational disability by persons who have received harm to health as a result of an insured event, provided by the Federal Act "on Compulsory Social Insurance against Industrial Accidents and Occupational Diseases", which creates legal relations in the sphere of compulsory social insurance against accidents at work and occupational diseases, and the determinations of the degree of occupational disability are not extended to apply to other cases and situations.

Paragraph 5 of the third paragraph of Article 8 of the Federal Act "On Social Protection of the Disabled", imposes on medical/social expertise establishments [the responsibility] to determine the degree of occupational disability without restricting the persons subject to such examination, and thus does not preclude the carrying out of such examination in respect of persons who have received harm to health as a result of accidents at work or occupational diseases.

This item does not contain requirements for submitting a report on an accident at work or a report on

occupational disease, but this does not create a contradiction in the contested provisions of the rules provided in this paragraph, since the paragraph does not regulate the procedure for determining the degree of occupational disability.

Based on Section 7 of the Federal Law "On social protection of disabled persons in the Russian Federation" the medico-social examination is the determination, in accordance with established procedure, the social security needs of the tested individual, including rehabilitation, based on an assessment of life restrictions caused by a persistent disorder of bodily functions.

Based on the above rules, the procedure for medico-social examination directly depends on the sphere of relations of compulsory social insurance provided for which the social support measures are provided. With this in mind, the applicant's allegation that the degree of occupational disability must be determined in all cases, regardless of the connection of the harm to health with to the execution of work duties, and without submission of a report, is devoid of legal basis. In view of the aforementioned, the contested-in-part rule governing the procedure for examination in connection with the implementation of the rights of the insured person in the sphere of compulsory social insurance against accidents at work and occupational diseases, does not contradict current legislation.

Compensation for harm to the health of citizens exposed to radiation as a result of the Chernobyl disaster is different from social benefits on the basis of compulsory social insurance, as the features of such compensation are created by the constitutional and legal nature of the respective relations concerning compensation of damage between the State, the activities of which in the field of nuclear energy the harm was related to, and citizens. Providing these benefits is a constitutional duty of the State to compensate for harm caused to the health of citizens, which compensation cannot be accomplished by some sort of fundraising, contributions to some fund or other, as is typical for compulsory social insurance.

The aforementioned constitutional obligation of the State is not identical to the obligations of the employer to reimburse his employee for the harm caused in the performance of job duties.

In accordance with Article 24 of the Law of the Russian Federation on May 15, 1991 № 1244-1 "on Social Protection of Citizens Exposed to Radiation as a Result of the Chernobyl Disaster," the conclusions of the inter-agency advisory councils on determining the causation of disease and disability, and military medical commissions, are the basis for determining the degree of occupational disability, disability and amounts of compensation for the harm caused to the health of citizens according to the procedure established by the Government of the Russian Federation.

Paragraph 2 of Section 13 and paragraph 15 of part one of Article 14 of the Act provide for compensation for harm caused to health due to radiation exposure due to the Chernobyl disaster or from the execution of works on liquidation of consequences of the Chernobyl disaster, in the form of monthly cash compensation in a fixed sum dependent on the degree of disability.

Item 5 of the Procedure for the payment of monthly cash compensation based on the harm caused to the health of citizens by radiation exposure due to the Chernobyl disaster or by the performance of work to liquidate the consequences of the Chernobyl disaster, which was approved by Government Resolution

of August 21, 2001 № 607, contains no requirements to present medical/social expertise assessments of the degree of occupational disability.

Thus, the right of persons with disabilities due to the disease which was contracted in the aftermath of the Chernobyl accident, to receive these payments is realized without the submission of any conclusions of medico-social examination of the degree of occupational disability. Thus, appellant's argument that, under the third part of Article 3 of the Law "On social Protection of Citizens Exposed to Radiation as a Result of the Chernobyl Disaster," he is entitled to compensation for harm caused to an employee in connection with the performance of job duties, [simply] because he experienced the harm to his health while on a business trip, can not be considered reasonable. The presence of an employment relationship between the employee and the employer itself is not sufficient for the qualification of the fact of harm to health as an insured event, [as an insured event] must be confirmed by a report in accordance with the law.

In view of the above, the contested-in-part regulation does not contradict the legislation in force, and does not deprive appellant of his due rights and freedoms.

Pursuant to Articles 194-199, 253 of the Civil Procedure Code of the Russian Federation, the Russian Federation Supreme Court has

decided:

in regards to the request of Lyamin AM to recognize as partially invalid paragraph 7 of the "Rules for establishing the degree of occupational disability resulting from accidents at work and occupational diseases," approved by resolution of the Government of the Russian Federation dated 16 October 2000, No. 789, we deny [the request].

This decision can be appealed to the Appeals Board of the Supreme Court within a month of the decision of the court in its final form.

Judge of the Supreme Court TA Petrova