



Ship Type: All Trade Area: All

Bulletin 471 - 06/06 - UPDATE - Crew Disability Compensation - Philippines

Further to the Association's Bulletin 468 - 05/06, by which Members' attention was drawn to two recent decisions of the Supreme Court in the Philippines set out below is practical guidance on how such cases should be handled in the future.

To recap, the Supreme Court recently ruled that once a crewmember had been unfit for 120 days or more, they are considered to have a Total and / or Permanent disability, entitling them to 100% disability compensation under the POEA Standard format, equivalent to USD 60,000. These decisions have been ruled upon applying the principals of the Labor Law / Code and specifically those of the Philippine Social Security System (SSS). However, Section 20(3) of the POEA Standard format clearly states that the benefits due under contract are separate and distinct from the Social Security System.

Whilst the two decisions have been rendered in cases involving the old POEA format, which was revised in June 2002, there appears to be no reason why the decisions should not apply to the new POEA format and this will no doubt be argued by the Plaintiff Attorneys going forward.

A crewmember is required to submit to a post employment medical examination by a company-designated physician when repatriated on medical grounds, or in circumstances where an illness or injury has yet to be reported, within three working days upon his return except when 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 should result in forfeiture of the right to claim benefits afforded under the POEA Standard format.

Recommendations

- It is important that notice of all seafarers who are repatriated sick or injured is given to the Club, or its correspondents in Manila, immediately so that arrangements can be made for a medical examination and treatment. The contact details for the Club's correspondents in Manila are below.
- In circumstances where the Member has a large deductible and therefore assigns the handling of these cases to their local Manning Agent or some other party, it is important that the individuals dealing with the claims must closely monitor the claims and the conduct of the treating doctors. However, it is recommended that in any event cases are reported to the Club in order that assistance and guidance can be provided in liaison with the local correspondents, so that a consistent approach to the handling of illness / injury claims can be taken.
- Delay in approving recommended medical treatment or surgical intervention should be avoided.
- The treating doctors must closely monitor a crewmembers medical progress and provide regular reports, particularly the closer to the 120 days treatment continues.
- Doctors must assess and advise on the length of required treatment. If less than 120 days the seafarer must be declared fit before the 120th day or provide a disability grading.
- If treatment will last more than 120 days, but the condition is curable, the doctor should provide a statement that the seafarer is not totally and permanently disabled.
- If the seafarer will require treatment for more than 120 days and is unlikely to improve the doctor should provide a disability grading before the 120 days have elapsed.
- If the disability is likely to improve after 120 days the doctor should assess the disability and also comment that subject to unforeseen circumstances the seafarer should become fit to work.
- New cases going to the NLRC or to the Appeal Courts need to be closely monitored to try to avoid further adverse judgements.

The Supreme Court decisions are concerning and draws our attention again to the benefits of prevention. Whilst the Club's pre-employment medical examination Scheme (PEME) is unable to prevent those injuries occurring on board, it will help screen out those individual who are deemed unfit for employment. This will reduce the risk of a crewmember falling ill and potentially costing a Member the usual repatriation, substitution, medical and sickness wage costs and also reduce the possibility of a further USD 60,000 in disability compensation.

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