

ESGUERRA, Octavino Q.

Re: Complaint; Illegal Dismissal

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RESOLUTION NO. 01-1092

Octavino Q. Esguerra, Senior Vice-President for Technical Services and Chief Actuary of the Philippine Health Insurance Corporation (PhilHealth), files a letter-complaint against Enrique M. Zalamea, Jr., PhilHealth President, and Alberto G. Romualdez, Jr., Chief Executive Officer and former Department of Health (DOH) Secretary, who was then the Chairman of the Board of Directors of the PhilHealth, respectively, for alleged illegal dismissal.

In his letter-complaint, Esguerra averred:

“x x x. In August this year, the president and CEO told me to submit an undated ‘courtesy resignation’ as per instruction of DOH Secretary of Health (sic) Alberto G. Romualdez. Under duress (how can one refuse a cabinet member?) and believing that the undated ‘courtesy resignation’ was illegal and therefore null and void, I obliged to the president’s instruction. I was hoping that the good secretary would somehow see the better light of fairness. On December 7, 2000, the secretary of President Zalamea handed me personally, in a sealed envelop (sic), a letter dated September 29, 2000 accepting my ‘resignation’ effective December 31, 2000 despite the PHIC Board’s approval of my appointment on September 8, 2000. I would therefore like to put on record with the Civil Service Commission that I am not resigning from my position.

“x x x. In August 1999, DBM finally approved the creation of the OSVP Technical

Services Sector headed by a senior vice-president (SG 28). The sector consists of the Actuarial Department, the Corporate Planning Department, and the Management Information System Dept. CSC approved of (sic) my appointment as senior vice-president in the same month on a temporary status. x x x. In June 1999, I took the MATB of CESB and landed on top of the batch of examinees. The process of my acquiring CESO eligibility was stalled because the CESB decided only on March 2000 through a resolution that the SVP for Technical Services Sector of PHIC is a third level position. On March 15, 2000 CSC conferred upon me the Career Service Executive Eligibility after passing the examination given in November 1999 and the subsequent panel interview conducted in February 2000.

“I believe that I possess the credentials (appropriate education, training, work experience, and untainted service record) that qualify me for my present position. It therefore seems grossly unfair to me that the DOH Secretary (who is the ex-officio chairman of the PHIC Board), with all my respect to him, would want my services terminated based on a study conducted by a team of AIM professors (the reason being given by him). x x x”

When asked to comment, the PhilHealth, through its counsel, alleged:

“1. The recital of facts in the instant complaint is not accurate and complete and the allegations therein against former Secretary of Health and Chairperson of the PhilHealth Board of Directors, Dr. Alberto G. Romualdez, have no basis in law and in fact. It was the PhilHealth Board as a collective body and not only Secretary Romualdez who decided on the term of Mr. Esguerra’s appointment as Senior Vice-President.

“2. This is not a case of illegal dismissal due to the fact that the term of appointment of Mr. Esguerra has already expired and his Letter of resignation duly accepted by the PhilHealth Board is merely a face saving device.

“3. Complainant’s appointment as Senior Vice President was for a specific and definite period, that is, from August 23, 1999 to 22 August 2000. x x x.

“4. Sometime in July, 2000 or a month before the expiration of his appointment, Mr. Zalamea told Mr. Esguerra that the Board was not inclined to renew his appointment and that of another consultant. nevertheless, Mr. Zalamea advised Mr. Esguerra to personally confer with the different members of the Board, including Secretary Romualdez, as ex-officio Chairman, regarding the possibility of reconsidering their decision not to renew his appointment.

“5. Before the Board meeting scheduled on 8 September 2000, Mr. Zalamea observed that Mr. Esguerra was reluctant to approach the members of the Board on the matter. In which case, Mr. Zalamea volunteered to intercede in his behalf in the said meeting.

“6. The PhilHealth Board, in an executive session, took up the matter but the members were not inclined to renew his appointment. However, in view of the Holiday season, the Board agreed to renew/extend his appointment up to 31 December 2000. To allow Mr. Esguerra to avoid embarrassment and save face under the situation, Mr. Zalamea suggested to Mr. Esguerra to submit his resignation letter.

“7. Mr. Esguerra acceded to the request as he was fully aware that as early as 22 August 2000, his appointment had already expired and his continued stay in office was merely an act of concession and an act of liberality and generosity on the part of management and the Board to help him financially while he was looking for another job.

“8. Mr. Esguerra’s letter of resignation was submitted to and accepted by the Board as evidence (sic) by the Corporate Secretary’s Certification x x x. Moreover, it should be noted that such Letter of Resignation was completely superfluous for even without it, the

Resolution approving the extension of his appointment was effective only up to 31 December 2000.

“9. Finally, starting January, 2001 Mr. Esguerra stopped reporting for work.”

Esguerra, on the other hand, submitted a Reply and averred:

“My appointment as Senior Vice-President on August 23, 1999 was temporary because at that time, I still did not possess the career service executive eligibility. However, I acquired the required civil service eligibility effective March 15, 2000. I informed the office about this on April 7, 2000 (x x x) after I obtained the Certificate of Eligibility from the CSC in order that they can change the status of my appointment from temporary to permanent. The office did not act on it however, as it has started to adopt a policy of not giving permanent appointments to eligible officers based on the order of former Secretary Romualdez. x x x. It is my belief that no officer (or any other employee) should suffer any consequence of this violation of the civil service rules (whether intentional or not). I believe therefore that even without the action of PhilHealth, my appointment as senior Vice-President was already permanent effective March 15, 2000.”

The issue in this case is whether or not Esguerra was illegally terminated.

The Commission rules in the affirmative.

At the outset, it must be pointed out that while the letter of Esguerra is denominated as a complaint, the Commission treats the same as an appeal on the illegal termination of Esguerra effected by the PhilHealth Management.

Records disclose that Esguerra was appointed as Senior Vice President of the Philippine Health

Insurance Corporation on August 23, 1999, as shown by a copy of his appointment paper. It was signed by the Head of Agency, Enrique M. Zalamea, pursuant to **paragraph (n), Section 16, Article IV of Republic Act No. 7875 (An Act Instituting a National Health Insurance Program for All Filipinos and Establishing the Philippine Health Insurance Corporation for the Purpose)**, which read:

“SEC. 16. Powers and Functions. – The Corporation shall have the following powers and functions:

X X X

“n) to organize its office, fix the compensation of and appoint personnel as may be deemed necessary and upon the recommendation of the president of the Corporation.”

Moreover, it is provided under **no. (1), Paragraph (b), Section 19 of R.A. 7875** that one of the duties and functions of the President of the PhilHealth is *“to act as the chief executive officer of the Corporation.”*

It is noted however that the status of Esguerra’s appointment is *“TEMPORARY”*. A temporary appointment is issued to a person who meets the education, experience and training requirements for the position to which he is being appointed except for the appropriate eligibility but only in the absence of a qualified eligible actually available, as certified to by the Civil Service Regional Director or Field Officer. The appointment shall not exceed twelve months, reckoned from the date it was issued but the appointee may be replaced sooner if a qualified eligible who is willing to accept the appointment becomes actually available. **(letter (b), Section 2, Rule III of CSC Memorandum Circular No. 40, s. 1998, as amended, otherwise known as the Revised Omnibus Rules on Appointments).**

Sometime in August of 2000, before the one (1) year effectivity of the temporary appointment of Esguerra lapsed, the President of PhilHealth requested Esguerra to submit a courtesy resignation, to which Esguerra, although disagreeing at first, eventually acceded believing in good faith that the Board would come to its senses. But this would not be so since the Board gave Esguerra a letter accepting his *“resignation”*. The Board’s contention in allowing Esguerra to *“resign”* was that his appointment expired, it having a fixed term of

one (1) year from signing.

The representation of Esguerra that the reason why he was issued a temporary appointment is that he lacks the proper career service executive (CSE) eligibility is well taken. The one (1) year period provided for under the Rules merely intends to establish the duration of the temporary appointment, which may be changed to a permanent appointment if and when the appointee during the said one (1) year period obtains the required eligibility.

Applied to the instant case, while it is true that Esguerra has one (1) year to occupy the position in a temporary status, he is not however precluded from obtaining the required CSE eligibility so as to change his status from temporary to permanent. The supervening event of Esguerra acquiring the required CSE eligibility on March 15, 2000, by virtue of **CSC Resolution No. 000695**, confers upon him the right to be permanently appointed to the said position. The denial of said right, based on a non-existing policy allegedly enunciated by the former Secretary of Health, is utterly erroneous.

Interestingly, records would show that as early as April 7, 2000, Esguerra already expressed his intention of having his temporary appointment changed into permanent by submitting a copy of his Certificate of CSE eligibility with the PhilHealth. By some mysterious design, this request was not acted upon, in complete violation of **Section 6, Rule IV of the Revised Omnibus Rules on Appointments** which explicitly provides:

“Sec. 6. In cases where the appointee fully qualifies for the position to which he is temporarily appointed, the appointing authority shall no longer issue an appointment for change of status from temporary to permanent. Upon the appointee’s presentation of the required document/s, such change may be effected as a footnote on the temporary appointment previously issued, copy furnished the Commission.” (underscoring supplied)

This being so, Esguerra in fact acquired security of tenure over the position to which he may not be

removed or suspended except upon lawful cause. Noticeably, there being no lawful cause pointed out by the President of the PhilHealth, the Commission finds the actions of the PhilHealth patently illegal.

In sum, the Commission holds that Esguerra was illegally dismissed by PhilHealth. PhilHealth is thus ordered to reinstate Esguerra to his former position as Senior Vice President for Technical Services and Chief Actuary, without loss of seniority rights and other benefits appurtenant to the position. PhilHealth is also ordered to pay Esguerra his back salaries from the time he was illegally dismissed up to the time of his actual reinstatement.

WHEREFORE, the complaint of Octavino Q. Esguerra for illegal dismissal is found to be meritorious and is hereby given due course. PhilHealth is ordered to reinstate Esguerra as its Senior Vice President for Technical Services and Chief Actuary.

Quezon City, **June 27, 2001**

(Signed)

J. WALDEMAR V. VALMORES
Commissioner

(Signed)

KARINA CONSTANTINO-DAVID
Chairman

(Signed)

JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

(Signed)

ARIEL G. RONQUILLO

Director III

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2001-0326-039