

APOLINARIO, Napoleon M.

Re: Drug Test; Vacation and Sick
Leave; Query

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RESOLUTION NO. 992306

Napoleon M. Apolinario, Director, Philippine General Hospital, requests a ruling of the Commission regarding the conduct of drug test and the availment of leave benefits for purposes of rehabilitation.

The requests of Apolinario are quoted in part as follows:

"May we pose a query on whether your office can include urine examination to test the presence of prohibited drugs as one of the requirements for our annual examination in the hospital. Can we conduct this unannounced or at random to prevent those who may be using it from manipulating the result of the examination?"

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"x x x Also in this regard, may we be clarified on whether we are authorized to grant sick leave or vacation leave of absence to our employees for reasons of 'Rehabilitation' - whether from drug dependency or alcoholism?"

Applicable to the first query is the ruling of the Commission in CSC Resolution No. 99-1410 dated July 1, 1999 which reads as follows:

"x x x [R]equiring an employee to undergo drug testing brings to the fore the issue as to whether or not they are violative of basic Constitutional rights, particularly the rights of an individual against self-incrimination and the right to privacy.

"As to the right against self-incrimination, it is true that it may be invoked not only in criminal proceedings but also in administrative investigations and may be claimed not only by the witness but also by the accused. Nevertheless, the kernel of the right is not against all compulsions, but against testimonial compulsion (Alih vs. Castro, 152 SCRA 279) and against production of documents, papers, and chattels that may be used as evidence against the witness, except where the State has a right to inspect the same (Almonte vs. Vasquez, 244 SCRA 286).

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"Regarding the right to privacy, it is presumed that every individual entering the government service naturally diminish their privacy expectations. Unlike employees of private firms, civil servants always expect inquiry into their fitness and probity, as a 'Public Office is a Public Trust'. The responsibility of the government to safeguard public safety and interest and the constitutional mandate of this Commission to ensure the fitness and merit of civil service employees far outweighs the right to privacy of its employees. It is also the Commission's stand that drug testing only involve limited intrusions into an employee's privacy which is overcome by public interest.

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"All in all, the issue of mandatory drug-testing for existing organic employees of the government boils down to the question as to whether it is a proper exercise of the Police power of the state. Police power is defined as the 'power of promoting the public welfare by restraining and regulating the use of liberty and property' (The Police Power [Chicago, 1904], cited in CONSTITUTIONAL LAW by Justice Isagani A. Cruz, 1191 ed.)

In the case at bar, the effect of drug testing transcends the private interest of the government employee as it directly involves and touches the interest of the public at large.

The danger the drug use creates is not only a wrong to an employee's own person but also an inquiry to the public. Drug use of civil servants, multiplied a thousand fold can very well cause the breakdown of the government itself and eventually hurt the welfare of society and the public interest.

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"At any rate, the Commission would like to emphasize that the purpose of requiring drug testing among its employees is for the sole purpose of testing their physical and mental fitness for public service. Thus, government employees who are positive for drugs and who can offer no satisfactory explanation may be subject to dismissal from the service. However, the test results of the said drug test may not be turned over to any other agency, including the Public Prosecutor's Officer and the Ombudsman, without the employee's written consent

"WHEREFORE, the Commission hereby rules that the MIAA may administer Drug Test on its existing organic personnel as the same is not violative of human rights nor it is an intrusion into one's privacy."

As to the manner of said drug examination administration, the choice is left to the management. In other words, it is up to the agency concerned to determine the best means to administer the examination, whether it be unannounced, at random or any other ways.

In response to the second query, Section 55 of CSC Memorandum Circular No. 41, s. 1998, provides as follows:

*"SEC. 55. **Rehabilitation leave for job-related injuries.** - Applications of officials and employees for leave of absence on account of wounds or injuries incurred in the performance of duty must be made on the prescribed form, supported by the proper medical certificate and evidence showing that the wounds or injuries were incurred in the*

performance of duty. The head of department/agency concerned shall direct that absence of an employee during his period of disability thus occasioned shall be on full pay, but not to exceed to six (6) months. He shall also authorize the payment of medical attendance, necessary transportation, subsistence and hospital fees of the injured person. Absence in the case contemplated shall not be charged against sick leave or vacation leave, if there be any."

Clearly, a rehabilitation leave is granted only on account of wounds or injuries sustained while in the performance of one's official functions. However, injuries or illness suffered as a proximate result of said bad habits, such as drug dependency or alcohol-induced accident even if sustained during office hours are not covered under this leave. Neither rehabilitation and treatment for these habits is within the scope of the aforequoted provision. Hence, benefits thereunder could not be utilized for this purpose. In fact, alcoholism (habitual drunkenness) and drug dependency are considered actionable offenses under the Civil Service Law and rules and the employees concerned ought to be sanctioned or disciplined.

Under the Civil Service Law and Rules, an agency may allow an employee to avail himself or herself of sick leave benefits on account of sickness or disability of the employee concerned, or any member of his **immediate** family. On this point, Rule I (5) of CSC Memorandum Circular No. 41, s. 1998 reads as follows:

"5. Sick leave refers to leave of absence granted only on account of sickness or disability on the part of the employee concerned or any member of his immediate family."

However, the period of treatment for drug dependency or alcoholism may be considered as falling under the aforequoted provision, hence, this benefit may be availed of by the affected employees.

WHEREFORE, the Commission hereby rules and so holds as follows:

1. That the PGH may administer urine examination on its existing personnel to test the presence of prohibited drugs and that the manner by which the urine examination will be

conducted is to be determined by the PGH Management; and

2. That the PGH is authorized to grant sick leave to its employees for reason of treatment, whether from drug dependency or alcoholism, and after exhaustion of sick leave credits, vacation leave credits but not the rehabilitation leave under Memorandum Circular No. 41, s. 1998.

Quezon City, OCT. 07 1999

CORAZON ALMA G. DE LEON
Chairman

THELMA P. GAMINDE
Commissioner

JOSE F. ERESTAIN, JR
Commissioner

Attested by:

ARIEL G. RONQUILLO
Director III

