

CS 69/1976

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RJAT/KMG

SOCIAL SECURITY ACTS 1975

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE NATIONAL INSURANCE COMMISSIONER

Name: Eric Roy Channell

Local Tribunal: Norwich

Case No. 47/1

1. This is an appeal by the claimant from the decision of a local tribunal. It concerns a claim for invalidity pension which has been disallowed because he failed to prove that he was incapable of work owing to some specific disease or bodily or mental disablement.

2. The claimant has been certified incapable of work since 20 March 1969. In 1970 he had an amputation of his left leg, and uses crutches. He is a registered disabled person of about 53 years of age whose mobility is much affected by his disability. In so far as getting to work is concerned, the insurance officer now concerned, in a further submission, accepts that the claimant is incapable of work due to his condition, and I am satisfied that he has proved incapacity for work as required in respect of any work to be done away from his home.

3. The claimant was a sales representative. Having regard to the period covered by his incapacity the field of employment is enlarged, (Decision R(S) 7/60, paragraph 10) and the question which arises is whether the claimant is incapable of work whilst at home. The enquiry is whether there is work which he can reasonably be expected to do at home whether whole or part time, and for which an employer would be willing to pay. (Tribunal Decision R(S) 11/51).

4. The claimant's doctor has reported fairly severe degenerative changes in the lumbar spine but that the claimant's main difficulty is not in his ability to work, but his ability to get to a place of work every working day. The claimant is described as a highly intelligent professionally qualified man, who has held posts up to chief accountant level in charge of many companies.

5. The question whether the claimant could use his qualifications for homeworking employment was reported upon by the Disablement Resettlement Officer. He wrote "I have explored the possibilities of this without success ... in view of no constructive response whatsoever by industry or the public service I feel that he has no reasonable prospects of employment".

6. The possibility of obtaining work is one thing; capacity to do work is another. Considering an equivalent statutory provision, the Commissioner in Decision R(S) 24/51, paragraph 6, wrote "It has been pointed out, however, in Decisions R(S) 11/51 and R(S) 17/51 that the fact that there is no work of such kind as the claimant can do in his locality, or that owing to the state of the labour market the claimant has only a remote prospect of obtaining it, does not prove that he is incapable of work ... In other words the question in claims for sickness benefit is not whether the claimant can get work, but whether he can do work." So the report of the Disablement Resettlement Officer does not assist the claimant in this respect, because his capacity for work at home is the issue, and not the prospects of obtaining any work to do.

7. The claimant further relies on the unreported Commissioner's Decision CS 156/75, which adopts the approach of the Commissioner to the question of capacity for work at home decided on Commissioner's file CS/128/1974. Incapacity was held established in both cases, based on a consideration of the negligible amounts which could be earned by addressing envelopes at home, and also on the fact (in the former case) that the claimant had no training for the suggested occupation of clock repairing.

8. I do not think it possible to ignore the fact that impaired mobility, which prevents the claimant from working away from home, is in his doctor's opinion not a matter affecting his ability to work. His intellectual capacity to use his qualifications is not in doubt, and the medical report of 14 May 1975 suggested that he could do office or administrative work. The insurance officer now concerned refers to accountancy work at home, whilst recognising the difficulty of securing such employment, a situation to which I have referred at paragraph 6 above.

9. I have read and considered the claimant's observations. Each case turns on its own facts, and capacity for work must depend on the ability, mental and physical and on the qualifications of the individual claimant to do remunerative work in the circumstances in which he is placed. In the circumstances of the claimant's case I am unable to reach the conclusion that he has proved incapacity for work for the inclusive period 9 July 1975 to 23 October 1975 and my decision, disallowing the appeal, is that invalidity pension is not payable for that period.

(Signed) R J A Temple  
Chief Commissioner

Date: 22 April 1977

Commissioner's File: C.S. 69/1976  
C.I.O. File: I.O. 1047/V/76  
Regional File: EM and EQ (Unregistered Papers)