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JM/BDS

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Emanuel Greene

Local Tribunal: Brixton

Case No: 74/2

1. This is a claimant's appeal against a decision of the local tribunal dated 17 December 1979 which confirmed a decision of the insurance officer dated 25 September 1979. My decision is that invalidity pension is payable to the claimant from 14 August 1979 to 20 June 1980 (both dates included) because the claimant has proved that he was throughout that period incapable of work by reason of some specific disease or bodily or mental disablement.

2. The claimant, now aged 59 years, was formerly employed as a chargehand. It appears that his work was of a supervisory nature. He has a long history of low back pain following an injury at work on 3 February 1975. From 10 April 1978 down to the events with which this decision is immediately concerned he was continuously in receipt of sickness benefit followed by invalidity benefit. Pursuant to routine procedures he was on 18 June 1979 examined by a medical officer of the Department of Health and Social Security. This medical officer recorded that the claimant was suffering from low back pain. It was his view, however, that because the claimant's normal occupation was a light one, he (the claimant) was not incapable of working thereat. Three days thereafter the claimant's own doctor signed a form Med 3 recording that the claimant had been advised to refrain from work for one year by reason of backache. On 13 August 1979 a further medical examination was conducted by a different medical officer of the department. Under "General Description" this medical officer wrote:

"Tall thinly built man. Old for years with considerable restriction forward bending and ability to lift. He is exceedingly slow in all actions but his occupation is light checking only. He might have a problem time-keeping."

This medical officer's conclusion was also that the claimant was not incapable of working at his normal occupation.

3. For reasons which are not wholly clear to me the insurance officer then proceeded to deal with the outstanding claim by three separate decisions. On 16 August 1979 he decided that invalidity pension was not payable from 14 August to 25 September 1979 (both dates included). On 25 September 1979 the insurance officer further

decided that invalidity pension was not payable for the inclusive period 14 August to 12 November 1979. On 2 November 1979 he made a decision in terms identical to those of his decision of 25 September 1979. All of these decisions, of course, were given before Tribunal of Commissioners Decision R(S) 5/80 drew attention to the fact that an insurance officer cannot disallow a claim in part and leave the remainder undisposed of. I do not propose, however, to go in any detail into the procedural complexities which were ventilated in Decision R(S) 5/80 and in certain unreported decisions which followed thereupon. Suffice it to say that I accept the reasoning set out in paragraph 5 of the submission of the insurance officer now concerned, namely that -

- (a) in spite of the fact that an incorrect terminal date was put upon their respective decisions, the effect both of the insurance officer's decision of 16 August 1979 and of the local tribunal's decision of 17 December 1979 was to disallow as from 14 August 1979 the whole of the claim constituted by the form Med 3 which was signed by the claimant's doctor on 21 June 1979; and
- (b) the whole of the period 14 August 1979 to 20 June 1980 (both dates included) is now before me.

4. The claimant's grounds of appeal to the local tribunal read as follows:

"Even though the RMO found me fit on 13 8 79 I am not in fact fit. I am attending a consultant at King's College Hospital on 21 9 79 and hope to produce evidence of my continuing unfitness."

The claimant did not, in the event, produce any such evidence, nor did he attend the local tribunal hearing. He appears thereafter to have turned for assistance to his Member of Parliament. The Child Poverty Action Group also came upon the scene on the claimant's behalf. The claimant's appeal to the Commissioner was made out of time but I granted the necessary extension more than a year ago. There were then further delays and it was not until November 1981 that the Child Poverty Action Group submitted a medical report prepared by the consultant, who had first seen the claimant on 19 March 1975. I quote in full the final three paragraphs of that report:

"He continues to complain of continual low back pain which prevents him from working, he has to take pain relieving tablets and says he gets relief from putting a flannel on his back soaked in hot water.

On examining him he gets pronounced muscle spasm when he attempts to flex his lumbar spine the movements of which are limited. There were no abnormal neurological signs in his legs and I note that previous X-rays taken in 1975 and 1979 were normal.

This man obviously injured his back six years ago but one

would have expected a simple back strain to have cleared up long ago. I do not think there is anything significantly wrong with his back, this is obviously hysterical reaction or 'compensationitis' and I do not see his symptoms resolving. I think they are genuine enough as they probably depend on his personality and I would advise that his benefit be continued. Physical treatment is unlikely to benefit him further at this stage."

(This report was written on 2 November 1981. The consultant had examined the claimant on 30 October 1981.)

5. I do not pretend to have found this an easy case to decide. "Compensationitis" is often a synonym for wilful malingering. Wilful malingerers are not normally entitled to sickness or invalidity benefit. On the other hand, it is beyond question that hysteria is a "specific disease or bodily or mental disablement". It is the consultant's opinion that the claimant's symptoms are "genuine enough". This takes the claimant out of the wilful malingering category and puts him in the genuine hysterical category. Moreover, there is nothing in the consultant's report to suggest that the claimant's condition in 1979 was significantly better than it was at the time when that report was written. The medical officers of the Department who examined the claimant in 1979 appear, understandably enough, to have confined themselves to what may be called the objective symptoms of the claimant. I do not think that they were giving their minds to the possibility of there being such a hysterical reaction as has been diagnosed by the consultant in the light both of his own examinations and of his acquaintance with the claimant's hospital records. At the end of the day I consider that, on the balance of probabilities, the claimant has proved that he was incapable of work throughout the period referred to in paragraph 1 above.

6. Accordingly, the claimant's appeal is allowed.

(Signed) J Mitchell
Commissioner

Date: 18 February 1982

Commissioner's File: C.S. 749/1980
C I O File: I.O. 1505/V/80
Region: London South