

1. This appeal, brought with my leave, succeeds. The decision of the tribunal on 7 1 03 was erroneous in law, because of the principle it appeared to apply to the representative's evidence of his independent observation of the claimant's walking. I set the decision aside and remit the appeal to a differently-constituted tribunal for rehearing.
2. The ground on which I gave leave to appeal was whether, in characterising the representative's written evidence as "unsatisfactory" *because* it came from the representative, the tribunal erred in its treatment of that evidence. The Secretary of State's officer submitted that it did. He cited two decisions in support of this view. The representative agreed, and I set the decision aside. But it prompts me to make some brief general observations on the treatment of evidence in which representatives become involved.
3. Tribunals, unlike the mainstream courts, are not bound by rules about the *admissibility* of evidence. The representative here suggested he should not have submitted his evidence in the form of what he called a "witness statement"; but there was no need for him to criticise himself. He was clearly trying to highlight the distinction between giving *the claimant's* evidence at the hearing and giving *his own* evidence based on observation.
5. Tribunals are right (though they have a discretion) not generally to permit representatives to give the claimant's evidence. Claimants should normally give their evidence themselves so that they can be questioned about it and their demeanour observed. Appeals based on representatives not having been allowed to give the claimant's evidence will not generally be well received.
6. But there is nothing inherently "unsatisfactory" about a representative giving his own evidence, at least where he is present at the hearing to be questioned on it. If he is not going to be present, it will be a more risky strategy. But it is a matter of the *weight* to be given to it, not its admissibility.
7. It may be that *this* tribunal had formed an adverse view of *this* representative (I am sure he will forgive me for raising this, it is only an illustration), whether in the course of this hearing or over a succession of other appeals, and this led them to give little weight to his independent observation. This can sometimes be a legitimate view to form, and consistently unreliable representatives probably have little idea how much of a disservice they can do to their clients. But where this is the case, tribunals should indicate why they have, rightly or wrongly, formed their view. They should not try to avoid doing so by raising what look like admissibility points.

8. If a representative is accepted as reliable, his evidence must be dealt with. That does not mean it must be accepted at face value: a tribunal can still form the view that even though eg a claimant stopped often, it was not really necessary for her to do so in the light of the rest of the evidence, and so forth. But it must *deal* with the representative's evidence as it deals with any other, and explain its acceptance or rejection as part of the weighing exercise.
9. A *reliable* representative's evidence may also be useful in local factual matters like distances and times. There is no point in excluding evidence which may be of some help in what can otherwise be a morass of speculation and guesswork in relation to such matters.
10. So this tribunal erred in categorising the representative's evidence as unsatisfactory in and of itself because of its source. It was in the context a rather venial sin, because the tribunal went on to give reasons (and I express no view on whether they were right or wrong) for not relying on it if it had been accepted. But it was a mistake.
11. The appeal is therefore remitted to a new tribunal for rehearing. That tribunal will examine the evidence, including the representative's written statement of 7 1 03, make its own findings of fact and reach its own properly-explained conclusions. The claimant is reminded that this tribunal will not be able to take into account developments after the date of the decision appealed against, and is warned that the rehearing will not necessarily result in a decision satisfactory to her.

(signed on original)

Christine Fellner
Commissioner

8 July 2003