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Art - <sup>(Finnish)</sup> ~~Insurance~~ - ~~Present~~ - ~~Swedish~~ ~~Person~~  
Secretary to ~~Activation~~ in  
Dispute - ~~various~~ ~~Accounts~~: ~~then~~ ~~to~~ ~~Sweden~~  
December, NOT PAIN

NJI-J/CW/3

Commissioner's File: CIB/309/1997

SOCIAL SECURITY ADMINISTRATION ACT 1992  
SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992  
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A  
QUESTION OF LAW  
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

~~Social Security Appeal Tribunal: Sutton C~~

Case No: 7 07 96 04689

1. This is an appeal against a decision of the Sutton C. social security appeal tribunal held on 7 August 1996. It is my decision that the decision of that tribunal is erroneous in point of law. Accordingly I set aside the decision and order that the matter be reheard before a freshly constituted appeal tribunal.

2. The claimant was born in the year 1949. On 8 February 1994, as appears from the summary of facts of the adjudication officer, the claimant was awarded income support as an unemployed person. Thereafter he received the same benefit on and after 3 August 1994 as a person incapable of all work. The claimant was required to complete an incapacity for work questionnaire. The questionnaire was received by the Department on 6 December 1995. If the contents of that questionnaire were correct the claimant satisfied the All Work test, by reason of compiling a sufficient number of points in respect of the disabilities which may make a person incapable of work as set out in schedule 1 to the Social Security (Incapacity for Work) (General) Regulations 1995. These regulations govern this matter by reason of the date on which the adjudication officer's decision was made, and the date of the hearing of the appeal tribunal. In particular it should be noted that in compiling his answers to the questionnaire the claimant indicated that he had difficulties with walking and that he could not walk without having to stop or feeling severe discomfort for more than 200 metres. He also indicated that he had difficulties bending and kneeling, and in particular, could not bend to touch his knees and straighten up again. These were important answers.

3. The claimant was examined on behalf of the Department and an incapacity for work medical report form was completed by the registered medical practitioner who carried out the examination. The registered medical practitioner indicated

that the claimant scored no points whatever in respect of the disabilities which might make the claimant incapable of work. I should add that the disabilities complained of were all physical disabilities. In particular so far as walking was concerned the registered medical practitioner said that he did not agree with the claimant's own assessment of himself. He said that the claimant could walk but would get pain eventually. His finding on clinical examinations were that the claimant could walk normally without a stick or limp. He found that the claimant could use public transport and could go shopping in nearby shops. He found that the claimant could only bend "half way". His opinion was that the claimant could not walk for more than 800 metres without stopping for severe discomfort. So far as bending or kneeling was concerned the registered medical practitioner found that the claimant could ~~not bend down completely. He got pain in his back. He needed help with putting on socks and shoes. He could bend down "half way".~~ Once again in respect of this the registered medical practitioner awarded no points.

4. In a supporting medical report the claimant's own doctor whose patient the claimant had been for more than 20 years, gave as his opinion that the claimant could not walk for more than 400 metres without stopping or suffering severe discomfort. He also said that the claimant could not bend, touch his knees and straighten up again. These two descriptors were between them worth 18 points, and if held correct, would have caused, benefit to have been payable to the claimant.

5. The majority of the tribunal dismissed the appeal. One member of the tribunal would have allowed the appeal. The decision of the majority turned on the point that they preferred the evidence of the Department's examining registered medical practitioner to that of the claimant's own registered medical practitioner. One member disagreed on this approach, preferring the evidence of the claimant's own doctor. The reasons for the decision were given in a general way. There was no specific finding with regard to any particular activity. Giving the reasons for the majority, it was stated that they preferred the medical officer's opinion of the claimant's capabilities for certain reasons which were set out in the record of the proceedings of the tribunal.

6. I accept that it may be satisfactory to deal with the activities and which are in issue between the parties in a general way in certain cases. However it is my view that it was erroneous not to have dealt specifically with, and made specific findings of fact in respect of, the activities of walking on level ground, and of bending and kneeling. So far as the former is concerned there was considerable difference between the claim of the claimant himself, the support which his registered medical practitioner was prepared to give him and the assessment of the examining medical practitioner who

saw the claimant on behalf of the Department. Moreover in the report of the examining registered medical practitioner there is a reference to the claimant "suffering pain eventually". This reference should have given the tribunal pause for thought and the tribunal needed to make a specific finding of fact with regard to the distance which the claimant could walk without suffering from severe discomfort. The particular reason for this is that it would appear to be possible that the registered medical practitioner was applying the wrong test to the claimant's walking ability, namely applying the test as to how far he could walk without suffering from pain, rather than the less stringent test of how far he could walk without suffering from severe discomfort.

7. So far as bending is concerned both the claimant and his own doctor asserted that the claimant could not bend to touch his knees and straighten up again. The examining registered medical practitioner was of a different view. However the examining registered medical practitioner stated in an imprecise fashion that the claimant "could only bend half way". He used this description twice. In my view this was far too imprecise a finding to be a finding to which the tribunal could refer generally without making specific findings of fact in respect of the claimant's ability in this regard. If the account of the claimant and his doctor was true, this would have seen the claimant home without more.

8. Accordingly for the above reasons it is my view that the tribunal erred in law in failing to make proper findings of fact necessary to their decision and to record them, so far as the majority is concerned. I am also of the view that from the reasons given by the majority it might be thought that they had ignored the claimant's own evidence about his capabilities and merely decided this matter on the basis of the medical evidence before them. I can see that in their decision there are general references to the amount of pain and suffering suffered by the claimant which might be supposed to be reasons for rejecting the claimant's own evidence. However my view is that these reasons in the context of this matter were not sufficiently related to the claimant's own evidence to give him a satisfactory explanation as to why it was rejected, or to enable him to know that his own evidence had been taken into account, albeit rejected. For this reason too I would set this decision aside.

9. Accordingly the matter must be heard anew.

(Signed) N J Inglis-Jones  
Commissioner

(Date) 28 May 1998