

JBM/SH/10

Commissioner's File: CIS/323/1990

SOCIAL SECURITY ACT 1986

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the Plymouth social security appeal tribunal contained at pages T68 and following of the case papers is erroneous in point of law. Accordingly I set it aside and remit the case for rehearing to a differently constituted appeal tribunal.

2. This is an appeal by the claimant to the Commissioner with the leave of the tribunal chairman in respect of the decision of the adjudication officer first involved in these appeals.

3. The facts of the case are dealt with in box 5 of the submission of the adjudication officer first involved in these appeals. In respect of those matters and of the submission dated 13 August 1990 of the adjudication officer now involved in these appeals the claimant through his representatives has had the opportunity to comment and I have their observations contained in the case papers at page 83 thereof. No useful purpose would be served by my setting out these matters afresh here.

4. The relevant statutory provisions are section 104 of the Social Security Act 1975 and section 53 of the Social Security Act 1986.

5. In my judgment the decision of the appeal tribunal is erroneous in point of law. The claimant's grounds of appeal are set out by his representatives setting out the six points contained at pages 75 and 76 of the case papers. I have considered very carefully the arguments put forward on behalf of the claimant by his representatives. I have also considered the full and careful submission made by the adjudication officer now concerned dated 13 August 1990. I do not think that it is necessary for me to recite the careful arguments put forward by

both sides. I have to bear in mind that I can allow an appeal only if I am satisfied that the decision of the appeal tribunal was erroneous in point of law. What is an error of law is helpfully detailed by the Commissioner in Decision R(I) 14/75. Suffice it to say that I accept and adopt as part of my judgment paragraphs 5 and 6 of the submission dated 13 August 1990. I need only add that I do not accept the grounds of appeal put forward by the claimant and dealt with in paragraphs 7 to 9 inclusive of that submission. There is no merit in my setting out these matters further here. On the grounds given in paragraphs 5 and 6 of the submission referred to immediately above the case has in any event to go back to a further tribunal.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. I direct that the new tribunal to whom I remit this case in rehearing the case shall pay particular attention to all the aspects to which I have referred in paragraph 5 above of this decision. Further they shall consider carefully the exact wording of the relevant statutory provisions and make and record their findings on all the material facts and give reasons for their decision. All issues of fact are at large before the new tribunal.

7. Accordingly the claimant's appeal is allowed.

(Signed) J.B. Morcom
Commissioner

(Date) 7 February 1992