

BJD/SH/2/MD

Commissioner's File: CS/0234/1986

C A O File: AO 4404/V/1986

Region: Overseas Branch

SOCIAL SECURITY ACTS 1975 TO 1986

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that this appeal be allowed and that the decision of the social security appeal tribunal dated 14 May 1986 be set aside. The effect of my decision is that the claimant is entitled to invalidity benefit for the period from 5 December 1983 to 14 May 1986 (inclusive).
2. The appellant came to this country from Pakistan in 1962 and remained here working in the textile industry until June 1979. During that time he made various visits back to Pakistan where his wife and five children lived. He never owned a house in this country but lodged with friends. On 1 July 1979 the claimant went to Germany to work in the motor industry because he found it difficult to obtain work in this country. In February 1981 the claimant made a claim for invalidity benefit to the German authorities. This claim was passed on to the United Kingdom authorities under the provisions of the European Community Regulations on Social Security and United Kingdom invalidity benefit was awarded to him from 22 October 1981. While in Germany the appellant had rented a room. He had originally come to the United Kingdom to try to earn money to support his family in Pakistan and had gone to Germany because work was available there but was not available here.
3. On 2 July 1983 the claimant returned to the United Kingdom and sickness benefit/invalidity benefit was paid while he was here. In November 1983 the claimant wrote to the DHSS informing them that he was "going home" on 1 December 1983 and asked for the money due to him to be sent on. He said that he would be staying abroad over six months to see if he could get better with the hot weather. He said that he hoped he would. He left for Pakistan on 4 December 1983. The previous day, in correspondence with the DHSS, he said that he intended to return to Great Britain, that he could not state the exact date of his return because it depended upon the state of his health, that his air ticket was valid for one year, that he was leaving his personal possessions with a friend at an address (as stated), that he was depressed due to loneliness while ill and that his normal residence was in Great Britain. He also said "I am not retaining a home in Great Britain" but, of course, this remark must be read in the context of the fact that he had never had a house here, in the context of owning one or renting one. He had always lodged with friends.
4. The adjudication officer decided that the claimant's absence from Great Britain was

not temporary and therefore decided that invalidity benefit was not payable from and including 5 December 1983. On 17 November 1984 the claimant returned to Great Britain permanently and invalidity benefit was reinstated from that date.

5. The question in issue before the tribunal, and remaining in issue before me, is whether during the period from 4 December 1983 to 17 November 1984, while the claimant was in Pakistan, he was "temporarily absent from Great Britain": (see Social Security Act 1975, s.82(5)(a) and Regulation 2 of The Social Security Benefit (Persons Abroad) Regulations 1975).

6. The tribunal, in a very carefully considered decision, reached the conclusion that the claimant's visit to Pakistan from 4 December 1983 to 17 November 1984 was only a temporary absence but the tribunal decided that it was an absence from Germany, not from Great Britain because his previous stay here from 2 July 1983 to 4 December 1983 had also only been "temporary". The adjudication officer, in his submission to me dated 28 November 1986, accepts that this absence in Pakistan was a temporary absence only. On this point I respectfully agree with the tribunal and with the adjudication officer. This means that the only matter which I have to decide is whether that temporary absence was "from Great Britain". In my judgment that absence was a temporary absence from Great Britain and not a temporary absence from Germany, as the tribunal held.

7. There are a number of earlier decisions on what is meant by "temporary absence". The question of the country from which the applicant was temporarily absent does not seem to have previously arisen. There seems to be a "rule of thumb" that after an absence of 12 months it is difficult to say that the absence is only temporary. Applying this rule of thumb to the facts of the present case, it would not be possible to say that the absence from Germany was temporary because the claimant left Germany in July 1983 and never returned there. It seems clear from the facts of this case that the claimant was permanently absent from Germany after 2 July 1983. Indeed, he has never been back there since that date. I therefore find it hard to accept the conclusion of the tribunal that while the claimant was in Pakistan from December 1983 to November 1984 he was temporarily absent from Germany. My task, however, and that of the tribunal is not to decide whether during the period in question the claimant could be said to be temporarily absent from any place other than Great Britain. The only question which the tribunal and I have to consider is whether, during the period in question, the appellant was temporarily absent from Great Britain. In reaching that conclusion, however, his apparent decision to abandon his residence in Germany may be highly relevant.

8. From the letters which he wrote at the end of 1983 (referred to above) it is clear, I consider, that the claimant thought that he would be coming back to Great Britain after his stay in Pakistan for the purposes of seeing his family and also trying to throw off his illness. He had a return air ticket (presumably for return to Great Britain from which he had departed), he had left personal possessions with a friend here and he was asserting that this was the country to which he would return. In my judgment, if the claimant was temporarily absent from anywhere during the relevant period, he was temporarily absent from Great Britain. Because he never had a house in this country, I do not think that any inference of significance can be derived from his statement in December 1983 that, "I am not retaining a home in Great Britain". Even if any significance could be attached to that answer, it would only be significance going to the question whether his absence was to be regarded as temporary. The tribunal accepted, as does the adjudication officer, that his absence in Pakistan is to be regarded as being a temporary absence only.

9. Before the tribunal the presenting officer made a submission that the purpose of the claimant returning to this country from Germany was to claim benefit in the United Kingdom before returning to Pakistan. He submitted that the absence in Pakistan was temporary absence from Germany only because the claimant had returned here to establish residence for benefit purposes only. The claimant was, of course, entitled to return to this

country and once he had returned here he was entitled to claim his statutory benefits. In my view, once it is established that the claimant did not intend to return to Germany (as must be accepted) his absence in Pakistan was either a temporary absence from Great Britain or was a permanent absence from this country or elsewhere. However, it is accepted that the period in question was only a temporary absence and, in my judgment, it must follow that such temporary absence was from Great Britain. The facts of the case afford strong support, in my judgment, for the view that if the claimant was temporarily absent from anywhere he was temporarily absent from Great Britain and, indeed, that he is to be regarded as having been temporarily absent from Great Britain during the period in question. What he said in December 1983 is wholly consistent with such a conclusion, as is his conduct thereafter both in returning to this country and in staying here after November 1984.

10. In the light of the matters set out above I have reached the conclusion that the decision of the tribunal that during the period in question the claimant was temporarily absent from Germany rather than temporarily absent from Great Britain is a conclusion which it is not possible to accept. On the facts of this case I conclude that from 5 December 1983 to 16 November 1984 (both dates inclusive) the claimant was temporarily absent from Great Britain.

11. Regulation 2 of the above-mentioned Regulations requires certain other conditions to have been fulfilled before the claimant is entitled to benefit for the periods of absence abroad. It is accepted by the adjudication officer in his submission to me dated 28 November 1986, that the claimant fulfils those other conditions and that if he was temporarily absent from Great Britain during the period in question he is entitled to invalidity benefit for such period. In the light of this consideration I hold that the claimant was entitled to receive invalidity benefit for the period from 5 December 1983 to 16 November 1984 (both dates inclusive) and for the remaining period up to the date of the tribunal's decision.

12. In his notice of appeal the claimant referred to various other matters, including the conduct of the hearing before the tribunal. In the light of the decision I have reached it is not necessary for me to consider these other matters.

(Signed) B.J. Davenport
Commissioner

Date: 19th May 1987.