

NO WARNINGS  
UNPREDICTABLE ABSENCES

Commissioner's File: CS/090/1986

**SOCIAL SECURITY ACTS 1975 TO 1986**

**CLAIM FOR INVALIDITY BENEFIT**

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. My decision is that invalidity benefit is payable to the claimant for the inclusive period from 19 February 1985 to 13 April 1985. If any supplementary benefit has been paid to the claimant in respect of that period there will be some adjustment to be made under section 12 of the Supplementary Benefits Act 1976.
2. The claimant is a man aged a little over 40 who in 1971 met with an industrial accident while working as a municipal dustman and he injured his back. He is in receipt of special hardship allowance, but as he receives a small amount of supplementary benefit the special hardship allowance is probably taken into account in assessing the supplementary benefit and is thus of little practical advantage to him.
3. The accident occurred in the year 1971 and the benefit history sheet shows many periods of sickness benefit and later invalidity benefit on account of the condition of his back. He had been in receipt of invalidity benefit for a continuous period of more than a year immediately before the commencement of the period above mentioned. His claims for benefit for that period were rejected by the adjudication officer after he had been twice examined by medical officers of the Department of Health and Social Security (on 12 September 1984 and 12 February 1985) and found on each occasion, in the opinion of the medical officer, to be incapable of work as a dustman (or on salvage) but capable of work within limits. The first officer thought the claimant's motivation good and both recommended employment rehabilitation courses; and as is common with persons suffering from back injuries, they recommended sedentary work not involving bending or heaving lifting. The second officer considered that the claimant's condition was static. The claimant appealed to the social security appeal tribunal and dismissed the appeal. In applying for an adjournment of the tribunal hearing the claimant's advisers intimated that they had a letter from the claimant's general practitioner but were seeking a report from a hospital where he had been treated.

They obtained the adjournment and the report, and relied on the latter to the exclusion of the general practitioner's letter. I was told that this letter was vague and unhelpful. I shall return briefly to the hospital report, which was written by a former consultant in charge of the accident department at the hospital in question. The tribunal dismissed the appeal considering that all the medical reports expressed the view that the claimant was capable of some work. The claimant now appeals to the Commissioner. He was represented at the oral hearing before me by Mr T Pickering of the Birmingham Tribunals Union and the adjudication officer was represented by Mr J Latter of counsel instructed by the Solicitor's Office of the Department of Health and Social Security.

4. It is, in my judgment, clear (and I do not think that the contrary was suggested) that the claimant's capacity for work has now to be judged by reference to a wider field of employment than that of his former occupation as dustman. He did work on as a dustman for some years after his accident with frequent spells off work on account of his back. He was finally declared unfit and pensioned off in the year 1980, since when he has not worked. He has exhausted his title to unemployment benefit. The appeal tribunal found correctly that all the medical reports (even that of the consultant) expressed the view that the claimant was capable of doing some kind of work. The claimant himself told the appeal tribunal and also told me that he would work if he could find a light job; and but for one factor which seems to have been mentioned for the first time at the hearing before me I should have to conclude that the claimant was not incapable of work that he could reasonably be expected to do.

5. There is in fact a border zone between incapacity for work (where sickness or invalidity benefit is appropriate) and disablement-induced unemployment, where in practice a person's disablement is such as to render it unlikely that he will in fact secure employment, where unemployment benefit is (until title is exhausted) the appropriate benefit. It was in effect held by a Tribunal of Commissioners in Decision R(U) 2/82 that disablement-induced unemployment did not of itself constitute incapacity for work. Once title to unemployment benefit is exhausted the only recourse is to supplementary benefit where some recognition is given to disablement-induced unemployment inasmuch that, in some cases at least, a person can be exempted from the requirement to be available for employment and thus qualify in time for the long term rate (see Supplementary Benefit (Conditions of Entitlement), regulation 1981, regulation 6(e)).

6. I have concluded however in this case that there is one factor about the claimant's condition which does in fact render him incapable of work.

Both he and his wife described to me the situation that occurs with relative frequency (they put it at about once per week on the average) when without much warning the claimant's back "goes" and there is no recourse but to lie on the floor absolutely still for perhaps an hour and to follow this with total rest for the remainder of the day at least so as to avoid recurrence. This the claimant says means that he would have to warn any prospective employer that he would have regular unpredictable absences from work. It is this factor of repeated periods of incapacity that in fact renders the claimant unemployable by reason of his back condition (as to intermittent incapacity see Decision R(S) and on that account I hold that the claimant's condition is such as to render him incapable of work notwithstanding that there must in my judgment be significant periods when he could do work that he could reasonably be expected to do. His appeal succeeds.

(Signed) J G Moore  
Commissioner

Date: 19 December 1986