

Commissioner's File: CS/142/1984

C A O File: AO 3361/V/83

Region: Midlands

COMMISSIONER'S DECISION  
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**SOCIAL SECURITY ACTS 1975 TO 1985  
CLAIM FOR INVALIDITY BENEFIT  
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

**Name:**

**Appeal Tribunal:**

**Case No:**

**[ORAL HEARING]**

1. This is a claimant's appeal, brought by leave of the chairman of the local tribunal, against a decision of that tribunal dated 5 July 1983 which confirmed a decision of the insurance officer (now the adjudication officer) dated 6 May 1983 and determined adversely to the claimant a reference made by the insurance officer on 19 May 1983. My decision is that invalidity pension is payable from 10 May 1983 to 8 August 1983 (both dates included) because the claimant has proved that he was, throughout that period, incapable of work by reason of some specific disease or bodily or mental disablement. The matter has taken an inordinate time to come to a conclusion, primarily because there were no fewer than four postponements of the oral hearing - all at the request of the claimant's representatives.
2. When, eventually, I held the oral hearing, the claimant appeared and was represented by Miss Angela Barney of the Social Services Department of the Derbyshire County Council. I am indebted both to Miss Barney and to the adjudication officer's representative for the thorough manner in which they canvassed the issues in what, I must confess, I have found a difficult case.
3. The claimant was born in Ireland in 1936. He left school at the age of 14. He is, at most, semi-literate. Initially he did farm work in Ireland. Thereafter, however, he came to England and for some 23 years was employed by the National Coal Board - latterly as a surface belt operator. In September 1980 he sustained an industrial accident in which he injured his right hand. He received injury benefit in respect of two periods totalling about 11 weeks. Thereafter disablement was assessed at 7 per cent from 1 March 1981 to 30 April 1982 and then at 3 per cent from 1 May 1982 for life. He became incapable of work on 10 September 1982 - and has never since been in employment. He was paid invalidity benefit down to 9 May 1983 - but then the insurance officer decided that the claimant, although incapable of his erstwhile occupation, was not incapable of all work. And that is what this case is about.
4. I turn first to the medical evidence which is, unsurprisingly, entirely documentary:
  - (1) Relevant to the period before me are two forms Med 3 issued by the claimant's

doctor. On the first the diagnosis is stated as "Injury to hand" and on the second the diagnosis is stated as "Painful thumb and index finger after an injury".

- (2) In the context of special hardship allowance, there is a report made by a consultant surgeon and dated 5 May 1982. It is, of course, primarily directed to the relevant loss of faculty - "Impaired gripping power". It refers to "Residual median nerve compression symptoms, probably due to carpal tunnel compression, probably due to injury to the right hand as dated". It also mentions "Cervical spondylosis causing stiffness in the neck but not causing the problem in the arm". The final paragraph reads as follows:-

"Relevant loss of faculty contributes only partially to his present incapacity. His incapacity for regular occupation is likely to be temporary but I cannot predict how long this incapacity is likely to last. I would rate him fit to do a light job which did not involve heavy lifting. He could handle a shovel for instance."

- (3) On 24 March 1983 the claimant was examined by a medical officer of the Department of Health and Social Security. That medical officer - somewhat surprisingly to me - considered the claimant to be capable of working at his regular occupation. Amongst his comments he wrote: "poorly motivated with good use of right hand today."
- (4) On 5 May 1983 the claimant was examined by a different medical officer of the Department. That medical officer was also of the opinion that the claimant was not incapable of his regular occupation.
- (5) On 4 June 1982 and 16 May 1983 medical boards advised in respect of renewal claims for special hardship allowance. Both boards were of the view that the claimant was not capable of his regular occupation but was capable of remunerative employment. They referred to the claimant's cervical spondylosis, impaired neck movements, dizziness and loss of consciousness in attacks which lasted about 10 minutes.

5. That was how the medical evidence stood at the time when the insurance officer gave his decision of 6 May 1983 - and how it stood when the local tribunal gave its decision of 5 July 1983. I am bound to say that in the light of such evidence I should have been surprised if the respective decisions of the insurance officer and the local tribunal had been other than they were.

6. When the matter first came before the Commissioner (who was not myself), the Commissioner directed that further medical reports should be obtained with specific reference to the claimant's blackouts and dizzy spells. A report dated 6 September 1984 was duly made by a senior consultant neurologist. It recites that in June 1984 the claimant had suffered his worst attack, having been unconscious for about 45 minutes. The claimant's doctor had been summoned and had arranged for the claimant's admission to hospital with a diagnosis of heart attack. I quote the following passages from the report's conclusion:-

"[The claimant] on his own account has suffered blackouts which he dates from September, 1980. His description of these blackouts is not sufficiently detailed to allow definitive diagnosis. And his wife's description of these episodes also is not diagnostic. However, the most probably clinical diagnosis on the information presently available is one of vasovagal syncope.... myocardial ischaemia can not be excluded on the information provided to me.... I can find no continuing physical abnormality that would prevent him returning to his normal work." (My underlining)

7. Dated 16 October 1984 is a report by a consultant psychiatrist. I quote the conclusion

in full:

"[The claimant] is an intellectually dull individual who is also illiterate. His early history suggests that he was prone to develop neurotic symptoms whenever he is faced with stressful situations. At the present time there is no evidence that he is suffering from any form of mental illness, although he is naturally worried about his financial affairs. I believe that he is fit from a psychiatric point of view for suitable work.

With regard to the period referred to in your letter, namely the 10th May, 1983 to the 8th August, 1983, I believe that he probably was fit for work although one cannot be sure because of his tendency to develop psychosomatic symptoms when under pressure and I think the pressure at that time was his inability to find suitable work and financial hardship." (My underlining)

8. Prior to the oral hearing - and in accordance with the recently introduced practice - the adjudication officer laid before me a list of some 19 different specifications of jobs of which the claimant might be considered capable. I shall return to those presently. I must first refer to three other items of medical evidence which came in subsequently to that list of jobs:

(1) On 1 April 1985 the area medical officer of the National Coal Board wrote:

"I saw this man recently for a pre-employment medical and am writing to you at his request to confirm that he is unfit for any form of work which the Board could offer him by reason of his health problems. He is unable to work at heights, on ladders or near moving machinery. He is unable to lift or to carry objects and he is unfit to work underground."

(2) On 6 January 1986 the same area medical officer wrote:

"Further to your query about [the claimant], I saw him for pre-employment medical on 27th March, 1985 at the request of the National Union of Mineworkers. He had had ill-health retirement in 1982 for cervical spondylosis, probable peptic ulceration and episodes of sudden unconsciousness, which were felt to be due to basilar insufficiency. He also had carpal tunnel syndrome. All of these conditions were still active at the time I saw him and in addition he had had a period in hospital with a suspected heart attack.

In view of this I felt he was unsuitable for any employment which he could be offered in the industry. His sudden blackouts made him unfit for work underground and he could not safely work at heights, on ladders or in the vicinity of moving machinery and his cervical spondylosis made it inadvisable that he should be required to lift and carry weights, especially as he was also having trouble with his back."

(3) But - perhaps most significant of all - was a report dated 3 June 1986 which was put in at the hearing before me by the claimant's representative. It was made by the claimant's doctor - who, I note, is a Fellow of the Royal College of Surgeons (London). It specifies various complaints and disabilities from which the claimant has suffered over recent years. Its conclusion is as follows:

"This man's fitness for work remains a matter of serious doubt. In April, 1985, Dr....., Area Medical Officer of the N.C.B. has clearly indicated that the man was not fit to work in any department of the coal

industry, however light the job might be. Chest pain, tending to attacks of vertigo and blackout are symptoms which one should not ignore, as the risk could amount to loss of life.

I have known this man for over 13 years and having regard to the continued symptoms as above, I, like [the area medical officer], feel that this man is not safe in undertaking any part or full time job of any description.

I would conclude he will remain incapable of work for the rest of his life."  
(My underlining)

That was, of course, written three years after the period which is before me. I think it reasonable, however, to infer from it that it relates to the whole of the time since the claimant gave up work. It is of particular significance, not only because of the high qualifications of its author, but because of its author's close acquaintance with the claimant's medical condition over many years. I have, at the end of the day, decided that it tips the scales in favour of the claimant.

9. In view of that conclusion, I intend to deal very briefly with the full and careful way in which both of the advocates before me dealt with the 19 jobs in the list to which I have referred in paragraph 8 above. The adjudication officer's representative expressly abandoned the jobs of gatekeeper and security officer. For her part, Miss Barney stressed - not only the somewhat alarming history of blackouts and loss of concentration - but the claimant's relative illiteracy and poor memory. I accept the claimant as a basically honest witness - but his evidence was confused. Had it not been for the medical report to which I have referred in paragraph 8(3) above, I should have found it very difficult to hold that there was no job in the list of which the claimant was - at the relevant time - capable. The high-water mark of the adjudication officer's case was when the claimant - after saying that he would have found the job of labeller embarrassing because of his difficulties with reading - said: "If I could get the job, I would have a shot at it." But it is clear from the papers that the claimant has been intensely worried over the years by his inability to make proper financial provision for his family. The fact that he "would have a shot at" the job of labeller, is not conclusive of his capacity for that job. I have myself said many times that this sort of case falls to be decided primarily upon the expert medical evidence - and, as I have already indicated, I hold that that evidence establishes, albeit narrowly, that the claimant was in the relevant period incapable of all work which he could reasonably be expected to do.

10. It follows that the claimant's appeal is allowed.

(Signed) J. Mitchell  
Commissioner

Date: 16th September 1986