

CS 295/84

COMMISSIONER'S DECISION
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VGHH/BC

SOCIAL SECURITY ACTS 1975 TO 1982

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Local Tribunal:

Case No:

1. This appeal fails. My decision is that invalidity pension is not payable to the claimant from 13 July 1983 to 21 July 1983 (both dates included) because the claimant has not proved that he was incapable of work, in terms of section 17(1)(a)(ii) of the Social Security Act 1975, by reason of some specific disease or bodily or mental disablement and incapacity cannot be deemed in this case.

2. The facts and relevant law are summarised in the written submission of the insurance officer to the local tribunal and I adopt that summary in these respects with the additions referred to by the adjudication officer now concerned in her written submission.

3. The claimant, a heavy goods vehicle driver who attained the age of 53 shortly after the end of the above mentioned period, became incapable of work on 15 January 1979 and received sickness benefit followed by invalidity benefit down to 12 July 1983, incapacity being certified variously as chest pains, angina on effort, post operative, coronary arterial disease and post coronary thrombosis bypass. He was examined on 9 June 1983 by an examining medical officer of the Department of Health and Social Security and was found incapable of work at the job of heavy goods vehicle driver but fit for a good range of light jobs. He had had cardiac surgery 2 years earlier and the medical officer considered him very much improved and able to manage suitable light work. He could not do heavy lifting and tugging and could not tolerate stress or responsibility. The claimant's own doctor continued to issue medical statements advising the claimant to refrain from work and the claimant was accordingly examined by a different medical officer of the Department on 26 August 1983 who expressed the opinion that the claimant could manage most sedentary jobs or van driving provided heavy lifting/loading was not required.

4. An insurance officer on 14 July 1983 decided that invalidity pension was not payable for the period referred to in paragraph 1 above and the claimant appealed to a local tribunal. Before them, he produced a report from a consultant physician, who examined the claimant on 6 March 1984 (the day of the report) and concluded that

"This man cannot do his old job. He could do light work of a clerical office indoor type but this is not available and secondly he is entirely the wrong type of person for such work with his relative lack of education. This man was a heavy goods vehicle driver doing heavy physical work in the building trade. He cannot do this work and it is the only work that would be open to him. I think the D.H.S.S. ought to continue his invalidity pension".

5. The claimant's own doctor advised him on 5 September 1983 that he was fit for limited work.

6. The local tribunal recorded as findings of material fact the following:

"Claimant is capable of work not involving lifting or prolonged outdoor exposure.

He is capable of such work as commissionaire, lift attendant, petrol station cashier".

By a majority, they dismissed the appeal, the dissenting member stating

"Medical report and Department of Employment show that he is incapable of work".

The tribunal's recorded grounds of decision were:

"Listening to claimant and considering written evidence."

The dissenting member's reference to "medical report" appears to be a reference to the consultant physician's report of 6 March 1984 and the reference to the Department of Employment appears to be a reference to a letter dated 10 November 1983 from the local Job Centre (Manpower Services Commission Employment Service Division) confirming that the claimant attended for interview at their office on 23 June 1983 "at which the various options were discussed but which concluded with a referral back to your own doctor" and to the claimant's evidence before the tribunal that the Disablement Resettlement Officer had said that he could not register the claimant and that he should not have been sent.

7. In appealing to the Commissioner, the claimant submits that having regard to his age, education, experience etc. there was no work which he could do, even if it were available and that the tribunal had accepted that he could not do any work which required any clerical ability. As regards the duties of commissionaire, lift attendant and station cashier, commissionaire and petrol station cashier involved a great deal of stress and responsibility, which the medical officer of the Department found he could not tolerate, he could not operate goods lifts because he could not do any lifting and there were no longer any passenger lift attendants.

8. In a letter dated 26 June 1984 the Disabled Persons Services of the Manpower Services Commission Employment Division wrote that vacancies for lift attendants did exist but only one vacancy for a goods lift attendant had been notified to the local Job Centre during the last 12 months - 2 years. The Disablement Resettlement Officer had said it would be very difficult to comment on the type of employment the claimant could consider as he could only cope with very light work and in view of this his employment prospects would be classed as very poor in the current economic climate.

9. There is no evidence to support any suggestion that incapacity could be deemed under regulation 3 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975, which is clearly inapplicable.

10. The sole issue in this case is whether the claimant has proved, and the onus of doing this lies on him, that he was, during the period 13 July 1983 to 21 July 1983 incapable of work in terms of section 17(1)(a)(ii) of the Social Security Act. As explained in the written submission of the insurance officer to the local tribunal, the claimant had by then been off work so long that the field of employment to be considered required to be enlarged beyond that of heavy goods vehicle driver (the claimant's former occupation) and his capacity for alternative employment considered. "Work" in section 17(1)(a)(ii) means work that the claimant could reasonably be expected to do and has many times been held to include, in the case of employed earner's employment, work for which an employer might be expected to pay and, in the case of self employment, gainful work.

11. I accept that the work of commissionaire and petrol station attendant might be too stressful for it to be reasonable to expect the claimant to perform them. But I cannot accept that there are no passenger lift jobs available; since the Disablement Resettlement Officer has written that there are and the claimant's own representative, in a letter dated 11 May 1984, wrote to the Disablement Resettlement Officer that it was "my own impression, however, that most of the lifts, both in the department stores and hotels in Manchester are passenger operated". The claimant lives in Manchester and, while claiming that there are not now attendant operated passenger lifts (which as I have just indicated I do not accept), agrees that this is a job which he could do.

12. In cases where a claimant's medical condition is such that it is difficult to imagine any work for which an employer would pay which he could reasonably be expected to do, an adjudication (formerly insurance) officer is often asked what jobs it is suggested that a claimant can do. But it should be emphasised that the onus of proving incapacity for work rests on the claimant. In the present case, the claimant can perform the job of passenger lift attendant, as he admits and I (on the medical evidence) hold. The detailed reports of two medical officers who examined the claimant and of the consultant physician are quite consistent and I prefer them to that of the claimant's own doctor who has not provided any detailed report and whose evidence is outweighed by that of the three other doctors. Clearly, the claimant is capable of light work.

13. In my judgment, the claimant has failed to show, on a balance of probability, that there are no light jobs which he could reasonably be expected to do and for which an employer could be expected to pay. I accept that it would not be reasonable for the claimant to do clerical work. But I am not satisfied either (a) that there are no light sedentary (non-clerical) jobs of which the claimant is capable and for which work an employer would be prepared to pay or (b) that the job of passenger lift attendant is one which does not exist in Manchester. The claimant may not be able to find such a job; but the inability to find a job is catered for, in appropriate circumstances and subject to the necessary contributions and other conditions, by unemployment benefit. The question for decision in this case relates to invalidity benefit which depends on whether the claimant has shown that he is incapable of work. If he has not (and in my judgment he has not), then invalidity benefit is not payable.

14. For these reasons, and also for the reasons given by the adjudication officer now concerned, with which I agree, I affirm the majority decision of the local tribunal and dismiss the appeal. I notice that the last two days (20 and 21 July 1983) to which my decision relates are included in a further decision of an insurance officer given on 25 July 1983 disallowing invalidity benefit for a period which includes those days. Since the insurance officer's decision which was before the present local tribunal is dated 14 July 1983, that other decision is in fact a nullity as regards these two days. Nothing turns on this point unless the later decision is under appeal.

15. My decision is set out in paragraph 1.

(Signed) V G H Hallett
Commissioner

Date: 23 November 1984

Commissioner's File: CS/295/1984
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Region: North Western