CS/91/81

JSW/ME

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Local Tribunal:

Case No:

Decision C.S. 19/81

1. My decision is that invalidity benefit is not payable to the claimant for the inclusive period 1 March 1980 to 30 April 1980 because he has not proved that he was incapable of work by reason of some specific disease or bodily or mental disablement as provided by section 17(1)(a)(ii) of the Social Security Act 1975.

2. The claimant, now aged 55, had been self-employed as a heating engineer with his own business until 1974 when he suffered a heart attack. From 26 May 1977 he had been continuously incapable of work due to acute bronchitis, hiatus hernia and angina for which he received sickness benefit followed by invalidity benefit. The period before me is that stated in paragraph 1 above on appeal from a decision of the local tribunal confirming a decision of the insurance officer for the period 1 to 5 March 1980 and deciding themselves that the claimant had not proved that he was incapable of work for a further period, 6 March 1980 to 30 April 1980, referred for their decision by the insurance officer.

3. The claimant's doctor issued several medical statements covering the period in issue advising the claimant to refrain from work on diagnoses of bronchitis and angina and, from 3 April 1980, of angina only. A doctor's statement does not certify that a claimant is unfit for work, as the claimant contends. As explained in Commissioners' decisions referred to by the insurance officers, a doctor's statement is not conclusive evidence of incapacity for work. If that was so there would be no need for further enquiry or determination. A doctor issuing a medical statement expresses his opinion on the diagnosis he makes and advises his patient accordingly. The insurance officers, in their submissions, have correctly explained the principles applicable and have referred to relevant Commissioners' decisions. Whether a person is incapable of work for any particular period of time is a question of fact to be determined by consideration of all the circumstances.

4. In paragraph 3 of the insurance officer's submission to the local tribunal, reference is made to a decision of a Tribunal of Commissioners, R(S) 11/51, paragraph 5, and to Decision R(S) 7/60, in which the principles are explained for considering in the early stages of

incapacity whether a claimant is incapable of his usual occupation and, if incapacity persists or recurs constantly over a period of time, whether the field of employment for which a person may be capable of work must be enlarged. Capacity for work should not be confused with the availability of work. The question is whether the claimant is capable of work if he could obtain it and not whether there is employment available for him, except in unusually rare circumstances when there is no work within reasonable travelling distance from a claimant's home which he could reasonably be expected to do.

5. In the written submission to the Commissioner, the insurance officer has cited a passage from Decision R(S) 2/78, which deals with when and how a claimant's ability to do work other than his usual work should be considered. In paragraph 8, the learned Commissioner stated -

> "Reasonableness, rather than any specific measure of time, is the crucial matter. It is not normally reasonable, in the case of a short-term incapacity, to expect a claimant to change his occupation. If incapacity is continued, it may become reasonable to do so. Just at what stage must depend on the circumstances of the particular case: not merely age, education, experience and state of health, but other possible factors such as the nature of the claimant's normal occupation, how long he has been engaged in it, whether his incapacity for it is likely to be permanent or long-continued, whether he is likely to be adaptable to a new form of employment, and possibly whether he is due to retire at no distant date. There can be no specific time limit for all cases."

In the main, I agree with the passage in so far as reasonableness should determine whether a claimant should change his usual occupation and in so far as it repeats the principle established by Decision R(S) 11/51. I am unable to agree, however, with the extension of the principle suggested, namely that in determining whether a person should be expected to widen his field of employment, regard should be had to other possible factors such as the nature of the claimant's normal occupation, how long he has been engaged in it, whether his incapacity for it is likely to be permanent or long-continued, whether he is likely to be adaptable to a new form of employment, and possibly whether he is due to retire at no distant date.

6. Section 17(1)(a) of the Act provides that "work" in that paragraph means "work which the person can reasonably be expected to do". That meaning is taken from Decision R(S) 11/51. It has long been the practice, following Commissioners' decisions, to have regard, in the early stages of incapacity for work, to the person's usual or main occupation, if he has one. There are no words in the statute to that effect, which originates from Commissioners' interpretation of the statutory language. I do not appreciate how the additional factors, mentioned for the first time in Decision R(S) 2/78, can possibly have any bearing on a person's physical or mental state of health as it

affects his capability for some kind of work, be it full-time or part-time: with respect of the learned Commissioner, they do not seem to me to be justified even by an extremely wide interpretation of statutory language.

7. Capability to undertake work is mainly a medical issue. The factors mentioned are appropriate for consideration of whether work is suitable and not to a person's disabled state or physical or mental capacity for the work. The factors mentioned relate to the suitability of employment and not to a person's capacity to work. They are appropriate when considering whether a person has good cause for refusing to apply for, or failing to accept, a situation when offered (Section 20(1)(b) and (4) of the said Act), but not whether he is capable of performing the work, having regard to the state of his health. If a person is unsuccessful in obtaining work, unemployment benefit is available, subject to satisfaction of the conditions for its receipt, and not sickness or invalidity benefit. I fail to appreciate how, for instance, a person's impending retirement can have any relevance to his physical or mental health for work. I do not accept that, in deciding such an issue, the statutory adjudicating authorities (the insurance officer, local tribunal and the Commissioner) are required by the statutory provisions to embark upon what might turn out to be a lengthy and involved enquiry as to the suitability of work. The enquiry should be confined to the criteria laid down by the Tribunal of Commissioners in Decision R(S) 11/51, which is of long-standing and has been consistently followed.

8. The claimant has related in detail the various symptoms of the conditions from which he suffers. Hiatus hernia is inoperable but is not a condition which prevents a person from doing any kind of work. On 19 November 1979, he was examined by a medical officer of the Department of Health and Social Security who was of the opinion that the claimant was incapable of his usual occupation of heating engineer but was capable of work within certain limits. The doctor reported that the claimant was no longer capable of manual work, which he had done in his business, but was capable of light work of a sedentary type avoiding stress and having opportunity for regular meals. The claimant did not register for employment. On 29 February 1980, he was interviewed at the local social security office and signed a statement in which he stated that he did some carpentry work - some for his boat - models from kits etc, but it took a long time. He said also that as a possibility he could do some kind of outwork, for example, electronic assembly or soldering. After the claimant's doctor had issued further medical statements, the claimant was again examined on 15 April 1980 by a different medical officer of the Department, who was of a similar opinion to that of the other medical officer. The doctor observed that the claimant had been nervously upset by problems with his daughter, which the claimant has stated was due to her illness. She had them improved and the doctor felt it would be for the claimant's own interests to get a job. The doctor found that the claimant was handicapped by tightness in his chest on exertion but was of the opinion that "he could cope with light work at ground level".

9. The opinions of the examining medical officers are not necessarily right and they are not conclusive and neither is the opinion of the claimant's own doctor. The claimant attended the hearing of his appeal by the local tribunal to whom he made a long, written statement. He also stated that he was not capable of any kind of work but could do "outwork" at home, that he had a car which he could drive but he tried to avoid peak hour travel. Having seen and heard the claimant, the tribunal found that he was capable of light work and was so from 1 March 1980 to 30 April 1980.

10. In his grounds of appeal to the Commissioner, the claimant has reiterated in detail his medical conditions and how they affect him and has stated that any leaning over at work would involve cramping his chest and his doctor has advised against doing anything that involves a cramped position. In a medical certificate, dated 4 June 1980, submitted on appeal, the claimant's doctor has stated that the claimant is unable to work sitting for long periods of time, which is not quite the same. The tenor of the claimant's written statements tends to support the medical officer's opinion that it would be in the claimant's own interests to get a job. He is under a misapprehension as to his losing "all rights to future claims for any benefit" if he returned to work during a period for which a doctor had issued a statement that he was unfit to undertake any work.

11. In the insurance officer's submission to the Commissioner, it is further submitted that incapacity cannot be deemed under regulation 3 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 for the period in issue. A similar submission is made in every appeal involving incapacity for work, apparently as a routine matter of form, whatever the circumstances of the case and whether it can conceivably arise for consideration or not. Such formal submissions are entirely unnecessary when the issue does not arise and has not been raised by a claimant. I have noticed an increasing tendency for insurance officers on appeal to the Commissioner to introduce negative submissions on a variety of aspects of entitlement to a particular benefit, which at no time have been raised as an issue in a claim, and which indeed could have no relevance to that claim. Such submissions should be avoided: they tend to confuse a claimant and to obscure the issues instead of clarifying the real issues in the appeal.

12. In his reply to the insurance officer's submission to the Commissioner, the claimant wrote that he understood that regulation 3(1)(a) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations enabled a claimant, who had submitted a statement signed by his medical practitioner, advising him to refrain from work and who in fact had not worked during that period, to be deemed incapable throughout the whole period. That is correct provided the other conditions prescribed by the regulation are also satisfied, which they are not in this case. The claimant's information would have been correct before regulation 3(1)(a) was amended on 17 March 1978 and Decision R(S) 1/79 was overruled by a Divisional Court of the Queens Bench Division. The regulation has no application to this case.

13. Having read the record of the case and considered the claimant's grounds of appeal and statements and the medical conditions from which he undoubtedly suffered, I agree with the insurance officers that the claimant's capacity for work should be determined by reference to a wider field of employment than his previous occupation of heating engineer. In my judgment, it is improbable that the claimant during the period in issue was incapable of any work which he could reasonably be expected to have done. There is also no ground for deeming incapacity for work in the circumstances of this case and no valid ground has been shown for my disagreeing with the unanimous decision of the local tribunal.

14. The claimant's appeal is dismissed.

(Signed) J S Watson
Commissioner

Date: 21 October 1981

Commissioner's File: C.S. 91/1981
C I O File: I.O. 8234/V/80
Region: South Western