

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: [REDACTED]

Appeal Tribunal: Durham

Case No: [REDACTED]

1. It is my decision that the decision of the social security appeal tribunal was erroneous in point of law and accordingly this appeal succeeds. I remit this case for re-hearing before a differently constituted tribunal.

2. This is an appeal from the decision of the social security appeal tribunal given on 23 September 1992 that the claimant was not entitled to invalidity benefit from and including 14.5.92. The reason was that the claimant was not incapable of work by reason of some specific disease or bodily or mental disablement for the purposes of section 17(1)(a)(ii) SSA 1975 (now section 57(1)(a)(ii) Social Security, Contributions and Benefits Act 1992). The appeal is brought with the leave of the chairman and is supported by the adjudication officer.

3. The background facts are conveniently summarised in paragraph 5 "Summary of Facts" in the adjudication officer's submission to the tribunal.

4. However, before addressing myself to the grounds of appeal, there is another matter which I should first mention. A letter dated 18 December 1992 from the claimant's representative contained certain statements of fact. Strictly speaking, this letter was the claimant's application for leave to appeal to the Commissioner but together with the claimant's observations concerning the adjudication officer's submissions to the Commissioner (CBS/67/70) comprised the grounds of appeal. Leave to appeal was formally noted to the claimant on 19 March 1993. However on 11 January 1993 the chairman wrote the following memorandum:-

"I have granted leave to appeal to the Commissioner in the case of James Reid. Nevertheless, it may be that the Commissioner will require our comments, having regard to the points raised by the appeal.

Copies of the Grounds for Appeal should be made available to the chairman, members and presenting officer so that their comments can be put on record while the events are still relatively fresh in their memory. Copies of the AT2 should also be made available to those persons.

When the comments of the members and the P.O. have been received they should be given to the chairman to enable them to summarise his comments in the light of them."

On 6 February 1993 the chairman, having doubtless received the comments of the members and the presenting officer, wrote down his comments and these were forwarded to the Commissioner. Those comments are comments about certain statements of fact contained in the letter of 18 December 1992 about which the chairman said his recollection was at variance. The chairman did not send his comments to the claimant's representative: they were sent by this Office on 3 September 1993 and the claimant made his observations which were forwarded to this Office on 18 October 1993. I would note that those documents did not settle the question of the variation and recollection of the chairman and the claimant. I do not think it is right or proper for the chairman of an appeal tribunal to comment on the grounds of the appeal in the way that he did in this case. No doubt the chairman was seeking to assist the Commissioner but once the decision of the tribunal is promulgated, the tribunal is functus. The appeal normally stands and falls on the recorded decision alone. I say no more about this aspect of the matter. I have not taken the comments by the chairman or the claimant's observations thereon into account in reaching the decision which I have reached. I have ignored them. What I would do in another case were this situation to arise, I do not know but at the very least this practice is most undesirable.

5. As I have said, the grounds of appeal are contained in the letter of 18 December 1992 and the later observations. I do not find it necessary to consider each and every contention contained in that letter for the purposes of this decision. This is a supported decision and, in short, I agree with the adjudication officer in thinking that there are two main criticisms:

- (1) There is a clear conflict of medical evidence, the two reports of the medical officers respectively dated 24 February 1992 and 30 April 1992 on the one hand, and the evidence of the claimant's doctor on the other hand. No reasons for the rejection of the evidence of the claimant's doctor were given. The claimant should be able to tell what facts have been accepted and what rejected and the reasons for the rejection of any evidence. (Incidentally R(S) 4/56 referred to in paragraph 6 of the adjudication officer's submissions

to the Commissioner does not seem to be in point - rather reference should be made to such cases as R(U) 3/80.)

- (2) The tribunal should have dealt specifically with the contention of the claimant's representative that the claimant was not capable of working as either a messenger or a gate-keeper. It seems that the tribunal having reached the conclusion that the claimant was capable of working as a gate-keeper did not, understandably enough, address their minds to whether he could work as a messenger. In box 4 in the last paragraph the tribunal said:-

"The representative made the point that his Vibration White Finger would make it difficult for him to carry out the writing duties involved and that his lack of grip would be a handicap as he would be liable to drop those items entrusted to him for distribution."

Against that specific point the tribunal said:-

"As to that we would point out that apparently appellant was suffering from Vibration White Finger in 1984 yet in 1987 as part of his duties as a warehouseman was engaged in cutting glass, and that does not imply a seriously impaired grip."

The tribunal had previously recorded that they took the view that the adjudication officer had shown on the balance of probabilities that the appellant was capable of working as a gate-keeper. That was an entirely general finding.

In my view the tribunal did not appropriately address the contentions of the claimant's representative in this respect. The following questions are directly raised:-

- (i) Why was the claimant's employment ended in 1987 and was the ending of it connected with Vibration White Finger?
- (ii) If it was, what is the present condition of the claimant? As the claimant points out it would be wrong in 1992 to judge the matter by reference to what might have been the claimant's condition in 1987.

6. I would note that in accordance with the decisions mentioned in paragraph 3 of the adjudication officer's submissions to the tribunal (T36) the onus of showing that the claimant is no longer incapable of work rests on the adjudication officer.

7. The claimant's educational qualifications and skills are relevant in considering the question of what employment the claimant is capable. I would note, in agreement with the adjudication officer, there would appear to be no evidence that employment could only be performed with substantial pain and

accordingly the decision in R(1)62/(SB) would not be in point without any such finding. It is of course perfectly open on the rehearing for the claimant to adduce such evidence as to that as he might.

8. My decision is therefore as set out in paragraph 1 above and I remit this case for a re-hearing in front of a differently constituted tribunal.

(Signed) J.M. Henty
Commissioner

(Date) 25 January 1994