

JBM/SH/24

Commissioner's File: CS/162/1992

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. My decision is that the decision of the Durham social security appeal tribunal dated 28 August 1991 is erroneous in point of law. Accordingly I set it aside and remit the case for rehearing to a differently constituted appeal tribunal.

2. This is an appeal by the claimant to the Commissioner with the leave of the Commissioner against the unanimous decision of the appeal tribunal in respect of the decision of the adjudication officer first involved in these appeals.

3. The facts of the case are dealt with in box 5 of the written submission of the adjudication officer first involved in these appeals to the appeal tribunal. In respect of those matters and of the entirety of the submission dated 24 September 1992 the claimant through his representatives has had the opportunity to comment and I have their observations to me dated 2 February 1992. No useful purpose would be served by my setting out those matters afresh here.

4. The relevant law (both statutory and otherwise) is adequately set out in the submissions of the two adjudication officers who have been involved in these appeals. Nothing is to be gained by my rehearsing that law here.

5. In my judgment the decision of the appeal tribunal is erroneous in point of law. The appeal tribunal have breached the statutory requirements of regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986. To my mind the appeal tribunal in regard to their statement on the face of their record in their findings of fact to the effect that "the tribunal accepted the presenting officer's submission that a review had taken place and that there was no necessity to provide evidence

for the review" have failed to state with clarity their meaning. It was incumbent upon the appeal tribunal to consider the evidence and the relevant statutory provisions and to determine whether there were grounds for reviewing the award of increase of invalidity benefit made from and including 29 July 1989. In the letter of appeal to the appeal tribunal the claimant's representative questioned the grounds for review. By failing to establish grounds for review the appeal tribunal are in error of law.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. I direct that the new tribunal to whom I remit this case in rehearing the case shall pay particular attention to all the aspects to which I have referred in paragraph 5 above of this decision. Further they shall consider carefully the exact wording of the relevant statutory provisions and make and record their findings on all the material facts and give reasons for their decision. The claimant will of course bear in mind that success before me does not necessarily mean success before the appeal tribunal to whom I make this decision.

7. Accordingly the claimant's appeal is allowed.

(Signed) J.B. Morcom
Commissioner

(Date) 17 May 1994