

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: Darlington

Case No: [REDACTED]

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 17 August 1993 as that decision is erroneous in law and I set it aside. I remit the case for rehearing and redetermination to an entirely differently constituted social security appeal tribunal: Social Security Administration Act 1992, section 23.

2. This is an appeal to the Commissioner by the claimant, a man born on 24 June 1936 and thus aged 57 at the date of the tribunal hearing. The appeal is against the unanimous decision of the social security appeal tribunal to dismiss the claimant's appeal from a decision of the local adjudication officer issued on 18 May 1993 as follows,

"I have reviewed the decision of the adjudication officer awarding invalidity benefit from and including 20.6.92. The decision awarded benefit for days after the date of claim and the requirements for entitlement are not satisfied. This is because I am satisfied that, from and including 18.5.93 [the claimant] is not incapable of work by reason of some specific disease or bodily or mental disablement. Accordingly, my revised decision is that [the claimant] is not entitled to invalidity benefit from and including 11.5.93."

3. Leave to appeal to the Commissioner was given by the tribunal chairman. In a difficult case like this I think that fact does have some significance. It is clear that the tribunal took the utmost care with this case and their record of decision (on Form AT3) is completed in exemplary detail. However the tribunal were dealing with a review decision and there is nothing in their record of decision dealing with the fact that there

would have to be grounds for review (and any revision) under regulation 17(4) of the Social Security (Claims and Payments) Regulations 1987. Moreover it is clear that in such cases the onus of proof is upon the adjudication officer to show that the claimant no longer satisfied the requirements for an award of sickness or invalidity benefit.

4. As to these matters the adjudication officer now concerned, in paragraphs 7 and 8 of a helpful written submission dated 8 September 1994 refers to R(S) 3/90 on the question of onus of proof and adds, "the tribunal, whilst not specifically stressing the question of review, in the reasons for their decision, accepted the opinion of the examining medical officer. This was that the claimant was no longer incapable of all work. ... I submit that in finding the claimant not to be incapable of work from and including 18/5/93, there can be no suggestion that the tribunal departed from the line taken by the Adjudication Officer or that they have misplaced the onus of proof in reaching their decision. I respectfully submit that the tribunal have not erred in law in this respect."

5. I would not of course wish to upset a carefully reasoned tribunal decision on a mere technicality but I have ultimately come to the conclusion here that the absence of any reference to review in the tribunal's decision or the onus of proof may mean that in this difficult case they did regard it as if it were a case of initial entitlement to benefit and may have placed some onus upon the claimant. I note that in their reasons for decision the tribunal say, "In particular they noted that the appellant had on his own admission been able to walk 5 to 10 miles, and had as recently as March 1993 been able to drive his car for 8 hours. They were satisfied that if he had been as bad as he was making out he would not have attempted to drive for so long."

6. I am not sure that this is entirely consonant with the onus of proof being upon the adjudication officer. I note from the chairman's careful note of evidence that what the claimant actually said about the driving was, "After driving for 8 hours in March I was in bed for 2 days because of back and hip pain." It may be, I do not know, that the drive was more or less essential for the claimant. It is perhaps not entirely correct to, so to speak, hold it against him in the way that the tribunal did in their reasons for decision.

7. Although I regard this as very much a borderline case, I have ultimately decided that I should set the tribunal's decision aside and that the claimant should have a further hearing before a differently constituted tribunal. I leave entirely to that tribunal what decision it ultimately arrives at on the appeal. My having allowed the appeal for the reasons stated above does not indicate any expression of opinion by me, one way or the other, as to what should be the ultimate result of the appeal. The tribunal will want to take careful note of the fact that the claimant says that he has bad days and good days. They will wish to consider, to the extent that there are a number of bad

days, how far it would be realistic to expect the claimant to undertake work whole-time or part-time. But these are really all questions of fact and I leave them to the new tribunal.

(Signed) M.J. Goodman
Commissioner
(Date) 13 March 1995