

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: Sunderland

Case No: [REDACTED]

1. My decision is that the decision of the Sunderland social security appeal tribunal dated 22 April 1993 is erroneous in law and I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters set out below.

2. This is the claimant's appeal against the decision of the Sunderland social security appeal tribunal, leave having been granted by a Commissioner.

3. It is not disputed that the claimant became unfit for work as long ago as 11 September 1984, at the very young age of 24. At the time of the hearing before the tribunal he was still aged only 32. I mention in passing the age of the claimant since this is a factor to which the new tribunal may wish to have regard in assessing his capacity for work, although I emphasise all matters will be at large before that tribunal. The claimant received sickness benefit following his incapacity and, from 6 April 1985, invalidity benefit on an indefinite award. His general practitioner has certified the cause of incapacity as being peptic/duodenal ulcer, right achilles bursitis and fractured right ankle. In a letter dated 9 December 1992 the general practitioner referred to "stress in [the claimant's] private life." It may be of some significance that the medical certificates before me are all of short periods - either 2 or 4 weeks - possibly suggesting short-term incapacity only. The claimant was examined on three occasions by Benefits Agency Medical Services examining medical officers. All formed the opinion that he was capable of his normal occupation, of a night watchman. At the first examination, however, the doctor recorded "fit for the above light work", in referring to that normal occupation. So far as I am aware the tribunal did not have a

brief description of what such an occupation might involve although I should be surprised if it were anything other than light work. In order to assess capacity for work in the normal occupation of the claimant I consider the new tribunal will need to have some idea of the range of duties and activities that might be involved.

4. The adjudication officer subsequently reviewed and revised the original decision awarding invalidity benefit. The adjudication officer decided that the claimant was not, from and including 11 November 1992, incapable of work by reason of some specific disease or mental or bodily disablement and that he was not entitled to invalidity benefit from that date. Following the claimant's appeal the matter came before the tribunal. The submission of the adjudication officer correctly accepted that in a review case of this type the burden of proof was upon the adjudication officer. It is not entirely clear from the decision of the tribunal whether they had this in mind as a necessary starting point; the notes of evidence refer to an appeal against a review decision but the tribunal do not elsewhere allude to this. I take this matter no further as I have set aside the decision for other reasons.

5. From the record of evidence it is apparent that at least part of the claimant's case was founded on unpredictable or intermittent incapacity. His representative evidently cited several Commissioners' decisions touching this point. From the tenor of the representations it is clear that the tribunal were asked to consider intermittent incapacity. As two unreported decisions were referred to on behalf of the claimant I trust his representative made copies available for the presenting officer and the tribunal.

6. The tribunal, then, were faced with detailed Benefits Agency Medical Services reports, specifically prepared for addressing the question of the claimant's capacity for work. Set against these were the usual short medical certificates and a general practitioner's letter. That letter, however, did not give an opinion as to the claimant's capacity for work. Additionally the tribunal had the benefit of seeing and hearing the claimant. It was the task of the tribunal to evaluate the evidence and attach appropriate weight to it. Although the tribunal had correct regard to the test of the balance of probabilities they failed to explain why they preferred the Benefits Agency Medical Services evidence. In my judgment they failed thereby to comply with regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986. Furthermore the tribunal incorporated by reference findings of fact from item 5 - "Summary of Facts" - of the submission. Part of that section, however, included matters of opinion. In my view the tribunal should have made adequate findings of fact on all matters in issue, including intermittent incapacity, if any. To my mind the claimant was left in the dark why his argument that he was incapable had been rejected.

7. For the above reasons I must set aside the decision of the tribunal. There are insufficient findings of fact on matters in issue to enable me to substitute my own decision under section 23(7)(a)(i) of the Social Security Administration Act 1992. I do not consider it expedient to make findings myself under section 23(7)(a)(ii) since the evidence is in issue and the claimant will need to give more detailed evidence as to the intermittent nature, if such be the case, of his symptoms. For this reason I urge that he attend before the differently constituted tribunal who will rehear this appeal.

8. The claimant's appeal is allowed.

(Signed) S.J. Pacey  
Deputy Commissioner

(Date) 18 October 1994