
Increase of benefit for wife—whether engaged in gainful occupation

Claimant in receipt of injury benefit claimed and was paid increase for a dependant wife. Some months later she commenced employment as a shop assistant for four days a week from which she earned more than the prescribed limit.

Held no increase payable as even though his wife was not employed every day of the week she was engaged in a gainful occupation and the employer-employee relationship was unbroken (R(S) 27/54 distinguished).

Commissioner also discusses practice to be followed where statements made under caution are involved.

1. My decision is that from 12th February 1957 to the 20th April 1957 both dates included and from the 30th April 1957 to the 11th May 1957 both dates included the claimant was not entitled to an increase in the rate of his injury benefit in respect of his wife, that he has been overpaid on account

of that benefit the sum of £14 11s. 8d., which sum he is required to repay to the Industrial Injuries Fund.

2. On the 17th November 1956 the claimant suffered injury caused by accident arising out of and in the course of his employment. On the 19th November 1956 he claimed injury benefit and on the 22nd November 1956 he claimed an increase in the rate of that benefit in respect of his wife. Injury benefit, including such an increase, was paid to the claimant from the 19th November 1956 to the 17th May 1957 both dates included. When making his claim for an increase in the rate of his benefit in respect of his wife on the 22nd November 1956, the claimant stated that his wife had no earnings. It subsequently came to the notice of the Ministry of Pensions and National Insurance, although the claimant failed to report the fact, that the claimant's wife was employed as a shop assistant on Tuesdays, Thursdays, Fridays and Saturdays at a weekly wage in excess of 40s. from the 12th February 1957 to the 20th April 1957 both dates included and from the 30th April 1957 to the 11th May 1957 both dates included.

3. At the time to which this claim relates the relevant regulation which calls for consideration was regulation 7(1) of the National Insurance (Industrial Injuries) (Benefit) Regulations, 1948 [S.I. 1948 No. 1372], as amended by the National Insurance (Industrial Injuries) (Benefit) Amendment (No. 2) Regulations, 1951 [S.I. 1951 No. 1233], which provided, so far as is material to this case, that "a beneficiary shall not be entitled to an increase of benefit in respect of his wife . . . for any period during which his wife is engaged in any gainful occupation or occupations from which her weekly earnings, calculated or estimated in accordance with the following provisions of this regulation, exceed twenty shillings : Provided that . . ." (in certain cases forty shillings is to be substituted for twenty shillings). As the weekly earnings of the claimant's wife clearly exceeded forty shillings it is unnecessary to consider whether the proviso to the regulation is applicable or not.

4. By regulation 7(2) of those regulations, the wife's weekly earnings are to be ascertained by taking her weekly wage, if it is a regular weekly wage of a fixed amount, or, if not, and the claim for the increase is made in respect of a period of seven days (including Sunday), by reference to her earnings in that period.

5. The earnings of the claimant's wife were not a regular weekly wage of a fixed amount, but the claimant's claims were for an increase in respect of periods of seven days (including Sunday) and her earnings were never less than £4 6s. 0d. in any such period.

6. The local appeal tribunal were of opinion that as the claimant's wife did not work on Mondays or Wednesdays she was not engaged in a gainful occupation on those days and the claimant was entitled to an increase in the rate of his injury benefit in respect of her on those days.

7. With all respect to the local appeal tribunal I do not agree. The fact that the work of the claimant's wife did not occur on every day of the week does not affect the fact that she was engaged in a gainful occupation throughout the week. The employer-employee relationship was unbroken. This case is distinguishable from the case dealt with in Decision R(S) 27/54, where a claimant's wife had temporarily left her employment to nurse her sick husband and the claimant's claim for an increase in the rate of his sickness benefit in respect of her in that case was limited to the period for which she was at home nursing him. In the present case, the claimant's claims were periodical claims covering the whole period from the

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12th February 1957 to the 20th April 1957 and from the 30th April 1957 to the 11th May 1957 all dates included.

8. In the result, I think that the claimant was not entitled to an increase in the rate of his injury benefit in respect of his wife for those periods, and he has been overpaid the sum of £14 11s. 8d. on account thereof.

9. I now turn to the question whether the claimant is required to repay that sum to the Industrial Injuries Fund. He has to be required to do so, unless I am satisfied that he acted in good faith in all respects as to the obtaining and receipt of that benefit.

10. Each time he claimed benefit he declared that "the circumstances of my dependants are and have remained as last stated by me in connection with my previous claims". He has said that his wife had started work long after he had completed the claim form for an increase of benefit and as a result he completely forgot to notify the Ministry of Pensions and National Insurance of his wife's earnings. He was, however, claiming for a dependant and it must have been manifest to him that the fact that his wife was now earning over £5 a week (except in one week when she earned £4 6s. 0d.) was relevant to such a claim. He has further said that he signed the medical certificate (by which he was referring to the claim forms on the medical certificates) without reading them and did not notice the declaration about dependants. To sign a declaration without reading it in such circumstances is not consistent with good faith. (See Decision R(G) 5/51.)

11. I am not satisfied, just as the local appeal tribunal were not satisfied, that he acted in good faith in all respects as to the obtaining and receipt of the benefit in respect of his wife and he is required to repay the sum of £14 11s. 8d. overpaid on account of that benefit to the Industrial Injuries Fund.

12. There is one point, however, to which I wish to draw attention. If in a case such as the present a claimant makes a statement under caution, the whole of his statement should be copied in preparing the case papers for the local appeal tribunal for the purposes of the claimant's appeal. It is for the local appeal tribunal to decide whether any part of it is irrelevant, but they should have the opportunity of judging that matter for themselves. I note that in this case the whole of the original documents has not been copied. The omissions did not matter here since they could not affect the result, but I thought it right to add this note for future guidance.

13. I allow the insurance officer's appeal.
