

INDUSTRIAL INJURY BENEFIT

Scottish Case

Onus of proof

It was contended on behalf of a claimant who was endeavouring to establish that he had suffered personal injury by accident that he should be given "the benefit of the doubt".

Held that the burden lies, generally speaking, upon a claimant under the National Insurance (Industrial Injuries) Acts to prove that he satisfies the conditions governing the claim. Apart from certain specifically prescribed instances there is no presumption in favour of the claimant. The claimant must discharge the burden of proving any necessary fact "on balance of probability", i.e. that it is more likely that it is so than that it is not so.

A claimant is not entitled to the "benefit of the doubt". This phrase belongs to the realm of criminal and not civil proceedings.

[Paragraphs 1-8 and 13-14 of the decision are not re-produced as they relate only to the particular case which was being decided.]

9. I must refer to an argument adduced on behalf of the claimant at the oral hearing. It was strongly urged upon me that the claimant should be given "the benefit of the doubt". Indeed it was said that some pamphlet or handbook of instructions issued to members of the local appeal tribunal in question stated that claimants were to be given the benefit of the doubt. I asked the association's representative in the present case to obtain for me, if he could, a copy of this pamphlet so that I could see for myself its terms and its origin: and I delayed my decision in order to enable him to do so. But the representative has now written to say that he has been unable to trace the required pamphlet.

10. A claimant in proceedings under the National Insurance (Industrial Injuries) Acts is *not* entitled to "the benefit of the doubt". The phrase is one which belongs to the realm of criminal, and not civil, proceedings: and it is used as a reminder of the general rule that in criminal proceedings the burden is on the person alleging guilt to prove the charge, and to prove it beyond reasonable doubt.

11. Where a person makes a claim under the National Insurance (Industrial Injuries) Acts, the burden lies, generally speaking, upon the claimant to prove that he satisfies the conditions governing the claim. This is in accordance with the normal rules in civil cases, and the same rule applied under the now-repealed Workmen's Compensation Acts. Apart from certain specifically prescribed instances, there is no presumption in favour of the claimant. He must prove the necessary facts. Not only is this general rule inherent in the statute: it is specifically provided by regulation 9 of the National Insurance (Industrial Injuries) (Claims and Payments) Regulations, 1948 [S.I.1948 No. 1362] that "every person who makes a claim for benefit shall furnish to the Minister or to an officer of the Ministry such certificate, documents, information and evidence for the purpose of determining the claim as may reasonably be required . . ."

12. The proof required of the claimant need not however amount to proof "beyond reasonable doubt". The burden is lighter. The claimant discharges the burden of proving any necessary fact if he satisfies the determining authority that on balance of probability, it is more likely that it is so than that it is not so. This was the standard of proof applied in cases under the Workman's Compensation Acts—see, in particular, the well known statement by Lord Chancellor Birkenhead in *Lancaster v. Blackwell Colliery Co. Ltd.*, (1919), 12 B. W. C. C. 400 at page 406—and it has been adopted by the Commissioner in cases under the Industrial Injuries Acts.