
A labourer asked for a medical certificate of incapacity for work on his first visit to his doctor but the doctor through error did not give him one. Some time later he obtained a certificate but his claim was then late.

Held that good cause for the delay was established. It had been caused not by the claimant's mistake or omission but by the doctor's

1. My decision is that the claimant is not disqualified for receiving sickness benefit from the 5th August, 1952 to the 18th August, 1952, both days included.
2. The claimant, a labourer aged 28 who had previously claimed sickness benefit under the National Insurance Act, 1946, was incapable of work by

reason of illness from the 5th August, 1952 to the 15th September, 1952, but gave no notice of incapacity and made no claim to benefit until the 22nd August, 1952, when he sent to the local Insurance Office a supplementary medical certificate (form Med. 5) certifying that he had been incapable of work from the 5th to the 22nd August, 1952, both days included.

3. The reason which the claimant has given for his delay was that, when he asked his doctor for a certificate the first time he saw her, on the 5th August, 1952, she said that she did not think a certificate would be necessary, and that he (the claimant) should see her again in a few days. He was told to have a few days rest, and was given medicine and tablets, and was told that the doctor did not think "that a panel would be necessary". On the 8th August and again on the 15th August he saw his doctor, and on each occasion she gave him a private medical certificate for his employer. The claimant says that on the 22nd August he "was signed on the panel". He sent in to the local Insurance Office the certificate issued for National Insurance purposes on the 22nd August, 1952 as soon as he obtained it.

4. It appears plain to me that if the claimant had been given the National Insurance certificate when he asked for it, on his first visit to the doctor, he would have sent that and succeeding certificates promptly to the local Insurance Office, as he did as soon as he was given a certificate. I accept entirely the principle stated in Decision C.W.S. 14/50 (reported) that "in law it is the claimant's responsibility to see that he gets his certificates; the doctor is under no obligation to give them unless he is asked for them", but that decision is not to the point. In that case the doctor was apparently never asked for a certificate, whereas in the present case the doctor was asked for one, and mistakenly said that she did not think it would be necessary.

5. The present case is one of those, of not infrequent occurrence, in which a claimant has correctly asked his doctor for a certificate which the doctor, through error or inadvertence or forgetfulness, has omitted to give. It has commonly been held in such cases that a claimant, having been put off by his doctor from getting a certificate, or having been misled into supposing that a certificate was unnecessary, has been able to prove good cause for the ensuing delay. Decisions C.S. 21/52, C.S. 391/50, C.S. 308/50, C.S. 744/49 and C.S. 277/49, all unreported, are instances in which a claimant has been held to have proved good cause for his delay on the ground that it has been substantially caused not by the claimant's mistake or omission but by the doctor's.

6. In my view the present appeal falls within that principle. The claimant here did not ask his doctor for advice or information but for a certificate, which the doctor erroneously did not give. The claimant realised that he needed a medical certificate and that he could not claim benefit without it. It was, I think, undoubtedly his intention, when he asked his doctor for a certificate, to send it to the local Insurance Office if he had received it. He could not expect his claim to succeed unless it were supported by some evidence of incapacity.

7. The Insurance Officer now concerned with the case suggests that the claimant should have reported his difficulty in getting a medical certificate to the local Insurance Office and there sought advice. I agree that that would have been an excellent and prudent course to adopt. The claimant's conduct has to be judged, however, not by the standard proper to a well-informed per-

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son of superior prudence but by the standard of conduct which is reasonably to be expected of a man of the claimant's position and standing in life. In the circumstances I think that the claimant was deterred from following his first inclination by his doctor's erroneous remark, and that it was not unreasonable for the claimant to believe that his doctor knew best whether or not to issue a National Insurance certificate. He may well have supposed that, if his doctor would not issue one, none could be issued, and that his claim must fail for lack of proof.

8. The claimant's appeal is allowed.
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