

INVALIDITY BENEFIT

Jurisdiction of the Northern Ireland Commissioner—claim for invalidity benefit under the legislation of Great Britain—claimant living in the Republic of Ireland.

A claim for invalidity benefit from a person living in the Republic of Ireland was the subject of an appeal by him to the Commissioner in Great Britain against a decision of a local tribunal (now social security appeal tribunal) sitting in Great Britain confirming the decision of an insurance officer (now adjudication officer) given in Great Britain to disallow the claim. The claimant and his solicitor applied for an oral hearing in Northern Ireland.

Held that:

1. the legislation and appellate jurisdiction is that of Great Britain by virtue of Article 39 of Regulation (EEC) No 1408/71. No jurisdiction is conferred on the Northern Ireland Commissioner and the claimant must therefore rely on the provisions of reciprocal agreements between Great Britain and Northern Ireland for his application to succeed (paragraph 9);
2. paragraph 3 of Schedule 1 to the Social Security (Northern Ireland Reciprocal Agreement) Regulations 1976 does not operate to transfer the jurisdiction to the Commissioner in Northern Ireland but confers jurisdiction upon him by removing an otherwise conclusive impediment (paragraph 17);
3. whether paragraph 3 of Schedule 1 to the Regulations is applicable is dependent on the interpretation of the provision that a decision may be determined “under the legislation of the territory in which the claimant is” (paragraph 17);
4. the claimant’s proposed attendance at an oral hearing before a Commissioner in Northern Ireland was not sufficient to satisfy the condition in paragraph 3(1) of Schedule 1 of being “in” the territory of Northern Ireland. A mere casual presence in Northern Ireland is not enough (paragraph 19).

1. The claimant lives in the Republic of Ireland. On 25 August 1983 I granted him leave to appeal against the unanimous decision of a local tribunal (now a social security appeal tribunal) sitting in Great Britain confirming the decision of an insurance officer (now adjudication officer) given in Great Britain. The claimant’s solicitors requested an oral hearing of the appeal to be held in Northern Ireland. I accede to the request for an oral hearing but for the reasons stated below, such hearing is to be held in Great Britain and not in Northern Ireland. This decision is limited to the interlocutory application and I make no substantive decision on the appeal itself.

2. The claimant, a miner now aged 44 lost his right eye as a result of an industrial accident in 1965. He was advised to refrain from work by reason of “laceration of eye”, “infection of eye” and “enucleation of right eye”. Invalidity benefit was paid from 2 April 1973 to the claimant in the

Republic of Ireland by virtue of Article 39 of Regulation (EEC) No. 1408/71 of the Council of the European Communities.

3. In accordance with normal procedure the claimant was on 2 December 1981 examined by an independent medical referee in the Republic of Ireland. He expressed the opinion that the claimant was capable of work.

4. On 8 April 1982 the claimant's own doctor in the Republic of Ireland issued a certificate expressing the opinion that the claimant was incapable of work by reason of "enucleation of right eye". The claimant was referred for a further medical examination by an independent medical referee in the Republic of Ireland and this took place on 19 May 1982. He expressed the opinion that the claimant was capable of work.

5. In the light of the evidence an insurance officer at the Overseas Branch of the Department of Health and Social Security at Newcastle upon Tyne, England, disallowed the claim to invalidity benefit for the inclusive period from 20 May 1982 to 6 October 1982 on the ground that the claimant had not proved that he was during that period incapable of work by reason of some specific disease or bodily or mental disablement.

6. The claimant appealed against the decision to a local tribunal in Great Britain and submitted a letter from his own doctor in the Republic of Ireland in support of his claim. The claimant did not attend the hearing of his appeal by the Newcastle upon Tyne local tribunal and in the event the appeal was dismissed. The claimant's solicitors in the Republic of Ireland applied for leave to appeal to the Commissioner in Great Britain as they wished to arrange for the claimant to be examined by an ophthalmic surgeon and to submit his medical report in evidence. Leave to appeal was granted by me.

7. In a letter dated 22 March 1983 the claimant's solicitors stated that they were experiencing extreme difficulty in arranging an appointment for the claimant to be examined by an ophthalmic surgeon "within this State" [Republic of Ireland] and that the claimant's own doctor had written to the Department at Newcastle upon Tyne and the Irish Department of Social Welfare suggesting that "an appointment be arranged for [the claimant] to see an ophthalmic surgeon at Londonderry, Northern Ireland". As a result on 9 June 1983 the claimant was examined by a consultant ophthalmologist at a hospital in Londonderry, Northern Ireland and his medical report was submitted in evidence in due course. The claimant's solicitors also submitted letters from numerous employers in the claimant's locality in the Republic of Ireland to the effect that they were not prepared to offer the claimant employment because of his eye condition.

8. Initially the claimant's solicitors asked for an oral hearing of the appeal provided it could be held in Londonderry, Northern Ireland to enable the claimant and his solicitors to attend and give evidence. They were advised that the oral hearing would be held in London and in the circumstances they confirmed they wished the appeal to be determined on the documentary evidence. However on 29 June 1984 the claimant wrote to the office of Social Security Commissioners in London saying "I wish the Commissioner to grant me an oral hearing anywhere in Northern Ireland but preferably in Londonderry as soon as possible". Manifestly I cannot accede to such a request unless I am satisfied that jurisdiction to entertain the appeal is conferred on the Northern Ireland Commissioner. I invited written submissions on this question and this decision is confined to that issue.

9. Article 39(1) of Regulation (EEC) No. 1408/71 of the Council of the European Communities provides that "The institution of the Member State

whose legislation was applicable at the time when incapacity for work followed by invalidity occurred, shall determine, in accordance with that legislation, whether the person concerned satisfies the conditions for entitlement to benefits". Article 39(2) provides that "A person who satisfies the conditions referred to in paragraph 1 shall obtain the benefits exclusively from the said institution, in accordance with the legislation which it administers". The Member State in the present case is the United Kingdom, which comprises England, Wales, Scotland and Northern Ireland. Under Annex 2 of Regulation (EEC) No. 574/72 of the Council of the European Communities, the Competent Institutions in the United Kingdom for cash benefits are the Department of Health and Social Security in relation to Great Britain (England, Scotland and Wales) and the Department of Health and Social Services for Northern Ireland, Belfast, in relation to Northern Ireland. Invalidity benefit was claimed and awarded by virtue of Article 39 by the Department of Health and Social Security in Great Britain and therefore the legislation and appellate jurisdiction applicable is that of Great Britain. No jurisdiction is conferred thereby on the Northern Ireland Commissioner and the claimant must rely on the provisions of reciprocal agreements between Great Britain and Northern Ireland for his application to succeed.

10. The national insurance systems established by the National Insurance Act 1946 in relation to Great Britain and by the National Insurance Act (Northern Ireland) 1946 in relation to Northern Ireland are similar but not identical. However co-ordination and reciprocity of the two systems were envisaged. Section 63(1) of the National Insurance Act 1946 reads as follows:—

"63.—(1) If legislation is passed for purposes similar to the purposes of this Act by the Parliament of Northern Ireland, the Minister may, with the consent of the Treasury, make reciprocal arrangements with the appropriate Northern Irish authority for co-ordinating the two systems of insurance established respectively by this Act and the said legislation so as to secure that they operate, to such extent as may be provided by the arrangements, as a single system."

11. Pursuant to section 63(1) of the National Insurance Act 1946, the National Insurance (Northern Ireland Reciprocal Arrangements) Regulations 1948 [S.I. 1948 No. 211] provided limited co-ordination in the administration of the two systems whilst still keeping them separate. Paragraph 2(a) of the First Schedule specifically provided that "any appeal from a decision of any question arising under or in connection with the Acts, including any claim for benefit, shall be made. . . in the country in which such decision was given; . . .". Paragraph 1(1) of the First Schedule defined "country" to mean Great Britain or Northern Ireland as the case required. Accordingly in Decision R(U) 9/61 the Commissioner held that an appeal against a decision given by an insurance officer in Northern Ireland could only be heard by a local tribunal in Northern Ireland and that the decision of a local tribunal sitting in England to determine the appeal was a nullity.

12. Social security law was consolidated by the Social Security Act 1975 in relation to Great Britain and by the Social Security (Northern Ireland) Act 1975 in relation to Northern Ireland. Section 142 of the Social Security Act 1975 provides, under the heading "Social Security Systems Outside Great Britain" for co-ordination with Northern Ireland and section 142(1) reads as follows:—

"142.—(1) The Secretary of State may with the consent of the Treasury make arrangements with the Northern Ireland Department

("the joint arrangements") for co-ordinating the operation of this Act and the Social Security (Northern Ireland) Act 1975 with a view to securing that, to the extent allowed for in the arrangements, those Acts provide a single system of social security for the United Kingdom."

13. It should be noted that although section 142(1) of the Social Security Act 1975 provides for the co-ordination of the Acts, it in no way alters the position that the social security systems in Great Britain and Northern Ireland are separate and distinct and administered by different adjudicating authorities. A Commissioner in Great Britain has no jurisdiction in Northern Ireland, which has its own Commissioners including a Chief Commissioner. Although the decisions of the Northern Ireland Commissioners are not binding in Great Britain, they may be of persuasive authority, and at least in one case, a Northern Ireland Tribunal of Commissioners' decision was followed in preference to an unreported decision of a British Commissioner (R(I) 14/63).

14. Pursuant to section 142 of the Social Security Act 1975, the Social Security (Northern Ireland Reciprocal Arrangements) Regulations 1976 [S.I. 1976 No. 1003] provided for further reciprocity of the two social security systems in various circumstances. Paragraph 3 of Schedule 1, so far as relevant to the present case, reads as follows:—

"3.—(1)..."

- (a) a decision of the determining authority on any question relating to a claim for benefit arising under or in connection with the Acts may be reviewed;
- (b) any appeal from such a decision, from a decision given on a review of, or from a refusal to review, such a decision may be determined;
- (c) ...
under the legislation of the territory in which the claimant is as if that question or appeal had arisen or that assessment had been made in that territory notwithstanding that it arose or was made in the other territory."

15. Paragraph 1(1) defines "the Act" in relation to Great Britain as the Social Security Act 1975, and in relation to Northern Ireland, as the Social Security (Northern Ireland) Act 1975 and "the Acts", as both of those Acts. The "determining authority" is defined in relation to Great Britain as an insurance officer, a local tribunal, or a Commissioner as the case may require and in relation to Northern Ireland an insurance officer, a local tribunal, or a Commissioner as the case may require. "Territory" is defined as Great Britain or Northern Ireland as the case may require.

16. The claimant submitted claims for benefit to the Overseas Branch of the Department in England and these were referred to an insurance officer for adjudication. On 7 June 1982 the insurance officer disallowed the claim to invalidity benefit for the inclusive period from 20 May 1982 to 6 October 1982 and the claimant appealed against that decision to a local tribunal sitting in England. The appeal was unsuccessful and the claimant applied for leave to appeal to the Commissioner in Great Britain on 7 December 1982. It is not in dispute that as at that date the claimant was not in the territory of Northern Ireland for the purposes of this appeal. The claimant's solicitors subsequently submitted documentary evidence in respect of the claimant's prospects of employment in the Republic of Ireland and the facts indicate that the claimant's only visit to Northern Ireland occurred on 9 June 1983 when he was examined by a consultant ophthalmologist.

17. In the present case it is not in dispute that the appellate jurisdiction lies with the Commissioner in Great Britain. Paragraph 3 of Schedule 1 to

the Social Security (Northern Ireland Reciprocal Arrangements) Regulations 1976 does not operate to transfer the jurisdiction to the Commissioner in Northern Ireland but in my view confers jurisdiction additionally on the Commissioner in Northern Ireland by removing an otherwise conclusive impediment to jurisdiction. Accordingly the question at issue is whether paragraph 3 of Schedule 1 is applicable in the present case and that issue is dependent on the interpretation of the provision that a decision may be determined “under the legislation of the territory in which the claimant is” [my underlining].

18. The claimant’s solicitors have referred me to the Northern Ireland Commissioner’s decision of 21 October 1982 Appeal No. 31/82 (IVB). In that case the Commissioner held that jurisdiction was conferred on a local tribunal sitting in Northern Ireland against an insurance officer’s decision given in Great Britain because the claimant had been present at the hearing and determination of the appeal by the local tribunal sitting in Northern Ireland. In consequence the Northern Ireland Commissioner considered that he had jurisdiction to hear the appeal from the local tribunal’s decision.

19. The facts in the present case are different in that the claimant appealed to the Commissioner in Great Britain against a decision of a local tribunal sitting in England. However the adjudication officer now concerned has submitted that it is for consideration whether the claimant’s proposed attendance at an oral hearing before a Commissioner in Northern Ireland would be sufficient to satisfy the provisions of paragraph 3(1) of Schedule 1 to the Social Security (Northern Ireland Reciprocal Arrangements) Regulations 1976. I think not. In my judgment there must be some nexus to make the jurisdiction relevant and in the present case there is none. A mere casual presence is not enough. I agree with the Commissioner who stated in Decision CP 1/81 (unreported) (paragraph 14):

“Moreover, on general principle, it would not, in my view, be possible for a claimant to say that he was ‘in the territory of’ a particular Government simply because he happened to be transitorily present there. . . . In addition, it would not, in my judgment, be possible for a claimant to establish that he was ‘in the territory’ of a particular Government by the expedient of making a casual visit to that territory for the express purpose of trying to attract to himself the benefit of a reciprocal agreement. . . .”

20. I appreciate that in a case where paragraph 3(1) of Schedule 1 applies both a Commissioner in Great Britain and a Commissioner in Northern Ireland will have jurisdiction to entertain an appeal. Considerations of judicial comity will then determine the venue of an oral hearing. However this does not apply in the present case because the claimant in my judgment does not satisfy the provisions of paragraph 3(1) of Schedule 1. It follows that a Northern Ireland Commissioner would not have additional jurisdiction conferred on him and as a result any decision given by him would not be binding in Great Britain.

21. The claimant’s request for an oral hearing is granted but this is to take place in Great Britain for the reasons above stated. I have no discretion to decide otherwise. I appreciate that paragraph 3 of Schedule 1 refers to “the legislation of the territory in which the claimant is” but in my view this includes a procedural issue which will ultimately bear on the legislation to be applied to the case in question.

(Signed) R. F. M. Heggs
Commissioner