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JGM/OG

SOCIAL SECURITY ACTS 1975 TO 1980

CLAIM FOR INDUSTRIAL DISABLEMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

Decision C.I. 13/81

1. My decision is that prescribed disease No 48 (occupational deafness) is not prescribed in relation to the claimant by the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1980 [S.I. 1980 No 377] (to which I shall refer as the Prescribed Diseases Regulations) in their present form and that disablement benefit is accordingly not payable to him on his claim dated 18 June 1980.

2. This is the insurance officer's appeal against a unanimous decision of the local tribunal that occupational deafness was prescribed in relation to the claimant. The appeal turns on the question whether the claimant, who has worked for many years as a fully fashioned outwear knitter, falls within the prescription as having been employed for the requisite period in an occupation involving:-

> "(e) work wholly or mainly in rooms or sheds where there are machines, engaged in weaving man-made or natural (including mineral) fibres or in the bulking up of fibres in textile manufacture"

in terms of sub-paragraph (e) of paragraph 48 of Schedule 1 to the Prescribed Disease Regulations. More briefly the question is whether in terms of those regulations "weaving" is used as a term which comprehends various methods of converting yarn into a fabric including knitting or comprehends only what I will call "conventional weaving".

3. The claimant has worked successively for four different companies as an outerwear knitter. His recollection of the times for which he worked is imperfect but I accept his evidence that there was no appreciable interval between his successive employments. In his claim form he listed the four employers mostly with dates of employment. He gave his employment with the first employers as approximately

1957 to 1963 and his employment with the second employers as starting in 1963. The first employers have gone out of business and no records are available. The second employers give May 1967 as the start of the claimant's employment with them. Further the claimant says that at the termination of his employment with the first employers he received a redundancy payment (of about £130). If this was a statutory payment this must have been after the appointed day under the Redundancy Payments Act 1965 (6 December 1965). The claimant says also that his earnings at that time were about £26 per week, which would suggest employment for five years, though as statutory redundancy payments were calculated by reference to what could be less than actual earnings this is not necessarily right. It appears to me that the claimant's employment as an outerwear knitter began not later than May 1962. It may well have begun earlier. Both the claimant and his wife thought it began within a year of their marriage in 1957. As I have decided that work in this employment was not work in a prescribed occupation I need not decide whether on a balance of probabilities his employment as an outerwear knitter has lasted the requisite 20 years. In the event of the prescription being changed in the future it would I think be appropriate to conclude that it began not later than May 1962 and probably began earlier than this.

4. It is clear that the occupation involves work wholly or mainly in rooms or sheds where there are machines engaged in knitting man-made or natural fibres. The question is whether they were engaged in weaving them. Conventional weaving fundamentally involves the interlacing of strands of yarn alternately over and under transverse strands, the alternate strands so interlaced going under the strands over which the adjoining strands went and vice versa. This is I believe the most ancient method of converting yarn into a length of fabric. Knitting on the other hand fundamentally involves the making of a loop in the yarn, passing further yarn through the loop thus creating a further loop and so on. Both conventional weaving and knitting can be done mechanically. More complicated variants of conventional weaving and of knitting have been developed.

5. The machine for doing conventional weaving is commonly called a "loom". The lengths of yarn running in the direction in which the fabric is being woven are called the warp, and the transverse threads are called the weft. The interlacing process is carried out by means of a shuttle which is moved rapidly (about once per second) from one side of the loom to the other. As it strikes each side it makes a noise, and it is this repeated noise, especially if there are numerous looms in a single chamber, which makes the weaving process noisy. A knitting machine is never referred to as a "loom" but it or at any rate that currently operated by the claimant works similarly to the extent that an item called a carrier passes rapidly from one side to the other of the machine making it noisy. There was produced in evidence at the hearing before me a paper published by the Hosiery and Allied Trades Research Association on measurements of noise levels in the knitting industry which shows that the noise levels of

some types of knitting machine are significantly in excess of the 90 decibel limit recommended by the Department of Employment. I may add that the claimant at present works in a room where there are 6 machines operating each having twelve sections, in each of which section there may at any time be one carrier moving from side to side (a maximum of 72 in the room at any one time).

6. Viewed as noise-producers machines engaged in conventional weaving and machines engaged in knitting have a great deal in common. However the insurance officer rejected the claim of the claimant on the ground that the claimant had not at any time been employed in any occupation involving any of the items listed in any of the sub-paragraphs (a) to (g) of paragraph 48 of Schedule 1 to the prescribed Diseases Regulations, and in particular that he had not been employed in any occupation specified in sub-paragraph (e) the terms of which are set out in paragraph 2 above. The local tribunal allowed an appeal from the insurance officer's decision and were presumably satisfied not only that knitting was a form of weaving but also that the claimant had worked on knitting machines for the requisite 20 years. The insurance officer now appeals to the Commissioner. He was represented at the oral hearing before me by Mr R G S Aitken of the solicitor's office of the Department of Health and Social Security and the claimant was represented by Mr A Kilsby of the National Union of Hosiery and Knitwear Workers. Both he and the claimant gave evidence before me.

7. Argument presented to me centred round three matters, viz (1) the Report by the Industrial Injuries Advisory Council (IIAC) of July 1978 (Cmnd 7266) which led to the introduction of sub-paragraph (e); (2) the meaning of the words "weave" and "knit" in every day language; and (3) the meaning of those words in the textile industry. If the meanings are different in the latter two cases there is a further question which is to be preferred.

8. It is clear that I am entitled to look at the IIAC Report as an aid to interpretation (see Decision R(I) 15/75 at paragraph 15 and 16). Paragraph 16 of that decision makes reference to the fact that the IIAC in an earlier report on occupational deafness intended the cover provided to be severely restricted so as to avoid overstraining the existing audiological services; and I have no doubt that a similarly cautious approach was adopted by the authors of the 1978 report (see in particular paragraph 16 of the report). It follows from this that one may find that in some cases, occupations are prescribed while others similar and possibly more noisy are not. I cannot invoke as an aid to interpretation the consideration that there is no logical reason for distinguishing between machines engaged in conventional weaving and machines engaged in knitting. I have to decide whether the draftsman of the regulation intended to include both classes of machine or only the one.

9. The terms of sub-paragraph (e) are derived to some extent from paragraphs 47 and 48 of the report. Paragraph 47 reads as follows:-

> "There are four other processes which we think should be considered for the first extension of the scheme. Two of these

> are in the textile industry, the industry which has long had a reputation of being noisy, principally because of the weaving process, and the term "weavers' deafness" is almost as well known as "boiler-makers' deafness". The older conventional looms which are still in wide use in the industry are the principal source of noise. The noise levels are lower than those to be found in a number of other processes but the large number of looms, usually anything between 30 and 80 mostly working at the same time, and the resulting continuity of noise means that the exposure is severe. The weaving-sheds or rooms are largely taken up by the looms so that all those who work there, either in weaving or in ancillary processes are equally exposed. We therefore recommend that the scheme be extended to those working in a room where man-made or natural (including mineral) fibres are woven."

10. Both Mr Aitken and Mr Kilsby based arguments on this. Mr Aitken pointed to the fact that the word "loom" is repeatedly used in the paragraph and that looms are used only in conventional weaving. Mr Kilsby on the other hand pointed to the fact that the draftsman had nevertheless used the word "machines", indicating that he was going beyond the recommendation of the IIAC. He pointed out that there was certainly no restriction to cases where there were at least 30 machines in a single room and submitted that the differences between the report and sub-paragraph (e) were such as to negative the suggestion that the draftsman was simply following the report. I may add that as was said in Decision C.I. 17/80 (unreported) at paragraph 6 the part of sub-paragraph (e) relating to "bulking up" goes beyond what was recommended in paragraph 48 of the report. I do not consider that the argument based on paragraph 47 advances the insurance officer's contention. I must consider the meaning of the words used.

11. The claimant has cited a number of dictionary definitions of the verb to knot which incorporate the word "weave" or "interweave" and he cites them as indicating that knitting is a branch of weaving. It has to be remembered however that the compiler of a dictionary is compelled to define any given word without making use of the word to be defined and can easily use language that at first sight seems to include the word being defined in some larger genus exemplified by one of the words of definition. It is unsafe to draw inferences from such definitions. Thus for instance I find in the Shorter Oxford Dictionary that the word "railway" is defined as "A way or road laid with rails ....." but no one would regard rail transport as a branch of road transport. I do not myself find these dictionary definitions very compelling. A definition of "knit" quoted by the claimant from the Oxford Universal Dictionary Illustrated reads "to form (a close texture) by the inter-looping of a successive series of loops of yarn or thread (now the chief specific sense). To interlock; to twine, weave or plait together". These same definitions appear almost verbatim in the Shorter Oxford Dictionary. It will be noted that the words "(now the chief specific sense)" qualify a definition which does not employ the word "weave". The subsequent part of the definition is described in the Shorter Oxford Dictionary as both archaic and obsolete. I consider that the dictionary definitions

support the insurance officer rather than the claimant.

12. I turn now to the technical meaning of the phrase bearing in mind the following passage from the judgment of Lord Esher MR in Unwin v Hanson [1891] 2 QB 115 at page 119 (a case concerning the meaning of the words "lop" and "prune"):-

> "Now when we have to consider the construction of words such as this occurring in Acts of Parliament we must treat the question thus: If the Act is directed to dealing with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language. If the Act is one passed with reference to a particular trade, business, or transaction, and words are used which everybody conversant with that trade, business or transaction, knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words."

13. In the present case the words of sub paragraph (e) are used with reference to the textile industry and I consider that I ought to give the words used the meaning attached thereto in that industry. I did not hear evidence from anyone who held himself out as an expert on technical terms in that industry though both the claimant and Mr Kilsby have experience in the knitwear side of that industry. Further I was informed that one of the members of the local tribunal who decided in favour of the claimant had some knowledge of the industry. Mr Aitken referred me to a volume entitled "Textile Terms and Definitions" (seventh edition) published by the Textile Institute. In this "knit" is defined as "To form a fabric by the intermeshing of loops of yarn (see warp knitting and weft knitting)"; while weave is defined as "To form a fabric by the interlacing of warp (qv) and weft (qv)". These definitions show the two processes to be different, though the similarity is emphasised by the references in each to "warp" and "weave".

14. The claimant, who acknowledged that he was not in the habit of calling knitting "weaving" and that his firm did nothing called "weaving", drew my attention to two matters pointing the other way. First he produced a machine knitted pullover produced by his firm (possibly by himself) with a trade label inside bearing the name "Moffat Weavers". Moffat Weavers, it appeared, were a firm in Scotland who marketed such pullovers; but I had no evidence what if anything, they did besides this. The word "weaver" suggests the producer rather than the mere marketer of textiles, and I do not find the fact that a firm calling themselves "Moffat Weavers" markets pullovers made by the claimant's firm any indication of the fact that they regard these pullovers as woven.

15. More cogent evidence was an advertisement that he produced inserted in a local Leicester newspaper by a firm advertising for an experienced weaver by a firm engaged in producing so-called "narrow fabrics" a knitting process. Conventional weaving is not done, on a large scale at least, in Leicester and the advertisement can hardly

be construed as an attempt by a knitting firm to secure staff from among those experienced in conventional weaving. I regard the advertisement as an indication that within the trade persons engaged in knitwear manufacture are sometimes referred to as "weavers". I regret however that I do not think that this outweighs the other considerations that I have outlined and I have reached the conclusion that the claimant's occupation is not within sub-paragraph (e) and I allow the insurance officer's appeal accordingly.

16. I allow the appeal with some regret as I do not think that the distinction that I have felt obliged to draw is an attractive one; and I find it incongruous that a person whose hearing has been affected by a weaving machine should, but a person whose hearing has been affected by a similar knitting machine should not, be entitled to the benefit of the industrial injuries provisions of the Social Security Act 1975; and I hope that, when next an extension of the prescription is under review, consideration will be given to the anomaly revealed by this appeal.

(Signed) J G Monroe
Commissioner

Date: 29 June 1981

Commissioner's File: C.I. 10/1981
C I O File: I.O. 5485/I/80
Region: East Midlands and East Anglia