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SOCIAL SECURITY ACTS 1975 TO 1977

CLAIM FOR INDUSTRIAL INJURY BENEFIT

DECISION OF THE NATIONAL INSURANCE COMMISSIONER

Name: Norman Ferguson

Local Tribunal: Workington

Case No: 17/5

1. My decision is that special hardship allowance in terms of section 60 of the Social Security Act 1975 is payable from 27 April 1977 to 25 April 1978 (both dates included) at the weekly rate of £5.20.
2. The claimant has requested an oral hearing of this appeal, but after considering the record of the case and the reasons put forward in the request for the hearing, I am satisfied that the appeal can properly be determined without a hearing. The claimant has been so informed in writing, and I proceed accordingly in terms of regulation 13(1) of the Social Security (Determination of Claims and Questions) Regulations 1975 [S.I. 1975 No. 558].
3. This appeal arises out of the claim for special hardship allowance made originally by the claimant on 29 March 1967. Special hardship allowance, commonly so-called, is, in terms of section 60(1) of the Act, an increase in the weekly rate of a disablement pension (or a corresponding provision in relation to a disablement gratuity) if the claimant can satisfy the precise conditions, or one of the sets of precise alternative conditions, set out in section 60(1): and the rate of allowance falls to be determined in accordance with the provisions of section 60(6).
4. On 2 May 1967 the claimant was found by a medical board to suffer a loss of faculty resulting from prescribed disease No. 42 (industrial dermatitis). The relevant disablement was assessed at 5 per cent from 7 August 1966 for life, and in implementation of these findings, a disablement benefit was duly awarded. The assessment was later confirmed by a medical appeal tribunal.
5. Since entitlement to special hardship allowance is related essentially to the standard of remuneration in the claimant's "regular occupation", it is necessary to ascertain in each case what the claimant's regular occupation is, or, in certain circumstances, what is to be treated as his regular occupation. A claimant's regular occupation is normally, but not necessarily, that which he was following at the time when he suffered his industrial accident or developed his prescribed disease. But the date of development of the disease is not necessarily the date when the claimant first in fact contracted the disease: the date of development

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for purpose of special hardship allowance is a date determined in accordance with the provisions of regulation 6 and 7 of the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1975 [S.I. 1975 No. 1537] or the corresponding provisions in earlier regulations. In the present case the date of development of the prescribed disease (which was regarded as a recrudescence), was determined as 18 June 1966.

6. When he claimed special hardship allowance, the claimant stated his regular occupation as "Builder's Labourer", and that at the date of development of the disease (which had been stated on the claim form as "18.6.66") he had been unemployed. "Builder's Labourer" was accepted as the regular occupation. It was also accepted that as the result of the relevant loss of faculty the claimant was incapable, and likely to be permanently incapable, of following that occupation. Special hardship allowance was awarded and paid continuously from 10 August 1966, at the maximum current rates, ultimately £10 weekly.

7. When the question arose whether the award of special hardship allowance should be continued after 27 April 1977, it was ascertained that the probable earnings of a builder's labourer were £45.20 a week. At this time the claimant was, and for some time past had been, registering for employment as a light labourer: this being suitable alternative employment of which the claimant was not incapable. His probable standard of remuneration in this alternative employment was assessed at £40 weekly. Accordingly, applying section 60(6) of the Act, the local insurance officer awarded special hardship allowance for the period 27 April 1977 to 25 April 1978 at the weekly rate of £5.20. The claimant appealed to the local tribunal, but on 12 July 1977 the tribunal unanimously confirmed that award. The claimant then appealed to the Commissioner.

8. In his appeal to the Commissioner, and in voluminous representations in connection therewith, the claimant insisted that his "regular occupation" for present purposes was not builder's labourer, but iron ore miner. This contention, if accepted, would have altered the situation very materially, and I thought it merited further investigation. This has now been carried out. Further statements and representations have been made by or on behalf of the claimant, and the insurance officer now concerned has made an additional submission (14 March 1978).

9. The claimant has explained that up to July 1961 his regular occupation was that of iron ore miner, and this I accept. His record shows that he had indeed been incapable by dermatitis for about 15 months up to January 1961, but he then resumed work as an iron ore miner and continued to do so until July 1961. He was then off work from 11 July 1961 to 22 January 1962 for "ophthalmic treatment" including an "eye operation". From 21 May 1962 to 24 July 1964, 18 February 1965 to 24 February 1965, and from 31 May 1965 to 17 September 1965, and from 27 September 1965 to 1 October 1965, he worked as a labourer. Never after July 1961 did he work as an

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iron ore miner. Having considered all the circumstances, I am satisfied that the claimant's cessation of work as an iron ore miner in July 1961 represented abandonment of that occupation. It may be that he continued to regard himself as an iron ore miner, but in the eye of the law "iron ore miner" had long ceased to be his regular occupation at the date of development of the relevant prescribed disease, for purposes of section 60 of the Act.

10. In terms, however, of regulation 19 of the National Insurance (Industrial Injuries) (Prescribed Diseases) Regulations 1959 [S.I.1959 No.467] now reproduced as regulation 19 of the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1975 [S.I.1975 No.1537] the abandoned occupation of iron ore miner could be treated, for purposes of special hardship allowance, as the claimant's regular occupation if he could establish that his abandonment of it was "as a result of the relevant disease". It is true that the abandonment had been preceded by a long spell of incapacity due to dermatitis. But the evidence is that he had recovered from that condition by January 1961, and that he then resumed work as an iron ore miner until July 1961. There is no indication that when he had to give up work as a miner in July 1961, it was because of dermatitis. There is no evidence that he was at that time suffering from dermatitis. The immediate cause was his eye condition. In my view the overwhelming probability is that his abandonment of iron ore mining was not to any material extent attributable to dermatitis, but rather to other conditions, in particular his eye condition. I conclude therefore that the claimant cannot have "iron ore miner" treated as his regular occupation under regulation 19.

11. The claimant's regular occupation for present purposes was correctly taken to be builder's labourer. It is conceded that as the result of the relevant loss of faculty he is incapable (and likely to remain permanently incapable) of following that occupation. But he is not incapable, or likely to be incapable, of following employment as a light labourer. Admittedly such employment is not of equivalent standard to that of his regular occupation. The difference in standards of remuneration, in terms of section 60(6) of the Act is reasonably estimated at £5.20 a week. His entitlement to special hardship allowance is therefore limited to that weekly rate. I confirm the decision of the local tribunal dated 12 July 1977.

12. The appeal of the claimant is not allowed.

(Signed)

H. A. Shewan
Commissioner
Date: 10 May 1978

Commissioner's File: C.I.28/78
C.I.O. File: I.O.5407/I/77
Regional Office File: Northern Unregistered Papers