30 yrs good cause! – Disablement benefit

JJS/3/LS

Commissioner's File: CI/049/1986
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Region: North Western

SOCIAL SECURITY ACTS 1975 TO 1986
CLAIM FOR INDUSTRIAL INJURIES DISABLEMENT BENEFIT
DECISION OF THE SOCIAL SECURITY COMMISSIONER

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[ORAL HEARING]

1. My decision is that the claimant does not fall to be disqualified for receiving disablement pension from 1 March 1951 to 27 March 1981 (both dates included), because he has proved that there was continuous good cause for the delay in making the claim. The claimant's appeal is allowed.

2. This is a claimant's appeal against the decision of the Liverpool social security appeal tribunal, given on 11 December 1985, dismissing the claimant's appeal against a decision of the adjudication officer that he was disqualified for receiving disablement pension from 1 March 1951 to 27 March 1981 (both dates included). The decision was a majority one.

3. I held an oral hearing of the appeal. Mr Rowland of counsel appeared for the claimant and Mr Sundborg of the Department of Health and Social Security represented the adjudication officer. In the main the facts were agreed, but Mr Rowland tendered the claimant for cross examination and he was examined by Mr Sundborg about his knowledge concerning the right to disablement pension and as to whether he knew that tuberculosis was prescribed in relation to him.

4. The question for decision in this appeal is whether the claimant is disqualified for the receipt of disablement benefit for the period 1 March 1951 to 27 March 1981 because his claim made on 28 June 1981 was not within prescribed time limits; or whether he escapes disqualification through showing that there was good cause for the delay in claiming.

5. Section 82(1) of the Social Security Act 1975 empowers the making of regulations for the purpose of disqualifying a person for the receipt of any benefit, if he fails to make his claim for it within a prescribed time; but it is expressly stipulated that such regulations shall provide for extending time within which the claim may be made in cases where good cause is shown for the delay. The material regulation is regulation 14 of the Social Security (Claims and Payments) Regulations as read with Schedule 1 to those regulations. The claim has to be made within the time prescribed, and in the instant case it was not, but it is provided that if the claimant proves that there was good cause for the failure to make the claim before the date on which it was made, the prescribed time for making that claim shall be extended to the date upon which the claim was actually made. The benefit in the instant case is not one where there is an absolute bar on payment, as provided for by section 82(2), so the prescribed time is to be extended if the claimant proves that there was good cause for the delay in presenting his claim. Regulation 14(3) provides that a claimant will not be wholly disqualified if there was good cause for his failure in the latter part of the period of

delay before the claim was made, but it is to be borne in mind that if the good cause for the failure to claim existed in the earlier part only, this would not lead to an extension of the prescribed time. There are a number of decisions explaining the good cause principle, which are relevant in the instant case, and I shall refer to these in the course of the decision.

6. In 1948 the claimant was a civil servant employed in the Ministry of Pensions, he was then 17 years of age. He worked there until 8 July 1948 when he became incapable of work by reason of tuberculosis. He was away from work until December 1951. As a civil servant he did not receive sickness benefit but he provided medical certificates. His work prior to his illness was concerned with war pensions, he received persons who were claiming this category of pension and brought them to the board, which heard their claims, and he had some duties relating to the claiming and payment of their travel allowances. His case is that at that time he had no knowledge of national insurance, and the scheme came into effect on 5 July 1948 and he went absent from work, due to illness, a few days later. Tuberculosis was added to the schedule of prescribed diseases, as disease number 38, by amending regulations which came into force on 1 March 1951. As a result of the prescription the claimant would have been entitled to benefit, as part of his duties involve the attendance upon persons suffering from tuberculosis; in any event there is no dispute on this aspect of the case, because on 17 March 1983 a local tribunal found that tuberculosis was prescribed in relation to this claimant, and his degree of disablement was assessed at 22 per cent, scaled down to 20 per cent, for the period from 1 March 1951 for life. On 3 December 1951 the claimant was interviewed by the senior medical officer at Orleans House Liverpool when he reported to the war pensions office to resume work. This was the office where he worked. One of this officers functions was to monitor daily the medical judgments of doctors, forming the several medical boards, and in carrying out this function he would examine claims relating to tuberculosis as a prescribed disease. The senior medical officer made a report on the claimant and as a result he was allowed to resume work on a part time basis and resumed full time work in March 1952. During the period of his absence the appellant had submitted national insurance medical certificates of incapacity to the Liverpool National Insurance office. The manager of the war pension office at Orleans House was responsible both for the medical boarding of war pensioners and industrial disablement claimants. He was the claimant's superior, but on his return to work it was not brought to the claimant's attention that he had had a prescribed disease which would entitle him to benefit. The claimant's evidence before me is that he had no knowledge of his entitlement or that tuberculosis was a prescribed disease. He only linked his illness with the conditions of entitlement when he learned about another employee, who had worked with him prior to his illness, whose case was dealt with in Decision R(I) 2/55 by the National Insurance Commissioner, where it was found that tuberculosis was prescribed in relation to such person. When he learned of this, he made a claim and it was accepted from 28 March 1981, however the adjudication officer decided that the claimant was disqualified from 1.3.51 to 27.3.81.

7. The claimant appealed against the decision of the adjudication officer and his appeal was heard by the tribunal on 11 December 1986. The tribunal was impressed with the claimant's honesty (as, indeed, I was) and noted that at no time did he say that he had asked for advice and been given the wrong advice; at all times his claim was that it never occured to him to claim, but that he had been working in areas where the manager of his department and the senior medical officer, who examined him, should have alerted him to the possibility that he might have a claim. In their findings of fact the members of the tribunal found that on 28 June 1981 the claimant had claimed disablement benefit on the grounds that he suffered tuberculosis since 1948. It was necessary for the appellant to show good cause why he did not claim from that date. They found as a fact that the appellant was employed as a clerical officer at the Ministry of War Pensions from April 1947, in two different departments, until July 1948. He was an in patient from September 1948 to January 1950 and an out patient from that month to December 1951. He then returned to the Ministry of Pensions but to a different department. In December 1951 he was examined by a senior medical officer who was concerned that someone with active tuberculosis would be

put in the department. By that date tuberculosis had become a prescribed disease. During the time he was in hospital no one from the department came to see him. The senior medical officer made no mention of a possible pension. When the claimant returned to work, he found that two of his colleagues had contacted tuberculosis, one had died of the disease. The claimant in R(I) 2/55 worked in the same department, but in a different office. The claimant rarely met him. The claimant did not know that he had been successful in his claim, or indeed that he had made a claim, until July 1981; immediately he heard of this, he realised that he might also have had a claim and made one. The tribunal by a majority decision disallowed the appeal; they asked themselves whether the appellant had done all that he could reasonably be expected to have done and they thought not, in this respect they considered R(S) 2/63. In the opinion of the tribunal the fact that the claimant was young and inexperienced at the beginning might have been enough to make it unlikely that he would think of claiming then, and this was the view of all three members. However the majority were of opinion that as he matured and worked in the Department of Health and Social Security (albeit having nothing to do with claims) and was open to newspaper and DHSS publicity campaigns over 30 years, it rendered as unreasonable that it could not have occured to him to query his entitlement, the majority accepted the adjudication officer's contention that it was for the claimant to make enquiries about his rights, while the dissenting member thought that the onus was on his office manager or the medical officer. It was accepted by all three members that R(G) 2/74 was in favour of the appellant's case.

8. There was no real dispute on the facts, other than the question of what the claimant might have learned over the years about his entitlement and the reasonableness of his grounds for not believing, during such period, that he had an entitlement. I heard the claimant give evidence on these aspects of his claim and I thought he was a credible witness. I have looked at the evidence as a whole and I am satisfied that he did not know of his entitlement until 1981. I accept the claimant's evidence that he was not working in a section of the DHSS which dealt with such claims during his time in the civil service. I further accept that there was no reoccurance of the disease and that he was not provoked into making enquiries as to benefit.

9. I have borne in mind that it is for the claimant to prove that there was good cause for his failure to make the claim until 1981 and that the standard of that proof is upon the balance of probabilities. At the time his claim arose the claimant was a very young man employed in the civil service; his claim arose when tuberculosis was made a prescribed disease in 1951. At the time he was absent from work. On his return to work all the facts which would support a claim were known to his superiors, and these people were officers who were charged, as part of their duties, with the administration of such claims. It is true that he did not seek specific information from them. So what, then, is the good cause relied upon. Mr Rowland argues that there was no reason why the claimant should think he had any right to disablement benefit. A person should make some enquiries, but if his claim was obscure to such an extent that he would not think he had entitlement to benefit, then, he was not under the duty to make enquiries. In the case of the claimant he needed to know that tuberculosis was a prescribed disease, but at the time he contacted it it was not so, and in support of this proposition he referred to the words of the Commissioner in R(S) 2/63, at paragraph 13; and in particular the last sentence of that paragraph in which the Commissioner said, in relation to the previous cases, "in all these cases a claimant has been held to have good cause for delay in claiming because the right to benefit was unlikely and not such as to provoke enquiry into its existence". In none of the cases which were referred to in R(S) 2/63 were the facts on all fours with the instant case, but it seems to me that the principle enunciated therein, namely that where the right to benefit was unlikely and not such as to provoke enquiry into its existence, the concession came into play is applicable to the instant case. The claimant was not in an occupation which would alert a person who contacted tuberculosis to the likelihood that he got that disease as a result of his work; he was not for example a nurse who attended on tubercular patients and would relate the disease to the work and thereby be put on enquiry to his rights. I do not think that a reasonable person, in the position of the claimant in 1951, would make enquiries or think

that he had anything to enquire about, in other words there were no grounds for thinking that he ought to have known that there was some right about which he had to enquire, and my view is reinforced by two other factors peculiar to this case. Firstly that tuberculosis as a prescribed disease, for the purpose of national insurance, was a new concept and one which came about during the claimant's absence from work. Secondly that the claimant could expect that his superiors, who were people charged in part with the administration of the scheme, would have advised him of his rights if he had any. The very fact that he was given no advice was something which would suggest to him that there was nothing to enquire about. I am satisfied on the facts and circumstances of this case that the claimant was under no obligation to take steps to ascertain his rights and duties as to the claiming of benefit. The circumstances were such to relieve him of this obligation. I am further satisfied that over the years nothing happened to provoke enquiry into the possible existence of a right to benefit. Mr Sundborg has submitted that as during this period the claimant was suffering a degree of disablement - found at a later time to be 22 per cent - such was a factor which would have caused him to make enquiries. I do not agree. Disablement there was, but the claimant remained in work and there were no other periods of absence, which might provoke enquiry into a right to benefit, nor anything else which would link the cause of the tuberculosis with the claimant's employment. Such was the position until 1981 when he learned of what happened in relation to the other employee and he was put on notice.

(Signed) J J Skinner
Commissioner

Date: 17 December 1986