

C 69/1981

VGHH/MP

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR INDUSTRIAL DISABLEMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

ORAL HEARING

1. This appeal succeeds. My decision is that increase of disablement benefit (commonly called special hardship allowance) in respect of the accident suffered by him on 15 February 1977 is payable to the claimant from 19 December 1979 to 21 December 1982 (both dates included) at the maximum statutory rates from time to time in force. I direct that any sums paid to the claimant in pursuance of the decision of an insurance officer dated 20 June 1980 awarding the claimant (in respect of a later accident suffered by him on 24 October 1978) special hardship allowance from 26 December 1979 to 25 November 1980 (both dates included) at the weekly rate of £15.20 shall be treated as paid on account of the special hardship allowance now awarded in respect of the earlier accident (Social Security Act 1975 section 86(2) as amended by the Social Security Act 1979, section 7).

2. This appeal has given rise to exceptionally involved questions of fact and law, which it is not necessary now to set out and repeat. They are dealt with in written submissions of the insurance officer dated 17 February 1981, 16 November 1981, 12 March 1982 and 3 September 1982 and in directions made by me dated 6 August 1981, 9 December 1981, 24 February 1982, 6 April 1982, 26 May 1982 and 21 July 1982. Oral hearings were held on 24 February 1982 and 21 July 1982 and the essential facts are not now in dispute.

3. The claimant suffered an industrial accident on 15 February 1977. It is not in dispute that his regular occupation was that of paviour, that the extent of his disablement was finally assessed by a medical appeal tribunal on 14 October 1977 at 10% less offset of 5% (i.e. 5% net) from 16 August 1977 for life and that the relevant loss of faculty is the fully relevant "strain of right groin". Nor is it now in dispute that he is entitled to an award of special hardship allowance in respect of this accident from 19 December 1979 at the maximum statutory rates from time to time in force on the ground that as a result of the relevant loss of faculty he is incapable and likely

to remain permanently incapable of his regular occupation and that from that date he has been wholly incapable of work and accordingly incapable of any alternative occupation.

4. The claimant had, however, already (namely on 20 June 1980) received an award by an insurance officer of special hardship allowance from 26 December 1979 to 25 November 1980 in respect of a later industrial accident on 24 October 1978 on the ground that as a result of the relevant loss of faculty he was incapable of his regular occupation of paviour i.e. the same regular occupation. There can, of course, be two awards of special hardship allowance in respect of two accidents provided that the regular occupations are different: see Decision R(I) 2/56 at paragraph 15. But where the regular occupation at the date of the first (i.e. earlier accident) is one that the claimant has become permanently incapable of following by reason of the relevant loss of faculty sustained in the first accident then he cannot be said to be incapable of following the same regular occupation as a result of the relevant loss of faculty due to the second accident: see paragraph 11 of the report. The award in respect of the second accident was accordingly erroneous. It would not have been made if my decision in respect of the earlier accident had been given in the first instance.

5. Regulation 35(4) of the Social Security (Industrial Injuries) (Benefit) Regulations 1975 [S.I. 1975 No. 5591], specifically provides that a claimant who has suffered two or more accidents shall not be entitled at any time to more than one of each of certain specified benefits. Special hardship allowance is not, however, one of these. But subsection (2) of section 86 of the Social Security Act 1975, which was substituted for the original subsection (2) by section 7 of the Social Security Act 1979, and which came into force on 22 March 1979 provides as follows:

"(2) Where on review or appeal a decision awarding or refusing a person benefit is revised, or is reversed or varied, but he retains any sums paid either in pursuance of the original decision or of any other decision awarding him benefit and those sums would not have been payable if the decision on the review or appeal had been given in the first instance, then, except in so far as regulations otherwise provide, -

(a) where the decision on the review or appeal reverses a decision refusing the person benefit, the decision on the review or appeal shall direct that those sums shall be treated as having been paid on account of that benefit (except to the extent that they exceed the amount of that benefit);

(b) in any other case

The original section 86(2) of the Social Security Act 1975 had provided for there to be set off against the benefit to which a claimant subsequently becomes entitled any sums paid to him under a decision awarding him benefit which is then revised, reversed or

varied on review or appeal. The substituted subsection (set out above) goes further. Set-off is now also to be directed (the subsection is mandatory) where a benefit originally refused is subsequently awarded on review or appeal and sums have been paid under another decision which would not have been payable if the review or appeal decision had been given in the first instance.

6. In the present case, an insurance officer had decided on 12 November 1979 on a claim in respect of the earlier accident on 15 February 1977 that special hardship allowance was not payable from and including 19 December 1979 and this decision had been affirmed on appeal to the local tribunal by a decision dated 6 March 1980. My decision (see paragraph 1) reverses the local tribunal decision. The claimant has however been paid special hardship allowance in respect of the award made on 20 June 1980 in respect of the accident of 24 October 1978. If my decision had been given in the first instance, those sums would not have been paid because, as explained in paragraph 4 above, the claimant could not as a result of that accident have been said to be incapable of following his regular occupation as a result of the regular loss of faculty. I am accordingly required to direct that the sums paid by way of special hardship allowance under the award of 20 June 1980 shall be treated as having been paid on account of the benefit awarded by me (except to the extent that they exceed the amount of that benefit). They do not exceed it. The present award is at the maximum statutory rates and for a longer period than the award of 20 June 1980 (which was also at the maximum statutory rate). There are no regulations which otherwise provide.

7. My decision is accordingly as set out in paragraph 1.

(Signed) V G H Hallett
Commissioner

Date: 9 November 1982

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Region: Northern