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112/1984

MJG/MC

SOCIAL SECURITY ACTS 1975 TO 1982

CLAIM FOR INDUSTRIAL DISABLEMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Local Tribunal: Chesterfield

Case No: 34/4

1. I hold that the decision of the national insurance local tribunal, dated 13 July 1982, is erroneous in law and is set aside. I remit the case for rehearing and redetermination to a differently constituted social security appeal tribunal: Social Security Act 1975, section 101.

2. This is an appeal to the Commissioner by the claimant, a man born on 17 August 1930, against the decision of the tribunal dated 13 July 1982, in the following terms,

"The claimant is not disqualified for receiving special hardship allowance at the maximum statutory rates from a date commencing 3 calendar months prior to 27 June 1977 [i.e. 27 March 1977] to 24 October 1981 (both dates included), as he has proved continuous good cause for the delay in making the claim on 25 January 1982. He is disqualified for receiving special hardship allowance from 14 October 1974 to the day next before the date first, aforementioned [i.e. 26 March 1977] as he has not proved continuous good cause for the delay in claiming prior thereto".

3. The claimant's appeal is of course only against the adverse part of the tribunal's decision, namely the disqualification by reason of late claim from 14 October 1974 to 26 March 1977. The adjudication officer now concerned does not dissent from that part of the tribunal's decision which was favourable to the claimant i.e. for the period from 27 March 1977 to 24 October 1981. Having considered the documents before me, that seems to me to be a proper attitude by the adjudication officer but as the case has to be reheard entirely afresh by the new tribunal to whom I have remitted this case, that tribunal has power to consider the whole period from 14 October 1974 to 14 October 1981. The new tribunal will also wish to consider the considerable documentary evidence that has been placed by the claimant before the Commissioner

on this appeal, I make no comment about it because in my view the claimant is entitled to a re-hearing before a new tribunal at which he is present and able to address the tribunal and give evidence to it, a state of affairs which did not occur at the previous hearing for the reasons set out below and for which I have felt impelled to set the original tribunal's decision aside.

4. The original tribunal that heard this case made a conscientious and complete record of their decision on form LT3. There the claimant is stated to have "attended" the hearing, but in fact he did not do so because, as the chairman's note of evidence records, the claimant's representative, a Mr G, stated "the claimant is at present in the building but cannot climb the steps to be in the tribunal room". The claimant's representative then developed the case, and it is not recorded that he asked for any adjournment in order to enable the claimant to be present at a hearing. Subsequent enquiries have been made of the insurance officer present on that occasion and he has confirmed that no adjournment was asked for. In reply to that, the claimant has stated that Mr G is no longer his representative and the claimant was not personally aware of his right to ask for an adjournment. Be that as it may, if a claimant appoints a representative to appear for him at the tribunal, a claimant is normally bound by the way that the representative handles the case.

5. However, I have come to the conclusion on the facts of this case that exceptionally I ought to interfere with the tribunal's discretion under regulation 10(2) of the Social Security (Determination of Claims and Questions) Regulation 1975 /S.I. 1975 No. 558/ (now replaced by regulation 4(3) of the Social Security (Adjudication) Regulations 1984 /S.I. 1984 No. 451/ (to proceed with a case in the absence of a claimant. From subsequent enquiries made as a result of a direction by me it appears the claimant was unable to climb the stairs to go to the tribunal room, which was above ground level, and that the clerk of the tribunal went down and spoke to the claimant. The claimant himself states:-

"The clerk to the tribunal did come down to see me, but did not mention the possibility of adjournment, nor was the possibility of using a ground floor room mentioned. She just asked me if I was right, and saw that a chair was brought for me, as I was sitting on the stairs".

The claimant also adds that if he "could have got into that tribunal hearing room", he would have made "very plain to all in that room" a number of matters relating to medical examinations etc, which he considers were not in fact brought out before the tribunal.

6. The local tribunal, whose chairman's conscientious note of the evidence brought this matter to my attention, must not be judged with 'hindsight'. However, the position so far as the tribunal saw it was that on form LT6 dated 5 July 1982 the claimant had stated that he intended to attend the hearing and did not wish the tribunal

to proceed with the case in his absence. In my judgment, when informed by the representative of the claimant or by the clerk of the tribunal or both that the claimant was unable to attend for the physical reason that he could not ascend the stairs, the tribunal should, of their own motion, whether or not a request was made for an adjournment, either have adjourned to a time and place where the claimant could be present or tried to make arrangements to sit on the ground floor so that the claimant could be present. That was particularly desirable in a case involving difficult factual issues of this kind. It is, of course of paramount importance and in accordance with the philosophy of the Chronically Sick and Disabled Persons Act 1970, that disabled persons should be given every facility to attend a hearing of their appeal.

7. In response to my direction, the adjudication officer now concerned, in a further written submission dated 5 July 1984, draws attention not only to the provision of regulation 10(2) of the Determination of Claims and Questions Regulations (see paragraph 5 above), but also to regulation 3(1)(b) of those Regulations, (now repeated in reg 2(1)(b) of the above-cited Adjudication Regulations) which provides:-

"3(1)(b) Any person who by virtue of the provisions of these regulations has the right to be heard at a hearing ... may be represented, by another person ... and, for the purposes of the proceedings at any such hearing, any such representative shall have all the rights and powers to which the person whom he represents is entitled under the Act and these regulations".

The adjudication officer then submits (paras 4 and 5),

"Although on form LT6 dated 5 7 82, the claimant expressed an intention to be present at the local tribunal hearing and indicated that he did not wish the local tribunal to proceed in his absence, the record of the proceedings of the local tribunal hearing on 13 7 82 on form LT3 indicate that the claimant was not present during the proceedings due to his inability to climb the stairs in the building in which the local tribunal were sitting. This has been confirmed with the presenting officer who has stated that the claimant was aware that the local-tribunal were proceeding in his absence and that his representative made no representation to have the case adjourned (although this is not a requirement of the aforesaid regulations). It is my submission that on the available evidence it would appear that the claimant had sufficiently acquainted his representative with the facts of his case for him to proceed in his absence and that as no adjournment was requested, or any objections raised after the hearing as to the conduct of the said hearing, then no injustice has been served which could be considered a breach of the regulations ...".

8. I cannot accept that submission. Regulation 11(2)(a) of the Determination of Claims and Questions Regulations (now repeated in reg 4(5) of the above-cited Adjudication Regulations) underlines the fact that the claimant personally has a right to be present at the hearing of his appeal. Moreover, regulation 3(1)(b) (cited by the adjudication officer) giving a right to be represented does not infer that if a representative is present the personal attendance of the claimant can be dispensed with. "Justice must not only be done, but also must manifestly be seen to be done". In this case it appears to me that not only was there an appearance of possible injustice but also the possibility of a real injustice. In so saying, I make no criticism of the original tribunal or of its chairman, but simply, for the reasons given above, consider this to be an exceptional case where I must interfere with the tribunal's discretion to proceed in the claimant's absence. Consequently, the tribunal's decision is set aside, and there must be a rehearing before a differently constituted tribunal (in accordance with the usual practice), at which every facility must be given to the claimant to attend personally.

(Signed) M J Goodman
Commissioner

Date: 17 September 1984

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Region: Midlands