

DGR/FB

SOCIAL SECURITY ACTS 1975 TO 1980

CLAIM FOR INDUSTRIAL DISABLEMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

~~CSU 15/80~~

Decision C 1 10/81

1. My decision is as follows:-

- (i) that the decision of the insurance officer awarding special hardship allowance for the inclusive period from 20 September 1978 to 18 September 1979 should be reviewed because there has been a relevant change of circumstances since that decision was given (section 104(1) of the Social Security Act 1975), and
- (ii) that such decision should be revised so that as from 13 December 1978 the claimant is disqualified for receiving special hardship allowance because his absence from Great Britain was and is otherwise than temporary (regulation 9 of the Social Security Benefit (Persons Abroad) Regulations 1975).

2. The claimant was awarded special hardship allowance for the period from 20 September 1978 to 18 September 1979. However on 9 December 1978 he left Great Britain for India. He advised the Department that he intended to remain there for a period of about 3 years. He was still there on 7 March 1980, and, as far as I am aware, he has still not returned. There has been correspondence with the claimant as to whether or not he intends to come back to England, but he has been unable to give a firm date for his return. He states that everything turns on an improvement in his health.

3. It should also be observed that he no longer has any home in Great Britain, he has left no personal belongings in this country, and his children are living in India apparently never having been in this country at any time. Moreover, he does not have a return air-ticket. In the light of the evidence the insurance officer decided that his original decision awarding special hardship allowance from 20 September 1978 to 18 September 1979 should be reviewed, because there had been a

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relevant change of circumstances since that decision was given. Further, the insurance officer also decided to revise his original decision, so that the claimant should be disqualified for receiving special hardship allowance from and including 13 December 1978 on the ground that his absence from Great Britain was not temporary. After an unsuccessful appeal to the local tribunal the claimant now appeals to the Commissioner.

4. Section 82(5) of the Social Security Act 1975 provides as follows:-

"Except where regulations otherwise provide, a person shall be disqualified for receiving any benefit ... for any period during which the person -

(a) is absent from Great Britain;"

However, there are regulations which are relevant in the present case. For regulation 9(5) of the Social Security Benefit (Persons Abroad) Regulations 1975 provides that a person shall not be disqualified for receiving special hardship allowance by reason of being temporarily absent from Great Britain during the period of 3 months from the date on which such absence commences, or during such longer period as the Secretary of State may, having regard to the purpose of absence and any other factors which appear to him to be relevant, allow, provided however that certain conditions are complied with. It is clear that those conditions have in the present case been complied with, so that, whether or not the claimant can escape disqualification on account of his absence abroad during the period of 3 months from the date of the commencement of such absence, will depend upon whether I am satisfied that his absence was of a temporary nature only. I am not concerned with whether or not the claimant might escape disqualification for a longer period than 3 months, because any extended period is a matter for the Secretary of State. Put shortly, the claimant has been absent from Great Britain since 8 December 1978, and the consequence of this is that he must be disqualified for receiving special hardship allowance unless he can establish that such absence was only temporary.

5. There is no definition in the Social Security Act or the regulations made thereunder of what constitutes "temporary" absence. Moreover, there is no specified time, after which an absence ceases to be temporary. The nature of the absence must depend upon the facts of each individual case.

6. Without attempting to give a positive definition to the word "temporary", it is possible to approach the matter negatively and to assert that an absence will not be temporary if it is of indefinite duration. Moreover, in the words of paragraph 6 of unreported decision C.F. 1/81 "an absence is not of indefinite duration if one can point to a date beyond which it cannot continue". However, the fact that "temporary" in the present context is to be contrasted with "a period of indefinite duration" does not mean that "temporary" is necessarily

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to be equated with any period finite in time. A period of, for example, 30 years is finite, but in the context of Social Security law it could not on any footing be regarded as "temporary". Whether or not any particular fixed period is temporary will depend upon the circumstances of the case in question.

7. Now applying the test of "indefinite duration" to the facts of the present case, I do not see any fixed date beyond which the claimant will not in any event continue to be resident in India. No indication has been given as to when, if ever, his health is likely to improve sufficiently to allow him to return to this country. The claimant is residing in India on an indefinite basis. Accordingly, he cannot be regarded as being abroad temporarily.

8. I am fortified in reaching the conclusion that I have by consideration of certain earlier decisions of the Commissioners in connection with sickness benefit, which have proceeded on the basis that, where the claimant's absence abroad was on the facts of indefinite duration, such absence could not be regarded as temporary. See R(S) 9/55; R(S) 5/59; R(S) 9/59. In particular in paragraph 12 of Decision R(S) 9/55 it was observed as follows:

"It is, no doubt, true that as a general rule where a period of absence has lasted for more than a year and there is no reasonable prospect of its coming to an end, it cannot be spoken of as temporary, and that it is a common practice, if a man has been in hospital for more than a year to inquire the prospects of his discharge and, if there are no reasonable prospects of his being discharged within the next six months, it can normally be assumed that there are no reasonable prospects for an indefinite time."

In the present case the claimant has been abroad since December 1978 and there is no evidence to suggest that he is to come back to this country within the next 6 months or so.

9. In the present instance I am satisfied that the claimant's absence in India is for an indefinite period and that the insurance officer was right to review his original decision awarding benefit, when it became clear that the claimant had gone abroad to India - manifestly there had been a material change of circumstances since

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the original decision was given - and I am likewise satisfied that the insurance officer properly revised his decision so as to disqualify the claimant for receiving special hardship allowance from and including 13 December 1978 because his absence from this country was not temporary. I have carefully considered the submissions of the claimant, but they do not assist him in the light of the relevant statutory provisions.

10. Accordingly, I dismiss this appeal.

(Signed) D G Rice
Commissioner

Date: 18 May 1981

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Region: Overseas Group, Newcastle-upon-Tyne