

continuous good cause for late claim - reliance
on TV advice not good cause.

CI 120/1984

DGR/EA

SOCIAL SECURITY ACTS 1975 TO 1982

CLAIM FOR INDUSTRIAL DISABLEMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Bernard Brian Riley

Local Tribunal: Wakefield

Case No: 12/3

[ORAL HEARING]

1. My decision is that the claimant is disqualified for receiving disablement benefit for the inclusive period from 29 July 1951 to 22 May 1983 because his claim for that period made on 23 August 1983 was not made within the time limit prescribed by Regulation 14 of and Schedule 1 to the Social Security (Claims and Payments) Regulations 1979, and he has not shown that there was continuous good cause for such delay.

2. This is an appeal by the adjudication officer (formerly the insurance officer) brought with the leave of the local tribunal chairman against the decision of the local tribunal reversing the insurance officer's decision shown in Box 1 of Form LT2. The claimant asked for an oral hearing, a request to which I acceded. At that hearing the claimant was represented by Miss C Dodgson, a solicitor from Messrs Rowleys and Blewitts and the adjudication officer by Mr P H Wickham of the Chief Adjudication Officer's Office. I am grateful to them both for their assistance.

3. On 16 April 1951 the claimant had the misfortune to suffer a serious accident at work resulting in the loss of one eye. He was then aged 15 and a claim at common law was brought against the employer. These proceedings were conducted by his parents acting on proper legal advice. In 1955 the whole matter was settled. The claimant did not at the time make a claim to disablement benefit, and in fact it was not until 23 August 1983 that any such claim was lodged. The claimant was invited to explain the delay and his reply was in the following terms:-

"I was only 15 years old at the time of the accident and to my knowledge was never informed that I was due to anything and I was only made aware of this when I received a leaflet along with a letter about a recent accident explaining that if I had an accident at work after 1947 I may be able to claim benefit".

In the light of the evidence the insurance officer was not satisfied that the claimant had shown good cause for his delay and he disqualified him for the period set out in paragraph 1.

4. In due course, the claimant appealed to the tribunal who reversed the insurance officer's decision. They made the following findings of fact:-

"The claimant suffered the accident in 1951. He was 15 years only and had very little advice following the injury to his eye. He did enquire before he accepted the final settlement of a claim for damages whether he was entitled to anything else and was told by his legal advisers - no. He later thought no more about any other benefits and we find he was quite ignorant of possible Disablement Benefit. He had 2 claims in 1967 and 1982 - when he received Disablement Benefit but on enquiring from his union representatives was told that benefit was not available in 1951. This he accepted and quite believed he could not claim Disablement Benefit for his eye injury in 1951. We find that this situation amounts to good cause for late claim - made when he at last saw a leaflet in or about August 1983. We find continuous good cause for failing to claim earlier".

5. Regulation 14 of, and Schedule 1 to, the Social Security (Claims and Payments) Regulations 1979 provide that the prescribed time for claiming disablement benefit is a period of 3 months from the first day on which the conditions for the receipt of that benefit are satisfied. If the claim is not made within that prescribed time, the claimant is disqualified for receiving benefit for any period more than 3 months from the actual date of claim. Nevertheless, if in the event the claimant is able to prove that there was good cause for the failure to make the claim before the date on which it was made, the prescribed time may be extended to that date. However, it must be emphasised that for the claimant to escape disqualification he must show that the good cause was continuous right up to the actual date of claim.

6. Manifestly, the claim was out of time in the present instance, and the question at issue is whether or not the claimant is able to establish continuous good cause for his lateness. Of course, the mere ignorance of his rights does not constitute good cause. As was said in Decision R(I) 82/53 "it is settled law that ignorance of the right to benefit or of the procedure for claiming it does not amount in itself to reasonable cause for failing to claim in time. A person is expected to take reasonable measures to acquaint himself with his rights and duties under the National Insurance (Industrial Injuries) Act by enquiring of the officials whose duty it is to advise him at any National Insurance Office".

7. I am satisfied, having regard to the extreme youth of the claimant at the time of the accident and to the fact that all the proceedings relative to his being recompensed (so far as he could ever be recompensed) for the loss of an eye were conducted by his parents on legal advice, that, at the time when the matter was

finally disposed of, he could properly conclude that there was nothing more to come to him and that he had no entitlement to disablement benefit. However, that is not the end of the matter. For on 4 further occasions he had the misfortune to suffer industrial accidents, and the question arises whether or not the circumstances surrounding any of those accidents should have alerted him to the need to enquire about a possible claim for disablement benefit in respect of his accident in 1951.

8. On 12 September 1960 the claimant suffered an industrial accident and claimed industrial injury benefit. At the end of that benefit he was sent a notification pointing out to him that he might be entitled to disablement benefit and drawing his attention to leaflet N16. The claimant never sought that leaflet and in the event he never received disablement benefit for this particular injury. On 16 February 1967, however, the claimant sustained a further accident and on this occasion he successfully claimed and received disablement benefit. Moreover, on 13 October 1982 he suffered another industrial accident and again made a successful claim for disablement benefit. Furthermore I was also informed that the claimant suffered yet another accident in 1983 and claimed, in August 1983, disablement benefit in respect of that accident also. Mr Wickham argued that the mere fact that the claimant made claims for disablement benefit on all these various occasions ought to have alerted him at least to the need to enquire as to the position in respect of the 1951 accident.

9. I am not satisfied that this was the case. If the claimant reasonably believed in 1955 that he had got all that he was entitled to, and if he had treated all the subsequent claims to disablement benefit on the footing that each such claim related strictly to the current accident, there was no necessity for him ever to query whether or not he was entitled to disablement benefit in respect of the 1951 accident. In other words, there was never anything to enquire about.

10. However, in his oral evidence to me the claimant stated that he had been told by his trade union representative in both 1967 and 1982 that disablement benefit was not available in 1951. Apparently, there had been some conversation relating to the loss of the claimant's eye and sympathy had been expressed that the accident had happened at a time when disablement benefit was not available. Now, on the former of those occasions when the question of a possible entitlement was discussed the claimant did entertain or should have entertained some suspicion that there was an entitlement to benefit for the 1951 accident. In my judgment, he should then have made enquiries at the local office, so as to resolve the matter authoritatively. It was not enough for him to rely on the views of his trade union representatives; they were not qualified to give advice on social security matters. The only authority was the local office of the Department. It should also be mentioned that the claimant complains that when in connection with his post 1951 claims, he was examined by the Department's doctors and was asked to disclose the circumstances in which he lost his eye, he was not informed by the doctors of his entitlement to claim a disablement benefit in respect of his 1951 accident. It cannot be over-emphasised that

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legal
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nothing
extra
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claim.
Why should
he make
further
enquiries?*

3 "Can't was"
"Good cause?"

the examining medical officers are doctors, and it is immaterial that they work for the Department of Health and Social Security; they are not lawyers, and are not competent to express any legal views as to entitlement to benefit. The fact is that the claimant knew or ought to have known when he discussed the matter with his trade union representatives in 1967 that the question of entitlement to disablement benefit in respect of the 1951 accident was an issue which should be authoritatively resolved, and he failed to make the appropriate enquiry at that time.

11. In April 1983 he acquired leaflet N16 and in the light of the information therein contained shortly thereafter made an enquiry at the local office and in due course presented his formal claim. The difficulty that confronts the claimant is that, if he is to show good cause, he has to demonstrate that it was continuous right up to the date of actual claim. Whilst I am prepared to accept that he had good cause at least until the time when he spoke to his union representatives in 1967, such good cause did not continue thereafter. The result is that it was not continuous up to the date of claim and this is necessarily fatal to his case.

12. I have no option but to allow this appeal.

(Signed) D G Rice
Commissioner

Date: 12 September 1984

Commissioner's File: C.I. 120/1984
C I O File: I.O. 5055/I/84
Region: North Eastern

*does not make sense that I would enquire and
claim Disability Benefits in 1967 or 1982 or any other
time for minor injuries, and not bother about a far
more serious accident if I had known about Disability
Benefits being available to me for 1951 ?*

*all the information I received in later years did not
~~to~~ relate to my 1951 accident but only to the
current injuries in 1960/67/82 or*