

MASTER

JHH - good cause for late claim - over 10 years
in regular contact with DHSS reasonable for him to
assume they are ensuring he receives his entitlement
to all benefits.

BJD/SH/3/MD

Commissioner's File: CI/147/1986

Region: London North

SOCIAL SECURITY ACTS 1975 TO 1986

CLAIM FOR INDUSTRIAL DISABLEMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: William James Armitage

Appeal Tribunal: Hereford

Case No: 2/1

1. This is an appeal by the claimant against the decision of the social security appeal tribunal given on 20 March 1986. My decision is that this appeal should be allowed and that the claimant was entitled to an award of special hardship allowance at the prescribed maximum rate from 5 October 1981 to 30 May 1984.

2. On 31 August 1984 the claimant was interviewed at the local DHSS office about his disablement benefit in general. In May 1978 the claimant had sustained injuries to the left side of his body when a ladder slipped from the side of a lorry causing him to fall. He claimed, and was awarded, Industrial Injuries Benefit for the period from 6 May to 20 May 1978 and 21 August to 23 September 1978. During the next five years there were numerous occasions on which the claimant appeared before medical boards for the assessment of his disability to be determined. He returned to his regular occupation in August 1978 and continued work until 5 October 1981 when he became incapable of work and took early retirement.

3. Under section 60(1) of the Social Security Act 1975 a person may become entitled to special hardship allowance (which amounts to an increase of disablement benefit) if as a result of the relevant loss of faculty he is incapable and likely to remain permanently incapable of following his regular occupation or employment of an equivalent standard which is suitable in his case. It is accepted that from 5 October 1981 onwards the claimant's condition was such that he would have been entitled to receive special hardship allowance had he claimed it. Under the Regulations referred to in paragraph 6 of the submission of the adjudication officer to me dated 4 December 1987, and helpfully set out in an Appendix, claims for special hardship allowance must be made within three months of the first day of being in a condition of entitlement to the allowance and, if there is a failure to claim within that time, a person is disqualified from receiving it in respect of any period more than three months before the date on which the claim was made. That latter date is accepted to have been 31 August 1984 and it is for that reason that the period of disqualification here in issue ends on 30 May 1984. The Regulations also provide that where a person claims late he will not be disqualified from receiving the benefit if he proves that throughout the relevant period there was good cause for delay in making such claim. The decision of the social security appeal tribunal and this appeal to me are concerned solely with the question whether during the period from 5 October 1981 to 30 May 1984 the claimant proved that

there was good cause for his delay in making his claim to special hardship allowance.

4. There have been many decisions of Commissioners on the question whether "good cause" has been shown. Some of those decisions are referred to in the submission of the adjudication officer to the tribunal and in the further submission of the adjudication officer to me. While all the guidance available has to be derived from the earlier authorities, I respectfully agree with the Commissioner, in his decision on Commissioner's file CS/089/1986, that "every case has to be looked at on its own facts and merits". But, as the Commissioner said in the decision on Commissioner's file CS/15/79:

"It has never been stated by the Commissioners that ignorance of the law prevents a finding that there was good cause. What has been said is that ignorance of the law is not of itself good cause. However, it has often been the case that a person has been held disqualified on the grounds of the lateness of his claim as if ignorance of the law was a total bar to his establishing a "good cause". ... I do not consider that it is possible to define what constitutes a good cause, for the simple reason that I consider that Parliament has allowed such a vague phrase to be included in this part of the law so as to enable the determining authorities to exercise a sensible judgment in each case depending on the circumstances of that case. There have been many cases when it has been recognised that complication in the law does excuse delay; because on many occasions ordinary people cannot be expected either to know what the law is or to know that they ought to enquire about it. In my view, the test for every case must be one of reasonableness. The question for the determining authority to answer is: has the person concerned done or omitted what can reasonably be expected of him having regard to his rights and duties under the social security scheme?"

5. That parts, at least, of the social security system are complicated is beyond argument. The tribunal stated that they did not accept that there was an onus on the Department to advise the claimant especially as the claimant had claimed once before. His earlier claim had been as long ago as 1969. I think that it is highly doubtful whether many years later a person who was not well versed in the social security system would recollect that he had received an allowance called "special hardship allowance". The claimant's case is that his claim to industrial injury benefit was reviewed by the Department when he ceased employment, that he was frequently thereafter in touch with the local DHSS office and frequently appeared before medical boards. On none of these occasions was the claimant led to think that there was some allowance, viz. special hardship allowance, which he might be entitled to receive and in relation to which he ought to make at least an enquiry, if not a claim.

6. It is not part of the function of a medical board to advise those appearing before it of their social security rights. The adjudication officer submits that the burden was on the claimant to enquire of his right to benefit. Nevertheless, it remains an obvious fact that those who are in contact with their local DHSS office do rely greatly upon the help, experience and advice of those in the local office. And it is an essential feature of our social security system that those in the local offices are so ready to give claimants and potential claimants the benefit of their help, experience and advice. The social security system is, in our modern welfare state, so complicated that the inexpert inevitably have to rely upon the expert. Having regard to his many contacts with the local office, I do not find it surprising that the claimant did not formally make an enquiry of his rights under the Acts. The question ultimately is one of "reasonableness", (see CS/15/79) and whether the person concerned has done or omitted to do what could reasonably be expected of him having regard to his rights under the social security scheme. In the present case I have reached the conclusion that the claimant has just shown that he had continuous good cause for not claiming special hardship allowance earlier than he did. His reliance upon the local officials was reasonable having regard to their expertise in the subject and the complications of that subject. It seems that it was never suggested to the claimant that he should make a formal enquiry of the local officials as to the full extent of his rights and the benefits to which he

was entitled. Again, I would not expect that the local officials would make such a formal suggestion. It may be that the very helpfulness of the local officials does lead those dealing with them to assume, perhaps wrongly, that those officials have told them of all the benefits to which they might be entitled. Such appears here to have been the case.

7. For the above reasons I consider that the claimant has shown good cause for his delay in claiming special hardship allowance from 5 October 1981 to 30 May 1984 (both dates inclusive) and that he was entitled to receive special hardship allowance at the prescribed maximum rate from the first of those dates to the second.

(Signed) B.J. Davenport

Commissioner

Date: 10 May 1988