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Prescribed Disease A12 - Mechanic Of
(Hand Held)

28/94
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RFMH/JC/3

CPPE

Commissioner's File: CI/160/1994

DSS File:

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL FROM DECISION OF MEDICAL APPEAL TRIBUNAL ON A QUESTION
OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal given on 7 January 1994 is erroneous in point of law and accordingly I set it aside. However as I consider it expedient to make further findings of fact and to give such a decision as I consider appropriate in the light of them, I further decide that prescribed disease A12 known as carpal tunnel syndrome is not prescribed in relation to the claimant because she was not employed in an occupation involving the use of hand-held vibrating tools. As a result the claim for disablement benefit is disallowed.

2. This is the adjudication officer's appeal against the decision of the social security appeal tribunal of 7 January 1994, leave having been granted by the tribunal chairman. I held an oral hearing of the appeal. The claimant did not attend but was represented by Mrs C Cleave a Legal Officer from G M B Union. The adjudication officer was represented by Mr D Jones from the Solicitor's Office of the Departments of Health and Social Security. I am grateful to them both for their detailed and helpful submissions.

3. On 6 May 1993 the claimant claimed disablement benefit in respect of prescribed disease A12 known as carpal tunnel syndrome. She stated that she had last worked as a machinist in

July 1990. In reply to enquiries her employers stated that the claimant was employed by them as a sewing machinist from October 1956 to August 1990 and that her employment had not consisted of the use of hand-held vibrating tools. In reply to further enquiries the employers stated that the claimant's employment had consisted of feeding material under the needlefoot of an industrial sewing machine which was, in turn, fitted to a flat table top. The claimant was asked for the names and addresses of 2 witnesses who could confirm the use of hand-held vibrating tools and what tools were used but she failed to reply.

4. In the light of the evidence the adjudication officer decided that prescribed disease A12 was not prescribed in relation to the claimant because she had not been employed in any occupation involving the use of hand-held vibrating tools. As a result he disallowed the claim for disablement benefit. Thereupon the claimant appealed to the tribunal.

5. The claimant and her representative attended the hearing of the appeal before the tribunal on 7 January 1994. Surprisingly the claimant did not give evidence. Her representative submitted that the criteria for prescribed disease A12 were satisfied because it was accepted that the sewing machine was a tool and that it vibrated. It was hand-held because "it is a hand on machine. The vibration is transferred through the machine into the upper limb." In the event the tribunal allowed the appeal. The findings of fact read:-

"1. [The claimant] worked as a machinist between October 1956 and August 1990.

2. It was accepted that the machine was a tool and that it vibrated for the purpose of the prescription regulations for carpal tunnel syndrome.

3. The machine was stationary and was used to piece together heavy cloth items such as sails for ships and marquees. The machine could only be operated if the operator applied both hands to the machine as the cloth went through."

6. The reasons for decision read:-

1. The whole appeal hinges upon whether or not [the claimant's] employment was prescribed in relation to PD A12.

2. She was employed as a machinist in a firm manufacturing sails for ships and large tents. It was common ground that the machine on which she worked was a tool and that it vibrated. The issue was whether or not the machine came within the prescription regulation since it was not a portable tool.

3. The Tribunal found that Parliament must have intended the fact that the hands on machine (ie a machine which

could not be operated without the operator applying pressure with the hands and therefore suffering (vibration) fell within the prescription tests otherwise a situation would be reached whereby a dentist satisfied the prescription test and a worker in heavy industry suffering the effect of regular vibrations did not simply because a piece of machine was held to the floor by a pair of screws."

7. From 19 April 1993 Schedule 1 to the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1993 provides for the insertion of prescribed disease A12 - known as carpal tunnel syndrome. To establish that the disease is prescribed in relation to the claimant, Part 1 of Schedule 1 to the Regulations requires a claimant to show that she was employed in employed earners employment at any time after 5 July 1948 in any occupations which involve:-

"The use of hand-held vibrating tools".

8. It is not in dispute that the sewing machine in the present case was a vibrating tool for the purposes of prescribed disease A12. The crucial question for decision is whether it was "hand-held". Mr Jones argued that it was not, because the words "hand-held" were in the provision for a purpose. They distinguished between tools which were hand-held and those which were not. It was a characteristic of some tools and not others. He referred me to paragraph 14 of Decision R(I)8/86 where the Commissioner provided a dictionary definition of "tool" albeit in the context of a different prescribed disease. The Commissioner held so far as relevant:-

"14....I do not consider that the word "tools" where it appears in that provision is a technical word. I think that it is used in the ordinary sense in which ordinary people use it when speaking or writing the English language. Accordingly, I turn to dictionaries for a definition of the word "tool". The Shorter Oxford English Dictionary first quotes Doctor Johnson's definition - "any instrument of manual operation": It then proceeds with the following more elaborate definition:-

"A mechanical implement for working upon, as by cutting, striking, rubbing, or other process, in any manual art or industries; usually, one held in and operated directly by the hand, but including certain simple machines, as the lathe."

Chambers Twentieth Dictionary (1972 Edition) defines "tool" (in relevant definition) "a working instrument, especially one used by hand".

9. Mr Jones submitted in the light of the above quoted passage that the tool which was held in the hand was not the same as a tool on which hands were placed. He argued that if the draughtsman had intended to refer to those type of tools he could

have prescribed employed earner's employment in any occupation involving contact with vibrating tools, or contact by hand with vibrating tools. The draughtsman had however limited the phrase to "hand-held". He added if the industrial sewing machine in the present case was a "hand-held vibrating tool" because the claimant placed her hands on it, then in his view the particular phrase "hand-held" was redundant and the adjective "hand-held" deprived of its meaning.

10. Mrs Cleave submitted that the provision relating to prescribed disease A12 should be given a wide interpretation. In support she referred me to the Report by the Industrial Injuries Advisory Council on the question whether further work related to upper limb disorders should be prescribed. Paragraphs 26 and 27 read, so far as relevant:-

"26...the most consistent observation has related to work involving the use of vibrating tools. Four studies have indicated a doubling of the risk of carpal tunnel syndrome among people working in hand-held vibrating tools, although it is unclear how far the disorder is a consequence of the vibration, and how far of the posture and grip required to use such tools - many of which are heavy or cumbersome.

27. We conclude that there is now sufficient evidence to justify the prescription of carpal tunnel syndrome in relation to the use of hand-held vibration tools. However, the evidence concerning other forceful and repetitive movement of the wrist is not sufficient to prescribe carpal tunnel syndrome in any other occupational categories."

11. Mrs Cleave stated that the tribunal had found as fact "the machine could only be operated if the operator applied both hands to the machine as the cloth went through". She submitted initially that that finding was sufficient to support the conclusion that industrial sewing machine was a "hand-held" vibrating tool. She argued that the whole purpose of the provision was to provide for the medical condition resulting from the handling of a tool whereby the vibrations travelled from the hand up the arm. In her view it was sufficient to establish a relationship between the hand and the vibrating tool to satisfy the conditions for prescribed disease A12. She submitted that Mr Jone's argument was misconceived because it was based on the vibrating tool being "hand-held" and in addition hand supported. There was nothing to indicate that the provision required the tool to be portable.

12. Mrs Cleave then referred me to the claimant's grounds of appeal in which she stated:-

"I have been reading through the reports and notice, that it was never mentioned, that in order to stop the machine you had to grip and hold on hard, for the machine being belt driven did not stop immediately you stood on the pedal."

13. Mrs Cleave explained that the industrial sewing machine in the present case was operated by a foot pedal. When in use the machine and the table on which it was secured vibrated. In order to steady the machine the claimant was required to place part of her hand on the machine and the other part on the material so as to guide it under the needlefoot. She controlled the operation of the sewing machine by holding a rotating wheel with her other hand. This enabled her to stop the sewing machine instantaneously. Mrs Cleave submitted that on those facts the claimant manifestly operated a "hand-held vibrating tool".

14. There is no statutory definition of the expression and the words can be given an extremely wide or narrow interpretation. Mrs Cleave submitted that any vibrating tool falls within the terms of prescribed disease A12 if it can be shown that any part of it is supported or held by the hand of the operator. That is an attractive argument which would afford benefit to a wide category of claimants who could establish that they had sustained carpal tunnel syndrome from the use of vibrating equipment. The expression is however susceptible to the narrower interpretation that the expression "hand-held" is descriptive of the actual tool in function and not of the use made of the tool by the claimant. On this construction as submitted by Mr Jones it therefore applies only to the particular kind of vibrating tool which is portable and held manually. It does not extend to the use of tools of any kind in which some part of the operation may involve hand steadying or control. I am entitled to have regard to the Report by the Industrial Injuries Advisory Council (see paragraph 15 of the Tribunal of Commissioners' Decision R(I)11/81 where Black-Clawson International Ltd v. Papierwerke- Walhof-Ascheffenburg AG (1975) A.C. 591 was applied). In my view the Report supports the narrower interpretation because it refers to "grip required to use such tools - many of which are heavy or cumbersome" and that "other forceful and repetitive movement of the wrist is not sufficient to prescribe carpal tunnel syndrome in any other occupational category". Accordingly I conclude that the narrower interpretation is that which must apply. The tribunal erred in law in concluding otherwise. However, as I consider it expedient to give the decision the tribunal should have given as I am empowered by section 23(7)(a)(i) of the Social Security Administration Act 1992, I give a decision set out in paragraph 1.

15. The adjudication officer's appeal is allowed.

(Signed) R.F.M. Heggs
Commissioner

(Date) 16 September 1994