

JBM/BF

Commissioner's File: CI/310/1984

C A O File: AO 5184/I/84

Region: London South

SOCIAL SECURITY ACTS 1975 TO 1984

CLAIM FOR INDUSTRIAL DEATH BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: [REDACTED]

Appeal Tribunal: Slough

Case No: 18/6

[ORAL HEARING]

1. My decision is that the claimant is not entitled to industrial death benefit as at the date of death of the claimant's wife he was not being wholly or mainly maintained by her; Social Security Act 1975, section 69(1).

2. This appeal by the claimant is against the unanimous decision of the appeal tribunal confirming the adjudication officer's decision that industrial death benefit is not payable. Leave to appeal was granted by the Commissioner. The claimant requested an oral hearing to which request I acceded. Accordingly, on 22 May 1985 I held an oral hearing. The claimant was present and represented himself. Mr. D.J. Ellis of the Chief Adjudication Officer's Office represented the adjudication officer. To both of them I am indebted.

3. The facts are dealt with at boxes 5 of the original and further submissions of the adjudication officer then concerned on which the claimant has had the opportunity to comment. I do not propose to set these matters out afresh here. I would add that the sole question at issue before me is whether the claimant was being wholly or mainly maintained by his wife at the time of her death, in particular, whether she was contributing more than half the cost of the claimant's maintenance. It is not in dispute before me that the unfortunate death of the claimant's wife was an industrial accident.

4. The relevant law (both statutory and otherwise) is adequately set out in the respective submissions of the two adjudication officers who have been involved in these appeals. Nothing is to be gained by my rehearsing that law here save to state that section 69(1) of the Social Security Act 1975 provides as follows:-

"The widower of the deceased shall be entitled to death benefit if at her death he -

- (a) was being wholly or mainly maintained by her or would but for the relevant accident have been so maintained; and
- (b) was permanently incapable of self-support".

5. A preliminary point arises in that the claimant contends that he did not have a fair hearing at the two appeal tribunal attendances. I need not however pursue that matter as the hearing before me is a complete re-hearing.

6. The claimant helpfully provided me with a type-written copy of his submissions which I have labelled Document 1 now contained in the case papers. The claimant read out his submissions in opening at the hearing and in reply the claimant stated that since his late wife's death his outgoings have increased, and that that position is unfair and not taken into account in the household fund test. As he said not only did he lose the support of his wife but the outgoings in respect of his responsibilities have doubled and trebled. Mr. Ellis expressed sympathy with the claimant's position, and referred me to the relevant statutory provisions and to the decisions of the Commissioner.

7. I have to apply to the case before me statutory provisions contained in section 69(1) of the Social Security Act 1975 set out at paragraph 4 of this decision in the light of the evidence before me and on the basis of the relevant decisions of the Commissioner. It is not in dispute that the second limb contained in section 69(1)(b) is satisfied but section 69(1) further requires the first limb contained in section 69(1)(a) to be satisfied. The claimant's wife was the major bread-winner at the time of her death but the tests laid down by the Commissioner in respect of the household fund test require not only that the deceased be the major contributor but that she provide the main part of the support of the claimant. The household fund test has long been applied by Commissioners over many years and it is applicable here. I refer to the decision of a Tribunal of Commissioners R(I)1/57. The claimant has provided the relevant figures for the application of the test which are contained at page 65 of the case papers. The test requires the claimant to show that at least half the unit cost of his maintenance was contributed by his wife. On the figures before me this is not the case. The test is a hard one and could not have been satisfied in his case unless three-quarters of the weekly income of the household came from the deceased. I turn therefore to the other question before me as to the date at which the test is applied. It is the claimant's contention that it is not the date of death that is to be looked at but one must see what effect the death has had on subsequent circumstances. This is not the case here where the accident and the death occurred at the same time. I need only refer in this connection to two decisions of the Commissioner namely, CI38/50 and paragraph 7 of R(I)19/51 (in which case though the circumstances are different the principle enunciated there applies). I would add that I have no power to alter or vary these statutory provisions which govern me.

8. Accordingly, the claimant's appeal is dismissed.

(Signed) J B Morcom
Commissioner

Date: 16 July 1985