MAT - Duty to give reasons - AMA had not made detailed diagnosis   26/95

DGR/SH/11   Commissioner's File: CI/422/1994

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR DISABLEMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. For the reasons set out below, the decision of the medical appeal tribunal ("MAT") given on 29 March 1994 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the MAT of 29 March 1994. In view of the unpersuasive nature of the written submissions of the Secretary of State, I directed an oral hearing. At that hearing the claimant was present, but unrepresented, whilst the Secretary of State appeared by Mr Dunlop of Counsel, instructed by the Solicitor's Office of the Department of Social Security.

3. On 7 November 1992 the claimant had the misfortune to suffer an industrial accident. On 17 November 1992 he claimed disablement benefit. On 29 July 1993 an initial adjudicating medical authority (AMA), who considered a precis of the Royal Wiltshire Hospital case notes dated 26 June 1993, found "strain left groin and recurrent left inguinal hernia and surgical repair with orchidectomy" to be the injury resulting from the relevant accident. They identified the loss of faculty resulting from that accident as being "loss of normal sensation left groin and pain on movement". The AMA found the disability resulting from the relevant loss of faculty to be "(1) impaired function abdominal wall" partly relevant with "(2) previous recurrent left inguinal hernia 1980, 1985 and 1990" as another pre-existing condition, and they finally assessed disablement at 10% from 20 February 1993 for life, after offsetting 15% for previous inguinal hernias. The AMA also recorded as an unconnected

condition the claimant's "old back injury 4% for life".

4. The decision of the AMA was in due course referred by the adjudication officer to the MAT at the instigation of the Secretary of State. The Secretary of State in his observations to the tribunal submitted as follows:-

> "The tribunal is entitled to reach its own conclusions on the whole of the case before it. It can confirm, vary or set aside and replace the decision of the Adjudicating Medical Authority in the light of the evidence and its own expert medical judgment. It follows that, apart from leaving things as they are, the Tribunal could change the period, increase or reduce the assessment, or decide that there is no relevant loss of faculty.
>
> The questions for the Tribunal to decide afresh are:-
>
> (a) whether and [if so] from what date not earlier than 20 February 1993, [the claimant] has any loss of faculty resulting from the accident on 7 November 1992 and if so;
>
> (b) at what level and for what period any resulting disablement should be assessed."

The Secretary of State made a specific submission directed to the merits of this case, saying as follows:-

> "The Secretary of State submits that having regard to the evidence before the Adjudicating Medical Authority, including their clinical findings, there is no loss of faculty resulting from the relevant accident from 20 February 1993."

5. Accordingly, it was perfectly clear to the claimant what the issues were, and that one possibility was that the tribunal might decide that the claimant suffered no loss of faculty from the accident of 7 November 1992. It follows that it was not open to him, when the tribunal in the event found that there was no loss of faculty, to say that he was taken by surprise.

6. The tribunal made the following findings of fact:-

> " [Our] examination of the Hospital Case Notes confirms that at the time of the relevant accident [the claimant] had already presented himself on 10 February 1992 at the hospital with a recurrent left inguinal hernia.
>
> In our opinion, the relevant accident was insignificant and did not exacerbate the condition of which he already complained. Neither in our opinion are the varicose veins of the left leg or other symptoms associated with the leg related to the relevant accident."

The tribunal gave as the reasons for their decision the

following:-

> "We have read all the documents. We have questioned [the claimant] and he has been examined.
>
> We therefore do not attribute any loss of faculty to the effects of the relevant accident."

I see nothing wrong in law with the tribunal's decision.

7. However, Mr Dunlop vigorously supported the appeal. He did not rely on the written submissions of the Secretary of State, but preferred to invoke what was said by Neill L.J. in Kitchen and Ors v. Secretary of State for Social Services. He contended that the tribunal had failed to give sufficient reasons for their decision. Mr Dunlop relied on the following passage from Neill L.J.'s judgment:-

> " (3) Where, however, the clinical findings do not point to some obvious diagnosis it may well be necessary for the tribunal to give a short explanation as to why they have made one diagnosis rather than another. Such an explanation will be important in cases where the tribunal's diagnosis differs from a reasoned diagnosis reached by another qualified practitioner who has examined the claimant on an earlier occasion."

Mr Dunlop argued that there had in effect been a diagnosis in this case by the AMA, and that it was incumbent on the tribunal to explain where that diagnosis went wrong. I reject that submission.

8. The above guidance from Neill L.J. clearly had in contemplation the situation which obtained in the Evans case, one of the matters arising in Kitchen and Ors v. The Secretary of State for Social Services. In that case, the issue was whether or not the claimant was suffering from tenosynovitis. The claimant relied on a report by a Mr Amos, and complained that the tribunal had failed to explain why they rejected his opinion. Neill L.J. said as follows:-

> "It is to be remembered that Mr Amos, who examined Mrs Evans in October 1986, stated that on examination he found that she was diffusely tender over the wrists and forearms and especially tender over the tendons of both thumbs and the index finger of the left hand. It is of course true that in the end it is the findings of the medical appeal tribunal which are decisive, but it seems to me profoundly unsatisfactory that, when one is dealing with a longstanding condition, an appeal should be rejected if there is a real risk that the same clinical findings may be interpreted differently by two experts. In such a case I consider that fairness points to the need for an adjournment so that, where possible, the tribunal's provisional view can be brought to the attention of the claimant's own advisors. In the absence of such a

procedure the claimant is left in the dark."

Mr Dunlop relied in particular on this passage.

9. However, in my judgment, the Evans case is quite different from the one before me. In the former case, the claimant relied on a very detailed diagnosis of her condition, and Neill L.J. decided that it was not enough merely to reject that diagnosis, without some detailed explanation being given as to why it was not accepted. However, in the present instance, there was no such diagnosis. Mr Dunlop sought to invoke the findings of the AMA. But that authority made no detailed diagnosis. They set out their clinical findings, which would appear not to be in dispute, and then simply attributed to the accident, without any elaboration, certain consequences. They also blandly stated the relevant loss of faculty, again without any explanation as to why they reached the conclusion they did. In due course, the matter went to the medical appeal tribunal, who simply rejected the AMA's opinion, and they are the final authority who must be deemed to have the greater expertise. They did not dispute the claimant's condition; they merely said that it was not attributable to the accident. In their judgment "the relevant accident was insignificant and did not exacerbate the condition of which [the claimant] already complained". The claimant was due to go into hospital for an operation on 8 November 1992, but unfortunately had the accident the day before. Clearly, in the tribunal's view the accident did not render the claimant's condition any worse than it already was, and for which an operation had already been arranged.

10. Mr Dunlop urged me in effect to make a medical judgment as to whether the opinion of the tribunal that the accident did not exacerbate the claimant's existing condition was tenable. But it cannot be over-emphasised that medical matters are not for the Commissioner. If the superior medical authority were satisfied that the effect of the relevant accident on the claimant's condition was insignificant, that is the end of the matter. I am unqualified to express any view, and certainly have no jurisdiction in the matter.

11. Accordingly, I have no option but to dismiss this appeal.

(Signed) D.G. Rice
Commissioner

(Date) **3 April 1995**