C1/536/92

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For the attention of CITIZEN'S RIGHTS OFFICE

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Message

This is an interesting and novel case which you may be interested in. Should you want further details please let me know.

LORD CHANCELLOR'S DEPARTMENT

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THE SECRETARY
C1/536/92

14-4-94

Mr. M. Brade
COHSE
63 Victoria Rd
ALDERSHOT.
Hampshire

Dear Mr Brade

RE: Pamela Caulfield

I enclose a copy of the Commissioner's decision. A copy has been sent to all the parties involved.

Yours sincerely

T Scott

For the Secretary

Enc.

OSSC 42

MJG/MB/11

Commissioner's File: CI/536/1992

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR INDUSTRIAL ACCIDENT DECLARATION

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Pamela Caulfield (Mrs)

Appeal Tribunal: Portsmouth

Case No: 7:15:57908

[ORAL HEARING]

1. I dismiss the adjudication officer's appeal against the decision of the social security appeal tribunal dated 21 July 1992 as that decision is not erroneous in law: Social Security Administration Act 1992, section 23.

2. This is an appeal to the Commissioner by the adjudication officer against the majority decision of a social security appeal tribunal dated 21 July 1992, which allowed the appeal of the claimant (a married woman born on 21 March 1948) from a decision of the local adjudication officer and held that, "the Appellant suffered an industrial accident on 9 March 1990. (Section 107(2) Social Security Act 1975)".

3. At the claimant's request the adjudication officer's appeal was the subject of an oral hearing before me on 4 February 1994. An earlier oral hearing dated 3 November 1993 had to be adjourned because the claimant's representative had not received the appropriate papers. At the hearing before me on 4 February 1994 the claimant was present and was represented by Mr. M. Brade of her trade union. The adjudication officer was represented by Miss N. Mallick of the Office of the Solicitor to the Departments of Health and Social Security. I am indebted to all those persons for their assistance to me at the hearing.

4. The tribunal in this case clearly took considerable trouble with it and their record of decision (on form AT3) is completed in exemplary detail. There is a detailed note of the evidence

taken from the claimant and then the tribunal made the following findings of fact,

> "The appellant was employed as a care assistant ... for five years prior to March 1990. She worked in a small residential home in which there were four mentally handicapped patients. The object of the home was to prepare them for normal life in the outside world. At the time in question, there were two violent patients, one of whom was subsequently returned to C-Hospital. The appellant worked three 24 hour shifts a week at the home and for most of the time would be the only member of staff on duty. The work was stressful, especially when dealing with difficult or violent patients. The appellant was further under stress because she had a home to run with three dependent children. The appellant has suffered hypertension for some 15 years prior to March 1990. This was controlled by drugs prescribed by her General Practitioner. On 9 March 1990 when she was on duty she was asleep in bed when she woke with a sharp pain on the right side of her head. The employers confirmed that the appellant became unwell on the morning of 9 March 1990. The appellant said the side of her face became numb and her speech was slurred. Because of the difficulties in obtaining an appointment with a consultant, it was not diagnosed that she had suffered a stroke until September 1990. The appellant's consultant has advised her that the stroke was probably due to stress. The appellant has not worked since the diagnosis of September 1990."

5. The majority of the tribunal gave the following reasons for their decision,

> "The appellant suffered from hypertension which her employers were aware of. She worked in a stressful job, especially when dealing with difficult or violent patients. The stress aggravated the hypertension and was the cause of the stroke which occurred while she was on duty on 9 March 1990. On the balance of probability and considering the definition of the word accident referred to in R(I)52/51 and R(I)7/73 the tribunal find that the stroke was caused by or materially contributed to [by] factors in the appellant's work."

6. The minority member of the tribunal gave as reasons for dissent,

> "The evidence and the findings of fact do not support the conclusion that there was an industrial accident, especially because of the long history of hypertension and the stress of the appellant's domestic circumstances."

7. The evidence that the tribunal had before it was basically answers by the claimant and her employers to questions put to her by the local office. The tribunal made a finding of fact that "the appellant's consultant had advised her that the stroke was probably due to stress." The claimant had in fact answered to

this effect in reply number 5 on form BI95 dated 27 July 1991. The claimant's neurological consultant (Dr. A.M.T.) did not give evidence to the tribunal nor did he provide the tribunal with a written report.

8. There was also before the tribunal a detailed statement from Dr. D.C. on behalf of the senior medical officer of the department and addressed to the adjudication officer. As well as reviewing the documentary evidence Dr. C. stated,

> "Like yourself I cannot identify any incident of 9 March 1990 that fulfils the description of an accident. There is no one isolated stressful episode; the pressures of work were no different for this lady than her colleagues or upon herself prior or subsequent to that night. I further note that it required a specialist neurologist to identify that there had appeared another entity (the stroke) as being separate from the other ailments. Like the AMA I would consider that the fortunately brief effects of the stroke are more likely to be a result of the raised blood pressure than any other cause - so: I cannot advise you on the balance of probabilities that the CVA [stroke] was caused or materially contributed to by factors in the work as described".

In their findings of fact and reasons for decision the tribunal did not refer to Dr. C.'s report though the chairman's note of evidence states that the presenting officer referred to Dr. C.'s statement.

9. At this point it should be borne in mind that appeal to the Commissioner against the decision of the tribunal lies only on its being shown that there is an error (or errors) of law on the part of the tribunal. Paragraph 4 of the adjudication officer's written submission of 28 October 1992 sets out the well-known tests of what constitutes an error of law. Miss Mallick helpfully indicated that it was not suggested that the heading "Does the decision contain a false proposition of the law ex facie?" was involved nor was it suggested that there had been any "Breach of natural justice". She did however rely on the head of error of law, "Is there evidence to support the decision?" to which Miss Mallick answered that there was no evidence to support some of the findings of fact of the tribunal. She also contended that a tribunal acting judicially and properly instructed as to the law could not have come to the decision that this tribunal did. She also submitted that the reasons given by the tribunal were defective, in that they gave no reasons for some of their findings eg as to causation or as to what exactly was the accident involved.

10. I first deal with the fact that the tribunal did not refer in terms to Dr. C.'s report, although it was before it. If this had been a medical appeal tribunal that had had a specific medical statement or report put before it, then of course it would have been erroneous in law if the medical appeal tribunal had not referred to it at all. But it must be borne in mind that

here was a 'lay', ie non-medical, tribunal dealing with a matter which under the legislation is entrusted not to the medical authorities but to the statutory adjudication authorities, including a tribunal. Although perhaps it may have been desirable for the tribunal to have made a reference to Dr. C.'s report in their reasons for decision, I do not consider that they were bound to do so. They clearly had the report in mind since the presenting officer referred to it and it was among the appeal papers before them. Nor of course where they in any way under an obligation to agree with Dr. C.'s views on the subject. They had to arrive at their own independent decision. For those reasons I consider that the tribunal did not err in law by not making a specific reference to Dr. C.'s report.

11. I cannot see that the tribunal's reasons for decision were inadequate and therefore in breach of regulation 25(2) of the Social Security (Adjudication) Regulations 1986. It is clear that they regarded the happening of the stroke itself as the accident and their detailed findings of fact amply explain why in their reasons for decision they said,

> "The stress aggravated the hypertension and was the cause of the stroke which occurred while she was on duty on 9 March 1990."

I therefore hold that the tribunals reasons for decision were not defective. Indeed their findings of fact and reasons for decision were detailed and fully complied with regulation 25(2).

12. I now turn to the contention by Miss Mallick that there was no evidence to support some of the tribunal's findings and in particular their finding that, "the stress aggravated the hypertension and was the cause of the stroke which occurred while she was on duty on 9 March 1990". It is of course true that all there was to set against Dr. C.'s statement was the oral evidence of the claimant herself. But again I stress that this was a case of a jurisdiction to be exercised by the lay statutory authorities, ie to decide whether or not there should be a grant of a declaration of industrial accident. The tribunal were therefore entitled to take into account the totality of the evidence including the claimant's own oral evidence and indeed the tribunal's own appreciation of the conditions in which the claimant must have worked. I therefore conclude that it cannot be said that there was no evidence to support their decision or parts of their decision.

13. I now deal with the contention that the tribunal's decision was what is sometimes called 'perverse' ie could not have been arrived at by, ".. a person acting judicially, and properly instructed as to the law .." (R(SB)11/83 paragraph 13). I conclude that, although another tribunal could well have arrived at a different result (and indeed this was only a majority decision), it cannot be said that the decision was 'perverse' in this sense. It was a conclusion which the tribunal was entitled to come to on the facts. It is of course not possible for the Commissioner to interfere with their decision (whether

he agrees with it or not) unless there is shown to be some error of law.

14. In this connection I should mention that Miss Mallick submitted at the hearing before me, in amplification of a helpful detailed "skeleton argument" which she put in before the hearing, that there was in fact a legal error involved at this point in that the tribunal should have found that the claimant was ".. able to identify first an accident and second that the accident (i) arose out of her employment and (ii) caused the stroke." Miss Mallick referred to paragraph 9 of R(I)11/80 to the speech of Lord Diplock in Jones and Hudson v. Secretary of State for Social Services (House of Lords) [1972] A.C. 944 at 1009 and 1013. However, I note that Lord Diplock was in fact dissenting in that case and therefore I prefer to look at the speeches of those Law Lords who were in the majority. I note that the headnote to the Law Report summarises the majority Law Lords as holding,

> "There may be cases where continuous heavy work has caused a hernia or some heart condition and where accordingly the occurrence of the injury is the only 'accident' within the Act" (my underlining).

15. I have looked at the passages cited in the headnote as authority for that statement and in my view they amply bear it out. That and indeed similar statements in paragraph 9 of R(I)11/80 in my view amply show that Miss Mallick's proposition that the claimant would have to identify first an accident and second that the accident caused the stroke is not correct in law. There does not have to be some separate event which can constitute an accident and then a further sudden physiological change for the worse which constitutes the accident or completes the accident. It is possible for the sudden physiological change such as a heart attack, hernia, or indeed stroke, of itself to constitute the accident. All that has to be shown, as I understand the case law, is that the claimant's employment caused or materially contributed to the happening of the sudden physiological change for the worse. Accordingly I reject Miss Mallick's contention on this point. I hold that, by not requiring two separate stages for the accident to be shown, the tribunal in no way erred in law and their decision was not one which no reasonable tribunal could have come to.

16. For all the above reasons, I conclude that despite the great care with which Miss Mallick documented and put her submissions before me that ultimately, although this is a difficult case, the adjudication officer's appeal must be dismissed. I emphasise that this case depends very much on its own facts. It should be noted that the claimant's stroke occurred while she was actually on duty and she therefore has the benefit of the presumption that an accident (if shown by the claimant) arising in the course of employment is presumed in the absence of evidence to the contrary to arise out of it (see Social Security Contributions and Benefits Act 1992 section 94(3)). My decision is certainly not any authority for the proposition that because an employee has

a stroke and is also working in stressful employment that the one will necessarily be connected with the other and an industrial accident established. My decision is simply that, on the detailed facts that were before this particular tribunal, they arrived at a conclusion that they were entitled to reach and that their record of decision and their conclusions do not show any error of law.

17. As I have dismissed the adjudication officer's appeal, the decision of the tribunal declaring that the claimant suffered an industrial accident on 9 March 1990 stands. Consequently the adjudication officer should now ensure that the case is remitted to the medical authorities for them to make the appropriate assessment of disablement.

(Signed) M.J. Goodman
Commissioner

(Date) 17 March 1994