

MJG/MB/10

Commissioner's File: CI/554/1992

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR DISABLEMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 24 August 1992 as that decision is erroneous in law and I set it aside. I make a declaration that the claimant suffered personal injury by accident arising out of and in the course of his employment, in September/October 1974: Social Security Administration Act 1992, sections 23 and 44.

2. This is an appeal to the Commissioner by the claimant a man born on 23 March 1939. The appeal is against the unanimous decision of the social security appeal tribunal dated 24 August 1992 which dismissed the claimant's appeal from a decision of the local adjudication officer issued on 22 May 1992. That decision was not in fact in appropriate terms and the tribunal was asked to consider a more appropriate adjudication officer's decision in the following terms (paragraph 6(1) of the Adjudication Officer's submission to the tribunal),

"It has not been established that there was either

- (i) an event which in itself is identifiable as an accident OR
- (ii) a particular occasion on which personal injury was suffered by [the claimant] which would constitute an accident. Accordingly a declaration of an industrial accident under section 107(2) of the Social Security Act 1975 cannot be made and Industrial Injuries Disablement Benefit is not payable.

Social Security Act 1975, section 107(5)."

3. The claimant's appeal to the Commissioner was the subject of an oral hearing before me on 10 May 1993 at which the claimant was present, gave evidence to me and addressed me. The adjudication officer was represented by Mr. M. Jenking-Rees of the Office of the Solicitor to the Departments of Health and Social Security. I am indebted to the claimant and to Mr. Jenking-Rees for their assistance at the hearing.

4. The tribunal clearly took considerable care with this case and their record of decision (on Form AT3) is completed in exemplary detail. However the question of whether or not a given set of circumstances constitutes an "accident" within the meaning of section 94(1) of the Social Security Contributions and Benefits Act 1992 and Section 44(1) of the Social Security Administration Act 1992 is a mixed question of fact and law. I have come to the conclusion after careful consideration that the tribunal's decision was erroneous in law, but only in the sense that it decided that the circumstances in this case did not constitute an "accident".

5. The claimant completed a claim for disablement benefit on 12 February 1992. He indicated that he was claiming that he suffered an industrial accident "circa 17/9/74" in his then employment as Assistant Secretary, Management Services Division, HM Customs and Excise. In answer to the relevant questions on the form he gave the following answers,

"What was the time of day
when the accident happened?

Circa 9.00 am

Where did the accident
happen?

I was in my office, getting myself set for the day. As I was preparing to go to work, I realised that I could not undertake a task I had been given.

How did the accident
happen?

In the course of a High Court Action I have taken against HM Customs and Excise, the judge found on 6.8.91 that 'the dreadful depression which overwhelmed [me] in October 1974 was triggered by the work situation in which [I] found myself.' On 5.9.91 His Lordship said that after October 1974 I was 'more liable to suffer subsequent outbreaks of this underlying disease'.

These findings are unchallenged.

What injury did the accident cause?

It triggered the manifestation of manic depressive psychosis. NB. that this has been exhaustively investigated in the aforementioned High Court Trial.

In what way are you now disabled as a result of the accident?

As DSS records show, I am regarded as permanently unemployable."

6. The High Court action to which the claimant referred in his answers to the questions on the form was the subject of a detailed and lengthy judgment by Mr. Justice Mars-Jones given on 6 and 7 August 1991. That judgment was concerned with what the learned Judge described as "the issue of causation" and in the opening words of his judgment the learned Judge said -

"This is my judgment on causation. I have indicated a considerable time ago that I would find in favour of [the claimant] on the issue of causation; that is to say, that I was satisfied, on a balance of probabilities, that the [claimant] had proved that the breakdown which he sustained in early October 1974 was substantially a result of the work situation in which he found himself at that time."

7. The case has since proceeded to the Court of Appeal on another issue in the same action. But it is correct to say that the judgment of Mr. Justice Mars-Jones stands, even though it appears from the judgment of Dillon L.J. in the judgment given on those further proceedings in the Court of Appeal (on 19 February 1993) that HM Customs and Excise had been prepared to challenge the findings of Mr. Justice Mars-Jones. However, from my point of view I regard myself, if not legally bound by the findings of Mr. Justice Mars-Jones, certainly as accepting them because they were given only after a most detailed consideration of complex medical and other evidence in a lengthy trial. Mr. Jenking-Rees at the hearing before me did not suggest that I should do otherwise.

8. Mr. Justice Mars-Jones judgment was not, though, concerned with the question whether or not what occurred in September/October 1974 constituted an "accident" within the meaning of the social security legislation. On this point the Social Security Appeal Tribunal made the following findings of fact,

"We found that [the claimant] has not worked since 20 February 1985, and has since 11 April 1986 been required

continuously to take medication for a manic depressive illness which he continues to suffer from. We find that the first serious manifestation of this illness was a spell of severe depression in October 1974. We accept his evidence that in the months preceding September 1974 he had been working very hard, and was under serious stress as a result of the extent and nature of his workload. We accept that in or about June 1974 he was asked to undertake, in addition to his other duties, the task of negotiating with the relevant Trade Unions worries over what they contended was insufficient staffing provision for the administration of VAT. We accept from [the claimant] that he found this task a particularly difficult and worrying one, in part because he had previously played a part in arriving at a much higher estimate for staff numbers, and in part because he regarded himself as trusted by the Unions, and felt that what he was required to do on behalf of his employers in 1974 went against his conscience. We accept his evidence that on 17 September 1974 he felt strongly that he was unable to carry out this task, and that that was the beginning of the depressive crisis and which became more obvious in October 1974".

9. I should add that these matters were fully investigated by Mr. Justice Mars-Jones who, in his judgment, gives a very detailed account of what occurred in September/October 1974. In essence, as the claimant states in his form of claim for disablement benefit, one morning at about 9.00 am on or about 17 September 1974 he realised that he could no longer carry on with his work and consulted his superiors who tried to persuade him to continue. Shortly after that the claimant became very seriously ill, being both suicidal and homicidal, and had to enter hospital as an in-patient. He had been under stress at work for some considerable period but the 'crunch' period was from June 1974, when he was asked to take on the job related to the administration of VAT, to September/October 1974, when he felt that he had a complete breakdown and could no longer carry on with his work. At page 16 of the transcript of Mr. Justice Mars-Jones judgment the learned judge says,

"The plaintiff told me that he had no doubt at all that it was the carrying out of an order that he had been given [ie to carry on with the VAT work] which triggered off the depression. The order he said was

- (a) to achieve stalemate and
- (b) as he thought, to lie.

As he conceded, to some it may not seem like much of a trigger but to him, given his age and background, it was an effective trigger. He was exhausted, he had been working 80 hours a week, and the workload had weakened him so when the trigger came it was diabolically effective. I have no doubt that the plaintiff genuinely believes that it was this that triggered off the depression which overcame him

at that time. I have no reason to doubt that conclusion."

The learned Judge also accepted the evidence of the claimant's consultant psychiatrist Dr. E.A.H-S a transcript of which was available to me. That evidence supported the claimant's case that the onset of his severe depression and manic depression was caused by the work circumstances at the time.

10. The learned Judge said (pages 42 - 43 of the transcript),

"All the medical evidence supports [the claimant's] case. He concedes that he has these inherent biological characteristics which make him liable to attacks of manic depression; depression alternating with hypomania. He might have gone through his life without every having experienced an episode of either. But I am satisfied on the evidence, that there are triggers which can bring about these episodes. It is not as easy as [the claimant] thinks to identify the particular trigger of a particular episode, but it seems to me that it is established on the evidence of this case that the dreadful depression that overwhelmed the plaintiff in October 1974 was triggered by the work situation in which he found himself. He was in a bind because of his difficulties of conscience, but his resistance had been weakened by the weight of the work which was imposed upon him. I accept his evidence upon this. There is massive support for it in the evidence of other witnesses who have testified before me."

11. The question for me to decide therefore is whether the "trigger" of the claimant's illness in September/October 1974 constituted an "accident" within the meaning of the social security legislation. That was not of course a question which Mr. Justice Mars-Jones was called upon to answer. I have borne in mind all the case law, which is voluminous, on the definition of "accident". It is clear that mental injury or injury to the nervous system is, in appropriate circumstances, capable of constituting an "accident". In paragraph 9 of R(I)22/59 the learned Commissioner said,

".. it is true that damage to the nervous system may be just as much a personal injury as damage to the structure of the bones, muscles and tissues to the body, and if a nervous injury is caused by accident arising out of and in the course of a claimant's employment he will be entitled to injury benefit".

12. In R(I)43/55, neurosis and depression were accepted as injury caused by industrial accident. That case in fact is of some assistance to the determination of the issues in this present appeal. To quote the headnote,

"Claimant worked in a machine shop in the vicinity of a machine which repeatedly produced explosive reports any one of which might have presaged a more serious explosion. He developed a psychoneurotic condition and a connected

affection of the skin. ... held .. that the incapacity was the result of injury by accident .."

13. The learned Commissioner in R(I) 43/55 held that the last of the explosions constituted an industrial accident because of a cumulative process which had eventually, so to speak, tipped the claimant over the edge so that the last of the explosions caused the injury. The learned Commissioner rejected a submission that the neurosis was caused by "continuous apprehension which was the state of process". I bear in mind of course that injury caused by "process" cannot be injury caused by "accident". I also note that in paragraph 12 of R(I)43/55 the learned Commissioner said that "each explosion taken by itself would clearly constitute an accident .." and added "it follows that the injury which is their cumulative effect must be held to be injury by accident unless the interval between each explosion was so short that the series of explosions ought to be regarded as a single continuous process." There is therefore a distinction in fact between the facts of that case and the present case where the claimant was under a continuing stress at his work and it was the last incident, when he realised that he could not cope, that constituted the cumulative result.

14. In R(I) 52/51, at para.6, the learned Commissioner said,

"... an accident is not confined to external incidents such as mishaps with machinery, or to special strains or exertion, but .. may include the case of a sudden physiological injury such as an internal lesion occurring without any unusual exertion or incident. There must, however, have been a particular moment at which the injury (be it an initial injury or an aggravation of an existing condition), occurred. It is not of course essential to prove exactly when that moment was, so long as it can be inferred from the evidence that there must have been such a moment." (cf. CI 123/49 (K.L.), para.6).

15. In my view that statement applies here, with the substitution of mental injury for "physiological injury". I have therefore decided that the claimant has shown, on a balance of probabilities, that what occurred to him in September/October did constitute an industrial "accident" and he is entitled to a declaration accordingly. The medical evidence was that he was abnormally sensitive to stress in the sense that although an excellent worker and very highly thought of there could come a moment of time when he would be tipped over and there would be a sudden and severe onset of mental illness. Consequently the so-called "egg shell skull rule" applies (see paragraph 11 of R(I)6/91 - the passive smoking case). In other words the claimant was more or less all right at one moment and severely ill the next. That is as I understand the evidence given by the consultant psychiatrist and which Mr. Justice Mars-Jones accepted.

16. It is only because of the special nature of that evidence that I have found in favour of the claimant. I would stress that

this case depends entirely on its highly individual facts and on the detailed nature of the medical evidence given in the High Court action. My decision consequently constitutes no precedent for any other case where it may be asserted that stress at work has caused a claimant mental or physical injury. The majority of such cases no doubt would in fact show only a gradual process causing illness. There would not be the sudden moment of time, the falling over, so to speak, the edge of a cliff which in this case did constitute an industrial "accident". The case is however, very much a border-line one.

17. As a result of my decision, the claimant's claim to disablement benefit will now have to be proceeded with. There will be questions for the adjudication officer and also medical questions. I direct the adjudication officer now concerned to make the appropriate references.

(Signed) M J Goodman
Commissioner

(Date) 7 June 1993

