7. PLA Late Claim — Fact That There Is No Disablement Assessment For The Period In Question ≠ Claim For PLA Can Be Treated As Made For SHA 31/96

DGR/SH/18

Commissioner's File: CI/731/1995

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR REDUCED EARNINGS

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Jeffrey Patterson

Appeal Tribunal: Birkenhead

Case No: 602 94 08694

1. My decision is that the decision of the social security appeal tribunal given on 21 October 1994 is erroneous in point of law, and accordingly I set it aside. As it is convenient that I give the decision the tribunal should have given, I further decide that the claimant is not disentitled to special hardship/reduced earnings allowance in respect of the period from 1 April 1985 to 7 April 1993 by reason of the delay in the lodging of his claim. He has established continuous good cause.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 21 October 1994.

3. On 8 July 1993 the claimant claimed reduced earnings allowance in respect of vibration white finger from 1 January 1981. Until 1 October 1986 the relevant benefit was not reduced earnings allowance, but special hardship allowance, and the claim was expressed in terms that referred only to reduced earnings allowance. Although there is no specific provision to treat a claim for reduced earnings allowance as a claim also for special hardship allowance, it has always been the practice so to do. See in this connection CI/092/93 at paragraph 6 and CI/552/92 at paragraph 4. On 16 February 1994 the adjudication officer, who appears to have treated the claim as being both for special hardship allowance and reduced earnings allowance, disallowed the same for the period from 1 January 1981 to 31 March 1985 because the claimant had no disablement assessment for this period, and on this point he was undoubtedly right. However, he went on to disallow the claim for the period from 1 April 1985 to 7 April 1993 because in respect of that period the claim was out of time, and the claimant had failed to establish continuous good cause for his lateness.

4. In due course, the claimant appealed to the tribunal, who in the event upheld the adjudication officer. They considered that the claimant had failed to establish continuous good cause for his delay.

5. The claimant was not examined by the adjudicating medical authority to see whether he had had vibration white finger until 2 June 1993, and when he heard the result he claimed reduced earnings allowance expeditiously. Accordingly, the claimant has, in my judgment, established continuous good cause for the delay.

6. I am aware that the adjudication officer now concerned submits that the approach I have in fact adopted is erroneous. He cites paragraph 4 of my decision CI/015/1993 and paragraph 4 of my decision CI/076/1993, where I pointed out that until a disablement assessment had been made the claimant simply had no title to reduced earnings allowance "and accordingly there was no reason for [him] to take any action". The adjudication officer now concerned contends that this approach nullifies paragraph 5 of Schedule 4 to the Social Security (Claims and Payments) Regulations 1987. However there is nothing in this point. Paragraph 5 merely sets out the correct date for claiming, but in no way impinges on the right of the adjudicating authorities to allow a late claim where good cause has been established. In all cases of lateness the strict requirements of the regulations could be said to be nullified where good cause operates to permit a late claim. Further, as regards paragraph 5, it is difficult to see the sense in requiring a claimant to lay claim to a benefit for which at the time he is not entitled. Accordingly, I wholly reject the submission of the adjudication officer now concerned.

7. It follows from what has been said above that the tribunal adopted the wrong approach, and I must set aside their decision as being erroneous in point of law. However, it is unnecessary for me to remit the matter to a new tribunal for rehearing. I can conveniently substitute my own decision.

8. My decision is, therefore, as set out in paragraph 1.

(Signed) D.G. Rice
Commissioner

(Date) 22 MAY 1996