

Commissioner's File: CI/15338/1996

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Hilary Ann Dyett (Mrs)

Social Security Appeal Tribunal: Bexleyheath

Case No: 7/06/95/17400

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 19 January 1996 as that decision is erroneous in law and I set it aside. My decision is that, on or about 30 April 1994 and on a number of subsequent occasions, the claimant suffered personal injury by accident arising out of and in the course of her employed earner's employment. She is entitled to a declaration of industrial accident accordingly. I direct the adjudication officer to refer the disablement question to an adjudicating medical authority: Social Security Administration Act 1992, sections 44(2)(6) and 60(3): Social Security Contributions and Benefits Act 1992, section 94(1).

2. This is an appeal to the Commissioner by the claimant, a woman born on 24 July 1946. The appeal is against the unanimous decision of a social security appeal tribunal dated 19 January 1996, which dismissed the claimant's appeal from a decision of the adjudication officer issued on 23 August 1995 to the following effect,

"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 44(2) of the Social Security Administration Act 1992 cannot be made."

3. At the claimant's request the appeal was the subject of an oral hearing before me on 17 July 1997 at which the claimant was present and gave evidence to me. She was represented by Ms B. Harris of Counsel, instructed on behalf of the Royal College of Nursing. The adjudication officer was represented by Ms Bamforth, a legally qualified member 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. I have set the tribunal's decision aside in this case because I accept the concurring submissions of Ms Harris and Ms Bamforth that the tribunal's findings of fact and reasons for decision are insufficiently detailed and do not altogether comply with the requirements of regulation 23(2) of the Social Security (Adjudication) Regulations 1995. In particular the tribunal's findings of fact read simply, "The tribunal found the facts to be as set out under the heading 'Summary of Facts' on Form AT2." This way of stating findings of fact by reference to the adjudication officer's summary of facts is not always sufficient and, in a case involving some controversy as this one did, was not adequate. Indeed, the summary of facts given by the adjudication officer to the tribunal was also brief. I have therefore set the tribunal's decision aside, though I add that it is plain to me that the tribunal, before whom the claimant appeared without representation at that stage, took pains with the case.

5. The facts of the case are very fully stated in a report by Mr A J G H, consultant orthopaedic surgeon dated 26 October 1995 and in particular under the heading "History" in that report. The relevant portions reads as follows,

"In April 1994 [the claimant] in her job as an enrolled nurse working in the operating theatre of a hospital started a fast track Operating Department Practitioner Course. This was a six months instead of a two year course. It involved work in the anaesthetic room and a great deal of transferring patients between trolleys and the operation table and back again. She started with eight weeks in her own theatres and this was followed by two periods of eight weeks each in the other two hospitals in the Health Authority area. At one of the hospitals.. she was working mainly as a scrub nurse with very little anaesthetic workroom. In the other hospital.. she was involved mainly in orthopaedics and had very many patient transfers. At [that] hospital a device known as an easi-mover was used. This was a slippery board which was put under the patient's canvas and then, with another nurse, the board was held with one

hand and the patient pulled with the other hand from the trolley to the table and vice versa. While at these other two hospitals she continued to return to her own hospital.. once or twice a week to do on-call from 5pm. Due to staffing arrangements there were only two members of staff available to move the patients after 5pm. After the sixteen weeks spent mainly at the other two hospitals, she returned to [her own hospital]. Early in the summer of 1994 she started to experience general stiffness and soreness around the shoulders, between the shoulder blades and up to the neck and in the right side of the neck. She also started to experience headaches over the right eye, a bit like a migraine but without the flashing lights. (She used to have migraines about 25 years ago). Her headaches became increasingly troublesome and by the beginning of 1995 she was experiencing them nearly every day. She thought these headaches were associated with her neck where she was continuing to experience pain and stiffness. She found that when she bent forward and pulled the patient the symptoms generally became very much aggravated. ..."

6. At the hearing before me the claimant confirmed the correctness of that statement and wished to add the following. She said that when she pulled the patient over on to the operating table she used but one hand and one arm. She was right handed and the pain was in the right side of her neck etc. She would feel a sudden spasm of pain when doing the pulling. Moreover the height of the trolley that carried the patient was too high for the claimant, as she is short in stature and the trolley was really meant for male operating department assistant. This weight problem increased the strain when she lent right over the trolley to move the patient on to the operating table.

7. The question in this case is the oft repeated one of whether the claimant can bring herself within the legal meaning of the word 'accident' in the legislation, cited in paragraph (1), above or whether her neck and other troubles came on as the result not of any accident or accidents but as the result of a 'process'. In the latter circumstance, she could not claim disablement benefit by reason of accident. There is no prescribed disease applicable.

8. In his well-known opinion in Roberts v. Dorothea Slate Quarries [1948] 2 All E.R. 201 at pages 202-206 Lord Porter dealt exhaustively with the distinction between 'accident' and 'process' and I have taken full account of everything that was said by him there. I have also taken into account the other authorities, in the form of reported Commissioners' decisions, which were cited to me by Ms Harris, notably R(I)77/51 (para 8) and R(I) 4/62 (paras 7 and 8).

9. Ultimately, however, the question of whether there was an accident in a particular case can be very largely a question of fact. In the present case, I have the advantage of a detailed account of the facts (as given above). I also have the advantage of additional medical reports (given after the tribunal's hearing) by Mr A J G H, the consultant orthopaedic surgeon and also by Dr. J. R., a consultant rheumatologist. Those reports are admissible because I have set the tribunal's decision aside (1992 Administration Act, section 23).

10. In his report of 27 January 1997, Mr A J G H says,

"Following a change of job within the various theatres in her hospital group, [the claimant] suddenly had to do a great deal of patient transfers and lifting. Each of these liftings and transfers would have constituted a separate episode placing extra strain on the thoracic and cervical areas of the spine. In a busy theatre suite there would have been many of these episodes each day. These episodes occurring regularly and repeatedly throughout the day would have produced an increased rate of deterioration of degenerative changes in the spine. This deterioration produced increasingly painful symptoms to such an extent that she was unable to continue with her work in the operating theatre." (My underlining).

11. In his report dated 18 September 1996, Dr. J.R. says, as follows, (paragraphs 19-21),

"When I saw [the Claimant] in September 1996, she reported that she had developed pains around the base of her neck on the right hand side and pains in her upper back soon after starting an Operating Department Practitioner Course in April 1994. Review of her previous records seems to suggest symptoms develop later than this, though [the claimant] herself states that it was not long after starting the course when she became aware of problems. The records also indicates that she had had some neck problems prior to 1994, though an X-ray in 1991 had shown no abnormality and there was nothing either in the history or on the X-ray to suggest significant pathology prior to April 1994. As part of [the claimant's] work during her course, it was necessary for her to lean forward a considerable amount while pulling or pushing during the process of transferring patients from a trolley to an operating table or vice versa. For reasons difficult to understand, a procedure had been developed prior to [the claimant's] arrival which necessitated leaning across the operating table to reach the patient on the trolley and in the process of doing this, or in pushing the patient from trolley to operating table, a great deal of strain was imposed on [the claimant's] upper back. I understand that the

method developed prior to [the claimant's] arrival was different to that recommended by the manufacturers of the Easyslide or Easymover and common sense suggests that if the patient had been moved on the Easyslide/Easymover prior to the operating trolley being placed on to the table, this would have required less bending and leaning and thereby less stress on the upper back. This history suggests that at some point during 1994 [the claimant] sustained a tear of ligaments in her upper thoracic and lower cervical spine. I believe that, where pressure was imposed particularly round the T3/T4 area, while carrying out the manoeuvre of leaning, pulling and pushing, ligaments were overstretched and then torn. Where these ligaments bled, symptoms then appeared. Where these ligaments healed, scar tissue developed as part of the process of healing and I believe it is this scar tissue which has been responsible for [the claimant's] symptoms since onset and her continued restriction in functions, including her inability to work." (My underlining).

12. The passages that I have underlined in those two medical reports indicate that there have been a number of definite incidents on particular occasions when the claimant sustained a tear of ligaments in her upper thoracic and lower cervical spine. It is correct to point to those incidents as being separate accidents, rather than there being just a gradual process over a longer period of time. In view of those reports, I have in my decision in paragraph 1 above stated that the first of those accidents occurred on or about 30 April 1994.

13. I should emphasise that my decision is one entirely on the facts of this case and does not constitute a precedent for other cases of back injuries occurring to nurses or others at work, which depend entirely on their own facts. It could well be that in other circumstances back injuries or back strains are the result of a gradual process over a length of time.

(Signed) M J Goodman
Commissioner

(Date) 11 August 1997