

Bulletin 168

[S.H.A.]

7

SOCIAL SECURITY AND CHILD SUPPORT COMMISSIONERS

Commissioner's File No.: CI/1802/01

Starred Decision No: 139/01

Commissioners' decisions are identified by case references only, to preserve the privacy of individual claimants and other parties.

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The practice about official reporting of Commissioners' decisions in Great Britain is explained in reported case R(I) 12/75 and a Practice Memorandum issued by the Chief Commissioner on 31 March 1987. The Chief Commissioner selects decisions for reporting after consultation with Commissioners. As noted in the memorandum there is also a general standing invitation to comment on the report-worthiness of any decision, whether or not starred for general circulation. However, a decision will not be selected for reporting if it is known that there is an appeal pending against it. The practice in Northern Ireland is similar, decisions being selected for reporting by the Northern Ireland Chief Commissioner.

Any **comments** by interested organisations or individuals on the suitability of this decision for reporting should be sent to:

*Ms Kimberli Jones,
Office of the Social Security and Child Support Commissioners,
5th Floor, Newspaper House, 8-16 Great New Street, London EC4A 3BN.*

so as to arrive by 6th March 2002 ---

Comments on Northern Ireland Commissioners' decisions will be forwarded to the Northern Ireland Chief Commissioner.

1. This appeal succeeds.

2. I set aside the decision of the Newcastle appeal tribunal dated 27 February 2001 and refer the case for rehearing by a different tribunal. The appellant must not assume that he will necessarily do any better second time round. All questions of fact will be considered afresh by the new tribunal.

3. The appellant is now 49 years old. He has claimed disablement benefit in respect of Prescribed Disease A11 which is vibration white finger. The Secretary of State refused the claim on the ground that he was not suffering from the prescribed disease. So he took his case to the appeal tribunal.

4. The tribunal disagreed with the Secretary of State. They found that the appellant was suffering from vibration white finger to the prescribed extent. They found a loss of faculty of "impaired manual dexterity". Their next task was to assess the disablement arising from the disease to see if it reached the 14% threshold for payment of disablement benefit. They concluded that it did not do so and assessed disablement at 5% for life.

5. The tribunal's statement of reasons reads as follows:-

"A careful history was taken today

(there follow the findings on clinical examination which I need not repeat in detail here)

On balance we consider that there is episodic blanching summer and winter to the extent required. We consider the onset date was 1 January 1978.

We assess at 5% from 1 April 1985 for life."

6. There is now an appeal on the ground that the tribunal decision is erroneous in law. A Commissioner granted leave for the appeal saying that it was arguable that the tribunal gave insufficient reasons for their assessment of disability.

7. Vibration white finger is not one of those conditions for which there is a prescribed degree of disablement in schedule 2 of the General Benefit Regulations. Those regulations therefore state only that the tribunal "may have such regard as may be appropriate to the prescribed degrees of disablement" when making its assessment. This indicates the very broad discretion which individual tribunals have in this type of case. In many cases it is simply not possible for a tribunal to give precise reasons for the conclusion which it has reached.

8. In my judgment, however, as a minimum, the claimant and the Secretary of State are entitled to know the factual basis upon which the assessment has been made; in other words what disabilities were taken into account by the tribunal in concluding that a particular percentage disablement was appropriate.

9. This can often be simply expressed. In many cases it will be enough to say that the evidence given by the claimant about the effect of a particular accident or disease on his or her daily life has been accepted. In some cases, where the claimant's evidence is for some

reason found to be unreliable, it may be that the tribunal will state that it felt able to accept only those disabilities which in its expert opinion were likely to flow from problems disclosed on clinical examination. Other cases may need more detail. But if it is not possible to discern the material upon which the assessment is based, then the tribunal's statement of reasons is likely to be inadequate.

10. In this case I am left guessing as to the factual basis of the tribunal's assessment. I therefore conclude that the reasons are insufficient and that the tribunal's decision is erroneous in law.

**(Signed) Nicholas Warren
Deputy Commissioner**

(Date) 14 November 2001