

Bulletin 162 (SITEST)
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Vibr. in White Paper -

SOCIAL SECURITY AND CHILD SUPPORT COMMISSIONERS for press, but

Commissioner's File No.: CI/2238/2000

discuss must
be based on

Starred Decision No: 29/01

'epistemic blanching'

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

Mr P Cichosz,
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 4th June 2001

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

CI 2238 2000

Commissioners' case no : CI 2238 2000

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1 I allow the appeal by the claimant. I do so for technical reasons only, and I substitute for the decision of the tribunal my own decision to the same effect.

2 The claimant is appealing against the decision of the Barnsley appeal tribunal on 14 March 2000 with my leave. The decision of the tribunal was that the decision of the Secretary of State is confirmed.

3 For the reasons below, the tribunal's decision is erroneous in law. I therefore set it aside. I substitute for it my own decision, which is:

The decision of the Secretary of State of 2 September 1999 is confirmed. This is because the claimant has at no time suffered from prescribed disease A 11 or from a sequela of that disease.

Background to the appeal

4 The claimant is an ex-miner. He claimed industrial injuries disablement benefit for prescribed disease A 11 (commonly known as vibration white finger) in June 1999. He described his problems as loss of feeling in the fingertips, constant "pins and needles", loss of ability to grip, and poor circulation in cold weather. He was examined by an examining medical officer in August 1999. He reported the same problems to the officer. The officer reported "No blanching is described. Criteria for PD A11 not met". The Secretary of State therefore rejected the claim.

A fair hearing by the tribunal?

5 The claimant appealed, asking for a paper hearing not an oral hearing. He wrote to the tribunal service when he returned the standard enquiry form, saying that he was waiting for a British Coal/ DTI report of an examination of his problem which was to take place a few days after he wrote. He indicated on the enquiry form that he had further evidence, namely the report, to put before it. The enquiry form states " You must send any extra evidence with this form, or let the Independent Tribunal Service know when you will be able to send it." He wrote that he would send it as soon as he received it. The report was available on 27 March 2000, and is now in the appeal papers.

6 The record of proceedings indicated that the tribunal did not consider it appropriate to adjourn. But there is no indication that the tribunal was aware that the claimant had said he would send in the report as soon as he obtained it. The claimant, in his grounds of appeal, objected to the tribunal going ahead without waiting for his evidence. I drew attention to this in granting leave to appeal. The Secretary of State's representative supported the appeal on this point, expressing entire agreement with the claimant's objections. I also entirely agree. The claimant did exactly what he was told to do on the enquiry form, and the tribunal service ignored it. The decision of the tribunal is unfair and must be set aside.

My decision

7 The other reason for appeal was that the medical report showed "that I am definitely suffering from Vibration White Finger Stage 3". The claimant later added the comment :

"I am unable to understand how the DTI and the DSS are unable to agree on what determines the presence of vibration white finger. The DTI have already compensated me for this disability, whereas the DSS are still disputing that I have the disease."

8 I understand why the claimant has difficulty in accepting that the DSS refuse to follow the DTI, but there is a clear reason for this. Industrial injuries disablement benefit is payable to claimants who show that they suffer from a "prescribed disease". The disease is called "prescribed" because the precise nature of the disease is prescribed, or laid down, by law. The prescriptions are in a list in Schedule 1 to the Social Security (Industrial Injuries)(Prescribed Diseases) Regulations 1985. In that list, the disease commonly called Vibration White Finger is number A 11. It is expressly defined as "episodic blanching , occurring throughout the year " affecting a defined area of the fingers.

9 Prescribed disease A 11 is one aspect of a wider group of problems known as Hand Arm Vibration Syndrome. In my decision CI 3073 1999, I stated (at paragraph 8):

" The description and diagnosis of vibration white finger is notoriously difficult, as is well illustrated by the series of expert reports on the subject by the Industrial Injuries Advisory Council. Their most recent report (Cm.2844 published in May 1995) outlines the four previous reports and the problems they discuss. It is well established that Commissioners may look to these reports for assistance in cases of doubt about the law and its application. The most recent report recommended a change to the description and prescription of vibration white finger. Specifically it recommended that the problem should be represcribed as hand-arm vibration syndrome (HAVS). This was not accepted by the Government. But in making the report, the scientific issues were revisited. Under the head "Defining the disease" the report notes:

" Clinically, there is general agreement that HAVS can have at least two separate components - the vascular and the neurological. An affected individual may exhibit one or both system effects. The vascular effects of blanching with extension of the areas affected with time and continued exposures are already prescribed. The neurological effects of numbness, tingling, reduced tactile discrimination and loss of dexterity are not currently included in the prescription. There is universal agreement that they should be."

I add that the "universal" agreement refers to the scientific community."

10 The answer to the claimant is therefore that the DTI accept both the vascular (white finger) aspect of Hand-Arm Vibration Syndrome and the neurological (pins and needles or numbness) part of the disease when considering entitlement for compensation, and also in awarding that compensation. The DSS has decided to reject the advice it was given and to continue to accept only the vascular (white finger) part of the disease as within the definition of the prescribed disease when considering entitlement for compensation. Neither officials nor Commissioners have any power to change that definition, which is laid down in legislation. But I agree with the Commissioner in CI

14532 1996 that, once a case falls within the definition of "episodic blanching", "the loss of faculty which causes the claimant's disabilities is to be identified by reference to the medical condition known as Vibration White Finger and not by reference to the restrictive legal definition" (paragraph 22). In other words, once there is episodic blanching of the relevant extent, the neurological effects of the disease will be relevant for compensation as well as the vascular effects.

11 The question in this case is therefore whether the claimant had episodic blanching. The claimant did not mention it at any stage, at least before the tribunal hearing. The examining medical officer reported that the claimant did not have blanching. The tribunal decided the case on that basis. I now have the DTI report in front of me. As the Secretary of State's representative points out, that also states that there is no blanching. The report records the fingers as pink. Under part 2.2, "vascular symptoms", it reports no blanching, and none is indicated on the charts. Further, under the Stockholm Workshop Scale, to which the claimant himself drew attention, it assesses the claimant at stage 3 for sensineural staging, but assesses no vascular staging.

12 The only conclusion possible is that the new medical report does not help the claimant. There is no evidence of blanching, although there is clear evidence of the neurological form of vibration white finger. I must set aside the decision of the tribunal as unfair. But the tribunal reached the only possible conclusion on the question of diagnosis in the light of all the evidence now available. It is clearly expedient that I take my own decision to that effect. There is no reason to refer this back to a tribunal.

David Williams
Commissioner

20 February 2001