Occupational Deafness — Textile Industry Data ★ 42/96

MJG/SH/6/1/W/MD

Commissioner's File: CI/2879/1995

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: Kathleen Waddington (Mrs)

Social Security Appeal Tribunal: Bradford

Case No: 1.02.94.06398

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 18 November 1994 as that decision is erroneous in law and I set it aside. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to another social security appeal tribunal, which can include a member or members of the original tribunal but need not do so: Social Security Administration Act 1992, section 23.

2. This is an appeal to the Commissioner by the claimant, a married woman born on 2 March 1937. The appeal is against the unanimous decision of a social security appeal tribunal dated 18 November 1994, which dismissed the claimant's appeal from a decision of the adjudication officer issued on 6 January 1994, in connection with the claimant's claim for disablement benefit for occupational deafness (Prescribed Disease A10), received by the Department on 7 July 1993. The adjudication officer held that occupational deafness was not prescribed for the claimant because she had not been employed in employed earner's employment in the only appropriate prescribed occupation namely,

"Any occupation involving ... work in textile manufacturing where the work is undertaken wholly or mainly in rooms or sheds in which there are machines engaged in weaving man-made or natural (including mineral) fibres or in the high speed false twisting of fibres." (My underlining.)

("Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985 (S.I. 1985 No. 967, as amended by S.I. 1987 No. 2112) Schedule 1, paragraph A10, sub-paragraph (e)).

It is common ground that the only applicable words are those which I have underlined i.e. "any occupation involving .. work .. in the high speed false twisting of fibres". The claimant has not at any time been involved with weaving.

3. At this stage I should explain that the appeal has been the subject of two oral hearings before me, on 30 November 1995 and again on 4 June 1996 at which this matter has been explored in considerable detail. Fresh written evidence has been supplied to the Commissioner. I have summarised some of that evidence below but the new tribunal should enquire for copies of all the documentation (eg. if necessary of the Office of Social Security Commissioners). At those hearings the claimant was present with her husband. Both gave me much detailed information and addressed me. On the first occasion the adjudication officer was represented by Mr S Cooper of the Office of the Solicitor to the Departments of Health and Social Security and on the second occasion by Mr S Priddis of that office. I am indebted to all those persons for their assistance to me at the hearings.

4. At the conclusion of the hearing on 4 June 1996, I indicated that I would accede to the parties' desire that I should decide the whole of this case myself, including factual issues, and not remit the case to another social security appeal tribunal. However, after subsequent consideration by me of the case and researches into it, I have come to the conclusion that there may well be factual 'loose ends' here and that the claimant should have the opportunity of having the matter further heard and investigated by a new tribunal.

5. Although I have held the original tribunal's decision to be erroneous in law on one point (see below), it is clear to me nevertheless that they took the utmost care with this case and their record of decision is completed (on form AT3) in exemplary detail. Consequently I have varied the normal rule in section 23 of the 1992 Act, so as to enable a member or members of the original tribunal to be on the new tribunal that hears this case though there is of course no necessity for that. I would however ask that, in view of the technical nature of this

case, the Independent Tribunal Service make every effort if possible to secure that one at least of the members of the new tribunal has practical experience of the textile industry and in particular of the processes that are involved in this case.

6. The original tribunal dismissed the appeal because they accepted a definition of the expression "high speed false twisting of fibres" provided in writing by Dr. M P U Bandara of the Department of Textile Industries at the University of Leeds. That definition was as follows,

> "[High speed false twisting of fibres] is a process used to produce bulkiness in yarns, in the production of man-made fibres. As the fine filaments which go into making a yarn of this kind are withdrawn from the production plant they are twisted at a speed in excess of 100,000 or more revolutions per second before being cooled and wound up into forming a yarn package. The twist produced is termed false twist as this twist disappears in the yarn that moves past this zone."

7. The original tribunal said about this,

> "The tribunal accepted that the term 'high speed false twisting of fibres' is a technical term. The only definition of this term was that provided by Dr. Bandara. Although it was argued by the claimant that this definition was too narrow and rigid, that argument was not accepted. The definition refers to twisting at a speed in excess of 100,000 revolutions per second. The claimant's former employers refer to the speed of spindles on the machine being 5,000 [revolutions per minute] maximum. It was clear therefore that the machines on which the claimant worked were not involved in the high speed false twisting of fibres. Further, the definition refers to a process only used in the production of man-made fibres. This was a point with which the claimant disagreed as she had worked on both natural and man-made fibres on the machines which she considered had been involved in the use of high speed false twisting. For the above reasons it was not accepted that the claimant's work fell within the occupation described [at paragraph A10(e) - cited above]. Further, a claim must be brought within a specified time of 5 years after the last date (before the date of claim) on which the claimant worked in the prescribed occupation - [paragraph 25(2) of the Prescribed Diseases Regulations 1985]. The claimant last worked as a spinner on 5.5.87 and her claim was not received until 7.7.93. It

is clear therefore that on this ground as well the claim would fail."

8. At that point I should mention that it is submitted to me by the adjudication officer now concerned that the tribunal erred in law in that they failed to consider whether the claimant's occupation after 5 May 1987 could also come within paragraph (e). That occupation was from 6 May 1987 to 12 August 1988 by the same employers (British Mohair Spinners) and was described by the claimant "as a roving operative in the drawing department". She gave a written description of that occupation (page T23 of the appeal papers) as,

> "The roving Department - put yarns on to bobbins - I work next to the drawing machine which draws the yarn on to the bobbins about 5 or 6 feet away. There are machines engaged in the high speed false twisting of fibres in the roving department."

At the hearing before me on 4 June 1996 the claimant's husband estimated the speeds of the cones from which the claimant drew off the yarns in the roving department as being 7,000 to 9,000 revolutions per minute.

9. Following the conclusion of the hearing on 30 November 1995 I asked a Nominated Officer of the Office of Social Security Commissioners to have enquiries made of the appropriate technical branch of the Health and Safety Executive and of Dr. M J Denton, an Honorary Research Fellow of the Department of Textile Industries in the University of Leeds. Detailed written communications have been received in response (a) by a letter dated 19 December 1995 from Mrs R Parkinson an Inspector of Factories of the Specialist Department of the Health and Safety Executive dealing with textile, clothing and laundries (b) two letters from Dr. M J Denton, the first dated 9 January 1996 the other dated 12 January 1996, the first to the nominated officer the second to the claimant's husband personally. The tribunal should ensure that it has copies of all those letters before it.

10. I will draw attention to some passages in that correspondence. The first occurs in the letter of 19 December 1995 from Mrs R Parkinson of the Health and Safety Executive, who says,

> "There can be little doubt that the process of high speed false twist texturing falls within the relevant definition [she then refers to text books on the subject]. The yarn speed need not be an issue in the definition in relation to

texturing. As far as I understand, all false twist texturing will be at 'high speed'. Furthermore, the speed of these machines will not necessarily be proportional to the noise levels they produce. Important parameters will be the machine design and its state of maintenance. This will be true of textile machines in general. In the case of false twist texturing for instance, the increased yarn speeds of newer machines have been offset by improvements in machine designs so that newer, faster machines can be significantly quieter than older, slower models. False twisting should not be confused with a large range of textile twisting machinery used to impart a true twist to the yarn or to twist several yarn threads together. I was uncertain of whether there are other non-texturing processes which might also fall inside this definition and was referred to Dr. M J Denton ... to the best of his knowledge, high speed false twisting of fibres is only associated with the texturing of synthetic filament yarns such as nylon and polyester."

11. The relevant passages to which I would draw attention in Dr. Denton's letters are, first, in the letter of 9 January 1996 as follows,

"'False twisting' is a technique used in some textile yarn production processes for both staple and filament yarns. It is not a process in itself. The purpose of false twisting is to insert a temporary twist into a yarn during a production process. While the yarn is temporarily twisted it may be subjected to other treatments such as thermal settings. Where false-twisting is used in staple yarn production, twisting rates are relatively low: at most, a few tens of thousands of revolutions per minute (rev. min -1. High speed-false twisting is used in the production of certain types of textured filament yarn. Here, twisting rates have increased over the years from about 100,000 (rev. min- 1) in 1960 to 850,000 (rev. min - 1) in 1968 and up to 7 million (rev. min. minus 1) today. In the early 1970's, there was a change in the type of spindle used in most of the false-twist texturing industry where 'friction-spindles' replaced the 'pin-spindles' mainly used previously. Friction-twisting offered a number of advantages including higher twisting rates, better yarn tension control and significantly lower noise levels. I have not heard the term 'high speed false-twisting' used in connection with any process other than false-texturing."

12. In his letter to the claimant's husband dated 12 January 1996, ~~the claimant~~ DR. DENTON says,

"It is my considered opinion that by no stretch of the imagination could false-twisting, as applied in some long-staple yarn production processes, be described as 'high-speed false-twisting'. The term 'high-speed false-twisting' invariably refers to the false-twist texturing and draw-texturing processes for synthetic filament yarns which, in 1970, operated at speeds approaching a million revolutions per minute and now operate with false-twisting speeds of up to 7 million revolutions per minute. Where false-twisting was used as a process aid in long-staple yarn production, I do not think that the relatively slow false-twisting devices on the machines would themselves have made a major contribution to total machine noise. The oscillating rollers of the self-twist (REPCO) process might possibly be an exception to this, but, in this case, the overall machine noise seems to be relatively modest. In the period you speak of, the main offenders where hazardous noise generation in the textile industry was concerned, were false-twist texturing machines and some weaving machines (especially older shuttle looms). Some types of heavy ringdoubler were also reported to be very noisy and I suspect, though I have no qualitative evidence, that some braiding machines also may be prime candidates."

13. The new tribunal must bear in mind that, in some parts of their letters, Mrs Parkinson and Dr. Denton have addressed themselves to the question of the degree of noise. However, to be able to claim disablement benefit for occupational deafness the degree of noise is not of itself directly relevant to the definition of the presented occupation, as distinct from the medical question. What is relevant is whether the claimant can bring herself within the description of the prescribed occupation. The question of the extent of her deafness would then be a medical question to be determined by the adjudicating medical authorities.

14. At this point I should, for the tribunal's benefit, mention the history of this particular prescription. In the original version of the 1985 Prescribed Diseases Regulations (SI 1985 No. 967) the prescription was different and read as follows,

"A10 (e) Work wholly or mainly in rooms or sheds where there are machines engaged in weaving man-made or natural (including mineral) fibres or in the bulking up of fibres in textile manufacturing." (My underlining.)

15. In that connection I should quote the commentary in Richard Lewis's book, (Compensation for Industrial Injury - 1987) at p.115, which reads as follows:-

> "'Bulking up' in paragraph (e) was discussed in CI/17/80 (unreported). It included not only high speed false twisting but also a process whereby the tow was crimped and heat set for it to resemble natural fibre. However, a drawer and spinner in the jute industry failed in his claim in CSI/37/84 (unreported). The Commissioner stated that bulking up -
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> > 'should be regarded as applying to the texturing processes which impart a permanently bulked up finish to the yarn in question with a view to enhancing it properties for manufacture and use; and that it would not be right to apply a generalised dictionary meaning of the expression, which is not recognised in the jute industry, merely because its processes cause some increase in bulk in the fibre.'"

16. That prescription was altered by an amending statutory instrument (S.I. 1987 No. 2112) as from 4 January 1988 to substitute the present paragraph (e) - cited at para.2 above. I was told at the hearing on 4 June 1996 by the claimant's husband that he did not regard his wife as ever having worked within the description of the old prescription i.e. "the bulking up of fibres in textile manufacturing" but, in view of what Lewis says in his book (see para.15 above), the new tribunal had better enquire into this. That is because, although the claim was not received until after five years from the substitution from 4 January 1988 by SI. 1987 No. 2112 of the new prescription, a question might arise if the claimant had worked within the old prescription of whether she could still take advantage of that fact during the period when the old prescription prevailed.

17. It follows from everything that I have said above that I accept the submission of the adjudication officer now concerned (written submission dated 21 July 1995 - paragraph 8) as follows,

> "In decision [redacted] Lord Esher MR, is quoted as saying in [Unwin v. Hanson [1891] 2QB 115 at page 119], ...
>
> > 'Now when we have to consider the construction of words such as this occurring in Acts of Parliament we must treat the question thus: if the Act is directed

> to dealing with matters affecting everybody generally, the words have the meaning attached to them in the common and ordinary use of the language. If the Act is one passed with reference to a particular trade, business, or transaction, and words are used which everybody conversant with that trade, business, or transaction, knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words'
>
> I submit that in this case the tribunal was entitled to rely on the definition from Dr. Bandara which defines 'high speed false twisting' specifically in relation to the Textile Industry taken in conjunction with the factual information supplied by the employer."

I accept those submissions as being correct. See also another Commissioner's decision on file CSI/11/95 on the possible 'heat treatment' element in false twisting.

18. I should, however, observe that in R(I) 13/81 the learned Commissioner was dealing with the interpretation of one word only namely "weaving" in paragraph (e) of Prescribed Disease A10 and had to consider whether that included "knitting" (he decided that it did not), whereas here of course there is a more detailed description of the prescribed occupation. It is worthy of note for example that the expression "high-speed" is not defined in para.A10(e) as being a minimum of so many revolutions a minute, nor is the word "fibres" in any way qualified to limit it to artificial fibres. I have searched for any preliminary papers, such as Industrial Injuries Advisory Council reports, that may have preceded the substitution of the present paragraph (e) by SI 1987 No. 2112, but I cannot discover any such, nor were any cited to me.

19. I have remitted the matter back to a new tribunal with detailed factual and legal guidance because I have ultimately come to the conclusion that there are still outstanding factual matters which it would be better for a tribunal with its local expertise (and hopefully technical expertise of at least one member) to decide after hearing further evidence from the claimant and from her husband (who has knowledge of the textile industry). In addition it may be that Mrs Parkinson of the Health and Safety Executive or Dr. M J Denton would be prepared to assist the tribunal by actually attending the tribunal and explaining these matters to it, I understood from the claimant's

husband that there have been some 400 cases in the Leeds area involving this particular prescribed occupation.

20. I should state that having allowed the appeal on the grounds above stated does not indicate any view by me, one way or the other, as to whether on all the evidence heard by the new tribunal the claimant can bring herself within paragraph (e) of paragraph A10. That is entirely a matter for the new tribunal.

21. Since the hearing on 6 June 1996, the claimant's husband has sent copies of a local newspaper report and of a detailed medical report (and audiogram) dated 7 April 1995. These documents are not directly relevant to the question of prescribed occupation but the claimant should have copies of them available at the new tribunal's hearing.

**(Signed)** M.J. Goodman
**Commissioner**
**(Date)** 11 June 1996