

SW → file

Bullch 169

CI/3596/2001

ESH₁₂ J

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow the claimant's appeal. I set aside the decision of the Barnsley appeal tribunal dated 18 June 2001 and I refer the case to a differently constituted tribunal for determination.

REASONS

2. The claimant, who had worked as a fitter in a colliery, claimed disablement benefit in respect of prescribed disease A11 (vibration white finger). The Secretary of State decided that the claimant was not entitled to disablement benefit because he was not suffering from the disease. The claimant appealed to the tribunal but elected to have a paper hearing, which may have been unwise. The tribunal dismissed the appeal. The chairman has written a very full statement of the tribunal's findings and reasons. The key paragraph, explaining why they considered that the claimant was not suffering from the disease, is as follows:

"First, as stated above, it is not typical of the disease for the palmar side of the fingers only to be affected by attacks of blanching, although we accept that this is not specifically stated in the prescription. In addition however, we note that the Appellant's exposure to vibrating tools was greatly reduced when he became a deputy in 1985. We understand that although deputies do use vibrating tools on occasion, their main function is to supervise the men in the use of tools and they would certainly not use the tools themselves each day. We note that the Appellant first noticed symptoms in his fingers in 1992 which was about 7 years after constant use of vibrating tools. We would have expected onset of symptoms of PD A11 before this period of time. Indeed the Appellant did not notice the change in his fingers until 1994, which again we would have expected earlier if indeed the symptoms were related to his use of the tools."

The claimant appeals with the leave of the tribunal chairman.

3. The claimant applied to the chairman for leave to appeal on the ground that the tribunal had erred in thinking he had been a deputy. This was the ground on which leave was granted. I accept that the decision is erroneous in point of law on the ground that the tribunal misconstrued the evidence. The evidence was that the claimant had been a supervisor which, as the claimant points out, is not the same as a deputy because a supervisor continues to use vibrating tools alongside the men he is supervising. That error, as the chairman acknowledged when granting leave, may have had some bearing on the tribunal's decision. I would add that that part of the tribunal's reasoning seems more directed towards the question whether the condition from which the claimant is suffering was due to the nature of his employment rather than to the question whether he was suffering from the prescribed disease.

4. The same criticism may be made of the first part of the tribunal's reasoning and it is on this point that the Secretary of State supports the appeal. Prescribed

disease A11 is prescribed in Schedule 1 to the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985 in the following terms:

“Episodic blanching, occurring throughout the year, affecting the middle or proximal phalanges or in the case of a thumb of the proximal phalanx, of

(a) in the case of a person with 5 fingers (including thumbs) on one hand, any 3 of those fingers, or”

As the tribunal accepted, there is nothing in the prescription to suggest that blanching affecting the palmar side of fingers only is insufficient to satisfy it and I accept the Secretary of State’s submission that the tribunal erred in law in suggesting that circumferential blanching is required. Blanching of the palmar side of the fingers only may be an atypical condition but it is sufficient to meet the terms of the prescription and that is what is relevant when it is being determined whether or not a claimant is suffering from a prescribed disease or injury.

5. That is not to say that the fact that there is blanching of the palmar side of the fingers only is irrelevant to other issues that arise on a claim in respect of prescribed disease A11. If it is atypical, that might be a reason for doubting the history given by the claimant or, alternatively, it might be a reason for deciding that the disease or injury was not due to the nature of the claimant’s employment. It might also give some indication as to the degree of disablement due to the disease or injury. Those, however, are different issues from the one on which the tribunal in this case decided the claim before them.

6. Finally, I observe that the Secretary of State’s representative referred in his submission to the Commissioner’s determination on file CI/3048/00. In that case, the Commissioner set aside a decision of a tribunal under section 14(7) of the Social Security Act 1998. Section 14(7) permits a Commissioner to set aside a decision under appeal merely because both parties to the appeal have expressed the view that the decision was erroneous in point of law. The decision may be set aside without the Commissioner agreeing with either of the parties’ submissions and without the Commissioner even making a firm finding that there is an error of law in the decision. That is what happened on file CI/3048/00. The Secretary of State’s representative has put before me the submission made by his colleague in that case, but there is no indication that the Commissioner accepted it. In those circumstances, the setting aside in CI/3048/00 provides no logical support for the submission made by the Secretary of State in the present case. In my view, no determination under section 14(7) should be regarded as providing an authoritative statement of the law. The Secretary of State should not cite such decisions. If the Secretary of State had wished the Commissioner considering file CI/3048/00 authoritatively to adopt the proposition of law advanced in that case so that the decision could be cited in future cases, he should have suggested that a decision determining the appeal be given, rather than suggesting, as he did, that the decision under appeal be set aside under section 14(7).

(signed)

M. ROWLAND
Commissioner

24 April 2002