Bulletin (7)
170
[S Hon]

SOCIAL SECURITY AND CHILD SUPPORT COMMISSIONERS

Commissioner's File No.: CI/3887/99

Starred Decision No: 144/01

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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.

Commissioners' case no: CI 3887 1999

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1 I allow the appeal.

2 The appellant is appealing against the decision of the Newcastle on Tyne appeal tribunal on 2 June 1998 with permission of the Commissioner. The decision of the tribunal was that the appellant is suffering from prescribed disease (PD) A11, but it is not clear what date of onset the tribunal decided. Disablement was put at 7%, and again it is not clear from what date the tribunal decided that this was so.

3 For the reasons below, the decision of the tribunal is wrong in law. I set it aside. I refer the appeal to a new tribunal to consider the matter afresh in this light of this decision.

4 There was an oral hearing of this appeal on 21 August 2001 in Gateshead County Court, together with CI 3170 1999, CI 4332 1999, CI 5477 1999 and CI 6027 1999. The appellant attended and was represented by Mr Duran Seddon of counsel, instructed by Browell, Smith and Co, solicitors of Newcastle on Tyne. The Secretary of State was represented by Ms D Haywood of the Office of the Solicitor to the Department for Work and Pensions (the successor to the Department of Social Security), accompanied by a departmental official. Because of arguments raised by Mr Seddon of which Ms Haywood had had inadequate notice (for reasons for which counsel was not responsible), I directed a further round of written submissions following the oral hearings. I am grateful to both for their help at the hearings and in the submissions.

Background to the appeal

4 The appellant worked as a miner from 1936 to 1982. In May 1997 he claimed industrial injuries disablement benefit for PD A11 stating that the date of onset was 1 January 1975. The report of the examining medical practitioner on the claim is difficult to read, but concludes that a diagnosis of the appellant's problems is "not established - possible early neurological damage from vibration." Despite the appellant's history of blanching, the report records no evidence of blanching. A formal report was produced by an adjudicating medical authority (AMA) in October 1997. This recorded the opinion that the appellant was not suffering from PD A11, noting as part of the history the reports of examinations in 1991 and 1996. The records of the examinations in 1991 and 1996 are in the papers, and it does not appear that the appellant sought to appeal them further at those times.

5 The appellant appealed to the tribunal against the decision in October 1997. He produced at that stage a report from an expert consultant giving the opinion that the appellant was suffering from vibration white finger, but with no date of onset stated. The tribunal , without examining the appellant, found that he had PD A11. The relevant part of its statement about the diagnosis question reads:

> "The fact that the severity of the vascular component does not worsen after ceasing to use vibrating tools implies an onset in 1982 which is what the claimant gave today and we take 1 ~~January 1982~~ ~~29/6/96~~ 29/9/96 as the onset date but recognise the restrictions on this claim."

The statement was issued in typescript, but the two alterations to the date are in manuscript. Further, the way the alterations are made suggests that the two alterations were made on separate occasions, both after the original decision was signed. These alterations accord with the current form of the decision notice on the diagnosis question, which also put the date of onset at 1/ 1/ 82 and has then been altered twice in the same way as the statement. I add for completeness that the papers also contain copies of the decision notice and statement without both alterations on them, and it appears that the appellant did not receive a copy of either the statement or the decision notice with the full alterations. Alterations were also made to the dates on the decision of the tribunal on the disablement question that was made at the same time.

My decision

6 As I indicated at the oral hearing, and as was accepted by the parties, the decision of the tribunal was clearly wrong in law on its face. The change in date of onset was not an "accidental error" but an unexplained change to a fundamental part of the decision. It may be that it was the result of requests by the local social security office, as noted in my decision CI 4332 1999 of today's date. But if it was, then the requests were, as noted in that case, "inappropriate". Alterations to a decision record can be made before it is issued to the parties: R (I) 14/74, paragraph 14. Once issued the record cannot be changed save by proper procedure, for the reason given by the Commissioner in R (I) 14/74: "it is not possible to make an effective decision without communicating it to the person whose rights are dealt with in it."

7 The only power to amend a decision (as against setting it aside or replacing it with another) is under regulation 56 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999. The previous power was in regulation 9 of the Social Security (Adjudication) Regulations, to the same effect. Any correction under that regulation must be notified as soon as practicable to the parties (regulation 56(2)). Unless notified, it is not in my view of any effect for the reasons given in R (I) 14/74. The other reason for notification is that under regulation 54 (13) the time to appeal is restarted by any correction, with effect from the date it is notified. An unnotified correction leaves the start of the time limit on the right of appeal against the corrected decision in abeyance.

8 In this case I do not consider any of the alterations are such as to fall within the scope of regulation 56. That applies only to accidental errors. Especially now that the power can be exercised by the Secretary of State (whose employee the clerk to the tribunal is), it is a power to be exercised only for a genuine error or omission such as a typing mistake or misspelling of a name or an omission about which both sides, if asked, would agree. It cannot be used to remove an error of law on an issue central to the appeal. It is not a procedure to be used as a short-cut to avoid an appeal or set-aside, and any use for that purpose is an abuse of process.

9 That does not answer the question that the appellant wants answered: what was the date of onset of his PD A11? Was it 1982, 1991, 1996 or some other date? As Mr Seddon emphasised on his behalf, his concern about this was because of a claim for reduced earnings allowance. He accepted the level of disablement assessed (7%) and was not seeking to claim industrial injuries disablement benefit. On that basis, I direct the new tribunal to which this appeal is sent to consider this case in accordance with the directions given in my decision CI 6027 1999 of today's date.

10 I direct the Secretary of State to provide the new tribunal with full details of all previous claims to disablement benefit and reduced earnings allowance.

David Williams
Commissioner

22 November 2001

[Signed on the original on the date shown]