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SOCIAL SECURITY ACTS 1975 TO 1986

APPEAL FROM DECISION OF MEDICAL APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Peter Alfred David Eames

Medical Appeal Tribunal: London North

Original Decision Case No: 85/14205

My decision is that the decision of the medical appeal tribunal ("MAT") dated 25 July 1985 is erroneous in point of law. Accordingly I set the decision aside and direct that the matter be reheard by a differently constituted MAT.

2. The claimant appeals to and with the leave of the Commissioner against the decision of the MAT dated 25 July 1985 that he was neither unable nor virtually unable to walk and that the exertion required to walk would neither constitute a danger to his life nor be likely to lead to a serious deterioration in his health and, consequently, that he was not entitled to mobility allowance.

3. The claimant, who is now aged nearly 59, sustained an accident on board ship in 1953 when he broke his left ankle. It is, I think, common knowledge that ankle injuries are notoriously troublesome and this was no exception, giving the claimant increasing problems ever since so that, by the time he made his application for mobility allowance, received by the Department on 20 February 1984, he was registered as disabled and was in receipt of an industrial injury pension assessed on the basis of twenty-five per cent disability. In brief, it is not in issue that the claimant has osteoarthritis of his left ankle; the question is the effect this has upon his ability to walk within the context of regulation 3(1) of the Mobility Allowance Regulations 1975 which provides, in summary, that for the purposes of section 37A of the Social Security Act 1975 a person shall only be treated "as suffering from physical disablement such that he is either unable to walk or virtually unable to do so, if his physical condition as a whole is such that" he was either unable or virtually unable to walk or that walking would constitute a danger to his life or cause deterioration in his health.

4. Following the claimant's application for mobility allowance he was examined on behalf of the Department by a doctor, who on 20 June 1984, found that he "Undoubtedly has an arthritic ankle which is painful - restricted in mobility but can walk 200 yds" and, therefore, that his condition as a whole did not satisfy the criteria of regulation 3(1). The claimant appealed and produced a letter, dated 31 July 1984, from a consultant (whom I assume to be an orthopaedic surgeon) confirming that the left ankle was "weak and liable to give way" which, the claimant contends, could indeed endanger his life. On 10 December 1984 the claimant was examined by a medical board consisting of two doctors; he is recorded as telling them that he had got worse since the previous examination and could now "only walk about 20 yds". The board, however, concluded that he could "certainly walk further than 25 yds before he gets pain" and they also concluded that he failed to fulfil the necessary conditions for mobility allowance. The claimant appealed again and, on 25 July 1985, he was further examined by the MAT with whose decision this appeal is concerned. The MAT recorded that his "leg and ankle injury is the subjet of a 30% life assessment which is under review", that they observed the claimant "walking outside and on

paved steps without an aid, with only minimal limp and without any apparent severe discomfort" and that he "walked down 24 steps quite normally, outside about 40 yds, then up the stairs again without trouble", and they too concluded that he did not "fulfil any of the requirements" of the Mobility Regulations. I should also note that the MAT declined to adjourn the hearing in order to have the benefit of a further report from the claimant's consultant, whch he was apparently expecting "shortly" as the "medical members and the chairman did not consider it necessary to adjourn".

5. In her careful and helpful submission dated 23 September 1986, for and on behalf of the Secretary of State for Social Services, Mrs W. P. Kennedy submitted, correctly in my judgment, that the "MAT were required to determine the claimant's entitlement to mobility allowance as at the date the claim was received ... i.e. 20 February 1984 and to consider and determine the medical questions as at that date". Mrs Kennedy further submits that "the MAT were entitled to rely upon their own observations and assessment of the claimant's walking ability" and, in so far as that is a matter of professional medical opinion, it is undoubtedly correct that medical questions are entirely the province of the MAT. It is also correct, as Mrs Kennedy goes on to submit, that the "MAT were fully entitled to prefer their own opinion to any other urged upon them", but I hesitate to accept what Mrs Kennedy appears to contend is the natural extension of that principle, namely that the MAT were therefore right to refuse an adjournment so that a further report could be obtained. While I accept that procedural matters are within the discretion of the tribunal, it nevertheless seems to me that there is an important distinction to be drawn between an MAT prefering their own opinion to some other opinion which is before them for consideration, and, in effect, deciding that they did not even need to consider any other opinion. Clearly there are occasions when the physical nature of a claimant's disability is so clear and uncomplicated that there will be no room for any useful further medical opinion, but such occasions are, in the nature of things, likely to be rare and, if and when they occur and constitute a reason for refusing an adjournment, then it seems to me that it would be incumbent on the MAT so to state. Otherwise, as in the instant case, one is left with the impression - which I am sure is not one the MAT wished or intended to give - that the MAT's minds are closed to argument and that, of course, would amount to a breach of natural justice which would entitle the Commissioner to interfere in procedural matters which are otherwise within the MAT's discretion.

6. However, I do not consider it necessary to make such a finding in the present case - although I am sure it is a matter which the new tribunal, who will doubtless have the benefit of a further report from the claimant's consultant, will wish to bear in mind. In the event the error of law which I find is on the narrower ground that the MAT failed sufficiently to explain their reasons for rejecting the issues raised by the claimant, and in particular his complaint that his ankle tended to give way.

7. Mrs Kennedy very fairly mentions this in paragraph 6 of her submission, although she contends that the "claimant's arguments were misconceived on this point since it is the exertion of walking and not the possible consequences of a fall" which is the relevant consideration. I agree that that is certainly true of regulation 3(1)(c) but, with respect, that rather begs the question as, in my judgment, it must surely be open for consideration that someone whose ankle is likely to give way unpredictably and unexpectedly is for all practical purposes virtually unable to walk within the meaning of regulation 3(1)(b). It is, of course, a question of degree to be decided on the evidence in each case, and I express no view as to its relevance in the instant case - that will be for the new MAT to determine.

8. In the circumstances, on that limited but important point, the claimant's appeal is allowed and the matter will be reheard by a differently constituted MAT who will, I hope, be assisted by the guidance contained in this decision.

(Signed) M H Johnson
Commissioner

Date: 20 March 1987