SC Slip Rule - Commissioners Power to hear Appeal Against Corrections.

MJG/SH/1

Commissioner's File: CM/264/1993

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR MOBILITY ALLOWANCE

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: John Nigel William Rushton-Booth

Appeal Tribunal: Leeds

Case No: D/11/081/92/6032

[ORAL HEARING]

1. My decision is as follows:-

(a) The Disability Appeal Tribunal's decision dated 22 May 1992 (as corrected and finally re-issued on 4 December 1992) was not the definitive decision of the Tribunal as the purported corrections were not validly made;

(b) The definitive decision of the Tribunal is as contained in its original uncorrected decision of 22 May 1992 (issued on 22 May 1992). That decision in fact decides that the claimant satisfied the medical conditions for an award of mobility allowance (see section 37A of the Social Security Act 1975 and regulation 3 of the Mobility Allowance Regulations 1975) for the inclusive period from 17 February 1987 (the date of claim) to 22 May 1994 (2 years after the tribunal's decision);

(c) The case should therefore forthwith be referred to the adjudication officer for an award of the appropriate mobility or other allowance for the inclusive period from 17 February 1987 to 22 May 1994. Any difficulty or problem over that award can be referred back to a Commissioner for Direction or Supplemental Decision.

2. This is an appeal by the claimant, a man born on 6 May 1955, from a majority decision of a Disability Appeal Tribunal dated 22 May 1992 which in fact allowed the claimant's appeal from the decision of a medical board (dated 18 May 1987) that the claimant did not satisfy the medical conditions for an award of mobility allowance (see section 37A of the Social Security Act 1985 and regulation 3 of the Mobility Allowance Regulations 1975). However, in the circumstances described below, controversy occurred as to the effect of the tribunal's decision, there being a number of purported corrections to that decision. Ultimately the matter was brought on appeal to the Commissioner.

3. At the claimant's request, the appeal was the subject of an oral hearing before me on 3 May 1994 at which the claimant was present and addressed me. He was represented by Mr P Stagg of the Free Representation Unit. The adjudication officer was represented by Mr L Loveday of the Central Adjudication Service. I am indebted to all those persons for their assistance to me at the hearing.

4. The Tribunal of 22 May 1992 was considering the claimant's appeal from the decision of the medical board (see above) on a remission by another Commissioner on file CM/121/1990. Paragraph 1 of that Commissioner's decision read,

> "My decision is that the decision of the Medical Appeal Tribunal .. dated 13 September 1989 is erroneous in point of law. Accordingly I set it aside. The case falls for rehearing by a differently constituted medical appeal tribunal."

5. In my judgment that was a correct remission by the learned Commissioner, as his decision was dated 30 January 1992 i.e. before the coming into force on 3 February 1992 of the Social Security (Introduction of Disability Living Allowance) Regulations 1991. Regulation 24(13) of those regulations substituted, for remission to a medical appeal tribunal, remission to an adjudication officer. The fact that the Commissioner's decision was not in fact issued until 13 February 1992 is not in my view material. My so ruling relates only to these particular circumstances and does not 'pre-empt' any future ruling on the general question of the date of effectiveness of a Commissioner's decision i.e. whether it is the date of signature or the date of subsequent promulgation.

6. The disability appeal tribunal's original uncorrected decision (pages T55 and T56 in the appeal papers) read as follows,

> "Appeal allowed.
>
> Reasons for decision ...
>
> The appellant is entitled to Mobility Allowance for a period of 2 years. The decision of the Medical Board is

not confirmed. The appellant is virtually unable to walk. The above condition existed from 17.02.87 the date of claim. The appellant's condition is likely to persist for at least 12 months from that date. The claimant's condition is likely to persist without significant improvement in 2 years from the dated [sic] hereof. The claimant's condition is such to permit him to benefit from time to time from enhanced facilities for locomotion during most of the period specified ... For the reason that there is some uncertainty as to the cause of [the claimant's] problems this is the reason why we have limited the award to a period of 2 years." (my underlining).

That decision was dated 22 May 1992 and was stated to have been notified to the interested parties on 10 June 1992. It was typewritten. There is no evidence of whether the word "dated" was a typist's or other error.

7. On 29 September 1992, a letter was sent to the Independent Tribunal Service by the Disability Living Allowance Unit at Blackpool reading as follows,

> "We are now in receipt of a copy of the decision dated 22/5/92. Before we can action the decision our adjudication officer needs to know the following:-
>
> > It states that the award should be of 2 years duration. Please clarify if this is 2 years from the date of claim i.e. award runs from 17/2/87 to 16/2/89 or 2 years from the date the appeal was heard i.e. until 22/5/94. If the latter is correct do they intend that the award should run from 17/2/87 to 22/5/94? This is very important and needs to be clarified before the appeal can be actioned."

8. The clerk of the tribunal then put this matter to the chairman of the tribunal for consideration under regulation 10 of the Social Security (Adjudication) Regulations 1986 which reads as follows,

> "Correction of accidental errors in decisions
>
> 10. (1) Subject to regulation 12 (provisions common to regulations 10 and 11), accidental errors in any decision or record of the decision may at any time be corrected by the adjudicating authority who gave the decision or by an authority of like status.
>
> (2) A correction made to, or to the record of, a decision shall be deemed to be part of the decision or of that record and written notice of it shall be given as soon as practicable to every party to the proceedings."

9. Regulation 11 refers to setting aside of tribunal decisions. Regulation 12(3) provides,

> " 12. (3) There shall be no appeal against a correction made under regulation 10 or a refusal to make such a correction or against a determination given under regulation 11 [setting-aside]."

10. On the matter being thus put to the chairman of the tribunal, the chairman endorsed the enquiry,

> "Box 4 [reasons]
>
> For the avoidance of doubt, the appellant is entitled to mobility allowance from the date of claim i.e. for 2 years from 17/2/1987."

That amendment was approved in writing by the other two members of the tribunal.

11. A corrected record of decision (on form DAT28) was then issued and in box 3 (not box 4 to which no amendments were made) instead of the words "appeal allowed" there were substituted the words, "appeal allowed for two years from date of claim".

12. The claimant then made representations to the tribunal authorities about this matter. The chairman indicated that further amendments should be made, some of which are immaterial to the present case and consist of additional notes of evidence etc. The amendment however altered the substantive decision of the tribunal (in box 3) to read as follows,

> "This appeal is allowed as a majority decision. Dr. Yates dissenting. The appellant .. is entitled to Mobility Allowance for a period of 2 years from the date of claim i.e. from 7 February 1987."

13. The claimant's Member of Parliament then wrote to the tribunal authorities and as a result the chairman authorised the making of another correction, namely that in box 4 in the sentence which originally read "the claimant's condition is likely to persist without significant improvement in two years from the dated hereof" the word "hereof" was altered to "thereof".

14. It is not apparent that the last two sets of corrections were ever put to the tribunal members for their assent, which was of course essential (see R(G) 1/81 and R(S) 2/84). No enquiry has however been made of the tribunal authorities as to whether the other members did assent to these attempted corrections but it would seem unlikely, as their letters of assent to the first correction are included on the file, that there are subsequent letters of assent. In the circumstances, however, that is not a critical point because I hold, for the reasons given below, that even the first amendment, made with the members' assent, was wholly invalid and, for the same reasons, so were the subsequent

attempted amendments. In so holding I in fact accept the concurring submissions of Mr Stagg and Mr Loveday to this effect.

15. In paragraph 9 of R(S) 2/84 it was pointed out that the predecessor of regulation 10 of the Social Security (Adjudication) Regulations 1986, which also referred to "accidental errors in any decision or record of a decision", was "akin to what is known in the courts as the 'slip rule'". As to the "slip rule" Mr Stagg submitted (paragraphs 20 and 21 of his written submissions of 15 April 1994),

> "The claimant agrees [with the adjudication officer] that the corrections made in this case went beyond the scope of those allowed by the 'slip rule'. The claimant further refers to the case of R. v. Cripps Ex Parte Muldoon and Ors [1983] 3 W.L.R. 465. In that case an Election Commissioner corrected his decision that the applicants should have '3-quarters of their costs properly incurred in relation to the petition' to a decision to award 3-quarters of their costs only upon those issues on which they had succeeded. Lord Justice Goff held that the correction was outside the scope of the 'slip rule' as defined in R.S.C. Ord.20 r.11, which is in similar terms to [regulation 10 of the Social Security (Adjudication) Regulations 1986]. He made some general comments about the scope of the slip rule (at 473) from which the following propositions can be drawn:
>
> (1) The error corrected must be contrary to 'the manifest intention of the court' on the face of the record.
>
> (2) The error must be consistent with the stated intention of the judicial body when giving judgment.
>
> (3) It is insufficient that the judicial body later expresses an intention that the order should have a different meaning."

16. I accept that formulation of the "slip rule" in relation to regulation 10 of the Adjudication Regulations 1986. It is quite clear, as indeed both Mr Loveday and Mr Stagg submitted to me, that the corrections made in this case did not come within the scope of the "slip rule". They were in fact substantial alterations. A procedure by which one party to a case before a social security appeal tribunal makes written representations after the tribunal has given its decision to try to have that decision changed in some way is undesirable save in the clearest cases of clerical or accidental error. (see R(S) 2/84 at paragraph 9 and also the unreported decision of a Tribunal of Commissioners on file CI/141/87 [Milne] unreported). If it was thought that the original decision of the tribunal was ambiguous, the correct course would have been for the adjudication officer to apply to the Commissioner for leave to appeal to the Commissioner against the tribunal's decision. The procedure adopted in this case was inappropriate, particularly as the

claimant was not privy to it.

17. There is no doubt that the so-called corrections made to the original decision were invalid in that they did not come within the scope of regulation 10 of the 1986 Regulations. The only remaining question is what is the power of the Commissioner to deal with this situation. I bear in mind that regulation 12(3) of the 1986 Adjudication Regulations provides that, "there shall be no appeal against a correction made under regulation 10 or a refusal to make such a correction ...". Mr Stagg adopted a submission put forward by his client that the so-called corrections were so clearly outside the scope of regulation 10 they none of them could properly be described as "a correction" at all. I accept that submission (compare R(SB) 4/90 in relation to the position in regard to a setting aside decision). I am not therefore entertaining an appeal against the corrections made but merely declaring that they were invalid with the result that in effect the original 'uncorrected' decision of the tribunal still stands. In my judgment, although perhaps some of the wording of the original form DAT28 (record of tribunal's decision) was infelicitous, it is quite clear, on the wording of box 4 of the record (reasons for decision), that the tribunal had in fact held that the claimant satisfied the medical conditions for an award of mobility allowance from the date of claim 17 February 1987 and thereafter to a date two years after the date of the tribunal's decision (22 May 1992) i.e. up to 22 May 1994. The statement, "the claimant's condition is likely to persist without significant improvement in two years from the dated hereof" can have only one meaning i.e. two years from the date of the tribunal's decision. It was inappropriate later to alter the word "hereof" to "thereof". The whole tenor of the decision is also to the same effect. There is no qualification to the words "appeal allowed" in box 3 and the reference in the last sentence of the tribunal's reasons for decision, "... this is the reason why we have limited the award to a period of two years" tends to the same conclusion.

18. I have therefore declared in paragraph 1 of my decision that the only extant decision of the tribunal is the original decision of 22 May 1992 notified to the parties on 10 June 1992 and that the effect of that is as stated in paragraph 1(b) of my decision. The adjudication officer must now forthwith make the appropriate award of mobility or other allowance to the claimant. If any difficulty or problem arises over that award, it can be referred back to a Commissioner for Direction or Supplemental Decision.

As to the period from 23 May 1994 onwards I cannot of course deal with that on this appeal. It must be the subject of adjudication by the appropriate authorities.

(Signed) M.J. Goodman
Commissioner

(Date) 10 May 1994