

SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL TO THE COMMISSIONER FROM A DECISION OF A SOCIAL SECURITY  
APPEAL TRIBUNAL UPON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal: Glasgow

Case No: 581 95 09610

1. This claimant's appeal fails. I find not error of law in the decision of the social security appeal tribunal dated 15 November 1995 such as to warrant my interference. The appeal is accordingly dismissed.
2. In August 1993 the claimant sought incapacity benefit. That benefit was awarded with effect from 12 August but in July 1995 it was reviewed and revised to the effect that the claimant was held no longer entitled to the benefit from and including 15 July 1995. That was because from and including 13 April 1995 the test of incapacity of work in respect of the claimant was the All Work Test, he having been incapable of work for 196 days in the spell of incapacity preceding said date of 13 April 1995. The adjudication officer conducting the review held that the claimant did not satisfy the All Work Test because he had not reached 15 points from physical and mental descriptors. The claimant appealed to the tribunal.
3. The descriptors in question are those set out in the Schedule to the Social Security (Incapacity for Work) (General) Regulations 1995. There was no question of any of the physical descriptors being involved and therefore concentration can be limited to Part II of the Schedule, which deals with the mental descriptors. The adjudication officer determined that the claimant's call from mental assessment was 7 – document 79 of the bundle. It falls to be indicated at this stage that the said Schedule prescribes a number of points to be awarded in respect of satisfaction of any particular descriptor. Regulation 25(1)(b) lays down that the All Work Test in respect of the descriptors in Part II of the Schedule is only satisfied if there is a total score of at least 10 points.
4. The adjudication officer had held satisfied the descriptors set out in said Part of said Schedule at 15(e), 17(a), 17(f), 18(c) and 18(d). Before the tribunal the claimant gave evidence suggesting also satisfaction of 16(c), 16(e), 17(b), 18(b) and 18(f). In respect of each of these the tribunal held that he had failed to satisfy them. They made appropriate findings of fact and gave their reasons for decision, in particular why each of the descriptors in question had been held not satisfied. The claimant now again appeals, with leave of the chairman.

5. The first ground of appeal is that the tribunal erred in law by putting the burden of proof on the claimant. The tribunal in their reasons, on this matter, said this –

“They accepted the mental descriptors and points which had been assessed by the Adjudication Officer. With regard to the items raised by the appellant and his representative, they considered that the appellant had in all these circumstances failed to discharge the onus of proof and that with regard to these specifically as follows...”

That demonstrates that so far as the adjudication officer’s assessment was concerned, the tribunal accepted it. In the appeal before them the claimant was clearly contending that in addition to the descriptors found satisfied by the adjudication officer, he also satisfied certain additional descriptors. He was thus raising issues of fact and so the burden of proof of each of them was necessarily upon him. No doubt, as founded upon for the claimant, R(I)1/71, lays down that the burden of proof where there are grounds for a review of an award of benefit lies with that party contending for a variation on review. That was, of course, here the adjudication officer. He was contending, that the prescribed days having elapsed, it was appropriate to review the claimant’s award, apply the All Work Test and consider the question of revisal in light thereof. He clearly had discharged that onus to the satisfaction of the tribunal. But the issue now before me is the somewhat different one as to upon whom lies the onus where, the adjudication officer having held certain descriptors satisfied, the claimant wishes to demonstrate that certain others have been satisfied. There is normally a presumption against proof by way of negation and I certainly think that in terms of principle as well as logic that onus must lie upon the claimant. I accordingly reject the first ground of appeal.

6. The second ground of appeal is an allegation that the tribunal misinterpreted descriptor 16(c). Descriptor 16 (c) concerns daily living and raises an issue as to whether the individual concerned –

“is frequently distressed at some time of the day due to fluctuation of moods”.

The doctor who examined the claimant and provided the base information for the adjudication officer recorded that the answer to that question was in the negative giving this reason –

“He does suffer mood changes but these are no longer frequent.” (Page 49 of the bundle)

The claimant gave evidence before the tribunal upon that matter. It is clear that the issue became focused upon the question whether as a result of any fluctuation of moods the claimant became “frequently distressed”. The findings of fact was that any such mood fluctuation was at most once a day and accordingly the tribunal reasoned –

“..they did not consider that there was the necessary number of times during the day which the appellant appeared to be distressed. They considered that frequently connoted a substantial or significant number of times and that the only evidence was that there was occasional or few such events.”

I think that they were well entitled so to do. The ground of appeal seems to confuse the issue of frequency with one as to whether even although something may only be occasional that –

“..does not mean to say it is not significant.”

It is not the significance that matters, whether of the mood changes or the amount of distress. It is simply whether there is frequent distress and it having been established as at most once a day there could not here be said to have been frequent such distress.

7. The next descriptor raised is that at 16(e) which raises a question as to whether sleep problems interfere with day time activities. On that issue the medical examiner again recorded a negative answer and gave the reason –

“He sleeps adequately”.

The claimant gave evidence to the tribunal that he did not get off to sleep but that a certain matter prayed on his mind. It was said not to happen every night, but a considerable number of times and on such occasions he felt tired the following day. On the other hand he seemed not to respond to a question whether that would actively interfere with day time activities or just cause him to be tired but nonetheless able to get on with things. The tribunal on that made this finding of fact –

“While the appellant may have had sleep problems, they did not appear to interfere with his day time activities. It did not appear to stop him doing anything during the day”.

In effect they repeated that, in slightly different words, as their reasons for decision. I regard that as both adequate and sufficient as matter of law. I note that there is no particular ground of appeal dealing with the matter and in that situation I say no more about it.

8. The next ground of appeal concerns descriptor 17(b) which, under the head of “coping with pressure” raises a question as to whether the individual –

“Frequently feels scared or panicky for no obvious reason.”

Again the medical examiner answered the relevant question in the negative and gave as his reason –

“No evidence.”

The claimant gave evidence to the tribunal about the circumstances and consequences of when he felt scared or panicky. The tribunal made this finding of fact on the matter –

“If the appellant felt scared or panicky during the day, this related to his assault and mugging and was therefore for an obvious reason.”

The ground of appeal is that –

“..the reason has to be something that causes the particular attack not the thing that caused the claimant’s health condition in general.”

The adjudication officer now concerned appears to support that ground upon the basis that if the assault had resulted in a mental disablement such as post-traumatic stress disorder which caused him to feel scared or panicky then descriptor 17(b) could be satisfied. She submits that it can be satisfied provided that the panic attack does not result from any identifiable physical event occurring at the time. I do not entirely accept that submission. As noted, the heading is “coping with pressure” and of course looking to the other descriptors at 17 they all seem to be, at least to some extent, work related. I have no doubt that so long as there is no identifiable physical event causing the panic attack then 17(b) may be satisfied. But I do not think that it is necessarily satisfied only by tracing or relating the panic attacks to the original assault. As I read the tribunal’s record of proceedings it was some self reflection of or upon the assault that caused the panic attacks. I am unable to hold, therefore, that the tribunal were not entitled, as matter of law, that his attacks were “for an obvious reason”. In any event it does not appear from the evidence that these attacks were, as the descriptor required, frequent. And, as the adjudication officer now concerned points out, satisfaction of that descriptor alone would still not have satisfied the All Work Test when added to the other descriptors that were satisfied. If error of law there be here, which I doubt, it is one of no practical consequence.

9. The next ground of appeal relates to descriptor 18(b). The general heading is “interaction with other people”. The particular descriptor concerns the question whether an individual is upset by ordinary events resulting in “disruptive behavioural problems”. The evidence was that mention or reference to assault or mugging could upset the claimant who might start crying or wish to go away to be on his own. The tribunal made a finding of fact, as in my judgement they were well entitled to do, that there was no evidence of disruptive behavioural problems. The ground of appeal suggests that the tribunal were wrong to interpret disruptive behavioural problems as involving some form of active behaviour and that they should have included the steps taken by the claimant when upset – which I understand to be withdrawal from other people. The adjudication officer submits that in order to satisfy descriptor 18(b) a claimant must behave in a way which actively disrupts a particular situation. In response for the claimant there is reference to a dictionary definition that to disrupt means to –

“..interrupt the flow or continuity of (at meetings, speech, etc) bring disorder to..”

It is thus suggested that to remove oneself from a situation at an inappropriate time would be disruption if it interrupted the flow or continuity. I think that approach suffers from sophistry. In the context of interaction with other people I have come to the view that “disruptive behavioural problems” must in some way upset if not indeed alarm them. Mere self withdrawal, I am satisfied, will not do.

10. Finally, although again there is no ground of appeal tabled upon the matter, the tribunal rejected the claimant's submission that he satisfied descriptor 18(f), which concerns being too frightened to go out alone. The medical examiner recorded that the claimant had said that he went out alone to the shops and to visit his family. In evidence to the tribunal the claimant maintained that he was too frightened to go out on his own and that only did so "if it is an absolute test (sic)" (=must?) but given his problems of indecision and panics that could be difficult. The tribunal found that the appellant was able to go out on his own and unaccompanied and recorded that the evidence as conceded by the appellant's representative was that he did so, was able to do so and so the test was not satisfied. That was recorded in their reasoning. I consider they were well entitled to do so.
  
11. For the reasons set out above this appeal must be disallowed.

(signed) WM Walker  
Commissioner  
Date: 15 October 1996