

## SOCIAL SECURITY ACTS 1975 TO 1990

## CLAIM FOR SICKNESS BENEFIT

## DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: John Leonard Brown

Appeal Tribunal: Taunton

Case No: 33101540

1. My decision is that the decision of the social security appeal tribunal is erroneous in point of law and accordingly I set it aside. I remit the case for determination to a new social security appeal tribunal who should have regard to what I have said in the course of this decision.

2. This is a claimant's appeal against the decision of the Taunton social security appeal tribunal given on 20 June 1988 which confirmed a decision of the adjudication officer. The decision of the adjudication officer was issued on 20 April 1988. He decided that the claimant was not entitled to sickness benefit from 3 March 1987 to 2 February 1988 (both dates included) because his claim for that period was made on 3 March 1988 and consequently was not made within the time limits for claiming. He further held that the claimant had not proved that there was continual good cause for the delay in making the claim. The adjudication officer also decided that the claimant was not entitled to sickness benefit from 28 September 1986 to 2 March 1987 because he was not entitled to benefit for a period more than 12 months before the date of his claim and he had regard to section 165A of the Social Security Act 1975. The claimant appealed to the tribunal and his appeal was disallowed.

3. The claimant lost his arm in an industrial accident in 1970. He is in receipt of industrial disablement benefit together with unemployment supplement. On 7 March 1988 the local office of the Department of Health and Social Security received by post a claim for sickness benefit in which the claimant stated that he wished to claim such benefit from 28 September 1986 and that he was incapable of work due to amputation of his right arm and chronic back trouble. The date of the claim was accepted as 3 March 1988. There was a letter from the claimant's doctor certifying that he had been incapable of work for 12 months prior to the time of the claim. At the time that he made the claim he was represented by Mr Tony Prior, a social worker with the Somerset County Council, who has continued to represent him and who has prepared written argument in support of his appeal to the Commissioner. In a letter accompanying the claim Mr Prior referred to the claimant's previous history in relation to

benefit. He explained that in 1981 the claimant was successful before a social security appeal tribunal in Weymouth when he appealed against a decision that he was not fit for work; nevertheless his general practitioner declined to give him a new certificate because of the earlier decision which had been overturned on appeal. The claimant did not then pursue his case further and signed on for work. In 1986 he worked on a building site but ceased that work at the end of September 1986. Mr Prior went on to explain that because of his past experience with the Department of Health and Social Security and with his own general practitioner, the claimant never went to his present general practitioner to ask for a certificate nor did he claim benefit. Mr Prior however had met the claimant about a week prior to his claim and advised him whereupon the doctor issued the certificate which accompanied the claim and the claimant claimed benefit. The local office then sought to know from the claimant as to why his claim for sickness benefit was not made until 3 March 1988. The claimant gave the following reason:

"The reason for not sending before is because I had much hassle with the Yeovil office and an awful lot of worry that I just could not take any more."

The adjudication officer then came to the decision to which I have referred earlier and the claimant appealed to the tribunal.

4. The claimant gave evidence before the tribunal. Mr Prior submitted that the claimant had established good cause for late claim. He referred to the claimant's injury and his difficulties with the Department of Health and Social Security, in particular that he had been disqualified for invalidity benefit following an examination by a regional medical officer in 1981 but that he had pursued a successful appeal. He went on to say that the claimant did not have good relations with his doctor who refused to give him a certificate some 12 months later. He could not change doctors because of where he lived although he signed on and received unemployment benefit for 12 months he had tried to work twice. He Mr Prior had seen the claimant in February 1988 and had advised him to go to his doctor and get a certificate and to apply for benefit. He also explained that the claimant had written to the Prime Minister but said that nobody had given him any advice. The claimant was under the misapprehension that having lost invalidity benefit, he would never be able to get it back. It was contended that the claimant had made an effort to ascertain his rights by writing to the Prime Minister.

5. The tribunal did not doubt the honesty of the claimant nor did they his incapacity. They accepted his evidence relating to the appeal in 1981 and to the later refusal of the doctor to give him a certificate. They found as fact that during 1987 the claimant had written to the Prime Minister and following that he had been visited by an officer of the Department of Health and Social Security and that he was told that the Department could not help him. That was a specific finding. In the reasons for their decision the members again referred to his writing to the Prime Minister and that that was followed by a visit from a

1986

visiting officer of the Department of Health and Social Security. They then went on to say that in all probability the officer was from the supplementary benefit section, who was unable to help, because in all probability the claimant's resources exceeded his requirements. They concluded that had the claimant been able to produce evidence of incapacity he would undoubtedly have been advised to claim sickness benefit, they then went on to say that he had no such evidence. I am perturbed by that finding. It seems to me there was evidence upon which the members of the tribunal could conclude that the visiting officer was from the supplementary benefit officer; but the claimant was seeking advice generally. His case was that he did not know that he could claim invalidity benefit and this was based on the refusal of the doctor to give him a certificate. He was making enquiries as to benefit. He was a person who had been in receipt of mobility allowance and at one time attendance allowance. He was in receipt of industrial disablement benefit together with an unemployability supplement. He had only one arm. In those circumstances it does not seem to me that it would be unreasonable to expect the supplementary benefit officer to advise him on invalidity benefit nor would I think it unreasonable for the claimant to continue in his belief that he was not entitled to it when he was not advised. The members of the tribunal stated that had the claimant been able to produce evidence of incapacity, he would undoubtedly have been advised to claim sickness benefit; I do not understand this finding. It seems to me that they may well have been envisaging the production of a medical certificate to the visiting officer. But here was a man who was seeking advice and who had one arm and was in receipt of industrial disablement benefit together with an unemployability supplement. The members of the tribunal do not appear to have had regard to these facts and the failure to do so was in my opinion an error of law upon which the decision must be set aside. They certainly have not explained their reasoning on this aspect of the case in the light of the evidence before them.

6. I have given anxious consideration to the question of whether I should give the decision myself or refer the case back to a new social security appeal tribunal for determination. It appears to me only fair to the claimant to order a rehearing before a new tribunal. Certain material has been supplied by the adjudication officer now concerned which was not before the original tribunal. It seems to me that the effect of this evidence is to greatly weaken the claimant's case, so I would not think it fair to decide the issue without giving him a full opportunity of dealing with it. In those circumstances it seems best to send the case back to a new tribunal. I direct that the new tribunal in rehearing the case should pay particular attention to the aspect to which I have referred in this decision above. Further they should make and record their findings on all the material facts and give reasons for their decision. No doubt they will remember what was said in R(S) 2/63, where "good cause" was described as some fact which having regard to all the circumstances, including the claimant's state of health and the information which he had received and that which he might have

obtained" would probably have caused a reasonable person of his age to act or fail to act as the claimant did. It will be for the new tribunal to determine the question afresh on the evidence before them and no doubt the parties will ensure that all such evidence is available to them. I note that there may be an additional reason why the claimant was refused the certificate by his general practitioner. / /

(Signed) J J Skinner  
Commissioner

Date: 2 September 1991