

CS 212/1978

J. A. H. S. Box

CS 212/1978

JNBP/KMG

SOCIAL SECURITY ACTS 1975 TO 1977

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE NATIONAL INSURANCE COMMISSIONER

Name: Robert Patrick Redmond

Local Tribunal: Chesterfield

Case No.: 35/1

1. My decision is that invalidity pension is payable for the period 21 June 1977 to 25 June 1977 because during that period the claimant either was incapable of work by reason of some specific disease or bodily or mental disablement or is deemed to have been so incapable pursuant to regulation 3(1)(a) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 [SI 1975 No 564].

2. This is an appeal by the claimant from the decision of a local tribunal dated 23 August 1977 dismissing the claimant's appeal from the decision of the local insurance officer dated 14 June 1977 which disallowed invalidity pension for the above period because the claimant had not proved that he was incapable of work by reason of some specific disease or bodily or mental disablement.

3. It is not in dispute that the claimant did not work during the period in question. Also, he has produced a medical certificate covering that period advising him to refrain from work, the diagnosis being prolapsed intervertebral disc. In these circumstances the insurance officer now concerned with the case submits that, notwithstanding any question as to the claimant's incapacity for work, the claimant is to be deemed incapable of work by virtue of the aforesaid regulation 3(1)(a) (see Commissioner's Decision CS 1/78 (not reported)). I cannot accept that the claimant is to be deemed incapable of work "notwithstanding any question as to the claimant's incapacity for work" because the deeming provision of the regulation comes into play only if the claimant concerned is not incapable of work. However, I accept that the appeal can be allowed without any decision being made on the question of incapacity because either the claimant was incapable of work during the

period in question, in which case the appeal would succeed on that ground or he was not incapable of work in which case he is entitled to be deemed incapable of work and the appeal would succeed on that ground.

4. For the foregoing reasons the appeal is allowed and my decision is as given in paragraph 1 above.

(Signed) J N B Penny
Commissioner

Date: 29 June 1978

Commissioner's File: C.S. 212/1978
C.I.O. File: I.O. 1769/V/77
Regional File: EM and EA (Unregistered Papers)