DGR/SH/1

Commissioner's File: CS/220/1988

SOCIAL SECURITY ACTS 1975 TO 1986

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 23 May 1988 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the majority decision of the social security appeal tribunal of 23 May 1988.

3. The claimant, an unemployed linen room assistant, born on 22 January 1940, had been in receipt of invalidity benefit from 2 July 1986 when, in accordance with normal practice, she was examined on 19 October 1987 by an examining medical officer of the Divisional Medical Office of the Department of Health and Social Security. That medical officer reported that the claimant's "symptoms of 'lumbar spinal syndrome' should not now prevent her from undertaking alternative suitable light physical or sedentary work. Apart from some restriction in lumbar spinal flexion she walks briskly and is relatively mobile." He was of the opinion that, while she was incapable of work as a linen room assistant, she was nevertheless fit for work within certain limits. These limits he defined by stating that the claimant was capable of any employment which did not involve heavy work or much bending.

4. The claimant was advised of the outcome of the examination, and invited to see her doctor to discuss the examining medical officer's findings. She was also offered the services of the Disablement Resettlement Officer at the Job Centre. She visited her general practitioner, but he issued a further statement dated 25 November 1987 advising her to refrain from work for 56 days. Her incapacity was again diagnosed as lumbar syndrome. On 20 January 1988 a further doctor's certificate was issued covering the claimant for a further 13 weeks.

5. Thereafter, an investigation, involving an interview with the claimant herself, was undertaken to ascertain what employment she might, having regard to her condition, be able to carry out. In the event, the adjudication officer indicated that she was, in his opinion, capable of undertaking the duties of light bench worker and assembly worker.

6. On 22 February 1988 the claimant was examined by a different medical officer. He was of the same opinion as the earlier doctor, namely that the claimant was capable of work within certain limits. He stated that the claimant would be best employed in light physical bench work where she could stand and move. Elsewhere in his report he said that she could undertake "light bench work or assembly work at a bench standing".

7. In the light of the evidence it is not surprising to find that on 1 March 1988 the adjudication officer decided that invalidity benefit was not payable for the inclusive period from 24 February 1988 to 19 March 1988 because the claimant had not proved that she was incapable of work by reason of some specific disease or bodily or mental disablement.

8. In due course the claimant appealed to the tribunal, who, in the event, by a majority upheld the adjudication officer.

9. Section 17(1) of the Social Security Act 1975 provides that it is a condition of entitlement to invalidity benefit that the claimant is, or is deemed in accordance with regulations to be, incapable of work by reason of some specific disease or bodily or mental disablement. Moreover, work means work which the person concerned can reasonably be expected to do. Whether a person is incapable of work is a question of fact (R(S) 1/53). The burden of proving that he or she is incapable of work rests on the claimant (R(S) 13/52). A doctor's statement is not conclusive of evidence of incapacity or, for that matter, of the advisability of refraining from work. It represents a particular doctor's opinion which is to be weighed with all other relevant evidence in forming a judgment on the case (R(I) 13/55; R(S) 4/60). In Decision R(S) 4/56 the Commissioner held that, where doctors disagree, the adjudicating authorities have to decide, on the balance of probability, which of the contrasting opinions is more likely to be correct.

10. A person is incapable of work, if having regard to his or her age, education, experience, state of health and other personal factors, there is no work or type of work which he or she can reasonably be expected to do. Whilst work in this connection means remunerative work (R(S) 11/51), in Decision R(S) 7/60 it was stated that in the case of a temporary illness of short duration a claimant's capacity for work should be judged by reference to his or her normal field of employment, because he or she could not reasonably in such circumstances be expected to embark on a new career. When a claimant's disabilities last for a long period, however, the field of employment to be taken into account must be enlarged, and it must be borne in mind that the work need not be full-time work. Part-time work is

permissible. Just at what stage the enlargement of the field of employment should take place must depend upon the particular case (R(S) 2/78). At the commencement of the period under appeal the claimant had been in receipt of invalidity benefit for some 18 months, and manifestly the time had come for an extension of her normal field of employment. Accordingly, it was necessary for the tribunal to determine whether the claimant was, during the relevant period, incapable of <u>all</u> forms of work.

11. In deciding that the claimant had not proved her case the majority gave the following reasons for their decision:-

> "Having regard to the medical evidence the majority came to the conclusion on the balance of probability that the claimant was capable of work as a Repetitive Assembler. In particular the majority observed that during the hearing the claimant had little trouble sitting in a relative immobile position for about $^3/_4$ of an hour - the majority did not regard the report by Dr. Stevens as being particularly helpful and in particular the comment about the claimant going back to work was ambiguous."

The report from Dr. J. Stevens, a Professor of Orthopaedics at The Royal Victoria Infirmary, Newcastle-upon-Tyne, produced by the claimant in support of her case, was dated 8 July 1986, i.e. some 18 months before the period at issue. Moreover, it is not clear from that report whether Dr. Stevens considered the claimant incapable of all work or merely that it was unlikely that she would be able to return to her former occupation of linen room assistant. Accordingly, the tribunal were entitled to take the view that that report was ambiguous.

12. Now, it is clear that the majority preferred the evidence of the examining officers of the Department to that of the claimant's own doctor - and here again the latter may well have been approaching the matter from the standpoint of whether the claimant was capable of her old employment as distinct from some new occupation. Clearly, the weight of the medical evidence was against the claimant, and as a result the tribunal were entitled to take the view that the claimant was capable of work as a repetitive assembler in accordance with the opinion of the second examining medical officer. I see nothing wrong with the tribunal's decision.

13. However, the adjudication officer now concerned has, somewhat surprisingly, supported the appeal. She submits as follows:-

> "In reaching that decision, while it can be inferred that the tribunal have preferred the opinion of the DHSS examining medical officers to that of the claimant's doctor, they have given no reasons for their preference. Further, they have made no findings of fact on any limitations imposed on the claimant before deciding that she was capable of work as a repetitive assembler."

I wholly reject those submissions. It was incumbent on the tribunal to consider the medical evidence and to decide which view they preferred. They were to exercise their commonsense and make a value judgment, a function for which members of a tribunal are peculiarly qualified, and they were certainly not required to set out the mental processes by which they arrived at their decision. The task of tribunals is not to be made an intolerable one; they are required merely to consider the evidence and where, as here, there is a divergence of medical view, simply to say which opinion they prefer. Provided only that the decision is not perverse, i.e. that on the evidence it could reasonably have been arrived at, the Commissioner has no power to interfere. Moreover, in deciding that a claimant is capable of work at a particular occupation, the members of a tribunal are not required first to analyse their decision in the way suggested by the adjudication officer. They have simply to determine, in the light of the medical evidence, whether a claimant can undertake a particular job. The medical evidence itself will specify the physical limitations imposed on a claimant by his or her condition, and no specific findings are necessary on the part of the tribunal. By accepting certain medical evidence the tribunal implicitly accept the limitations referred to in that evidence. Accordingly, when in the present case the tribunal merely said:-

> "Having regard to the medical evidence the majority came to the conclusion on the balance of probability that the claimant was capable of work as a Repetitive Assembler"

they did all that was required of them. No further analysis was called for.

14. I dismiss this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 16 January 1990