

~~CS 313/1980~~

CS 241/73

JGM/MV

NATIONAL INSURANCE ACTS 1965 TO 1973

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE COMMISSIONER

Name: James Massett

Local Tribunal: Stepney & District

Case No: 31/3

[ORAL HEARING]

1. My decision is that the claimant was incapable of work by reason of some specific disease or bodily or mental disablement within section 20(1)(a)(ii) of the National Insurance Act 1965 on 2nd and 4th September 1972.

2. The claimant is a man aged 45 who after **servicing** in the Forces from 1946 to 1948 worked for 18 years in the London docks. He developed a **perforated** peptic ulcer for which he was operated on in 1961 and in March 1967 he **sustained** an injury to his back. Since then he has periodic attacks of pain in his back and he suffered from recurrences of his peptic ulcer. After the accident he was for the greater part of the time down to the days before me in receipt of injury benefit or sickness benefit or invalidity benefit for a variety of causes. In a medical certificate of 4th April 1972 the cause of incapacity was certified as anxiety state. The claim for the days before me is based on a certificate dated 11th July 1972 certifying incapacity for a period of 8 weeks on the ground of anxiety state and depression.

3. The claimant was examined by a medical officer of the Department on 28th July 1972 who found him incapable of work at the occupation of cleaner but capable of work within certain limits. It was stated he could manage any light to moderate work as long as heavy exertion and lifting were not involved and there was adequate provision for regular snacks or meals. He was examined again on 22nd November 1972 and he was certified as being incapable of work as a heavy labourer but capable of work within limits, it being stated that he must avoid **heavy** lifting but could manage machine-winding, assembly work or inspection in a factory. As a result presumably of the first of these reports the insurance officer decided that invalidity pension was not payable to the claimant from 2nd September to 4th September 1972 because the claimant had not proved incapacity for work with him. This decision was confirmed on appeal by the local tribunal. The claimant appealed to the Commissioner and at the oral hearing before me he was represented by Miss Wood a solicitor from the West Stepney Neighbourhood Law Centre and evidence was given on his behalf by his general practitioner to whom I will refer as Dr. P. The insurance officer was represented by a representative from the Office of the Chief Insurance Officer.

4. By virtue of section 20(1)(a)(ii) for purposes of invalidity benefit a day is not to be treated as a day of incapacity for work unless on that day 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. The onus of proving this is placed on the claimant by regulation 7(1)(a) to the National Insurance (Unemployment and Sickness Benefit) Regulations 1967 as amended. There is no question of the claimant being deemed in accordance with the regulations to be incapable of work and he has to show therefore that he was at the relevant time incapable of work by reason of some specific disease or bodily or mental disablement. In the Tribunal Decision R(S) 11/51 it was said that in this context work means "... remunerative work, that is to say, work whether part-time or whole-time for which an employer would be willing to pay, or work as a self-employed person in some gainful occupation."

5. The claimant's case rests mainly on the evidence of Dr. P., who has been the claimant's doctor since January 1969 and who told me he had seen him about three times a month on the average since that time. He said that he was not a psychiatrist, that he knew the claimant had emotional stress and that apart from his history of peptic ulcer and strained back he suffered from an anxiety state. He said that an anxiety state had objective physical symptoms, which, if chronic have long-term effects (including depression) and play on physical disability and activate bodily ailments such as a quiescent ulcer or back strain. He expressed the view that such an anxiety state fell within the phrase "specific disease or bodily or mental disablement". He was of opinion that it was this anxiety state rather than ulcer or back strain which caused the claimant's incapacity for work, and he was clearly of opinion that he was so incapable on the days in question here. The definition of "work" set out in paragraph 4 was read to Dr. P. and he has expressed the view that the claimant was incapable of work in that sense although he conceded that it might be possible for the claimant to work on some occupation such as the making of British Legion poppies, if he had no delivery dates to keep to. He was not capable of doing any work which entailed regular attendance or fulfilment of delivery dates. Dr. P. had referred the claimant to a consultant psychiatrist of the London Hospital who had confirmed his view at rather a later date.

6. The insurance officer's representative did not dispute that an anxiety state as it was described by Dr. P. fell within the phrase "specific disease or bodily or mental disablement" but questioned the claimant's incapacity having regard to the possibility of his doing such work as the making of poppies. I have reached the conclusion however that work of that kind which is really given for philanthropic reasons is not work within the definition above mentioned. As Lord Macmillan put it in Birch Brothers Ltd. v. Brown, [1931] A.C. 605 at p. 630 "Even the actual obtaining of employment by a handicapped workman may not prove his recovered economic capacity to earn wages, for the job may have been given to him out of philanthropy and be merely nominal." I regard the making of poppies or some similar occupation with no requirement for the fulfilment of a norm or for the delivery by a given date as on a par with work given out of philanthropy, and, accepting as I do Dr. P's evidence, I find that the claimant was incapable of work by reason of some specific or mental or bodily disablement on the days before me.

7. I have reached my conclusion with a little misgiving about the future. It is probable I suppose that my decision will be applied to later days of claim. Dr. P. expressed the view that he wished that the claimant would undertake some such work as the making of poppies which he thought might have therapeutic value. I view with ~~some~~ alarm an **apparent** vicious circle resulting from the claimant's being unable to undertake work because of his anxiety state, when the ~~best cure is that anxiety state.~~ ~~work could very well~~ be the best cure in that anxiety state. The claimant is a relatively young man, and as I said can only recover his self-respect by again becoming an earner.

8. My decision is that stated in paragraph 1 and the appeal is allowed.

(Signed) J. G. Monroe
Commissioner

Date: 22nd May 1974

Commissioner's File: C.S.241/73
C.I.O. File: I.O.1431/V/73
Regional File: L.N. unregistered papers