CS 337/1977

VGHH/PF

SOCIAL SECURITY ACTS 1975 TO 1977

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE NATIONAL INSURANCE COMMISSIONER

Name: William Robert Redgewell

Local Tribunal: Folkestone

Case No. 4/5

[ORAL HEARING]

Decision C.S. 1/78

1. My decision is that invalidity pension is payable to the claimant from 24 December 1976 to 19 January 1977 (both dates included) because the claimant is deemed, in terms of regulation 3(1) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 [SI 1975 No 564], to be incapable of work by reason of some specific disease or bodily or mental disablement.

2. This case raises directly the question of the effect of a medical certificate on "Form Med 3" as now in use. That "Medical Certificate" is in the form of a doctor's statement and registered medical practitioners are required to complete the form for National Insurance purposes whenever a claimant wishes to claim sickness, injury or invalidity benefit. The form now in use (which I shall call "the new form") has been employed since the Social Security (Medical Evidence) Regulations 1976 [SI 1976 No 615] (which I shall call "the new Medical Evidence regulations") came into operation on 4 October 1976. It replaces the previous "Form Med 3" (which I shall call "the old form") which was in use under the Social Security (Medical Certification) Regulations 1975 [SI 1975 No 531] (which I shall call "the old Medical Certification regulations") until their revocation by the new Medical Evidence regulations. In the old form, the claimant's doctor certified that in his opinion the claimant was incapable of work. In the new form, no such certificate is given. Instead, the doctor certifies, in the form of a statement, that he has advised the claimant to refrain from work. The question that arises is whether such a statement is a certificate that the claimant "should abstain from work" in terms of regulation 3(1)(a)(ii) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 (which I shall call the "Unemployment, Sickness and Invalidity Benefit Regulations") and, if so, whether the claimant, if not incapable of work in terms of section 17(1) of the Social Security Act 1975, must be deemed to be so incapable within the

meaning of that section on production of that statement, for the duration of the period covered by it, assuming that throughout that period he remains under medical care and does not work. The immediately relevant statutory provisions are, for convenience, set out in the Appendix to this decision.

3. The claimant, a weighbridge operator now aged 54, was in receipt of sickness benefit from 8 July 1975 to 19 January 1976 and invalidity benefit from 20 January 1976 to 23 December 1976, his incapacities having been diagnosed as PID, sciatica, low backache and sciatica, Back pain and sciatica. He had been previously incapacitated from 17 January 1973 to 17 February 1973 with sciatica, when sickness benefit was paid.

4. On 3 September 1976 the claimant's own doctor issued a further certificate, in the old form, certifying that he had examined the claimant and that in his opinion the claimant was incapable of work at the time of examination by reason of Back pain and Sciatica and would remain incapable of work for a period of 4 weeks. A further certificate for 4 weeks, also in the old form and giving the same diagnosis, was issued by the same doctor on 2 October 1976. On 29 October 1976 (by which time the new Medical Evidence regulations were in operation) the same doctor issued a certificate in the new form stating that he had examined the claimant and advised him that he should refrain from work for 4 weeks by reason of low backache and sciatica. A further certificate for 4 weeks, also in the new form and giving the diagnosis backache and sciatica was issued by the same doctor on 26 November 1976.

5. Two medical officers of the Department of Health and Social Security have examined the claimant. On the first examination, which took place on 14 October 1976, the doctor reported that the claimant was incapable of work at the occupation of weighbridge operator but was capable of work within certain limits, which were specified as light work for example car park attendant, caretaker in the claimant's previous job of weighbridge operator or any light work subject to the reservations that he was unfit for sustained heavy manual labour with bending and lifting, that there was some weakness of left forearm and grip and that prolonged standing should be avoided. On the second examination which took place on 7 December 1976, a different doctor reported that the claimant was incapable of work at the occupation of weighbridge operator but was capable of work within certain limits. The report stated that the claimant had restriction of back movement and could not climb ladders or do heavy lifting but that he was willing and able to do limited work if and when it was available. The claimant's own doctor however issued a further medical certificate on 23 December 1976 advising the claimant to refrain from work for 4 weeks and diagnosing the disorder causing absence from work as backache and sciatica. The claimant has at all material times indicated that he considers that he must follow his own doctor's advice.

6. On 29 December 1976, the local insurance officer decided that invalidity pension was not payable to the claimant from 24 December 1976 to 19 January 1977 because the claimant had not proved that he was incapable of work by reason of some specific disease or bodily or mental disablement. On 9 February 1977 the local tribunal, to whom the claimant appealed, decided that, on the balance of probabilities, the claimant was capable of light work, and disallowed the appeal. The claimant's own doctor continued to issue medical certificates.

7. In appealing to the Commissioner against the decision of the local tribunal, the claimant's representative, Mr B W Clark of the Disabled Consultative Association, submitted that the claimant, if not incapable of work, must, under regulation 3(1) of the Unemployment, Sickness and Invalidity Benefit regulations, be deemed to be incapable of work. The insurance officer now concerned with the case submitted that it was for the statutory authorities, in this case the Commissioner, to decide whether the claimant should be deemed to be incapable of work and, in a further submission, drew my attention to a recent decision in Commissioner's file CS 106/1977 (unreported), where reference was made to regulation 3 and the Commissioner found that the above regulation "is framed to cover a person who is not himself incapable of work but who is kept away from work because of contact with infection or is a carrier of a disease". That decision does not, however, assist me. For the Commissioner's words are clearly a reference to regulation 3(1)(b) and I am concerned with regulation 3(1)(a). The Commissioner was not concerned with regulation 3(1)(a) because the certificate in the case before him was given in the old form, not the new form, and clearly could not fall within regulation 3(1)(a) since it did not advise the claimant to refrain, or abstain, from work. The question whether, as the insurance officer has submitted, I have a discretion whether the claimant should be deemed incapable of work is one which, so far as I am aware, is covered by no reported or numbered decision of the Commissioner. It is of far-reaching importance; since if I have no discretion but to deem a claimant incapable of work in cases where he is under medical care and produces a certificate in the new form signed by his doctor, every such claimant will (if he does not work) be prima facie entitled to sickness, or invalidity, benefit, subject to waiting days and satisfaction of the contribution conditions, for the period covered by the certificate. This conclusion is startling because, if it is correct, it renders virtually useless the current practice under which, where a claimant's incapacity for work is in any doubt, he is referred to a medical officer of the Department of Health and Social Security for examination. For if that officer decides that the claimant is capable of work, the claimant can then rely on his own doctor's certificate as entitling him to be deemed to be incapable of work. In the

light of these considerations, in granting the claimant's request for an oral hearing, I made the following direction:

> "Legal argument is required on the following points:
>
> (a) Whether a certificate in the form of a Doctor's Statement on form Med 3 is a certificate within the meaning of regulation 3(1)(a)(ii) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 [SI 1975 No 564]
>
> (b) If the answer to (a) is Yes then what is the meaning of "medical care" in 3(1)(a)(i)? and
>
> (c) If the requirements of 3(1)(a) of the regulation are complied with, does the Commissioner have a judicial discretion whether or not to deem a claimant incapable of work?
>
> (d) If the Commissioner does have such a judicial discretion on what principles does the regulation require it to be exercised?
>
> (e) In what circumstances may a certificate be given under regulation 3(1)(a) i.e. what sort of case is it dealing with?
> The above points should be drawn to the attention of the claimant and his advisers, as well as the C.I.O.'s office
>
> (f) Attention is drawn to the case of Julius v The Bishop of Oxford 5 App Cas. 214 in connection with the question whether "may" means "shall", on the true construction of the regulation."

8. The oral hearing before me took place on 27 January 1978. The claimant was represented by Mr Clark and the insurance officer was represented by Mr A E Taylor of the Solicitor's office, Department of Health and Social Security.

9. On behalf of the claimant, Mr Clark submitted that the claimant's appeal must succeed because either the claimant had proved that he was incapable of work, in terms of section 17(1)(a)(ii) of the Social Security Act 1975 or he must be deemed to be so incapable by virtue of regulation 3(1)(a)(ii) of the Unemployment, Sickness and Invalidity Benefit regulations. It was a case, so far as regards the claimant, of "Heads I Win. Tails You Lose".

10. The claimant gave evidence before me that his doctor, who was still issuing certificates advising him to refrain from work, took the view that it was for him to decide when the claimant could resume work. The claimant felt that he should take his doctor's advice. In cross-examination the claimant was unable to say whether his doctor took the view that the claimant's disability was temporary or permanent.

11. Mr Taylor, on behalf of the insurance officer, told me that regulation 3 of the Unemployment, Sickness and Invalidity Benefit regulations had its genesis in the way in which claims for benefit were dealt with by approved societies before the 1946 National Insurance scheme came into being. It was considered that insured persons who were capable of going to work, but whose doctor advised them not to do so, should be encouraged to take their doctor's advice, and should receive benefit when they refrained from work on doctor's advice. This policy was adopted into the 1946 scheme. The objects of the present regulation were to cover persons who were not incapable of work but who either

(1) were suffering from a dormant condition, such as asthma or angina pectoris, which might manifest itself if the insured person were to work, or

(2) ought not to work, because of the nature of their ailment (e.g. tuberculosis), so as to protect other people, or

(3) were convalescent.

12. On the construction of the regulation, Mr Taylor submitted that the expression "medical care" was much wider than the expression "medical treatment" (e.g. prescribing pills) or "medical attention" (e.g. renewing dressings). It covered any case where a person was receiving advice from the doctor and included the case where the doctor was issuing certificates advising the claimant to refrain from work: see paragraph 18 of Commissioner's Decision R(S) 1/72. He further submitted that a certificate in the new form was a certificate for the purpose of regulation 3(1)(a)(ii). It had been intended that a certificate by a doctor under this regulation should be a note. But a certificate in the form of Med 3 was in practice accepted by the Department for short term benefits. There was no doubt that the new form was a "certificate": see regulation 2(1) of the new Medical Evidence regulations.

13. Turning to the question whether the Commissioner had a discretion whether or not to deem a claimant who produced a certificate in the new form to be incapable of work, Mr Taylor submitted that the Commissioner did not have such a discretion because "may be deemed incapable of work" meant, on its

true construction "must be deemed incapable of work". The principle was that where a person had a right in connection with which a power was conferred on someone else, that other person was under a duty to exercise the power. See Julius v Lord Bishop of Oxford (1880) 5 App Cas. 214 at page 241, where Lord Blackburn said:

> "I do not think the words 'it shall be lawful' are in themselves ambiguous at all. They are apt words to express that a power is given; and as, prima facie, the donee of a power may either exercise it or leave it unused, it is not inaccurate to say that, prima facie, they are equivalent to saying that the donee may do it; but if the object for which the power is conferred is for the purpose of enforcing a right, there may be a duty cast on the donee of the power, to exercise it for the benefit of those who have that right, when required on their behalf. Where there is such a duty, it is not inaccurate to say that the words conferring the power are equivalent to saying that the donee must exercise it".

That passage applies equally where the word "may", rather than "it shall be lawful", is used. In R v Mitchell Ex parte Livesey [1913] 1 K.B. 561 at page 566, Mr Justice Ridley stated that the principle to be extracted from earlier cases was best stated in Julius v Lord Bishop of Oxford, where that and many other previous decisions were reviewed in the House of Lords. He continued:

> "The word "may" when it appears in a statute of this kind is a permissive word, unless there is at the same time a right conferred upon some other person in connection with which the permission or power is given. If that other person has a right which he is entitled to assert, then the word "may" is not merely a permissive but is an enabling word, empowering the persons in question to do their duty and give effect to that right."

Finally, in Padfield v Minister of Agriculture [1968] A.C. 997 at page 1039, Lord Morris of Borth-y-Gest said:

> "Where some legal right or entitlement is conferred or enjoyed, and for the purpose of effectuating such right or entitlement a power is conferred upon someone, then words which are permissive in character will sometimes be construed as involving a duty to exercise the power. The purpose and the language of any particular enactment must be considered."

Mr Taylor submitted that in the present case, once the statutory requirements as to contributions (which were satisfied in the present case), being under "medical care" and production of an appropriate medical certificate had been fulfilled the claimant was entitled to benefit and had a right to it. The Social Security Act 1975 was, according to its preamble, a consolidation of so much of the Social Security Act 1973 as established "a basic scheme of contributions and benefits". Section 14 of the 1975 Act provided that subject to the provisions of that section a person who satisfied any of the three conditions of sub-section (2) shall be entitled to sickness benefit in respect of any day of incapacity for work which forms part of a period of interruption of employment; and section 17(1)(a)(ii) enabled a person to be deemed in accordance with regulations to be incapable of work. Once the conditions in section 14 (which were admittedly satisfied by the claimant) and the requirements imposed on the claimant by regulation 3 of the Unemployment, Sickness and Invalidity Benefit regulations had been satisfied [by the claimant], the claimant was entitled and had a right to benefit and the Commissioner was under a duty to exercise his power in accordance with the principles enunciated in the above mentioned cases.

14. In my judgment, the claimant has clearly not established that, on a balance of probability, he was during the period in issue incapable of work in terms of section 17(1)(a)(ii) of the Social Security Act 1975. There is clear medical evidence from two medical officers of the Department of Health and Social Security (and from a medical board advising on a claim for special hardship allowance) that the claimant was, during the period in issue, capable of light work. His own doctor has not, in respect of that period, said that the claimant was incapable of work. He has certified that he should refrain from work. In other words, he has advised the claimant that, for the medical reasons given in his statement, namely back pain and sciatica, the claimant ought not to be at work. I am satisfied, on the medical evidence before me, that the claimant was, during the period in issue, capable of light work, such as car park attendant or caretaker, and that this is work which, bearing in mind the duration of his incapacity, he could reasonably have been expected to do. Before parting with this aspect of the case, it should be added that the claimant said in evidence that no employer, knowing of the advice given by the claimant's doctor and of the claimant's disabilities, would be willing to employ and pay the claimant. I am not, however, concerned to decide whether the claimant would in fact get such a job if he applied for it. My concern is to decide whether there is work that the claimant was capable of doing during the period in issue for which an employer would be willing to pay. The work of car park attendant and the work of caretaker is such work and the claimant was, as I have already found, capable of performing it during the period in issue.

15. The claimant, since he has not succeeded in proving that he was incapable of work during the period in issue, is, in my judgment, "a person who is not incapable of work" in terms of regulation 3(1) of the Unemployment, Sickness and Invalidity Benefit regulations. The reference in the opening words of that regulation to such a person means, in my view, a person who has not proved that he is incapable of work in terms of section 17(1)(a)(ii) of the 1975 Act. There can be no question of disallowing a claimant from benefit on the ground that he has neither proved that he is incapable of work (so as to qualify on the ground of actual incapacity) nor has he proved that he is not incapable of work (so as to be eligible for deemed incapacity). The claimant must either be incapable of work or not incapable of work, in terms of section 17(1)(a)(ii) and regulation 3(1) (which being made under that section must be read with it) and there is no limbo into which a claimant who claims benefit on the ground of incapacity and fails can be cast under which he is also disentitled to be deemed incapable. This would defeat the purpose of the regulation. In the present case, in any event, I am satisfied that the claimant was in fact not incapable of work during the period in issue. I have considered whether there could be any form of "estoppel" in that the claimant in claiming benefit has himself subscribed to a printed statement that he was incapable of work. In my judgment, this does not prevent him from relying on deemed incapacity.

16. Turning to the requirements of regulation 3(1) that have to be satisfied by the claimant in respect of the period in issue:-

(1) the claimant was not incapable of work: see paragraph 15 above

(2) he was under "medical care", for his doctor was throughout the period in issue advising him to refrain from work. His doctor had issued several certificates giving that advice and it is clear beyond doubt that the claimant was under his own doctor's medical care, for that doctor was insisting that it was for him to decide on medical grounds when the claimant could go back to work. ("Medical care" does not however, in my judgment, necessarily require to be given by the certifying registered medical practitioner in order to fall within paragraph (i) of regulation 3(1)(a)).

(3) that medical care was in respect of some specific disease or bodily or mental disablement, in terms of the said paragraph (i), namely "low backache and sciatica": see paragraph 4 above.

(4) there were certificates by a registered medical practitioner in terms of paragraph (ii) of the above mentioned regulation, that by reason of such disease or disablement the claimant should abstain from work. Although it is stated in the Report of the National Insurance Advisory Committee on the new Medical Evidence regulations, which was laid before Parliament and was printed on 30 April 1976, (paragraph 7) that

> "... in the draft regulations ... a doctor will no longer be required to certify his opinion about his patient's incapacity for work; he will instead state the advice he gives to his patient about refraining from work because of a specified disorder..."

there is no doubt that, for the purposes of paragraph (ii) of regulation 3(1)(a) of the Unemployment, Sickness and Invalidity Benefit regulations, the doctor does give a certificate. It is specifically described in regulation 2(1) of the new Medical Evidence regulations as a certificate. I have no option but to hold that the doctor who signs a statement in the new form has given a certificate within the meaning of regulation 3(1)(a)(ii). Nor is there any doubt that such certificate is stating that by reason of such disease or disablement the claimant should abstain from work. There is no difference, in the context of this regulation, between the word "refrain" and "abstain"; and it is not necessary to use the exact word, provided that the meaning of the certificate is clear, as it is in this case. The certificate states the doctor's diagnosis of the disorder causing the absence from work so that the requirement that the certificate should state that "by reason of such disease or disablement he should abstain from work" has also been satisfied.

(5) it is not in dispute that the claimant "did no work" during the period in issue and accordingly satisfies paragraph (iii) of regulation 3(1)(a).

17. It remains to be considered whether I have any discretion to refuse to exercise the power conferred on the statutory authorities (in this case the Commissioner) of deeming the claimant to be incapable of work, in the light of my decision that he has satisfied the above mentioned requirements. In this

respect, I accept the submissions and reasoning of Mr Taylor, on behalf of the insurance officer, with the qualification that the statements of principle in R v Mitchell and Padfield v Minister of Agriculture set out in paragraph 13 above are taken from minority judgments. The principles enunciated by Mr Justice Ridley were, however, expressly accepted by Mr Justice Ba[illegible] and the statements of principle made by Lord Morris of Borth-y-Gest are consistent with the majority opinions of the House of Lords.

18. Strictly, "may be deemed incapable of work" can never mean "must" or "shall" be deemed incapable of work; for the word "may" indicates that a power has been conferred on the statutory authorities (in this case the Commissioner): cf Re Baker (1890) 44 Ch D. 262 at page 270, per Lord Justice Cotton. The question that I have to decide is whether the statutory authorities have a duty to exercise this power in cases where a claimant satisfies the conditions to which I have already referred. In resolving this question:

> "It is, however, a well-recognized canon of construction, as Lord Cairns said in Julius v Bishop of Oxford (1880) 5 App Cas. 214, 225, 241, that 'where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised and the court will require it to be exercised'. And Lord Blackburn said: "The enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right" ": see Craies on Statute Law, 7th Edn page 285.

Whether the enabling words conferring a power ought to be construed as imposing a duty, so that it must be exercised, has to be solved from "the context, from the particular provisions, or from the general scope and objects, of the enactment conferring the power" (see Julius v Bishop of Oxford at page 235 per Lord Selborne). As regards context, it would be startling if the statutory authorities were under no duty to exercise their power to deem a claimant incapable of work where a Medical Officer for Environmental Health excludes a person from work on his certificate that the claimant is a carrier, or has been in contact with a case of infectious disease. In such a case, it must have been the intention that once a certificate falling within regulation 3(1)(b) is produced, the statutory authorities (once they are satisfied that the conditions specified in section 14 of the Act have been satisfied) are under a duty to deem the claimant incapable of work. In other words, "may" is, in the case of regulation 3(1)(b), equivalent to "must". It

would be surprising if it were intended that the power of deeming a claimant to be incapable of work, which is conferred by the same words in connection with cases falling within (a) and (b) of regulation 3(1) should impose no duty in case (a), but a duty in case (b). Both paragraphs operate only when a certificate is given by a particular person holding a specified qualification or office. The particular provisions of paragraph (a) lay down conditions which depend on fact i.e. is the claimant under "medical care", is there a certificate in the proper form, has the claimant not worked? The giving of the certificate depends on the judgment of the registered medical practitioner who signs it. If the judgment of the statutory authorities on what would appear to be primarily a medical question, namely whether a claimant should abstain from work, were intended to be substituted for that of the certifying registered medical practitioner, guidance as to the manner in which they should exercise their judgment would be expected:

> "A loose and unfettered discretion is a dangerous weapon to entrust to any court, still more so to a single judge. Its exercise is likely to be the refuge of vagueness in decision and the harbour of half-formed thought. .. This invites public criticism, and shakes public confidence in the justice of the tribunal"

(see Morgan v Morgan (1869) L.R. 1 P. & D. 644 at page 647, per Lord Penzance, and the other quotations to the same effect in Craies, op.cit.pp.273-4). In my judgment, the object of paragraph (a) of the regulation, which has appeared in similar form in all the relevant regulations since 1948, was to enable a claimant to be deemed incapable of work as a matter of right, if he complied with the necessary conditions. In the regulations relating to unemployment and sickness benefit between 1948 (see regulation 3 of the National Insurance (Unemployment and Sickness Benefit) Regulations 1948 [SI 1948 No 1277]) up to and including the National Insurance (Unemployment and Sickness Benefit) Regulations 1967 [SI 1967 No 330], which were in force until the Social Security Act 1975 came into operation, the power to deem a person incapable of work was conferred in the following terms:

> "A person who is not incapable of work shall, if an insurance officer, a local tribunal or the Commissioner, as the case may be, so determines, be deemed to be incapable of work by reason of some specific disease or bodily or mental disablement for any day in which he satisfies the conditions specified in paragraph (a) or paragraph (b) below, namely:"

followed by similar conditions to those set out in the paragraphs now in force. The quoted words show clearly, in my judgment, that the function of the statutory authorities, was to determine whether the claimant satisfied the conditions specified in paragraph (a) or (b) of the regulation. If he did, he had a right to be deemed incapable of work. The effect of regulation 3(1) of the current Unemployment, Sickness and Invalidity Benefit regulations is, in my judgment, the same. Once the necessary conditions set out in paragraph (a) or (b) of the regulation have been satisfied the claimant has a right to be deemed incapable of work. The claimant in the present case has satisfied the conditions of paragraph (a) and is entitled to be so deemed for the period in issue. My decision is set out in paragraph 1 above.

(Signed) V G H Hallett
Commissioner

Date: 10 February 1978

Commissioner's File: C.S. 337/1977
C.I.O. File: I.O. 1173/V/77
Regional File: L.S. (Unregistered Papers)

APPENDIX

Section 17(1) of the Social Security Act 1975 provides:

"17.-(1) For the purposes of any provisions of this Act relating to unemployment benefit, sickness benefit or invalidity benefit-

(a) subject to the provisions of this Act, a day shall not be treated in relation to any person-

(i) ...; or

(ii) as a day of incapacity for work unless on that day he is, or is deemed in accordance with regulations to be, incapable of work by reason of some specific disease or bodily or mental disablement.

("work", in this paragraph, meaning work which the person can reasonably be expected to do);

(b) ...

(c) ...

(d) ...

(e) ..."

Regulation 3(1) of the Unemployment, Sickness and Invalidity Benefit regulations provides:

"Persons deemed to be incapable of work

3.-(1) A person who is not incapable of work may be deemed to be incapable of work by reason of some specific disease or bodily or mental disablement for any day on which either-

(a)(i) he is under medical care in respect of a disease or disablement as aforesaid,

(ii) it is certified by a registered medical practitioner that by reason of such disease or disablement he should abstain from work, and

(iii) he does not work; or

(b) he is excluded from work on the certificate of a Medical Officer for Environmental Health and is under medical observation by reason of his being a carrier, or having been in contact with a case, of infectious disease".

Regulation 2(1) of the new Medical Evidence regulations provides:

"Evidence of incapacity for work and confinement

2(1) Where a person claims any benefit and his entitlement to that benefit depends on his being incapable of work in respect of the day or days to which his claim relates, he shall furnish evidence of such incapacity in respect of that day or days either by means of a certificate in the form of a statement in writing given by a doctor in accordance with the rules set out in Part I of Schedule 1 to these regulations on the form set out in Part II of that Schedule or by such other means as may be sufficient in the circumstances of any particular case.

(2) Every person to whom paragraph (1) applies shall, before he returns to work, furnish evidence of the date on which he will become fit to resume work either in accordance with rule 10 of Part I of Schedule 1 to these regulations or by such other means as may be sufficient in the circumstances of the case."

Rule 10 of Part I of Schedule 1 provides:

"Where, in the doctor's opinion, the claimant will become fit to resume work on a day not later than 2 weeks after the date of the examination on which the doctor's statement is based, the doctor's statement shall specify that day."

Part II of the Schedule, omitting the two boxes at the end of that part, one of which bears the heading "Recommendation for vocational rehabilitation" and the other of which is blank, is as follows:

" PART II

FORM OF DOCTOR'S STATEMENT

DOCTOR'S STATEMENT

In confidence to
Mr./Mrs./Miss .....
I examined you today/yesterday and advised you that:
(a) you need not refrain from work
(b) you should refrain from work for .....
OR until .....

Diagnosis of your disorder
causing absence from work .....
Doctor's remarks

Doctor's signature

Date of signing "

The above mentioned Form of Doctor's Statement replaced the following Form of Certificate which is set out in Part II of Schedule 1 to the old Medical Certification regulations on their revocation by the new Medical Evidence regulations (the footnotes to the form have been omitted)

" PART II

FORM OF CERTIFICATE
MEDICAL CERTIFICATE

In confidence to-
Mr.
Mrs.
Miss ....

I certify that I examined you today / yesterday and that in my opinion

1. you were incapable of work at the time of examination by reason of
.....
.....
and

2.(a) you will be fit to resume work today/tomorrow/on ... next; or
(b) you will remain incapable of work for a period of ...

[Complete 2(a) or (b), whichever is appropriate]

Doctor's signature .....

Date .....

Any other remarks by doctor .....
....."