

JNBP/GSN

SOCIAL SECURITY ACTS 1975 TO 1979

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE NATIONAL INSURANCE COMMISSIONER

Name: Mildred Sherwood (Mrs)

Local Tribunal: Doncaster

Case No: 6/4

1. My decision is that invalidity pension is payable in respect of the period 5 July 1977 to 11 October 1977 (both dates included) but the amount thereof is to be adjusted to take account of unemployment benefit awarded in respect of that period.

2. This is an appeal by the claimant from the decision of a local tribunal dated 10 January 1978 disallowing the claimant's appeal from the decision of the local insurance officer dated 18 July 1977 that invalidity pension was not payable for the above period because the claimant had not proved that she was incapable of work by reason of some specific disease or bodily or mental disablement.

3. In her submission dated 9 May 1978 the insurance officer now concerned with the case supported the client's appeal on the ground that, applying the principles laid down in Decision C.S. 1/78 (now reported as R(S) 1/79) the claimant was entitled, under the provisions of regulation 3(1)(a) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975, to be deemed to have been incapable of work during the period in issue and hence to have her claim allowed. However, before the appeal could be considered the Divisional Court made an order of Certiorari quashing Decision R(S) 1/79 and subsequently a Tribunal of Commissioners gave Decision R(S) 2/79 laying down the principles applicable to the deeming of incapacity under regulation 3(1)(a) in the light of the judgments of the Divisional Court. The result is that if it were necessary to consider the question of deeming the submission by the insurance officer based on Decision R(S) 1/79 would no longer be valid. In fact, however, it is unnecessary for me to consider the question of deeming any further because, as will appear, I have reached the conclusion that the claimant has proved that she was incapable of work during the period in issue.

4. It has not at any stage been suggested by the insurance officer that the claimant was capable of her former work as an assembler but the local insurance officer and local tribunal, rightly in my view having regard to the length of time for which the claimant's disability had lasted, considered the question of her incapacity for work in relation to a field of employment enlarged to include work of any type

which she would reasonably be expected to do. On the evidence before them the local tribunal decided that the claimant had not proved that she was incapable of all work and I do not consider that their decision can be criticised.

5. However, following the submission by the insurance officer now concerned with the case, the claimant produced a report dated 26 May 1978 by Mr Clifford Jones, a consultant surgeon. In the report Mr Jones, after describing the nature and extent of the claimant's disability, expressed the opinion that she was very severely handicapped and could carry out only highly selected duties and went on to say that in his view she was virtually unemployable. The local tribunal referred in their decision to the lack of any positive evidence produced by the claimant refuting the reports by the two medical officers of the Department of Health and Social Security to the effect that the claimant was capable of work within certain limits. It appears to me that Mr Jones' report, if it had been available to the local tribunal, would have filled the gap and led them to a different conclusion. In any event I myself consider that it outweighs the other medical evidence and justifies the conclusion that the claimant has proved incapacity.

6. For the foregoing reasons I allow the appeal and my decision is as set forth in paragraph 1 above.

(Signed) J N B Penny  
Commissioner

Date: 25 April 1980

Commissioner's File: C.S. 341/1978  
C I O File: I.O. 1538/V/78  
Region: Yorkshire and Humberside