

C S 721/1981

JSW/OG

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision C.S. 3/82

1. My decision is that neither sickness benefit nor invalidity benefit is payable to the claimant for the inclusive periods 25 February 1975 to 10 December 1975, for 28 July 1976 and 21 September 1978 to 4 February 1980 because he has not proved that he was incapable of work by reason of some specific disease or bodily or mental disablement as was provided by the former statutory provisions referred to in the insurance officer's written submission to the Commissioner and now section 17(1)(a)(ii) of the Social Security Act 1975.

2. The claimant, now aged 56, resides in Italy. He was insured under the legislation of the United Kingdom from 31 May 1948 to 4 July 1948 and from 10 January 1952 to 22 December 1963. Details are sparse as to the nature of the claimant's employment, part of which appears to have been in paper mills and paint works. That appears to have been in insurable employment and I accept that he is a 'worker' as defined in Article 1(a) of Regulation (EEC) No 1408/71. It appears that he has also been insured under the legislations of Belgium and Italy. If he had proved that he was incapable of work, it might have been necessary to refer to the Secretary of State for Social Services the question as to whether the contribution conditions for benefit were satisfied.

3. Leaving aside any issue as to contribution conditions, I am satisfied that the insurance officer, in his written submission to the Commissioner, has referred to the relevant EEC regulations and has correctly stated their effect, except as regards the terminal date of the first period, 25 February 1975 to 10 December 1975. The insurance officer gave a decision for that period terminating on the latter date, which was the date of his decision. In the submission to the Commissioner, the insurance officer dealing with the appeal has submitted that the claimant has not submitted claims for benefit to the United Kingdom authorities during the period 7 November 1975 to 10 December 1975. He contends that form E204, which shows that a claim for an invalidity pension was submitted by the claimant on 25 February 1975, which was completed by the Italian authorities and

Decision C.S. 3/82

dated 7 November 1975, should be treated as terminating on that date, there being no document which constitutes a claim covering a later date. He has submitted that the decision of the local tribunal for the first period should have been from 25 February 1975 to 7 November 1975 and that that is the first period in issue before the Commissioner.

4. I do not agree with that submission. In my opinion, the insurance officer rightly treated the claim for benefit as continuing to run to and including the date on which he gave his decision. It is perhaps unnecessary to add that it cannot be treated as a claim for a period beyond that on which a decision is given, unless indeed there is a claim beyond that date as in the second period which was referred by the insurance officer to the local tribunal for their decision. In Balsamo v Institut National D'Assurance Maladie-Invalidite, case 108/75 [1976] 1ECR375 it was decided by the European Court of Justice that it is not necessary to make a new claim in another Member State even if, at the time of making the claim, a worker does not yet satisfy all the fundamental conditions required by the legislation of the other Member State for a grant of the benefit. The only claim for benefit that need be made is in the country of permanent residence.

In their judgment the Court stated at page 382 -

"10. For the same purposes Articles 31 to 34 govern the manner in which the institution of the place of permanent residence deals with the file on the application, confirms the accuracy of the information provided by the person concerned, and then sends a form giving the information necessary for proving the rights of the said person concerned to the competent institutions of the other Member States in which insurance periods have been completed, the transmission of this form being equivalent to transmission of supporting documents.

11. It follows from these provisions that all the conditions of form concerning the making of an application, in respect of all the Member States in which periods of insurance or assimilated periods have been completed, are satisfied as soon as the application is properly made in accordance with the procedure laid down by the legislation of the country of permanent residence."

and continued at page 383 -

"15. It is necessary therefore to reply that when a migrant worker has made a claim for invalidity benefits to the institution of the place of his permanent residence and in accordance with the procedure specified by the legislation of the said place, he has no need to make a new claim in another Member State even if at the time of the making of his claim he did not yet satisfy all the fundamental conditions required by the legislation of the second State for the grant of the benefit."

Although the Court was dealing with different Articles and with Article 36(1) of Regulation (EEC) No 574/72, the provisions for making a claim are similar and the principle applies. It was applied in the decision on Commissioners' file C.S. 102/1977 and in Decision C.S. 22/81.

5. The single day, 28 July 1976, is covered by a medical certificate of that date and the further period 21 September 1978 to 4 February 1980 is covered as regards a claim by a further form E204, dated 4 February 1980.

6. In view of the dates of claims and the changes in the United Kingdom legislation, the insurance officer dealing with the appeal has correctly referred to the appropriate statutory provisions applicable to the dates of claims. Since the current provisions relevant to the claims and their effect are similar in all relevant respects to the former provisions, I do not propose to reiterate the insurance officer's careful submission on the subject. I also find it unnecessary, in view of my decision that incapacity for work has not been proved, to decide whether and when sickness benefit or invalidity benefit is the appropriate benefit.

7. I am satisfied that the matter is correctly within the jurisdiction of the appropriate adjudicating authorities of the United Kingdom. The issue in the appeal is whether the claimant has shown that he was incapable of work by reason of some specific disease or bodily or mental disablement. In a medical report, dated 31 July 1975, the claimant's condition was described (translated) as suffering from cervical rachialgia and limitation of bilateral movements of the head. In other respects his condition appears to have been normal for a man of his age and, in the doctor's opinion, he was not disabled and was capable of performing an occupation other than that last performed. On 23 June 1976, a claim under Italian insurance for a pension was rejected on the ground that medical examination had found the claimant not to be invalid according to law as no illness had appeared that might cause a permanent reduction to less than 50 per cent of the claimant's earning capacity in occupations suitable to his aptitudes. I am not aware whether there was an appeal against the Italian decision. In a medical report, dated 20 January 1979, the doctor was of the opinion that the claimant was not disabled or not invalid, considered him capable of following an occupation other than his previous one and remarked that the claimant's general condition was good and that he was then working. A medical certificate of 28 July 1976 described his occupation as watchman, having previously been a labourer. The diagnosis was stated (translated) as "Intense oppressive cephalgia diffused chronic polyarthrititis; varicocele of fair entity, chronic bronchitis". The claimant, in his letter of 15 June 1980, describes his job as watchman as a "chair-ridden" one and qualified as a third class job.

8. I take account of the differences in regard to the terms of invalidity and disability between the United Kingdom and Italian systems. The United Kingdom system does not assess percentages of invalidity or incapacity for the purposes of sickness benefit or invalidity benefit. The test is whether a claimant is incapable of work; "work" in that connection meaning work which the person can reasonably be expected to do. The insurance officer has cited, in paragraphs 11 and 12 of the written submission, from Commissioners' decisions which I need not repeat.

9. The claimant's representative at the hearing of his appeal by the local tribunal said that the claimant was working and had been working for a few years living on the premises where he works. The representative did not know when the claimant started to be a watchman on his

Decision C.S. 3/82

return to Italy. A watchman living on the premises in Italy probably has a similar role to that of a security guard in England or, if the premises are residential, as a caretaker in charge of the premises. Whatever his role might be, and having regard to the medical conditions described, I find, on a balance of probability, that he has not proved that he was incapable of all work during the dates in issue.

10. I agree with the insurance officer's submission to the Commissioner that the certificate of the Mayor of Comune di Torre del Greco that the claimant is registered as of the poor does not assist his claim. The certificate is dated 23 May 1973. I also agree that the copy of the findings of the Provincial Health Commission of Naples, at an examination on 28 November 1972, when he was found to be suffering from chronic polyarthritis and varicocele and assessed as having an invalidity of 35 per cent, do not assist this appeal; whilst that is part of his medical history, it does not signify that he was incapable of work during the dates covered by this appeal. In the summary of facts for the local tribunal, paragraph 4, it appears that a number of requests made to the Italian institutions to provide a further medical examination report on the claimant's capacity for work have been of no avail.

11. Having considered the evidence in detail and the claimant's grounds of appeal and statements, I find no valid ground for disagreeing with the unanimous decision of the local tribunal.

12. The claimant's appeal is dismissed.

(Signed) J S Watson
Commissioner

Date: 23 March 1982

Commissioner's File: C.S. 721/1981
C I O File: I.O. 8373/V/80
Region: Overseas Group, Newcastle-upon-Tyne