

CS 741/1981

NOTE TO ACCOMPANY DECISION ON FILE C.S. 741/1981

I have starred this decision with considerable diffidence. It says almost nothing that has not been said many times before in respect of failure by LT's adequately to complete form LT3. The issue is, however, more pressing than it used to be. Before November 1980 one had to write a "speaking" decision in every case which came up from the LT. It was generally little more trouble to decide the whole matter de novo than to send the case back with a lecture on correct procedure. Now, however, we ought to be writing "speaking" decisions only in cases which have some kick in them. If the LT3 is inadequately completed, it is often impossible to know (on the application for leave) whether there is or is not any kick. The claimant is then (I imagine) entitled to his leave - and, unless the Commissioner remits the matter for rehearing, a full-scale appeal must ensue. This time-consuming exercise is inflicted upon us by reason solely of the shortcomings of certain chairmen. It may concentrate their minds if they are warned clearly that in future their shortcomings will rebound upon their colleagues (who may well be moved to wholesome expostulation). I appreciate that my decision is directed almost solely at chairmen. As I understand the starring system, however, it will not be seen by chairmen unless it is reported.

J Mitchell

JM/BP

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's appeal, brought by my leave, against a decision of the local tribunal dated 12 August 1981 which confirmed a decision of the insurance officer dated 3 April 1981 and determined unfavourably to the claimant a reference by the insurance officer. In view of the course which I have decided to take, I say as little as possible about the facts and merits of the case.

2. The claimant was at the material time a self-employed professional golfer. Since 21 January 1976 he had been continuously in receipt of sickness benefit, followed by invalidity benefit. The main certified cause of incapacity was depression. In 1978 he reported to the Department of Health and Social Security that he had, with his doctor's approval and as a part of his rehabilitative treatment, returned to part time work. The insurance officer accepted that the claimant remained incapable of work except, of course, in respect of the days upon which he worked and earned more than the permitted maximum. (Section 17(1)(a)(ii) of the Social Security Act 1975 and regulation 3(3) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 [S.I. 1975 No. 564], as amended by regulation 2 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Amendment (No. 3) Regulations 1979 [S.I. 1979 No. 1299]). This situation continued down to 3 April 1981, when the insurance officer decided that, with effect from 22 March 1981, the claimant was no longer incapable of work by reason of some specific disease or bodily or mental disablement.

3. The claimant appealed to the local tribunal. He appeared thereat and gave evidence thereto. The documentary evidence included the accounts of a business in which the claimant was a partner and a series of forms Med 3 signed by the claimant's doctor. There was no other medical evidence relating to the periods in issue. Forms Med 3 are not, of course, conclusive of incapacity. If, however, their tenor is to be overridden by the appellate authorities, the claimant is entitled to be informed of the grounds upon which this course has been adopted.

4. The reverse of the relevant form LT3 was completed as follows:

"Findings of tribunal on questions of fact material to decision

- (a) For the period 22 3 81 to 7 4 81 (both dates included) the claimant has not proved that he was incapable of work by reason of some specific disease or bodily or mental disablement.
- (b) For the period 8 4 81 to 9 7 81 (both dates included) the claimant has not proved that he was incapable of work by reason of some specific disease or bodily or mental disablement.

Full text of unanimous decision on the Appeal/Reference

- Appeal Dismissed: (a) Invalidity Pension is not payable from 22 3 81 to 7 4 81 (both dates included).
- (b) Invalidity Pension is not payable from 8 4 81 to 9 7 81 (both dates included).

Grounds of decision (including reported decisions of the Commissioner considered by tribunal)

R(S) 11/51 R(S) 8/55 R(S) 2/61 R(S) 4/79"

This is lamentable. It is of no more use to the claimant than would have been the bare statement that his appeal had been disallowed. Not one finding of fact is recorded. (The entries in the relevant box are conclusions.) The grounds contain no word of English. To an unrepresented claimant they are little more than algebra.

5. Regulation 12(2)(b) of the Social Security (Determination of Claims and Questions) Regulations 1975 [S.I. 1975 No 558] is explicit:

"(2) A local tribunal shall -

- (a)
- (b) include in the record of every decision a statement of the grounds of such decision and of their findings on questions of fact material thereto; and
- (c)"

The Commissioners have been equally explicit. In Decision R(U) 3/80 the then Chief Commissioner said:

"The regulation [ie the aforesaid regulation 12(2)(b)] does no more than reproduce similar provisions made by its predecessors, on which the Commissioners for years have spelled out, in simple terms and unambiguous language, the obligation of local tribunals to comply with this duty. They have emphasised at length in reported decisions the reasons why the obligation is imposed, pointing to such elementary considerations as that a claimant

ought to be able to see why he has failed, and that those concerned in the event of an appeal to the Commissioner should not be left to guess - as I am now - about the facts found to be material to the decision." (Paragraph 3)

6. It is well-established that when a local tribunal fails to comply with regulation 12(2)(b) its decision may be set aside by the Commissioner. It is equally well-established that the Commissioner may then proceed in either of two ways. He may himself determine the case in the light of the evidence and submissions before him; or he may remit the case for rehearing to a differently constituted local tribunal. In the past, considerations of time and convenience have generally moved the Commissioner to adopt the first of these courses. But times have changed. Since 24 November 1980 appeals to the Commissioner from unanimous decisions of local tribunals lie only by leave - either of the chairman of the local tribunal or of the Commissioner himself. Parliament has effectively up-graded the status of appeals to the local tribunal. They can no longer be regarded, by any of the parties thereto, as preliminary canters which, if unsuccessful, can always be re-run before the Commissioner. In many cases they will be the final determination available to the parties. It is, accordingly, more important than ever that they should be conducted in compliance with the regulations. Moreover, there is another side to the coin. The new appellate procedure is intended, inter alia, to relieve the Commissioners of the time-consuming and costly burden of entertaining appeals in which there is no live issue of either fact or law. It is manifestly inconsistent with this intention that the Commissioner should have to conduct a full-scale hearing before he can ascertain whether there are any merits in the relevant appeal.

7. I am in no way to be taken as suggesting that there will not in future be cases where, despite the local tribunal's failure to comply with regulation 12(2)(b), the Commissioner will elect to determine the substantive appeal itself. Each case will turn upon considerations particular thereto. The case now before me, however, is one which I could not satisfactorily determine without an oral hearing. It is in such cases that local tribunals must be prepared to find that the Commissioner will be more reluctant than of yore to embark upon the spade-work which the tribunal has left undone.

8. My decision, accordingly, is as follows:

- (1) The claimant's appeal is allowed.
- (2) The decision of the local tribunal dated 12 August 1981 is set aside.
- (3) The claimant's appeal from the insurance officer's decision dated 3 April 1981 and the insurance officer's reference set out in box 1 of the form IT2 in the papers are remitted for rehearing by a local tribunal which must be (as to each of its members) constituted differently from the local tribunal which gave the decision referred to in subparagraph (2) above.

9. I have three comments to add:

- (1) Upon the rehearing either party may, of course, adduce such further evidence and advance such further arguments as may be deemed fit.
- (2) In effect, this was an uncontested appeal. With characteristic detachment, the insurance officer now concerned supported the course which I have adopted.
- (3) The papers contain forms Med 3 and the insurance officer's (unfavourable) decisions in respect thereof relating to periods subsequent to those which were before the local tribunal. The claimant may be minded to apply for an extension of the time for appealing to the local tribunal against those decisions - and the chairman may find that there is good cause for granting such application. Should that happen, it will obviously be in everybody's interests that the consequent appeals should be heard at the rehearing referred to in paragraph 8(3) above.

(Signed) J Mitchell
Commissioner

Date 27 September 1982

Commissioner's file: C.S. 741/1981
C I O File: I.O. 8110/V/82
Region: London South