

CS 861/1981

JM/BOS

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR SICKNESS BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision C.S. 6/82

1. This is a claimant's appeal, brought by leave of the chairman of the local tribunal, against a decision of the local tribunal dated 27 July 1981 which confirmed a decision of the insurance officer dated 3 June 1981. My decision is that the claim for sickness benefit for the period 23 May 1981 to 1 June 1981 (both dates included) is disallowed because the claimant has not proved that he was at any time during that period incapable of work by reason of some specific disease or bodily or mental disablement.

2. The claimant is a coal miner, now aged 45. He has an enormously long record of claims for incapacity, many of them in respect of relatively short periods and relatively mild complaints. The local insurance officer has produced a table showing that in the two years immediately preceding the events with which this appeal is directly concerned the claimant made some 11 claims, all but one of which were in respect of periods of less than a fortnight. Typical diagnoses were gastritis, URI, vertigo and dyspepsia. At least 9 of these claims embraced periods in which the claimant would not normally have been working, whether by reason of annual holidays or otherwise. Four of the claims were disallowed. The claimant must have been well aware that his claims were being (with every justification) examined critically.

3. On 28 May 1981 the claimant made a claim for sickness benefit from 23 May to 1 June 1981 (both dates included). The relevant form MED 3 had been signed by the claimant's doctor on 26 May 1981. It recorded that the claimant had been advised to refrain from work until 1 June 1981 by reason of "respiratory infection". (The claimant returned to work at 10 00 pm on Monday, 1 June 1981.) The insurance officer disallowed the claim and the claimant appealed to the local tribunal. In the circumstances of this case it is desirable that I quote the grounds of appeal in full:

"To have stopped my sick pay, because I have not proved incapacity for work owing to some specific disease. When I saw my doctor he gave me a Club note stating that I was unfit for work, he gave me a nasal spray, and some tablets there was some bad infection, which was stated on the doctor's note. It just does not make sense to have had the sick pay stopped. I have a lot

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of pain with my nose, and I seem to get infection quite easy. I am also under Dr S a specialist at Hospital. And am waiting to go in Hospital for an operation when they send for me." (The specialist and the two hospitals were identified by the claimant.)

4. The claimant did not attend the local tribunal hearing; nor did he submit any medical evidence either by way of amplification of the aforesaid laconic form MED 3 or by way of corroboration of what he had said in his grounds of appeal. Unanimously the local tribunal disallowed his appeal. Quite justifiably it attached significance to his record of previous claims and the incidence of such claims at or around holiday periods.

5. The claimant applied for leave to appeal to the Commissioner. In support of that application he elaborated upon the information in respect of his health which he had set out in his grounds of appeal to the local tribunal. Again, however, no supporting medical evidence was submitted. The chairman of the local tribunal granted leave to appeal to the Commissioner.

6. At this point I break off to make certain comments of general application. It is now well over a year since Parliament provided that appeals from unanimous decisions of the local tribunal should be subject to the granting of leave either by the chairman of the local tribunal or by the Commissioner. The time has come when claimants, and indeed insurance officers, must recognise the full import of this change in the procedure. It is my clear impression that in the past the parties' preparation for appeals to the local tribunal was frequently scanty. It was known that as of right there could be another bite at the cherry before the Commissioner. A party could take his chance before the local tribunal in the confident knowledge that if he should there fail he would have an opportunity of assembling further and better evidence in support of his appeal to the Commissioner. It has certainly been my own experience that a substantial number of appeals under the old system succeeded because there was laid before the Commissioner evidence which could have been, but was not, laid before the local tribunal. Parties are not in safety to assume that this is still the position. Parliament has made it quite clear that the principal battle ground is the local tribunal. Save where the local tribunal is not unanimous, it is only by leave that the battle can be rejoined before the Commissioner. I make no attempt here to prescribe criteria by which applications for leave to appeal should be allowed or disallowed. It is probably undesirable that any such attempt should be made. I say this, however: claimants who do not trouble to appear in person, or by representative, before the local tribunal and/or who seek to lay before the Commissioner evidence which they could quite easily have laid, but did not lay, before the local tribunal must be prepared to find that their applications for leave to appeal to the Commissioner are refused.

7. I return to the appeal in hand. It is really of no avail to the claimant for him to set out details of what he alleges to be his medical condition without furnishing a single line of expert corroboration. Nor am I assisted by the fact that in August 1981 the claimant was paid sickness benefit against forms MED 3 diagnosing nasal obstruction.

From the evidential point of view the case stands before me very much as it stood when before the local tribunal. I can see no good reason for interfering with the unanimous decision of the local tribunal. The claimant has done nothing effective to undermine the overwhelming inference to be drawn from his recent record of claims. He has failed to satisfy me that he was during the relevant period incapable of work.

8. The claimant's appeal is, accordingly, disallowed.

(Signed) J Mitchell
Commissioner

Date: 15 April 1982

Commissioner's file: C.S. 861/1981
C I O File: I.O. 8338/S/81
Region: East Midlands and East Anglia