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Commissioner's File: CS/7387/95*

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: G K

Social Security Appeal Tribunal: Sheffield

Case No: 1/10/94/05889

[ORAL HEARING]

1. The decision of the social security appeal tribunal dated 10 May 1995 is erroneous in law. I set that decision aside and as empowered by section 23(7)(a)(ii) of the Social Security Administration Act 1992 and in the light of my own findings in fact, I give the decision which I consider appropriate which is that the adjudication officer is directed to determine the question of the claimant's entitlement to invalidity benefit for the period from 18 September 1990 to 22 November 1993 (both dates included) insofar as he has not already done so.

2. The claimant appeals, with the leave of the chairman and the support of the adjudication officer now concerned, against the tribunal's decision that the adjudication officer is not required to give a decision on the claimant's entitlement to invalidity benefit for the period from 18 September 1990 to 8 May 1991 as that question had been determined by the decision of a social security appeal tribunal dated 8 May 1991.

3. The claimant was awarded invalidity benefit from and including 4 October 1988. The award was for an indefinite period in terms of regulation 17(1) of the Social Security (Claims & Payments) Regulation 1987. On 16 November 1990 an adjudication officer, in the light of information that the claimant had been seen working, decided that the awarding decision fell to be reviewed as required by regulation 17(4) of the Claims & Payments Regulations on the grounds that the requirement for entitlement that the claimant be incapable of

work was no longer satisfied and terminated the award with effect from 17 September 1990. The claimant continued to submit to the local office of the Social Security Department forms Med 3 on which his doctor advised that he should refrain from work. He also submitted a letter from his doctor in which the doctor stated his opinion that, although the claimant might be able to do work on some days, in general he was not fit to work and would not be able to hold down an employment. The claimant appealed against the adjudication officer's decision. On 8 May 1991 a social security appeal tribunal dismissed the claimant's appeal and confirmed the adjudication officer's review decision. The claimant appealed to a Social Security Commissioner and on 22 November 1993 that appeal was dismissed. On 28 January 1994, by a letter from his representative, the claimant requested an adjudication officer's decision on his claim for invalidity benefit for the period from 18 September 1990 as constituted by the forms Med 3 which the claimant had submitted immediately before the date of disallowance and on subsequent dates. The adjudication officer decided that he could not determine entitlement in respect of the period from 18 September 1990 to 22 November 1993 because entitlement for that period had been decided by the Commissioner's decision of 22 November 1993. The claimant appealed that determination of the adjudication officer to the social security appeal tribunal which gave the decision now under appeal to me.

4. I heard the appeal on 14 January 1997. The claimant was not present but was represented by Mr R.J. Bowles of the Sheffield Co-ordinating Centre Against Unemployment. The adjudication officer was represented by Mr Sriskandarajah of the Solicitor's Office, Department of Social Security. I am obliged to both Mr Bowles and Mr Sriskandarajah for their submissions.

5. By the time of the tribunal hearing on 10 May 1995 the adjudication officer had modified his position and took the view that the tribunal of 8 May 1991 had dealt with the question of the claimant's entitlement to invalidity benefit for the period from 18 September 1990 to 8 May 1991 but not for the period from 9 May 1991 to 22 November 1993 (the date of the Commissioner's dismissal of the appeal against that tribunal's decision). The claimant's grounds of appeal to me, as originally stated, were that the tribunal of 10 May 1995 erred in law in deciding that the earlier tribunal had determined the question of entitlement for any period after 8 May 1991.

6. At the hearing before me Mr Sriskandarajah conceded that the evidence before the tribunal of 10 May 1995 was not a valid basis for that tribunal's finding in fact that the earlier tribunal had considered the question of entitlement for any period after 8 May 1991 and that its decision was therefore erroneous in law. Having seen that evidence in the

file I accept that Mr Sriskandarajah's concession is correctly made and that the tribunal's decision has to be set aside.

7. The adjudication officer and Mr Bowles have made substantial written submissions on the question of whether or not an appeal tribunal which confirms an adjudication officer's review decision terminating an award of benefit is required to consider the claimant's entitlement to that benefit from the date of that termination to the date of its own hearing. Mr Bowles amplified his written submissions orally at the hearing. It is out of no disrespect for those detailed submissions that I shall deal briefly with that question of law. To my mind this case turns on its own facts and as it is almost three years since the claimant asked for an adjudication officer's determination in respect of the period from 18 September 1990 I think that the matter should now be dealt with expeditiously. ]

8. By the time of my hearing the adjudication officer's position, as put to me by Mr Sriskandarajah, was that there were conflicting views as to the question in issue. In a written submission produced to me at the hearing he summarised the authorities for and against the "down to date of decision approach". The essence of that summary is that, apart from the Commissioner who decided CS/879/95, all of the Commissioners, including Tribunals of Commissioners, who have considered this question have decided that the appeal tribunal must deal with the question of entitlement from the date of claim until the date of its own decision. Most of those decisions concerned entitlement to income support whereas CS/879/95 concerned a termination of an award of invalidity benefit on review and took account of the requirement for a written claim in respect of each period of purported entitlement. However, CS/879/95 ran counter to the line of authorities and the difficulty about the need for a claim is met by the concept of their being an ongoing claim which is not finally disposed of until any appeal has been determined.

9. Mr Bowles' argument was substantially the same. He cited CIS/030/93 for the proposition, specifically rejected by the author of CS/879/1995, that there is no difference between an appeal against a refusal to award benefit on a claim and an appeal against a review decision terminating an existing award of benefit and that in both cases there is a continuing claim in respect of the period between the adjudication officer's decision and the tribunal's hearing with which claim the tribunal must deal. He also cited CSIS/137/94 in support of his argument.

10. In my view CS/879/1995 correctly decided the question with which it dealt and did not run counter to the trend of other Commissioner's decisions, apart from CIS/030/93. The appeal tribunal practice of regarding a claim in respect of an indefinite period as continuing to the date of the

determination of an appeal against the adjudication officer's decision stems from the accepted concept of the appeal being a reconsideration, in the light of the information available to the tribunal at the date of its hearing, of the adjudication officer's disposal of the claim: but when a claim has been disposed of by an award of benefit it is no longer extant and does not revive when the claimant appeals against an adjudication officer's review decision terminating the award. Therefore, if an appeal tribunal confirms an adjudication officer's termination of an award it has accepted that from the date of termination there is no longer entitlement under the originating claim. There can thus be no appeal tribunal jurisdiction until a new claim has been made and has been determined by an adjudication officer.

11. I think that my view of this is in accordance with paragraphs 5 to 10 of CSIS/137/94 and paragraph 47(2) and (3) of the Appendix to that decision. Sub paragraph (5) of paragraph 47 refers to the desirability of a tribunal, when overturning an incorrect review decision, dealing with the need for any later review of the awarding decision down to the date of the tribunal's own decision. I do not regard that as suggesting that when the tribunal has terminated an award it should, despite the lack of any written claim accepted by the Secretary of State in respect of a period subsequent to the date of termination, consider the claimant's entitlement to benefit in that subsequent period on the basis of a notional claim.

12. I, therefore, do not accept Mr Sriskandarajah's and Mr Bowles' arguments as to a tribunal's obligation to consider the claimant's entitlement to benefit in a period post-dating the date of termination of an award of benefit in respect of which period the claimant has made no fresh claim. However, the factual point on which the claimant's appeal turns in this case is that the adjudication officer who on 23 March 1994 declined to adjudicate on the claim in respect of the period 18 September 1990 to 22 November 1993 must have had before him the claim on which he declined to adjudicate and the claim must have come to the adjudication officer from the Secretary of State. I am, therefore, satisfied that the Secretary of State had accepted as a claim the Forms Med 3 which the claimant continued to submit and referred that claim to the adjudication officer. The adjudication officer's determination of 23 March 1994 that he could not adjudicate upon that claim because it had already been determined by the Commissioner on 22 November 1993 was wrong because the Commissioner merely confirmed the decision of the tribunal of 8 May 1991, which upheld the adjudication officer's termination of benefit with effect from 17 September 1990. The claim should now be adjudicated upon by an adjudication officer except insofar as an adjudication officer has already done so (the period from 8 May 1991 to 22 November 1993 may by now have been the subject of adjudication).

13. For the foregoing reasons the claimant's appeal to me succeeds and my decision and direction are in paragraph 1 above.

(Signed) R J C Angus  
Commissioner

(Date)

**28 FEB 1997**

mw

Commissioner's File: CS/7387/95

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY (COMMISSIONERS PROCEDURE) REGULATIONS 1987  
REGULATION 24

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL  
TRIBUNAL/MEDICAL APPEAL TRIBUNAL/DISABILITY APPEAL TRIBUNAL ON  
A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER - CORRECTION

Name: Mr Gordon Tooze

Social Security Appeal Tribunal/Medical Appeal Tribunal/  
Disability Appeal Tribunal:

Case No: 1-10-94-05889

[ORAL HEARING]

PARAGRAPH 4 LINE 3

DELETE: "SHEFFIELD CO-ORDINATING  
CENTRE AGAINST UNEMPLOYMENT"

INSERT: "SHEFFIELD CITY COUNCIL,  
FAMILY AND COMMUNITY  
SERVICES DEPARTMENT"

(Signed) R J C ANGUS  
Commissioner

(Date) 1 April 1997