

INDUSTRIAL INJURIES BENEFIT

**Special Hardship Allowance—
medical opinion not a material fact enabling review**

The insurance officer, in the face of a medical board's opinion that the claimant was incapable of following his regular occupation, but that the relevant loss of faculty made no material contribution to such incapacity as his disability was due to constitutional causes, awarded the claimant a special hardship allowance. The claimant was shortly afterwards examined by a medical consultant, whose opinion corresponded to that of the medical board. The insurance officer thereupon purported to review his earlier award and to decide that special hardship allowance was not payable.

Held—

1. that medical opinion does not conclusively establish the fact of capacity or incapacity; it is for the statutory authorities to draw an inference of fact from the evidence before them (para 8);
2. that section 72(1)(a) of the N I Act 1965 does not authorise a review of a decision founded on such an inference merely because the insurance officer is satisfied that in the light of the evidence before the determining authority the inference was faulty or mistaken. He must go further and assert and prove that the inference might not have been drawn, or that a different inference might have been drawn, if the determining authority had not been ignorant of some specific fact of which it could have been aware, or had not been mistaken as to some specific fact which it took into consideration (para 9).

1. My decision is:—

- (i) that the insurance officer's decision dated 17th January 1974 (whereby special hardship allowance was awarded to the claimant from 30th January 1974 to 28th January 1975) may not be reviewed; and that the same is restored and confirmed;
- (ii) that the insurance officer's decision dated 20th March 1974 (whereby on purporting to review the above decision he decided that special hardship allowance was not payable from 20th March 1974 to 28th January 1975) is set aside;
- (iii) that the local tribunal's decision dated 16th September 1974 (whereby the claimant's appeal from the insurance officer's decision dated 20th March 1974 was dismissed) is set aside.

2. The claimant was a ripper in a coal mine. He suffered injury to his right knee as a result of an industrial accident on 27th February 1970. In connection with a claim to disablement benefit a medical board in July 1970 assessed disablement at 3 per cent net from 28th August 1970 for the residue of his life, after "offsetting" 10 per cent which they attributed to pre-existing osteoarthritis. By virtue of successive decisions special hardship allowance at the maximum statutory rate was awarded and paid from 2nd September 1970 to 29th January 1974.

3. Following a claim for a further award from 30th January 1974, the claimant was examined by an advisory medical board on 19th December 1973. The board considered that he was then incapable of following his regular occupation, but that the relevant loss of faculty made no material contribution to such incapacity. They expressed the view that his disability was due to progressive osteoarthritic change in both knees.

4. On 17th January 1974 the insurance officer gave the decision referred to in paragraph 1(i) above, whereby special hardship allowance was awarded from 30th January 1974 to 28th January 1975. Shortly afterwards he seems to have had second thoughts, and caused the claimant to be examined by an orthopaedic consultant. The consultant's advice, given on 11th March 1974, was similar to that of the medical board of 19th December 1973.

5. On 20th March 1974 the insurance officer, on a review of his decision of 17th January 1974, gave the revised decision referred to in paragraph 1(ii) above. The claimant appealed to the local tribunal. In support of his decision the insurance officer relied on section 72(1) (a) of the National Insurance Act 1965, and submitted "that in the light of the information contained in the reports of the medical board dated 19.12.73 and the consultant dated 11.3.74, the insurance officer was entitled to review the decision awarding special hardship allowance for the period from 30.1.74 to 28.1.75 on the grounds that this decision was given in ignorance of a material fact namely that the claimant's incapacity for his regular occupation does not result from the relevant loss of faculty". The local tribunal dismissed the claimant's appeal on the ground that his injury made no material contribution to his incapacity. They did not specifically deal with the question of review.

6. In my judgment the insurance officer was not entitled to review the decision of 17th January 1974. It seems to me that his submission to the local tribunal was based on a misconception of the scope of section 72(1)(a), and that it also involved some misunderstanding of the role of the statutory authorities in adjudicating on a claim for special hardship allowance. As Mr. Owen George pointed out in paragraph 10 of Decision R(I) 2/65, the statutory authorities, on considering such claim, have to determine whether or not the conditions for an award are satisfied, and this involves determining among other questions whether the claimant is as a result of the relevant loss of faculty incapable of following his regular occupation (see section 14(1) of the National Insurance (Industrial Injuries) Act 1965). "These questions" said Mr. Owen George "have to be decided by the statutory authorities and they necessarily involve a careful examination of the actual physical effects upon the beneficiary of the relevant loss of faculty at the time for which the increase of disablement benefit is claimed. Evidence, both medical and general, showing what those effects are, is in my judgment not only admissible but indispensable to enable the statutory authorities to fulfil their jurisdiction . . .".

Mr. Owen George's observations were cited with approval by Lord Parker, C. J. in *Regina v. Industrial Injuries Commissioner, Ex parte Ward* [1965] 2 Q.B. 112 at page 128.

7. In the present case there was a considerable volume of evidence both of fact and opinion before the insurance officer. There was evidence as to the nature of the claimant's injury and as to the condition found by the medical authorities to constitute the relevant loss of faculty. There was fairly elaborate evidence contained in the findings of the medical board of 19th December 1973 as to the claimant's physical condition at that date. And finally there was the opinion of the two doctors constituting that board to the effect that the relevant loss of faculty made no material contribution to the claimant's incapacity.

8. The processes by which insurance officers arrive at their conclusions

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necessarily sometimes fall short of the ideal. But that must not be allowed to obscure the fact that the question whether the conditions for an award of special hardship allowance are satisfied is for decision by the statutory authorities. A doctor's opinion that as a result of the relevant loss of faculty the claimant is, or is not, incapable of following his regular occupation does not conclusively establish the fact of capacity or incapacity. It is for the statutory authorities, including the insurance officer, to draw an inference of fact from the evidence before them. Having drawn such an inference, an insurance officer cannot, merely because he subsequently changes his mind, say that he was ignorant of the fact that he now thinks he ought to have inferred.

9. The insurance officer does not contend that his original decision was based on a mistake of fact. This would have been a more understandable, though still an unacceptable contention. It would be inappropriate for me in this decision to try to lay down what constitutes a mistake of fact for the purpose of section 72(1) (a), but one or two observations on the scope of that provision may not be out of place. As is made clear by Mr. Owen George's observations quoted above, an adjudication on a claim for benefit requires the determining authority to consider whether the statutory conditions for entitlement are satisfied. The fact is that every claim for benefit involves considering one or more questions affecting the right to benefit. In disposing of the claim the determining authority must consider those questions whether or not they are specifically referred under section 68(2) of the National Insurance Act 1965. Sometimes the questions are of pure law. More often they are not. For example, a claim for sickness benefit necessarily raises the question whether the claimant was incapable of work; and a claim for widow's benefit may raise the question whether the widow was cohabiting with a man as his wife. In all such cases the duty of the determining authority is to consider the evidence and reach a conclusion. That conclusion is an inference of fact—that the claimant was or was not incapable of work; that she was or was not cohabiting with a man as his wife. Section 72(1) (a) does not authorise a review of a decision founded on such an inference merely because the insurance officer is satisfied that in the light of the evidence before the determining authority, the inference was faulty or mistaken. He must go further and assert and prove that the inference might not have been drawn, or that a different inference might have been drawn, if the determining authority had not been ignorant of some specific fact of which it could have been aware, or had not been mistaken as to some specific fact which it took into consideration.

10. The appeal succeeds in relation to the period covered by the insurance officer's revised decision dated 20th March 1974.

(Signed) Hilary Magnus
Commissioner