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SOCIAL SECURITY ACTS 1975 TO 1980

CLAIM FOR INDUSTRIAL DISABLEMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision No: C.S.I.2/81

1. My decision is that the prescribed disease No. 48 (occupational deafness) is prescribed in relation to the claimant.
2. This is an appeal by the insurance officer against the decision of the local tribunal who held, allowing the claimant's appeal against an adverse decision of the local insurance officer, that prescribed disease No. 48 (occupational deafness) is prescribed in relation to the claimant by reason of his employment as a fitter with the National Coal Board for a period of more than 20 years. An oral hearing was held before me at which the insurance officer was represented by Mr. George and the claimant who attended in person was represented by Mr. Philbin of the National Union of Mineworkers, No. 2 Group Area (S.C.E.B.T.A.).
3. I am informed that following the local tribunal's decision and in accordance with the relevant regulations the diagnosis question arising upon the claimant's claim for disablement benefit by reason of occupational deafness has been referred to a medical board who have held that the claimant is not suffering from occupational deafness within the meaning of the statutory definition. Notwithstanding that decision the insurance officer is of course entitled to pursue the present appeal upon the issue of whether the claimant's employment has been in an occupation which enables occupational deafness to be prescribed in relation to him.
4. The claimant is now aged 59. The employment which is material for present purposes is the claimant's employment as a fitter with the National Coal Board. From 4 August 1952 to 3 October 1965 he was employed as a fitter in various collieries in the Lothians. Since 31 January 1966 he has been continuously employed as a fitter at Bilston Glen Colliery, Midlothian where he is still so employed. During his period of employment with the Coal Board the claimant has been employed with drilling teams forming mine roads. This work is carried out with 4 to 6 pneumatic boring machines which are pneumatic percussive tools. The work proceeds in a cycle. The machines bore for approximately 1½ to 2 hours. Thereafter the bored section is blown down by explosive and then "redd up" ready for the next drilling operation. Depending upon geological conditions the cycle may take place only once in a working shift or it may be partially or even wholly repeated. The fitter must be present and is an essential member of the drilling team. He assists

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in the coupling up of the machines to their supply lines and in the positioning of each machine in turn. If any drill stops the claimant attends and may disconnect and remove the drill and may reposition the drill or another drill. He makes minor repairs or adjustments on the spot and thereafter tests the drill by running it. On occasion, for instance if the drill is sticking at a pressure within its expected tolerance, he may test bore the drill. At the end of each drilling period he assists in uncoupling and removing the drills and may continue with repair or adjustment prior to their next use. The claimant also maintains other kinds of machinery and has not been exclusively engaged in road forming work throughout his periods of employment in the mines. Nevertheless I am satisfied that he has overall been engaged in work in connection with the drilling machines as described above for an average period of at least 1 hour per working day.

5. Regulation 2(d) of the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1975 (now regulation 2(d) of the corresponding 1980 Regulations) provides:-

"2. For the purposes of Chapter V of Part II of the Act. -

- (a) ...
- (b) ...
- (c) ...
- (d) occupational deafness is prescribed in relation to all persons who have been employed -

(i) in employed earner's employment at any time on or after 5th July 1948;

and

(ii) for a period or periods (whether before or after 5th July 1948) amounting in the aggregate to not less than 20 years,

in one or more of the occupations set out in the second column of paragraph 48 or Part I of Schedule 1 to these regulations.

6. The relevant occupation for present purposes is that set out in paragraph 48(c) of Part I of Schedule 1 to the foregoing Regulations as amended with effect from 3 September 1979. That occupation is an occupation involving:-

"(c) The use, or supervision of or assistance in the use, of pneumatic percussive tools on metal, or for drilling rock in quarries or underground, or in coal mining, for at least an average of 1 hour per working day;"

7. The claimant claimed disablement benefit on the ground of occupational deafness on 1 February 1980, and there is no doubt that he is entitled to found

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upon the enlarged definition of the prescribed occupations introduced as from 3 September 1979. There is also no doubt that his employment exceeds the qualifying period of 20 years referred to in regulation 2(d) quoted above. The main issue in this appeal is whether the claimant's duties as above described involve "assistance in the use, of pneumatic percussive tools ... in coal mining, for at least an average of 1 hour per working day".

8. On behalf of the insurance officer it was argued under reference to reported decision R(I) 15/80 and unreported decision C.S.I.5/80 that the assistance in the use of the tool for the purposes of the regulation must be direct assistance. To be engaged in such assistance a claimant must do something connected with the actual use of the tool in operation. While the present claimant might be engaged in assistance in the road driving operations in the mine he was not engaged in assistance in the use of the drilling tools. His function was essentially concerned with times when the tool was not in use and not when it was in use. In reply Mr. Philbin on behalf of the claimant stressed that the claimant's activities in connection with the operation of the drills came directly within the ordinary meaning of "assistance" in their use.

9. In paragraph 9 of reported decision R(I) 15/80 the Commissioner, who was considering the case of a claimant who prepared metal for caulkers who then used pneumatic percussive tools on the cleaned metal, observed: "The claimant could doubtless be regarded as having provided assistance in regard to the caulking process in that he prepared metal for the caulker who then finished off the process, but in my view he did not provide assistance in the use of the pneumatic percussive tools used by the caulker." In agreeing with that decision in unreported case C.S.I.5/80 I sought to make a distinction in paragraph 11 between a person involved in a related activity such as the claimant in R(I) 15/80 and a person engaged in the activity which involved the use of the tool. I thus concluded that whilst the claimant in R(I) 15/80 was not engaged in assistance in the use of the tool, the craneman in C.S.I.5/80 could be described as engaged in such assistance.

10. In the present case the claimant in testing the drills after repair or adjustment might also be said to be himself "using" the tools. Such brief test running of these tools by the claimant, even if correctly described as "use" of them for the purposes of this statutory definition, would not represent a sufficient use to satisfy the statutory requirement of at least an average of 1 hour per working day. As there appears to be no necessity to consider the claimant's testing activities separately I propose simply to consider these as part of the claimant's activities relevant to the issue whether his occupation involves "assistance in the use" of the tools. Those activities in connection with the drilling tools, as summarised in paragraph 4 above, appear to me to be activities by way of assistance directed to the use of the drilling tools and not to a related activity such as the preparatory metal cleaning activity of the claimant in R(I) 15/80, or just to the overall activity of road forming operations in the mine. The definition of "assistance in the use" of the prescribed tools advanced in argument on behalf of the insurance officer seems to me to be calculated to limit the scope of paragraph 48(c) even more tightly than the actual words require. Taking those actual words within their normal meaning I consider that the activities of the claimant's occupation aptly fit them. For these reasons I have come to the conclusion that the claimant should be regarded as engaged in an occupation involving assistance in the use of the prescribed tools. It was not

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conceded by Mr. George on behalf of the insurance officer that even if this was held to be the case the evidence was sufficient to establish that the claimant was so engaged to the requisite extent, that is for at least an average of 1 hour per working day. In light of the facts established in evidence however I am satisfied that this requirement also is met by the claimant.

11. I am therefore satisfied that for a period considerably in excess of 20 years the claimant has been engaged in an occupation which enables occupational deafness to be prescribed in relation to him. The claimant will appreciate that this decision does not of itself entitle him to disablement benefit since the separate medical diagnosis question has been the subject of an adverse decision by the medical board.

12. The appeal of the insurance officer is not allowed.

(Signed)

J. G. Mitchell
Commissioner

Date: 1 June 1981

Commissioner's File: C.S.I.8/81

C.I.O. File: I.O.5031/I/81

Central Office File: Sc.I0/8/81