

JGMI/MM

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR INDUSTRIAL DISABILITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

CS 45/81

[ORAL HEARING]

1. My decision is that prescribed disease No.48 (occupational deafness) is prescribed in relation to the claimant.
2. On 30 June 1980 the claimant, then a plater in the employment of James Howden & Co. Ltd., Glasgow, made a claim for disablement benefit on account of prescribed disease No.48 (occupational deafness). He was employed as a plater by Messrs. James Howden & Co. Ltd. for some 44 years from 1936 to 1980. His claim was refused on the ground that he had not been employed in an occupation prescribed for the purposes of occupational deafness under paragraph 48 of Part 1 of Schedule 1 to the Social Security (Industrial Injuries)(Prescribed Diseases) Regulations 1975 as amended (and now consolidated in the 1980 regulations of the same name). The claimant appealed to a local tribunal who unanimously refused his appeal by decision dated 1 December 1980. Leave to appeal to the Commissioner was granted on 21 July 1981. In connection with the claimant's appeal to the Commissioner an oral hearing was held before me at which the claimant who appeared in person was represented by Mr. Clydesdale of the Amalgamated Society of Boilermakers, Shipwrights, Blacksmiths and Structural Workers. The insurance officer was represented by Mr. Canlin.
3. In terms of Regulation 2(d) of the Social Security (Industrial Injuries)(Prescribed Diseases) Regulations 1975 as amended occupational deafness is prescribed in relation to any person who has been in employed earner's employment since 5 July 1948 for a period (whether before or after 5 July 1948) amounting to not less than 20 years in one or more of the occupations set out in paragraph 48 of Part 1 of Schedule 1 to the regulations. The occupation relevant for the purposes of this appeal is that set out in paragraph 48(c) of those regulations, that is, an occupation involving:-

"(c) the use, or supervision of or assistance in the use, of pneumatic percussive tools on metal, ... for at least an average of 1 hour per working day;"

That sub-paragraph was added as an extension to the scope of occupation by amendment with effect from 3 September 1979. The critical words for present purposes are: "supervision of....the use, of pneumatic percussive tools." The time bar provision contained in regulation 40(2) of the same regulations is not in issue in this case.

4. In numbered decision C.S.I.1/81 decided 5 February 1981 the duties of a plater with John Brown Engineering Ltd., Clydebank, were considered with particular reference to the occupations set out in paragraph 48(c) quoted above. It was held by the Commissioner that the plater's occupation was one involving supervision of the use of pneumatic percussive tools on metal as defined in that sub-paragraph and that occupational deafness was prescribed in relation to the claimant. That decision was approved by the present Chief Commissioner in numbered decision C.I.7/81, paragraph 12. In numbered decision C.I.14/81, the decision of a Tribunal of Commissioners dated 14 August 1981, the meaning of the expression "supervision of ... the use of pneumatic percussive tools" was considered both generally and in relation to the duties of the particular claimant in that case who had latterly been employed as a welding inspector in the fabrication quality assurance department of a shipbuilding group. The Tribunal rejected the argument that the claimant's duties of inspection of the results of use of pneumatic percussive tools amounted to supervision of their use for the purposes of the relevant paragraph. In paragraph 11 of their decision the Commissioners state:-

"For an occupation to be one 'involving ... supervision ... of the use of pneumatic percussive tools ...' that supervision must be of the use of those tools."

In paragraph 13 the Commissioners state:-

"Such supervision, in our judgement, in the context of the regulations, imports direct and personal superintendence and control of the use of the tools."

In the same paragraph the Tribunal of Commissioners disagree with the view expressed in paragraph 9 of decision C.I.4/81 that "supervision" in this context includes the oversight of the work done by the tool as well as the oversight of its use. In paragraph 14 of their decision the Tribunal make it clear that they have considered decision C.S.I.1/81 mentioned above. The Tribunal express the view that that decision depended upon its own facts.

5. The duties of the plater in relation to the use by caulkers of pneumatic percussive tools in the present case were essentially the same as the duties of the plater considered in decision C.S.I.1/81 and so need not be repeated here. At the date of his claim in June 1980 the claimant in the present case had been working for more than 20 years on permanent night shift work in connection with the manufacture of fan casings and other parts for power station units. He worked in a squad consisting of himself, a plater's helper, two welders and a caulker. There was only one foreman employed on night shift for all trades who was not a caulker foreman. The particular operation involving the caulker's use of pneumatic percussive tools under the direction of the plater was not the cutting of plates as in C.S.I.1/81, but the bevelling of plates and bars for welding. It was a constant and regular feature of the job.

6. It was argued on behalf of the claimant that the duties of his occupation in relation to the use of pneumatic percussive tools by the caulkers were exactly as described in decision C.S.I.1/81. This was in effect conceded by Mr. Canlin for the insurance officer who stated that if the decision in C.S.I.1/81 was to stand then the claimant in the present case would succeed. Mr. Canlin however submitted that decision C.S.I.1/81 could not stand alongside the decision of the Tribunal of Commissioners in C.I.14/81. He

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submitted that the Tribunal of Commissioners in the latter case were under a misapprehension as to the facts in C.S.I.1/81 because, according to Mr. Canlin, those facts did not establish supervision of the use of the tool in accordance with the meaning ascribed by the Tribunal of Commissioners themselves. He referred me to the last sentence of paragraph 13 where the Tribunal state:-

"An employee waiting for a job, or a particular stage in a job, to be completed by a claimant using a particular pneumatic percussive tool, so that he can carry out his job (e.g. inspecting the results, or carrying out other work that he is employed to do) and who has no control of the way in which the tradesman uses those tools, is not 'supervising' their use at all, in terms of the regulations."

According to Mr. Canlin this meant that an essential element of supervision in this context was the ability to instruct how the tool was to be used and he did not shrink from the consequence that this might limit "supervision" (at least in the context of a caulker's cutting tool) to the relationship between a foreman or tradesman on the one hand and a person under instruction such as an apprentice on the other.

7. The facts of C.S.I.1/81 are very clearly set out in paragraph 7 of that decision with a general description and separate headed sub-paragraphs (a) to (f). It would be somewhat surprising to say the least if the Tribunal of Commissioners in decision C.I.14/81 misapprehended these facts. If of course I was satisfied that the facts in C.S.I.1/81 could not justify holding that the claimant's occupation involved supervision of the use of pneumatic percussive tools in accordance with the meaning ascribed to those words by the Tribunal of Commissioners I should have to conclude that the Tribunal had in some way misapprehended those facts. The simpler explanation, and the one which upon re-reading C.I.14/81 I prefer, is that the Tribunal of Commissioners, who at least twice stress the need for direct and personal supervision of the use of the tool, were satisfied that the plater's duties in C.S.I.1/81 did contain that essential element and that they did not consider the ability to instruct in the technique of the operation of the tool to be essential. It was submitted by Mr. Canlin that the claimant's duties bore a close resemblance to those of the welding inspector in C.I.14/81. In my opinion however this is to overlook important features of the plater's duties, namely his direct and personal responsibility to have the job carried out in accordance with the specified dimensions, his authority to instruct the caulker to use a pneumatic percussive tool to achieve that result, his marking of the required dimensions, and his authority to oversee the use of the tool and to instruct further use of the tool by the caulker if he considered this necessary. Having reconsidered the matter I am satisfied that the duties of the claimant's occupation as a plater and those of the plater in C.S.I.1/81 involved a sufficient element of direct and personal superintendence and control of the use of pneumatic percussive tools in accordance with the test laid down in paragraphs 11 and 13 of C.I.14/81 to justify the conclusion that those were occupations prescribed for the purposes of paragraph 48(c) of the regulations. I therefore reject Mr. Canlin's

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submission that decision C.S.I.1/81 cannot stand with the decision of the Tribunal of Commissioners. The claimant is in my opinion entitled to succeed in this appeal.

8. The foregoing decision does not of course of itself entitle the claimant to succeed in his claim for disablement benefit and it will now be for the medical authorities to decide the diagnosis and disablement questions arising in connection with that claim.

9. The appeal of the claimant is allowed.

(signed) J.G. Mitchell
Commissioner
Date: 19 May 1982

Commissioner's File: C.S.I.45/81
C.I.O. File: I.O.5231/I/81
Central Office File: ScIO/88/81