

DR/IM

SOCIAL SECURITY ACTS 1975 TO 1980

CLAIM FOR INDUSTRIAL DISABLEMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision No. C.S.I.1/81

1. My decision is that prescribed disease No. 48 known as "occupational deafness" is prescribed in relation to the claimant.

2. Regulation 2(d) of the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1975 provides that 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 Schedule 1 to the said regulations. These occupations were amended and extended by the Social Security (Industrial Injuries) (Prescribed Diseases) Amendment (No. 4) Regulations 1979. The occupation which is involved in connection with this appeal is contained in paragraph (c) of the said 1979 Regulations, and that occupation is one involving 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. It also falls to be noted that under regulation 40(2) of the said 1975 Regulations (as amended) disablement benefit is not payable in pursuance of a claim in respect of occupational deafness which is made later than 12 months after the claimant in question has ceased to be employed in an occupation prescribed in relation to occupational deafness unless various conditions are satisfied.

3. On 10 March 1980 the claimant claimed disablement benefit in respect of occupational deafness. The claimant's employment history is as follows:-

- (a) He was employed as a plater by the shipbuilders John Brown & Company Limited, Clydebank from 1929 to 1959. I do not have very much information regarding the claimant's employment during that period, but the available information is to the effect that his occupation during the said period cannot be regarded as prescribed in relation to occupational deafness.

/ (b)

(b) The claimant was employed as a plater with Babcock & Wilcox, Renfrew from 1 June 1959 to 13 June 1969 (10 years and 2 weeks). It is not in dispute that that occupation involved the use of pneumatic percussive tools on metal for at least an average of 1 hour per working day.

(c) The claimant was employed as a plater with John Brown Engineering Limited, Clydebank from 5 January 1970 until he retired on 28 December 1979 (9 years, 11 months and 3 weeks). The real question at issue in this appeal is whether that employment can be regarded as prescribed in relation to occupational deafness.

4. The local insurance officer decided that since 5 January 1970 the claimant had not been involved in any occupation prescribed in relation to occupational deafness and that therefore because of the provisions of the above-mentioned regulation 40(2) disablement benefit was not payable to him. The claimant appealed against that decision, and on 15 May 1980 a local tribunal allowed his appeal having reached the view that the claimant's employment as a plater with John Brown Engineering Limited involved the supervision of or assistance in the use of pneumatic percussive tools on metal for at least an average of 1 hour per working day. The insurance officer now concerned with the case thereafter brought the present appeal to a Commissioner.

5. The information before me is to the effect that the claimant occasionally gave assistance to caulkers who were using pneumatic percussive tools. Furthermore, because of the relaxation of working practices the claimant occasionally used a pneumatic percussive tool himself. The said use of pneumatic percussive tools or assistance in the use of such tools did not, however, according to the information before me, amount to an average of 1 hour per working day. The case turns on the question whether the claimant's occupation as a plater with John Brown Engineering Limited involved the supervision of pneumatic percussive tools on metal. The information contained in letters dated 9 June 1980 and 1 August 1980 from the personnel and administration manager of the said company is to the effect that it was considered that the claimant could not be regarded as having been in an occupation involving the supervision of pneumatic percussive tools.

6. The claimant requested an oral hearing in connection with his appeal, and that request was granted. At that hearing the insurance officer's representative adduced evidence from the senior foreman of John Brown Engineering Limited who gave information regarding the claimant's duties and responsibilities. The claimant's representative was a District Delegate of the Amalgamated Society of Boilermakers, Shipwrights, Blacksmiths and Structural Workers (Glyde District). He also in the course of his submissions gave evidence regarding the duties and responsibilities of the claimant.

7. John Brown Engineering Limited manufacture industrial gas turbines and other heavy engineering products. The claimant carried out duties in that connection, and he was involved in general fabricating work. His duties involved carrying out work on sheet metal plates. The said senior foreman supervised the various shop foremen, and at the oral hearing before me he gave helpful evidence regarding the position of a plater. He explained that platers such as the claimant, are the leaders of sections which consist of platers, caulkers, caulker burners and welders. A plater such as the claimant is handed the blueprint regarding the piece of engineering equipment being created. It is the plater's duty to see that the sizes of metal etc. are created according to the print, and in this connection he requires from time to time to get a caulker to cut metal with a pneumatic percussive tool. In this whole connection the following matters fall to be mentioned:

- (a) The work of a caulker is a service trade to that of a plater.
- (b) When a plater such as the claimant required a caulker he applied to the shop foreman for a caulker. The foreman would then either detail a caulker to attend to the plater's needs, or he would authorise the plater to instruct a caulker to carry out the work required.
- (c) A plater such as the claimant would thereafter instruct the caulker what required to be done in the way of cutting the metal with a pneumatic percussive tool, and he usually marked out the portion of metal which he required cut.
- (d) While the caulker was carrying out the cutting operations as requested by the plater, the plater in question would either wait for the necessary work to be done, or, if the caulking operation was liable to take a long time, he might proceed to carry out some other duties.
- (e) It was the duty of the plater such as the claimant to see that the necessary cutting operation carried out by the caulker was correctly performed according to what was laid down in the blueprint. If the caulking operation was not carried out in accordance with the blueprint, then the plater was entitled to instruct the caulker to carry out further cutting operations with his pneumatic percussive tool.

(f) Although a plater such as the claimant had to see that the necessary cutting operations were performed in accordance with the blueprint, he had no disciplinary powers over the caulker. If he was dissatisfied with the manner in which the caulker's work had been carried out, his remedy was to report the matter to the shop foreman.

8. The insurance officer's representative at the oral hearing before me maintained that in regard to the said cutting operations carried out by caulkers at the request of platers it was only the shop foremen who could be regarded as carrying out any supervisory duties in connection with the use of pneumatic percussive tools on metal. The information given to me at the oral hearing, however, showed clearly that the shop foremen could not possibly oversee or superintend personally all the duties being carried out by caulkers at the request of platers. A shop foreman had of course duties of supervision over all the work being carried out by platers, caulkers, caulker burners and welders in his part of the engineering works in question. In turn the general foreman, who gave evidence at the oral hearing before me, had duties of supervision over all the shop foremen at the engineering works in question. The fact remains in my view that when a plater such as the claimant required cutting work done with a pneumatic percussive tool by a caulker in accordance with the blueprint which had been supplied to him, he had a duty to ensure that the caulker in question carried out the said cutting duties in a proper manner in accordance with the measurements on the blueprint. Having regard to what I have stated above in this whole connection it seems to me that a plater such as the claimant had a duty of supervision over a caulker in the use of pneumatic percussive tools on metal. It was accepted by the insurance officer's representative that if I reached that conclusion, the evidence warranted a decision that the said supervision amounted to at least an average of 1 hour per working day. I have therefore reached the decision that the claimant in the present case used, supervised or assisted in the use of pneumatic percussive tools for the appropriate 20 year period for at least an average of 1 hour per working day. In those circumstances prescribed disease No.48 (occupational deafness) is prescribed in relation to the claimant. I have therefore decided to agree with the above-mentioned decision of the local tribunal. I note that the claimant has already been examined by a medical board who decided that he did not have the appropriate amount of deafness warranting a payment of disablement benefit. That, however, is not a matter with which I am concerned.

9. The insurance officer's appeal is disallowed.

(Signed) Douglas Reith
Commissioner

Date: 5 February 1981

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