



48/01

THE SOCIAL SECURITY COMMISSIONERS

*Commissioner's Case No: CSI/987/00*

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY ACT 1998

APPEAL FROM THE GLASGOW APPEAL TRIBUNAL UPON A QUESTION OF  
LAW

DEPUTY COMMISSIONER: SIR CRISPIN AGNEW OF LOCHNAW BT QC

*Appellant:*

*Respondent: Secretary of State*

*Tribunal: Glasgow*

*Tribunal Case No: U/05/098/1999/04647*

## DECISION OF SOCIAL SECURITY COMMISSIONER

### Decision

1. The appeal is allowed. I hold that the appeal tribunal erred in law in failing to consider whether or not prescription (b) applied to disease A11 (vibration white finger).
2. In exercise of the powers in section 14(8)(a)(i) of the Social Security Act 1998, I find that disease A11 is prescribed in relation to the claimant's occupation as a builder's labourer in terms of occupation A11(b) prescribed by Regulation 2(a) and Schedule 1 (A11) of the Social Security (Industrial Injuries)(Prescribed Diseases) Regulations 1985. I remit the case to the Secretary of State for a determination of the remaining conditions of entitlement.

### Reasons

3. The claimant claimed industrial injuries disablement benefit in respect of prescribed disease A11 known as vibration white finger. He advised that he had been employed as a builder's labourer and had used kango hammers and grinders to cut raggles for electricians in concrete blocks. Prior to that employment he had been working as a builder's labourer removing and installing fireplaces.
4. On 19 March 1999 the claim was disallowed on the basis that the claimant had not worked in an occupation listed in the regulations as likely to cause disease number A 11. The Adjudicating Officer held that he had not been employed in any of the occupations prescribed by Regulation 2(a) and Schedule 1 (A11) of the Social Security (Industrial Injuries)(Prescribed Diseases) Regulations 1985.
5. The claimant appealed the decision to the appeal tribunal contending that he had worked in a prescribed occupation and in particular that:  

"I also worked as a labourer to electricians, which involved cutting raggles in concrete walls with a grinder and then hammering and chiselling them out."
6. In a reconsideration of the decision on 8 July 1999, the reconsidering Officer, who did not change the decision, said:  

"His employment as a gratebuilder using Kango Hammers, hammers and chisels for 20 years and with J Laing Construction using hand-held grinders and Kango Hammers to raggle channels in concrete blocks does not fall within mining, quarrying, demolition or works on road or footpaths, including road construction"
7. The appeal tribunal accepted "the claimant's own evidence as to the nature of the occupations he has worked in ..." and found:  

"4. ... in turn he worked for approximately 3 years as a builder's labourer, his job in that occupation entailed cutting raggles out of concrete walls to allow electricians to put in conduits. Occasionally in the course of that job he hit reinforcing bars. He used various tools including an electrical grinder, a chisel and a hammer. However he also used a kanga hammer which was air powered nearly every day.

5. For a period of about 13-14 years before the above occupation the appellant worked as a grate builder's labourer, fitting fireplaces. His job involved pulling fireplaces out and then putting them back in again. He used a kanga hammer on a very regular basis in that job."

8. The appeal tribunal refused the appeal on the grounds that:

"The only possible way for the appellant to satisfy the prescription for disease A11, in our view, is if he can be brought within the terms of (d) of the said prescription. That reads as follows "The use of hand held powered percussive drills or handheld powered percussive hammers in mining, quarrying, demolition or on roads, footpaths, including road construction"

9. The claimant has appealed to the Commissioners on the ground:

"Mistake in Law; Tribunal accepted appellant's evidence which included use of an electric grinder (rotary tool); client may satisfy (b) of the prescription. The Tribunal also erred in its definition of "demolition".

10. I agree with the appeal tribunal that ground (d) does not apply. They held that on the evidence the claimant could only come within the use of the prescribed tools in "demolition". They considered that demolition "bears its ordinary meaning of pulling down buildings and that there is a trade or occupation where the doing of such work is the main activity." That definition is born out by the Oxford English Dictionary ["The action of demolishing (buildings or other structures); the fact or state of being demolished"] and Stroud's Judicial Dictionary ["demolish", where various statutory uses of "demolish" have been held to involve the pulling down or destruction of things]. In Decision CI/2333/95 the Commissioner said:

"6. It would, in my view be a travesty to equate the occasional knocking of holes through walls and floors with 'demolition'. Demolition essentially involves a destruction of, in this context, the whole or a substantial part of a building, such as might ordinarily be done by builders clearing a site or demolition workers; jobs of a plumber is essentially not to destroy but to improve."

I agree with that reasoning. I do not accept the claimant's submission that demolition can apply to the pulling down or ruining of something small, because the prescription is a verb and not a noun. I consider that the "in ... demolition" is relevant as it suggests the wider definition of a trade or business.

11. Further the use of the word "in" before "mining, quarrying, demolition" suggests that these are the business or trade of the defined operation. The use of those words in prescription (d) is to be contrasted with what might be described as activities that can take place in any trade or business, such as "grinding" or "sanding or polishing" in (b) or "riveting, caulking, chipping, hammering, fettling or swaging" in (c), albeit these activities are limited to particular circumstances by the preceding words.

12. The appeal tribunal were not satisfied that the putting in of grates, albeit after pulling out the old grate can fairly be described as "demolition". Whether or not the pulling out of grates is "demolition" within the general meaning of that word is a question of fact for the

appeal tribunal and a determination with which I cannot interfere. I have to say that on the material before me, I would have reached the same conclusion.

13. Where I consider that the adjudicating officer and the appeal tribunal erred was in failing to consider prescription (b), which provides:

“(b) the use of hand-held rotary tools in grinding or in the sanding or polishing of metal, or the holding of material being ground, or metal being sanded or polished, by rotary tools”

14. The Secretary of State submitted of prescription (b) that:

“... the occupation relates to work on metal of a frictional or abrasive nature, and does not cover the occasional action of cutting metal reinforcing rods with a grinder. ... I submit that the claimant has never been employed to grind, sand or polish metal.”

15. I consider that prescription (b) applies in the present case. I reject the Secretary of State's submission that grinding relates to metal and that the only metal ground was the occasional action of cutting metal rods with a grinder.

16. I consider that “grinding” can be on any “material”, whereas “sanding or polishing” can only be on “metal”. I reach this construction of the provision having regard to (i) the use of the word “in” before “grinding” and again before “the sanding or polishing of metal” which suggests that the task of grinding is separate from the task of sanding or polishing of metal and (ii) the fact that the later part of the provision refers to the “holding of material being ground” and “the metal being sanded or polished”. Had the intention been that prescription (b) should only apply to the grinding, sanding or polishing of metal, I would have expected the word “metal” to be used rather than “material”. “Material” is a word that can be applied to any substance and not just to metal.

17. The appeal tribunal have found that the claimant has used electric grinders to cut raggles in concrete. I consider that this involves the grinding of material and therefore falls within prescription (b).

18. I shall therefore allow the appeal and find that the claimant is entitled to industrial injuries benefit for disease All (vibration white finger) and shall remit the remaining conditions of entitlement to the Secretary of State for disposal.

(signed)

Sir Crispin Agnew of Lochnaw Bt QC  
Deputy Commissioner

Date: 16 March 2001

Bulletin 7  
164 [SHEP]

**SOCIAL SECURITY AND CHILD SUPPORT COMMISSIONERS**

Commissioner's File No.: CSI/987/2000

**Starred Decision No: 48/01**

*Commissioners' decisions are identified by case references only, to preserve the privacy of individual claimants and other parties.*

*Starring denotes only that the case is considered to be of general interest or importance. It does not confer any additional status over an unstarred decision.*

*Reported decisions in the official series published by DSS are generally to be followed in preference to others, as selection for reporting implies that a decision carries the assent of at least a majority of Commissioners in Great Britain or in Northern Ireland as the case may be. Northern Ireland Commissioners' decisions are published by The Stationary Office as a separate series.*

*The practice about official reporting of Commissioners' decisions in Great Britain is explained in reported case R(I) 12/75 and a Practice Memorandum issued by the Chief Commissioner on 31 March 1987. The Chief Commissioner selects decisions for reporting after consultation with Commissioners. As noted in the memorandum there is also a general standing invitation to comment on the report-worthiness of any decision, whether or not starred for general circulation. However, a decision will not be selected for reporting if it is known that there is an appeal pending against it. The practice in Northern Ireland is similar, decisions being selected for reporting by the Northern Ireland Chief Commissioner.*

Any **comments** by interested organisations or individuals on the suitability of this decision for reporting should be sent to:

Mr Damien Abbott,  
Office of the Social Security and Child Support Commissioners,  
5th Floor, Newspaper House, 8-16 Great New Street, London EC4A 3BN.

**so as to arrive by 17<sup>th</sup> July 2001**

Comments on Northern Ireland Commissioners' decisions will be forwarded to the Northern Ireland Chief Commissioner.

## DECISION OF SOCIAL SECURITY COMMISSIONER

### Decision

1. The appeal is allowed. I hold that the appeal tribunal erred in law in failing to consider whether or not prescription (b) applied to disease A11 (vibration white finger).
2. In exercise of the powers in section 14(8)(a)(i) of the Social Security Act 1998, I find that disease A11 is prescribed in relation to the claimant's occupation as a builder's labourer in terms of occupation A11(b) prescribed by Regulation 2(a) and Schedule 1 (A11) of the Social Security (Industrial Injuries)(Prescribed Diseases) Regulations 1985. I remit the case to the Secretary of State for a determination of the remaining conditions of entitlement.

### Reasons

3. The claimant claimed industrial injuries disablement benefit in respect of prescribed disease A11 known as vibration white finger. He advised that he had been employed as a builder's labourer and had used kango hammers and grinders to cut raggles for electricians in concrete blocks. Prior to that employment he had been working as a builder's labourer removing and installing fireplaces.

4. On 19 March 1999 the claim was disallowed on the basis that the claimant had not worked in an occupation listed in the regulations as likely to cause disease number A 11. The Adjudicating Officer held that he had not been employed in any of the occupations prescribed by Regulation 2(a) and Schedule 1 (A11) of the Social Security (Industrial Injuries)(Prescribed Diseases) Regulations 1985.

5. The claimant appealed the decision to the appeal tribunal contending that he had worked in a prescribed occupation and in particular that:

"I also worked as a labourer to electricians, which involved cutting raggles in concrete walls with a grinder and then hammering and chiselling them out."

6. In a reconsideration of the decision on 8 July 1999, the reconsidering Officer, who did not change the decision, said:

"His employment as a gratebuilder using Kango Hammers, hammers and chisels for 20 years and with J Laing Construction using hand-held grinders and Kango Hammers to raggle channels in concrete blocks does not fall within mining, quarrying, demolition or works on road or footpaths, including road construction"

7. The appeal tribunal accepted "the claimant's own evidence as to the nature of the occupations he has worked in ..." and found:

"4. ... in turn he worked for approximately 3 years as a builder's labourer, his job in that occupation entailed cutting raggles out of concrete walls to allow electricians to put in conduits. Occasionally in the course of that job he hit reinforcing bars. He used various tools including an electrical grinder, a chisel and a hammer. However he also used a kanga hammer which was air powered nearly every day.

5. For a period of about 13-14 years before the above occupation the appellant worked as a grate builder's labourer, fitting fireplaces. His job involved pulling fireplaces out and then putting them back in again. He used a kanga hammer on a very regular basis in that job."

8. The appeal tribunal refused the appeal on the grounds that:

"The only possible way for the appellant to satisfy the prescription for disease A11, in our view, is if he can be brought within the terms of (d) of the said prescription. That reads as follows "The use of hand held powered percussive drills or handheld powered percussive hammers in mining, quarrying, demolition or on roads, footpaths, including road construction"

9. The claimant has appealed to the Commissioners on the ground:

"Mistake in Law; Tribunal accepted appellant's evidence which included use of an electric grinder (rotary tool); client may satisfy (b) of the prescription. The Tribunal also erred in its definition of "demolition".

10. I agree with the appeal tribunal that ground (d) does not apply. They held that on the evidence the claimant could only come within the use of the prescribed tools in "demolition". They considered that demolition "bears its ordinary meaning of pulling down buildings and that there is a trade or occupation where the doing of such work is the main activity." That definition is born out by the Oxford English Dictionary ["The action of demolishing (buildings or other structures); the fact or state of being demolished"] and Stroud's Judicial Dictionary ["demolish", where various statutory uses of "demolish" have been held to involve the pulling down or destruction of things]. In Decision CI/2333/95 the Commissioner said:

"6. It would, in my view be a travesty to equate the occasional knocking of holes through walls and floors with 'demolition'. Demolition essentially involves a destruction of, in this context, the whole or a substantial part of a building, such as might ordinarily be done by builders clearing a site or demolition workers; jobs of a plumber is essentially not to destroy but to improve."

I agree with that reasoning. I do not accept the claimant's submission that demolition can apply to the pulling down or ruining of something small, because the prescription is a verb and not a noun. I consider that the "in ... demolition" is relevant as it suggests the wider definition of a trade or business.

11. Further the use of the word "in" before "mining, quarrying, demolition" suggests that these are the business or trade of the defined operation. The use of those words in prescription (d) is to be contrasted with what might be described as activities that can take place in any trade or business, such as "grinding" or "sanding or polishing" in (b) or "riveting, caulking, chipping, hammering, fettling or swaging" in (c), albeit these activities are limited to particular circumstances by the preceding words.

12. The appeal tribunal were not satisfied that the putting in of grates, albeit after pulling out the old grate can fairly be described as "demolition". Whether or not the pulling out of grates is "demolition" within the general meaning of that word is a question of fact for the

appeal tribunal and a determination with which I cannot interfere. I have to say that on the material before me, I would have reached the same conclusion.

13. Where I consider that the adjudicating officer and the appeal tribunal erred was in failing to consider prescription (b), which provides:

“(b) the use of hand-held rotary tools in grinding or in the sanding or polishing of metal, or the holding of material being ground, or metal being sanded or polished, by rotary tools”

14. The Secretary of State submitted of prescription (b) that:

“... the occupation relates to work on metal of a frictional or abrasive nature, and does not cover the occasional action of cutting metal reinforcing rods with a grinder. ... I submit that the claimant has never been employed to grind, sand or polish metal.”

15. I consider that prescription (b) applies in the present case. I reject the Secretary of State's submission that grinding relates to metal and that the only metal ground was the occasional action of cutting metal rods with a grinder.

16. I consider that “grinding” can be on any “material”, whereas “sanding or polishing” can only be on “metal”. I reach this construction of the provision having regard to (i) the use of the word “in” before “grinding” and again before “the sanding or polishing of metal” which suggests that the task of grinding is separate from the task of sanding or polishing of metal and (ii) the fact that the later part of the provision refers to the “holding of material being ground” and “the metal being sanded or polished”. Had the intention been that prescription (b) should only apply to the grinding, sanding or polishing of metal, I would have expected the word “metal” to be used rather than “material”. “Material” is a word that can be applied to any substance and not just to metal.

17. The appeal tribunal have found that the claimant has used electric grinders to cut raggles in concrete. I consider that this involves the grinding of material and therefore falls within prescription (b).

18. I shall therefore allow the appeal and find that the claimant is entitled to industrial injuries benefit for disease All (vibration white finger) and shall remit the remaining conditions of entitlement to the Secretary of State for disposal.

(signed)

Sir Crispin Agnew of Lochnaw Bt QC  
Deputy Commissioner

Date: 16 March 2001