

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR INDUSTRIAL INJURY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

CWI 50/82

1. My decision is that the claimant did not sustain an industrial accident on 12 April 1982 and that, accordingly, injury benefit is not payable to her.

2. At the relevant time the claimant, who is a married woman aged 51 years, was employed as a nursing officer at a hospital. On 15 April 1982 she claimed that she had sustained an industrial accident at 3 p.m. on 12 April 1982. She also stated that she became unfit to work on 12 April 1982, and had finished work at 8.30 p.m. that day. On 21 April 1982 she provided the following additional information: "I was involved in a car crash on a Friday 2 weeks before Good Friday [9 April 1982]. I was badly bruised and shaken. I was not injured seriously so I was able to go to work on the following Monday I was on holiday when I had the accident and the police told me to see my own doctor as I was coming back home on the following Sunday. I went to work on Monday and saw the doctor and had chest & skull X-rays. I worked as usual and although I was bruised from the accident I felt no pain in my back particularly. I worked right up to Easter Monday. On 12 4 82 I had gone into work I was doing my normal job and had been getting up and sitting down doing my duties as normal. Suddenly as I was getting up from my chair I felt a very sharp, severe, pain in the lower part of my back and right buttock. I was unable to stand up straight. so I sat back down and asked the charge nurse to get me painkillers as I thought it was lumbago. I took two painkillers which had no effect so I took another lot of tablets. I had to wait until 8.30 pm before I could finish my shift and although I was not busy I was still in pain especially when I moved so I kept as still as possible. I kept taking painkillers but by the end of my shift when they had no effect I was taken in a wheelchair to the accident and emergency department where I was x-rayed. I was admitted to "short stay unit" straight away and the following day a bed became available on the ward 3 (orthopaedic ward). Where I have been ever since. I filled in the accident report the day after the accident. I have done no lifting or strenuous work which could have contributed to the accident as my job is mainly clerical.. They did say in casualty dept that it could possibly have been due to the car accident but this is not certain. I have never suffered with any back trouble prior to this". The information provided by her employers on 19 April 1982 was to substantially the same effect. The insurance officer then gave the following decision: "It has not been established that there was either (1) an event which in itself is identifiable as an accident or (2) a particular occasion on which personal injury was suffered by the claimant which would constitute an accident. Accordingly a declaration of an industrial accident under Section 107(2) of the Social Security Act 1975 cannot be made". The

claimant's appeal from this decision to the local tribunal, which she and her husband attended and at which she was represented by her association, was allowed by a majority. The tribunal decided that what occurred amounted to an industrial accident and awarded her injury benefit from 16 April 1982 to 14 June 1982 (both dates included). The insurance officer has now appealed to the Commissioner.

3. The claimant's doctor has attributed the claimant's undoubted incapacity during the relevant period to a disc lesion. At the hearing before the local tribunal a report by Mr. J. Hombal, the consultant orthopaedic surgeon who examined her on 22 July 1982, was produced. He recorded the following history: "On 13 April, 1982, [the claimant] experienced excruciating pain in the lower part of her back during the course of her work. She was sitting down in a chair and on rising from the chair she had an attack of pain in her lumbar spine and was unable to move. She also had radiation of pain over the right iliac crest. She was admitted to P.. C.. Hospital. Examination revealed that she had limitation of movements in the lumbar spine. Straight leg raise test on the right side was positive at 10 degs. Neurologically there were no abnormal signs. X-rays showed evidence of narrowing of the disc space between L.5/S.1 and also L.3/L.4. She was kept on bed rest and continuous pelvic traction. She made a gradual recovery during the following few days and she was mobilised and fitted with a lumbo-sacral corset, on 26 April, 1982. She was given a course of physiotherapy. She was discharged home on 30 April, 1982. She was subsequently seen in the Outpatient Department on 5 May, 1982 and also on 9 June, 1982, when she was found to have a full range of movements in the lumbar spine. Straight leg raise test was negative and there were no neurological signs. She was therefore discharged". He also stated that she had informed him that she had had no backache in the past and had not had any symptoms of backache following the road accident to which she referred. He went on to provide the following details relating to the examination carried out by him: "Clinical examination reveals that [the claimant] is a fit-looking lady of 52 years. She walks without any limp. Lumbar spine reveals a normal lumbar curvature. There is no tenderness. Forward flexion, lateral bending and lateral rotation are full but they are painful at their extreme ranges. Neurologically there are no abnormal signs. Sciatic stretch test is negative". His opinion was that "[The claimant] suffered acute lumbo-sacral strain when she was rising from a chair after she had been sitting down for a period in time during the course of her work on 13 April, 1982. This resulted in acute backache and the symptoms lasted for several weeks. She was off work for a period of nine weeks, and this is reasonable in view of her injury. I do not think the road accident in which she was involved two weeks prior to the injury in question, was responsible for the symptoms in her back".

4. I am satisfied that what happened to the claimant on 12 April 1982 amounted to an accident, that is to say, a physiological or pathological change for the worse in her condition. There is no dispute that it occurred during the course of the claimant's employment. However, before the accident can be regarded as being an industrial accident it must also have arisen out of her employment. In considering this aspect of the case, it is necessary to pay attention to section 50(3) of the Social Security Act 1975, which lays down that "... an accident arising in the course of an employed earner's employment shall be deemed, in the absence of evidence to the contrary, also to have arisen out of that employment".

5. Having considered all the evidence including, in particular, that of

the claimant and her husband, and having taken note of the submissions made and the decisions referred to (see, in particular, the decision to be reported as R(I)6/82) I have come to the conclusion that the relevant accident did not arise out of the claimant's employment. It is arguable that, in view of the fact that there is evidence which is capable of being interpreted as indicating that the accident did not arise out of the claimant's employment, the statutory presumption created by section 50(3) is inapplicable to the present case. I do not find it necessary to agree or disagree with this proposition as I am satisfied that if a presumption exists, it is a rebuttable presumption which is rebutted by the evidence relating to the circumstances in which the relevant accident occurred. I accept the medical evidence to the effect that at the relevant time the claimant "suffered acute lumbo-sacral strain". Why she should have done so and why she should have done so at that particular time would appear to me to be a mystery. The medical evidence is to the effect that there was no causal connection between what occurred and the injury or injuries she sustained in the road accident in which she was involved about 2 weeks earlier. The claimant has stated that "I have done no lifting or strenuous work which could have contributed to the accident as my job is mainly clerical", and that at the time she was doing her normal job and "had been getting up and sitting down doing my duties as normal". There is no suggestion that, by reason of the work she had to do or for no particular reason, she had been sitting in the chair for an abnormal length of time. There is also no suggestion that the chair was defective in any way, or that its condition or the condition of the floor on which it rested, or the surrounding area contributed in any way to what occurred. There is no indication that she got up from the chair suddenly, or in an awkward manner or that she slipped, and no suggestion that there was any interference with the chair, or that she came in contact with any object. It would appear that what occurred, occurred when she was simply getting up from a chair. The indications are that what happened might equally well have happened when she was getting up from a chair in her own home, or in that of a friend, and that it was completely fortuitous that it happened when she was getting up from a chair at her place of work. It is true that her work required her to sit in a chair and to get up from the chair periodically. I am unable to accept that merely because this was so the relevant accident should be regarded as having arisen out of her employment. What she was doing at the time was just one of the many ordinary every day human activities, such as walking or standing, in which one indulges irrespective of whether one is or is not at work. What she was doing did not expose her to any risk of accident, which is not present at all times during the course of a day when involved in such activities. In view of the conclusion to which I have come, my decision has to be that set out in paragraph 1. However, the claimant is not required to repay the injury benefit paid to her following the decision of the local tribunal. I wish to add that I regret having to come to a decision which is not in the claimant's favour, particularly as I have no doubt that she has been completely frank and sincere throughout.

6. The insurance officer's appeal is allowed.

(Signed) E. Roderic Bowen
Commissioner

Date: 11 November 1982

Commissioner's File: C.W.I.50/82

C.I.O. File: I.O.5228/I/82

Regional File: Wales: Unregistered Papers