THE SOCIAL SECURITY COMMISSIONERS

File No: CIB 805 2004

APPLICATION TO SET ASIDE A REFUSAL OF LEAVE TO APPEAL BY THE SOCIAL SECURITY COMMISSIONER

1 On 16 March 2004 I refused leave to appeal, with reasons, to the applicant in this case.

2 Commissioners have power to set aside their determinations of refusals of leave to appeal (permission) under regulations 31 and 32 of the Social Security Commissioners (Procedure) Regulations 1999. Regulation 31(1) provides that:

> Subject to regulations 6 (transfer of proceedings between Commissioners) and 32 (decisions shall include determinations of applications for leave to appeal), on an application made by any party, the Commissioner who gave the decision in proceedings may set it aside where it appears just to do so on the ground that
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> (a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or his representative or was not received at an appropriate time by the Commissioner; or
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> (b) a party or his representative was not present at a hearing before the Commissioner; or
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> (c) there has been some other procedural irregularity or mishap.

Commissioners may look at ground (c) broadly where the justice of the case clearly so requires: see decision CG 3657 2001 and the other decision cited in that decision. Commissioners have no other power to set aside refusals of leave to appeal.

3 On 24 May I received an application to set aside my refusal of leave from the solicitors for the applicant. The only grounds on which this application was made was that the applicant had now produced then existing evidence about his disability that was not available to the tribunal (or, in fairness, to the solicitors until after the tribunal hearing). The solicitors were invited to indicate whether there were any grounds within the scope of regulation 31 but have not had the courtesy to reply. I assume therefore that there were no grounds.

4 I am frankly surprised at a well established firm of solicitors making such an application on those grounds alone. It is for the parties to produce their evidence to the tribunal. If a claimant fails to produce evidence that he or she has to the tribunal, the only way in which that evidence can be considered in connection with any benefit entitlement is by asking the Secretary of State or other authority (in practice, the relevant Departmental office) to consider a revision or supersession. That can be done if the evidence is evidence of a mistake as to, or ignorance of, a material fact as

at the date of the original decision, or of a relevant change of circumstances since that date.

5 A tribunal has no power at all to revise or supersede its own decisions or those of another tribunal. And it cannot in any event look at changes since the date of the original decision under appeal to it.

6 The application must fail.

David Williams
Commissioner

21 October 2004

[Signed on the original on the date shown]

DW/f