

*Art - Machine Up + Down Stairs (7) ★ 43,99*

DGR/SH/ZA/18

Commissioner's File: CIB/15804/96

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the social security appeal tribunal given on 7 June 1996 is erroneous in point of law, and accordingly I set it aside. As it is convenient that I give the decision the tribunal should have given, I further decide that the claimant is able to satisfy the All Work Test, and accordingly continues to be incapable of work and entitled to incapacity benefit.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 7 June 1996.

3. On 5 January 1996 the adjudication officer reviewed the award to the claimant of incapacity benefit, and decided that from and including 5 January 1996 he did not satisfy the All Work Test nor could he, from that date, be treated as incapable of work, with the result that, from and including 5 January 1996, the claimant ceased to be incapable of work and was no longer entitled to incapacity benefit.

4. In due course, the claimant appealed to the tribunal. The adjudication officer had allowed 11 points under the physical descriptors, whereas in order to satisfy the All Work Test the claimant required 15 points. In the event, the tribunal increased the number of points to 14, but this was still insufficient to enable the claimant to succeed. However, in the course of their decision, the tribunal considered whether or not the claimant might be entitled to 3 points under the physical descriptor "walking up and down stairs". They considered whether the claimant could only walk up and down a flight of 12 stairs by proceeding one step at a time. They were satisfied that he could only move one step at

a time when going down stairs, but they took the view that this was not enough. In order to score the necessary points, he had to suffer from the restriction on his walking ability when going upstairs as well as downstairs.

5. This interpretation of the provision is, in my view, unsound. The exact words of the test read as follows:-

"Can only walk up and down a flight of 12 stairs if they go ... one step at a time."

No difficulty arises in construing this provision if the person concerned goes one step at a time continuously throughout the whole process of walking up and down a flight of 12 stairs, but what if he progresses in this manner for only part of the way? The provision seems to contemplate an "all or nothing" situation. Presumably, it was thought that a person who needed to progress only one step at a time would suffer this disability continuously, and would not be in a position at any stage to walk free of the disability. But apparently, in the case before me the claimant was constrained to move one step at a time only when going down stairs.

6. The language of the provision is clearly unsatisfactory, as it does not contemplate the possibility that a claimant suffering from the relevant disability might not at all times need to progress one step at a time. But doing the best I can with the language used, I take the view that the condition that the draftsman really had in contemplation was an inability to go up and down a flight of stairs without the necessity at some stage at least to restrict one's movements to one step at a time. And on this basis, as the claimant was clearly unable to walk downstairs without recourse to proceeding one step at a time, he satisfies the test, and as a result is entitled to the 3 points.

6. Accordingly, I consider that the tribunal misconstrued the relevant provision, and I must set aside their decision as being erroneous in point of law. However, it is unnecessary for me to remit the matter to a new tribunal for rehearing. I can conveniently substitute my own decision, and dispose of the appeal finally.

7. My decision is, therefore, as set out in paragraph 1.

(Signed) D G Rice  
Commissioner

(Date) 12 May 1998