

## SOCIAL SECURITY ACTS 1975 TO 1981

## CLAIM FOR INVALIDITY BENEFIT

## DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's appeal, brought by leave of the chairman of the local tribunal, against a unanimous decision of the local tribunal dated 12 January 1981 which confirmed a decision of the insurance officer dated 10 November 1980 and decided adversely to the claimant a reference by the insurance officer. My decision is as follows:

- (1) Invalidity pension is payable from 6 November 1980 to 24 November 1980 (both dates included) because the claimant has proved that he was throughout that period incapable of work by reason of some specific disease or bodily or mental disablement.
- (2) Pursuant to regulation 4 of the Social Security (Overlapping Benefits) Regulations 1979, I direct that all unemployment benefit paid to the claimant in respect of the period referred to in sub-paragraph (1) above shall be treated as having been paid on account of the invalidity pension referred to in that sub-paragraph.

2. The claimant, now aged 51, was formerly a coalminer. He suffered a severe back injury on 21 July 1975. On 21 June 1978 a medical board assessed the disablement resulting from the relevant loss of faculty at 11½ for life, final. At the time of the events with which this decision is directly concerned, the claimant had been since 30 November 1977 continuously in receipt of invalidity benefit, the diagnosis being "old injury to back. During that period the insurance officer had, in the light of reports by examining medical officers of the Divisional Medical Office of the Department of Health and Social Security, twice disallowed the claimant's claims to invalidity benefit, but on each occasion the claimant successfully appealed to the local tribunal against such disallowance.

3. Pursuant to routine procedures, the claimant was on 9 October 1980 examined by a medical officer of the Department. This medical officer took note of the fact that the claimant had on 1 June 1979 been retired by the National Coal Board on medical grounds. He was satisfied that the claimant was not fit for his regular occupation. He considered, however, that the claimant was capable of work within certain limits. Under "General Remarks" he wrote:

"Restricted back movements as a result of old injuries. Capable of light or sedentary work. No work motivation. He is incapable of work at the occupation of light job at NCB but is capable of work within certain limits.

4. The claimant was acquainted with this opinion and was advised to get in touch with his local unemployment benefit office. He did not, however, accept this advice. On 10 November 1980 the insurance officer disallowed invalidity benefit from 6 November 1980 (the latter date being the date of the expiry of the latest doctor's statement then to hand).

5. The claimant appealed to the local tribunal against this disallowance and at the same time submitted a further doctor's statement covering the period 11 November to 24 November 1980. He claimed and was awarded unemployment benefit in respect of the inclusive period 11 November to 24 November 1980.

6. On 1 December 1980 the claimant was examined by a different medical officer of the Department. The conclusions of this medical officer were in line with those of the medical officer who had examined the claimant on 9 October 1980. The insurance officer referred to the local tribunal the inclusive period 11 November to 24 November 1980.

7. The claimant appeared before and gave evidence to the local tribunal. He was represented by an officer of the National Union of Mineworkers. He produced a letter dated 10 January 1980 and written to him by the Area Education Officer of the Nottinghamshire County Council. That letter read as follows:

"You will recall that at the interview for the post of Caretaker at St Patrick's RC First School, the offer of the appointment was made subject to satisfactory reports from your previous employers. Unfortunately the details which have now been very carefully considered by the Authority make it clear that the appointment cannot be confirmed because of the medical evidence.

I hope that you will soon be able to find some other suitable employment".

Evidence was also produced to show that the claimant suffers from deafness, although this is alleviated by a hearing aid. The claimant told the tribunal that the pain from his back well into his legs, his shoulders and both arms. He could not walk very far and got stiff after any period of sitting. He slept badly because of constant aching in his back. He had to give up driving.

8. The relevant form L73 was completed in a exemplary manner. It is obvious therefore that the claimant received a most careful hearing. The local tribunal unanimously considered that the weight of the medical evidence was against the claimant. No criticism can be made of this decision. The Commissioners have said many times that a claimant whose medical evidence consists of nothing more than laconic, unparticularized forms MED3 is poorly equipped to rebut the more detailed findings of two medical officers of the Department.

9. The chairman of the local tribunal granted the claimant's application for leave to appeal to the Commissioner. On form L752 the claimant drew attention to the fact that since 17 July 1981 his incapacity had been recognized by the insurance officer and payment of invalidity benefit had been restored. He also asked for an oral hearing of his appeal to the Commissioner. I granted that request but, bearing in mind the consideration to which I have referred at the end of paragraph 8 above. I pointed out that it was very much in the claimant's interests that he should produce further medical evidence directed specifically to his capacity (or incapacity) in respect of light or sedentary work during the period 6 November to 24 November 1980.

10. The National Union of Mineworkers has now submitted a letter dated 4 June 1982 and written by the claimant's general practitioner. I quote therefrom:

"I wish to confirm that we had to put him off work in October 1977 because of pain in the back, from old back injury sustained in his work at the pit. The pain and stiffness in the back which he had at that time has never improved. In fact it is getting worse. In 1978 we consulted Mr Moulton. He was given traction and attended Crow Hill throughout 1978 but his back has not improved. He was not fit for work in 1979 and I can confirm that from 6 November 1980 to 24 November 1980 he was definitely not fit for work. We have always considered him incapable of work even though the DHSS say that he was capable of limited work. He still continues to have pain in his back and legs. So much so that it takes him at least  $\frac{1}{2}$  an hour to get up in the mornings. In 1981 because of pain and stiffness to the shoulders and hands he was referred to Dr Lloyd-Jones Rheumatologist. He is still attending Dr Lloyd-Jones, and is on continuous treatment.

11. With characteristic objectivity, the insurance officer now concerned has submitted to me that it is now for consideration whether the claimant has, on the balance of probability, proved that he was incapable of all work during the period the subject of this appeal. In my view the claimant has so proved. It is in the nature of things that a general practitioner who has been regularly seeing his patient is likely to be in a better position to form an accurate view of that patient's condition than is a medical officer of the Department after a single examination. Where, as here, the general practitioner is prepared to commit himself to an unqualified expression of opinion as to his patient's capacity for any work, much weight falls to be given to such opinion. (I hasten to add that this in no way reflects upon either the integrity or the competence of the medical officers of the Department.) It is my view that the claimant has now made out his case. I find that throughout the period referred to in paragraph 1 above he was incapable of all work.

12. In my view of the conclusion which I have reached upon the material in the papers I decided that there was nothing to be gained by holding an oral hearing of this appeal - and the claimant and the National Union of Mineworkers were so informed on 29 November 1982. On 3 December 1982 Solicitors instructed by the claimant wrote to the Office of the Social

Security Commissioners, accepting that the matter could properly be dealt with on the basis of the papers but inviting me "to bear in mind that (the claimant) was without benefit from 6 November 1980 to 17 July 1981" and "to take these days into account". I have, however, no jurisdiction to give any decision in respect of any period other than that which was before the local tribunal - i.e. the period referred to in paragraph 1(1) above. To the extent that the period 25 November 1980 to 17 July 1981 was the subject of claims duly made by the claimant, the claimant can (pursuant to section 104 of the Social Security Act 1975) apply to the insurance officer for a review of the relevant decisions. Alternatively, the claimant can apply to the local tribunal for leave to appeal out of the against this decisions. At this stage these are matters for the insurance officer or for the local tribunal; matters over which I have no control in this appeal. I add this however. It is obvious that the ascertainment of this claimant's true condition from time to time is generating a substantial volume of controversy and litigation. The claimant has been in the care of two consultant specialists. Either his Union or the Department may think it worth obtaining the opinion of one or both of these specialists in the hope of bringing some finality to this controversy.

13. The claimant's appeal is allowed.

**ADDENDUM:**

Since I drafted the foregoing, the claimant's Solicitors have written a further letter, dated 16 December 1982, to the Office of the Social Security Commissioners. They therein state that the claimant regards the period of claim as being 6 November 1980 to 17 July 1981. As I have explained in paragraph 12 of my decision, the only period of claim before me is 6 November 1980 to 24 November 1980 (both dates included). In the same paragraph I have indicated the courses open to the claimant in respect of the period 25 November 1980 to 17 July 1981.

(Signed) J Mitchell  
Commissioner

Date: 24 January 1983

Commissioner's File C.S. 773/1981