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JMH/SH/2

Commissioner's File: CS/159/1993

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: [REDACTED]

Appeal Tribunal: Darlington

Case No: [REDACTED]

1. It is my decision that the decision of the social security appeal tribunal on 20 October 1992 is erroneous in point of law and I remit the case for a rehearing in front of a differently constituted tribunal.

2. This is an appeal with the leave of the Commissioner from the decision of an appeal tribunal given on 20 November 1992 that the claimant is not entitled to Invalidity Benefit from and including 5 October 1992. It has the support of the adjudication officer.

3. In paragraph 13 of the submissions of the adjudication officer to the Commissioner the adjudication officer records his consent to a decision without reasons being given, in accordance with regulation 22(2) of the Social Security Commissioners Procedure Regulations 1987. I cannot find any record of the consent of the claimant to this procedure and accordingly I am under a duty to record my reasons for my decision.

4. The grounds of appeal are:-

(1) The tribunal did not explain why they preferred the evidence of the two medical officers against her own general practitioner and her own evidence.

(2) There were insufficient findings of fact. It is not enough to state as the tribunal did in box 2 that, "there is work which she [the claimant] could do which does not involve constant use of the right arm and hand which would suit the claimant" and, in box 4, "there is lighter work eg. cinema attendant, which she could do".

The claimant is left wondering how and why they came to these findings and the decision. Why is the tribunal of the view that she could be a cinema attendant?

The adjudication officer makes similar submissions and, in regard to the second submission, states "[they - the Appeal Tribunal] have not explained why the claimant's incapacity does not prevent her from performing the duties involved", that is to say involved in the duties of the suggested occupations.

It is my decision that both grounds of appeal are valid.

5. The adjudication officer also submits in paragraph 12 as follows:-

"In their reasons for decision the tribunal have stated, "The tribunal is not satisfied that the claimant is not incapable of any work", and it is my submission that this statement does not confirm the decision that the claimant is not entitled to invalidity benefit. In view of my findings above I do not need to make a determination on this issue. This seems to be probably more a matter of grammar than anything else, though in view of where the onus of proof lies it would have been more felicitously expressed without the first "not" i.e. "the tribunal is satisfied that the claimant is not incapable of any work"."

6. My decision is therefore as recorded in paragraph 1 above.

(Signed) J.M. Henty
Commissioner

(Date) 13 January 1994