

PARA - 6 - Falls to Dept. to obtain and bring for med. reports
What are necessary for proper adjudication of a claim, reports
R.C.P.

SH/1

Commissioner's File: CS/209/1992

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR SICKNESS BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: [REDACTED]

Appeal Tribunal: Darlington

Case No: [REDACTED]

1. This appeal succeeds. The decision of the Darlington social security appeal tribunal dated 24 March 1992 is erroneous in point of law. I set it aside. I declare that the claimant has suffered personal injury caused by an accident on 15 March 1965 arising out of and in the course of his employment, being employed earner's employment in Great Britain. The question whether the claimant is incapable of work by reason of that personal injury is referred to a differently constituted tribunal for determination.

2. On 1 February 1991, the claimant was advised by his doctor to refrain from work and, on the same day, he signed form SC1 claiming sickness benefit, stating that his sickness was due to an accident which happened while he was working for an employer. He was told that he did not satisfy the contribution conditions and it appears that he accepted that. It therefore followed that he could be entitled to sickness benefit only if he was incapable of work due to an industrial accident or prescribed disease (section 50A of the Social Security Act 1975, now section 102 of the Social Security Contributions and Benefits Act 1992). In reply to various enquiries, the claimant gave details of an accident at work he had suffered in the mid-1960s. The adjudication officer was not satisfied and, on 5 March 1991, decided as follows:-

"It has not been established that there was either -

- (i) an event which in itself is identifiable as an accident or
- (ii) 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 reason for making that decision appears at paragraph 5.3 or the adjudication officer's submission to the tribunal.

"The employer in question has been out of business for some time and [the claimant] could not provide any corroboration that the accident happened on a more specific date."

As the tribunal rightly held, corroboration of the claimant's own evidence was not required as a matter of law (R(SB) 33/85). The tribunal found the claimant to be a truthful witness and held that he had had an accident in about March 1965. No complaint is made in respect of that part of the tribunal's decision. However, in my view, the tribunal ought to have made a formal declaration that there had been an industrial accident in terms that showed that all the elements of section 107(5) of the Social Security Act 1975 (now section 44(6) of the Social Security Administration Act 1992) had been considered. Also a precise date must be fixed in case it becomes important. If it is not possible to pinpoint the actual date of the accident a notional date must be fixed.

3. The real issue in this appeal arises out of the adjudication officer's submission to the tribunal at paragraph 6.6.

"Should the tribunal decide that there was such an accident they are requested to decide upon the date and the further questions arising under sections 50(1) and 50A of the Social Security Act 1975 whether the accident caused personal injury and, if so, whether incapacity for work from 1.2.91 is a result of that injury."

In my view, the question whether the accident caused personal injury was a matter which, under section 107, fell to be decided on the appeal before the tribunal. However, the further question under section 50A was a new issue for the tribunal upon which the adjudication officer had made no determination. It was, effectively, referred to the tribunal by the adjudication officer.

4. The tribunal accepted that the claimant suffered from a "degenerative lumbar disc which is arthritic" and, implicitly, also accepted that he was, as a result, incapable of work. They had some evidence from the claimant as to the history of his disablement and recorded that he said "he had no trouble until immediately after the accident". There was no other evidence from medical practitioners except the medical certificates which, of course, did not deal with the issue of causation. During the hearing, the claimant's representative, Mr John Salisbury of the Welfare Rights Unit of Durham County Council, asked the tribunal to obtain a medical report. The tribunal recorded the following

evidence on that issue:-

"No report was produced to the tribunal on account, the claimant said, of the expense of getting it although Mr Siva had told the claimant that he would report to the DSS. The claimant said he thought Mr Siva would not provide him with a report."

I take the second sentence to mean that the claimant did not consider that Mr Siva would provide him with a report unless he paid the appropriate fee. The claimant had written a letter to Mr Siva asking whether he could "confirm that his back trouble could have been caused initially by the fall he had described". He had not received an answer to that question.

5. The tribunal decided that the claimant was not entitled to sickness benefit and their reasons were as follows:-

"Whilst the tribunal were satisfied on the evidence (they found the claimant a truthful witness) that the claimant suffered an accident at about the date described, they were not satisfied, on the balance of probabilities, that the claimant's inability to work resulted from that accident or that the accident contributed to it. The descriptions of the claimant's medical conditions suggested that his symptoms were degenerative and the tribunal had not received sufficient evidence to satisfy themselves, again on a balance of probabilities, that the claimant became incapable of work as a result of injuries received on the occasion of the accident. The tribunal accepted that corroboration of the claimant's own evidence was not required. R(SB) 33/85, section 50A Social Security Act 1975.

The tribunal considered Mr Salisbury's request that the tribunal order a special medical report but refused the request because in their opinion such a report should be produced by the claimant as part of his case."

The claimant now appeals with the leave of the tribunal chairman on the ground that the tribunal ought to have exercised their power under section 115A of the Social Security Act 1975 (now section 53 of the Social Security Administration Act 1992) to obtain a report. The appeal is supported, on the same ground, by the adjudication officer now concerned with the case.

6. It is repeatedly said that a tribunal's jurisdiction is inquisitorial. That is in part a consequence of the adjudication officer's role being inquisitorial. Before making a decision on a claim, an adjudication officer or a tribunal has a duty to investigate. There was clear evidence in this case that the claimant had a degenerative spine. The issue was whether the relevant accident had been a cause of that condition. That is a matter of medical judgment and while the tribunal must make the ultimate decision it seems to me that they were, in circumstances where the claimant's case was not completely unarguable, bound to ensure that there was some medical evidence to assist them.

In any event, the ground for refusing to exercise the power to obtain the report was not a proper one. If a report is desirable in the interests of justice, those adjudicating on the claim should obtain one. There can be no question of a claimant being required to pay for a report which is necessary for the proper determination of his claim for benefit.

7. In my view the tribunal misdirected themselves as to their role and their decision is accordingly erroneous in point of law. I must, of course, set aside the tribunal's decision. However I see no reason why I should disturb the tribunal's finding that there had been an industrial accident. It is plain that the incident complained of by the claimant and accepted by the tribunal as having happened caused personal injury at the time (see the claimant's description dated 1 March 1991) arose out of and in the course of employment, being employed earner's employment in Great Britain. Accordingly, on that part of the appeal, I give the decision which the tribunal should have given and make the declaration set out in paragraph 1 above. I fix 15 March 1965 as the date of the accident, the actual date being lost in the mists of time.

8. The questions arising under section 50A of the Social Security Act 1975 (now section 102 of the Social Security Contributions and Pensions Act 1992) must be determined by a differently constituted tribunal who must consider afresh whether to refer a question for examination or report under section 53 of the Social Security Administration Act 1992. I do not direct the tribunal to obtain a report because 16 months have elapsed since the tribunal's decision. It may no longer be necessary for a report to be obtained under section 53 because a report may have been brought into existence during that period of 16 months. Alternatively the tribunal may wish to wait until the disablement questions on any claim for disablement benefit have been determined by an adjudicating medical authority, since the determination of those questions may throw some light on the principal question before the tribunal. If an opinion is to be obtained from a medical practitioner, the question which needs to be asked is whether the relevant accident is more likely than not to have been an effective cause of the claimant's incapacity for work, although not necessarily the only cause (see R(I) 3/56). It would also, of course, be necessary for the medical practitioner to be provided with a description of the accident.

9. My decision is set out in paragraph 1 above.

(Signed) M. Rowland
Deputy Commissioner

(Date) 19 August 1993