

JBM/SH/5

Commissioner's File: CS/277/1994

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: Barnsley

Case No: [REDACTED]

1. My decision is that the decision of the Barnsley social security appeal tribunal dated 16 December 1993 is not erroneous in point of law.

2. This is an appeal by the claimant to the Commissioner with the leave of the Commissioner against the unanimous decision of the appeal tribunal in respect of the decision of the adjudication officer first involved in these appeals.

3. The facts of the case are dealt with in the written submission of the adjudication officer first involved in these appeals to the appeal tribunal. In respect of those matters and of the submission dated 19 August 1994 of the adjudication officer now involved in these appeals the claimant has through his representatives had the opportunity to comment and I have their observations dated 24 August 1994 which are "no further comments". No useful purpose is to be served by my setting out those matters afresh here.

4. The relevant law (both statutory and otherwise) is adequately dealt with in the submissions of the two adjudication officers who have been involved in these appeals. Nothing is to be gained by my setting out these matters afresh here.

5. In my judgment the decision of the appeal tribunal is not erroneous in point of law. It is trite law that where medical opinions differ the appeal tribunal should decide, on a balance of probabilities, which opinion is more probably correct. The reports in the instant case from the examining medical officer and the claimant's consultant agree in the main as to what the claimant is suffering from. The medical evidence available to the appeal tribunal is not inconsistent nor contradictory. On

the medical evidence before them the appeal tribunal were entitled to reach the conclusion to which they came. The appeal tribunal considered the claimant's evidence as to the extent of his abilities and incapacity and took into account the claimant's physical limitations as reported by the examining medical officer when considering the type of work the claimant was capable of. Accordingly they observed the guidelines provided in the decisions R(S) 6/85 and R(S) 7/85. Further they have observed the statutory requirements imposed upon them by regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986. The appeal tribunal on the face of their full and careful record gave consideration to all relevant facts, observed the statutory requirements imposed upon them to make full findings of fact and reached a conclusion to which they were entitled to come. On the face of the appeal tribunal record the claimant can ascertain why his case failed. I note that the claimant has made a new claim to sickness benefit from 25 August 1994 and from the memorandum dated 11 September 1994 "the AO has not yet made any decision on this claim." I note from the chairman's note of evidence on the face of the record of the appeal tribunal that "no Presenting Officer today". However the claimant was represented at the oral hearing before the appeal tribunal "appellant's representative state organisation if any Mrs B Bashforth - Social Services." From the record of the proceedings it is clear that the claimant has not suffered any prejudice in the absence of a presenting officer.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision.

7. Accordingly the claimant's appeal is disallowed.

(Signed) J.B. Morcom  
Commissioner  
(Date) 6 March 1995