INDUSTRIAL INJURY BENEFIT

Late claim—misreading of official information

Claimant made a late claim for an increase of injury benefit in respect of her children. Her reason for the delay in claiming was that, as a married woman living with her husband who was in work, she did not know that she could claim in respect of her children.

Held that reasonable cause for delay in claiming had been shown The claimant had been led from perusal of leaflet N.I.1 to believe that a general rule existed precluding payment of benefit in respect of children to her as a married woman living with her husband who was in work, and the usual form explaining that in the case of injury benefit this restriction did not apply was not issued to her. In these circumstances it was not unreasonable for her to refrain from making further inquiry.

1. My decision is that injury benefit in respect of the claimant's dependent children from the 22nd August 1959 to the 13th February 1960 (both dates included) is not forfeited.

2. The claimant is a married woman aged 39 years who sustained an industrial accident on the 17th August 1959. She claimed and was awarded injury benefit from the 22nd August 1959 to the end of the injury benefit period on the 13th February 1960. The claimant had three children, but it was not until the 23rd August 1960 that she claimed an increase of benefit in respect of them.

3. Section 17 of the National Insurance (Industrial Injuries) Act, 1946 provides for an increase of injury benefit for any period during which the beneficiary entitled to injury benefit has a family which includes a child or children. But regulation 12 of the National Insurance (Industrial Injuries) (Claims and Payments) Regulations, 1948 [S.I. 1948 No. 1362] as amended provides that claims for benefits are to be made within the appropriate prescribed times, and that if a person fails to make his claim within the prescribed time he shall forfeit the benefit, unless he proves "reasonable cause" for the delay. The prescribed time for claiming the increase of injury benefit in respect of the claimant's children was (in the present case) one month. Obviously, in the present case, the claim was late. Unless "reasonable cause" for the delay be proved, the increase of benefit is forfeited. Whether "reasonable cause" is proved is the question in this appeal.

4. "Reasonable cause" in this context has been defined as "some fact which, having regard to all the circumstances (including the claimant's state of health and the information which he had received and that which he might have obtained) would probably have caused a reasonable person of his age and experience to act (or fail to act) as the claimant did." Simple ignorance of a claimant's rights to benefit can seldom, if ever, be regarded as "reasonable cause": this is not because everybody is expected to know the details of procedure relating to claims: it is rather because a person who does not know the procedure may reasonably be expected to find out by making appropriate inquiry.

5. The local appeal tribunal regarded the present case as one of simple ignorance of the right to claim for children. The claimant herself admits that she did not know that it was open to her, as a married woman living with her husband (who was working), to claim in respect of the children. That was why she did not claim until a friend told her otherwise. It is true, therefore, that basically the delay in claiming was due to the claimant's ignorance of her rights: and in that situation, unless some exceptional circumstances can be found to justify the claimant's lack of inquiry, the increase of benefit in question must be forfeited.

6. The insurance officer now concerned with the case supports the claimant's appeal. It appears, in the first place, that form B.F.11P which is normally sent with the first payment of benefit to claimants without dependants, was probably never sent out to the present claimant. Form B.F.11P expressly points out that whereas a married woman who is residing with her husband cannot receive sickness benefit for a child dependant unless her husband is incapable of self-support, this restriction does not apply in the case of industrial injury benefit. On the other hand there is evidence that the claimant had been supplied with and had read leaflet N.I.1, in which it is stated (at paragraph 13(e)) that increases of National Insurance benefits for dependants "cannot be paid to a married woman residing with her husband unless he is incapable of self-support and not himself receiving benefit for the child(ren)." Since the leaflet elsewhere (e.g. at paragraph 9) refers to industrial injuries benefits, the reader may possibly fail to appreciate that the statement quoted from paragraph 13(e) does not apply to industrial injuries benefits.

7. The insurance officer now concerned with the case submits that, in the circumstances, "it is considered that the claimant had reasonable cause for believing that she was not entitled to an increase of injury benefit

in respect of her children and that there was nothing for her to inquire about." I do not wish to encourage any general idea that, if a person has some impression as to what his rights are, he is thereby absolved from further inquiry. That is not so. I am prepared to accept however that the present case is somewhat exceptional, in respect that the claimant appears to have been led, from a perusal of official information, to believe that a general rule existed precluding payment of benefit in respect of children to her as a married woman living with her husband, who was in work; and that she was not supplied with the information (usually supplied to claimants) which would have told her that in the case of injury benefit this rule did not apply. I agree that in these circumstances it was not unreasonable for her to refrain from making further inquiry; and accordingly I accept that " reasonable cause " for failure to claim at the right time has been established.

8. The appeal of the claimant, supported by the insurance officer now concerned with the case, is allowed.