

INDUSTRIAL DISABLEMENT BENEFIT

Special hardship allowance—Appeal pending—Death of appellant.

A claimant appealed to the Commissioner against the disallowance of his claim for special hardship allowance but died before his appeal could be heard. His widow was unwilling to be appointed to act in respect of the outstanding appeal and the Official Solicitor declined to become involved. No other person was found who would have been prepared to act and the insurance officer applied for dismissal of the appeal and referred to Decision R(S) 7/56 where the Commissioner dismissed the appeal of a deceased claimant against a decision requiring him to repay overpaid benefit on an assurance by the insurance officer that no attempt would be made to enforce repayment.

Held that:

1. where the claimant is the appellant and has died since his appeal has been launched and where
 - a. there is no person willing to be appointed a representative under regulation 29 of the Social Security (Claims and Payments) Regulations 1979, or
 - b. there is no personal representative (or, in Scottish cases, the equivalent functionary), and
 - c. the case is not amenable to the procedure adopted in Decision R(S) 7/56

it is better not to dismiss the appeal but merely to declare it abated (paras 5 and 6);

2. an appeal which is abated is suspended only and is capable of being revived by procedure (para 2) though the matter can for practical purposes be regarded as closed (para 5).

1. My decision is that the claimant's appeal against the decision of the local tribunal dated 19 May 1981, to the effect that the increase of disablement benefit generally called special hardship allowance was not payable from and including 20 February 1980, has abated because of the death of the claimant on 12 August 1981.

2. Where a claimant who has appealed against the decision of an insurance officer or of a local tribunal dies before his appeal is disposed of, the appeal is said to be abated (see Decision R(I) 7/62). An appeal which is abated is suspended only and is capable of being revived by procedure. If in the circumstances the institution of procedure to revive the appeal is unlikely a position results which is very much the same as if the appeal had been dismissed; and the question has been raised whether in such circumstances the appeal can properly be dismissed. I have reached the conclusion that (subject to what is said in paragraph 5 below) the proper course where an appeal has been abated and not revived is simply to declare the appeal to be abated. Such a declaration is no bar to its being revived by the appropriate procedure.

3. In Decision R(I) 7/62 the appeal which had abated was revived by the Minister's appointment of a representative under a regulation analogous to that conferring like power on the Secretary of State for Social Services contained in regulation 29 of the Social Security (Claims and Payments) Regulations 1979 [S.I. 1979 No. 628]. The representative was served with the appropriate documents and the appeal was dismissed. In Decision R(P) 2/62 the appellant had died and although no one had been found who was willing to be appointed as representative in connection with the appeal, it was ascertained that executors had been appointed. The executors were of course personal representatives within the meaning of the Administration of Estates Act 1925 and as such stood in the shoes of the deceased appellant.

The abated appeal was revived when the appropriate papers were served on the executors and the appeal was in due course dismissed.

4. Neither of the foregoing courses is readily open in the present case. It is not known that any personal representatives have been constituted and the claimant's widow is unwilling to be appointed representative under regulation 29. No other person has been found who would be prepared to act. Under regulation 29(1) the Secretary of State has power to appoint any person to proceed with the appeal and under regulation 29(2) he has power to provide for any resulting award to be distributed or paid to or distributed among persons claiming as personal representative, legatee, next of kin or creditor. Where none of such persons can be found who are willing to be appointed the Secretary of State could in fact appoint some person without any interest in the claim to act, but such person could only be properly appointed if prepared conscientiously to look into the matter on behalf of others. The Official Solicitor has been approached but has indicated an unwillingness to be appointed, more particularly as there is no one to give a satisfactory undertaking as to costs. There is no reason why any other disinterested person should be willing to be appointed, and it is necessary to look for some other means of dealing with the appeal.

5. In Decision R(S) 7/56 where the appeal of a claimant since deceased was an appeal against a decision requiring repayment of benefit overpaid, the Commissioner dismissed the appeal without there being any representative of the deceased or his estate on an assurance by the insurance officer that no attempt would be made to enforce repayment. This was a practical solution to the problem in that the assurance made it virtually certain that no one would ever seek to have the decision dismissing the appeal set aside. No comparable assurance has been offered or indeed can readily be devised that would achieve an equivalent effect in the present case. I note that in Decision R(P) 2/62 the Commissioner left open the question whether it would be proper to dismiss an appeal in a case where there was neither a personal representative nor an appointment under the then equivalent of regulation 29. I have reached the conclusion that it is better not to dismiss such an appeal in circumstances such as the present but merely to declare it abated. In my judgment when in such circumstances an appeal is declared abated by the Commissioner (or in the case of an appeal to the local tribunal by that tribunal) the matter can for practical purposes be regarded as closed. It is true that there remains a faint possibility of its being revived; but, even if the appeal were dismissed in the absence of anyone to represent the claimant, there would remain the possibility of an application to have the dismissal set aside.

6. I have discussed with several other Commissioners the practice recommended in this Decision and they have authorised me to say that they agree that it is appropriate for adoption in comparable cases, that is to say in cases where the claimant is the appellant and has died since his appeal has been launched and where (1) there is no person willing to be appointed a representative under regulation 29, (2) there is no personal representative or the equivalent functionary in Scotland and (3) the case is not amenable to the procedure adopted in Decision R(S) 7/56. It is not appropriate where the appellant is the insurance officer and if the insurance officer is in such a case unwilling to withdraw his appeal some other procedure must be devised.

(Signed) J. G. Monroe
Commissioner