
Reasonable cause for delay in claiming

Claimant delayed claiming disablement benefit on account of pneumoconiosis until advised by his doctor to do so. Chest physician who had treated the claimant for pulmonary tuberculosis for several years stated that delay was not due to lack of interest on the claimant's part but to lack of certainty of the presence of pneumoconiosis in addition to tuberculosis.

Held that the claimant had reasonable cause for delay in claiming disablement benefit. He was acting on medical advice, not legal advice, given to him by his doctor. Decision R(S) 5/56 distinguished.

1. My decision is that the claimant has not forfeited any disablement benefit to which he may be proved to have been entitled from the 21st November 1949 to the 15th February 1958 both dates included by reason of his failure to claim such benefit before the 16th May 1958.

2. The claimant's association asked for an oral hearing of this appeal, but it is unnecessary to trouble them to attend a hearing.

3. On the 16th May 1958 the claimant claimed disablement benefit in respect of pneumoconiosis from the 21st November 1949. By reason of the lateness of his claim he has to be held to have forfeited any benefit to which he would have been entitled (had his claim not been late) in respect of any period more than three months before the date of his claim, unless he can prove that he had reasonable cause for his failure to make his claim before he did.

4. The chest physician, by whom he has been treated since 1949, has stated that the delay was not due to any lack of interest on the claimant's part, but to advice received from the physician. The physician states that there were "very good and reasonable clinical reasons" for the delay. The claimant suffered from active pulmonary tuberculosis, in addition to suspected pneumoconiosis, which the physician was convinced was present. Nevertheless, the physician recognised the difficulty of being certain, in view of the type and character of the active tuberculosis from which the claimant suffered. The physician thought it necessary to continue treatment for tuberculosis and was forced to wait a considerable time before it became clear that the claimant also suffered from pneumoconiosis. The physician says that the responsibility for the late application is to be laid entirely on his (the physician's) shoulders. It seems clear that the claimant made his claim as soon as his doctors advised him to do so, though I see no reason to doubt that the claimant himself must have suspected that he might have pneumoconiosis, having worked underground in a coalmine for a number of years.

5. It is quite true that to delay in making a claim on a doctor's advice has been held not to be good cause for delay. (See Decision R(S) 5/56.) In that case, however, the doctor's advice related to legal requirements concerned with the making of claims. It was pointed out that a patient goes to a doctor for medical, not legal, advice. In the present case, on the contrary, it seems to me that the claimant was acting on the medical advice of his chest physician.

6. As it appears that the physician thought, and communicated his opinion to the claimant, that the claimant was not in a position, in view of the tuberculosis from which he suffered, to prove that he had pneumoconiosis, and it seems clear was not prepared to support the claimant's claim that he suffered from such a disease, the claimant has proved, in my opinion, reasonable cause for his delay. He was acting on medical advice, not legal advice, given to him by his doctor.

7. Accordingly, he has not forfeited any disablement benefit to which he may be entitled.

8. I allow the appeal of the claimant's association.