
Claimant made a late appeal to the local appeal tribunal against an adverse accident decision. Chairman refused extension of time for appealing

Held that there is no right of appeal from a tribunal chairman's refusal to extend the time for appealing. Distinction drawn between a decision of the tribunal and a decision of the chairman.

1. My decision is that I have no jurisdiction to entertain the association's appeal which is a nullity.

2. On the 26th September 1950 the claimant (who was then 15 years of age) made a claim for industrial injury benefit in respect of an industrial accident on the 26th September 1950 as a result of which his left hand was injured. In reply to an inquiry by the local insurance officer the claimant's employers stated that the accident happened when the claimant was playing on a dismantled machine. The claim was disallowed by the local insurance officer on the 6th October 1950 on the ground that the accident was not an industrial accident. The claimant did not appeal to the local appeal tribunal from this decision but made a claim for industrial disablement benefit on the 20th October 1950 which was disallowed by the local insurance officer on the ground that the accident was not an industrial accident. The claimant did not appeal from this last-mentioned decision but on the 12th February 1958 he made a second claim for disablement benefit which was disallowed by the local insurance officer on the 13th February 1958 on the ground that the insurance officer had already decided that the claimant had not suffered an industrial accident on the 26th September 1950. On the 25th February 1958 the claimant appealed from this decision of the 13th February 1958 and on the 12th May 1958 he purported to appeal from the local insurance officer's decision of the 6th October 1950 that he had not suffered an industrial accident on the 26th September 1950. He stated that his appeal was late owing to his having been wrongly advised by the Ministry of Pensions and National Insurance and later that his trade union representative at the time did not advise or help him. He applied to the chairman of the local appeal tribunal for an extension of the time for appealing from the local insurance officer's decision. This

application was supported by the local insurance officer but on the 4th July 1958 the chairman refused the application, giving his reasons in writing. The chairman's decision was communicated to the claimant on the 18th July 1958.

3. On the 31st July 1958 the claimant attended the local appeal tribunal hearing of his appeal against the disallowance on the 13th February 1958 of his disablement benefit claim. The hearing was adjourned to enable his trade union representative to attend. At the resumed hearing on the 14th August 1958 it was stated that the claimant was 15 at the time of the accident and that his father handled the matter and told him that the claim for injury benefit had been disallowed on the ground of insufficient contributions. It was recorded that this is questionable and was probably due to a confusion between the claim for sickness benefit, for which the claimant had too few contributions, and that for injury benefit for which contributions do not matter. It was submitted on the claimant's behalf that the chairman's decision to refuse extension of time might fairly be reconsidered, there seeming to be no means of appealing to the Commissioner. The tribunal dismissed the appeal finding that there was no question for them to decide. This finding was in my opinion incorrect. The appeal was from the local insurance officer's disallowance of the claim for disablement benefit on the ground that the local insurance officer had previously decided that the claimant had not suffered an industrial accident which decision had not been reversed. The appropriate "finding" would have been that the claim for disablement benefit must be disallowed on the ground that the local insurance officer's decision that the accident was not an industrial accident had not been reversed.

4. On the 11th March 1959 the claimant's trade union wrote to the office of the Commissioner requesting leave to appeal to the Commissioner under section 47 of the National Insurance (Industrial Injuries) Act, 1946 (hereafter referred to as section 47) "against the local appeal tribunal chairman's decision not to extend the time limit for an appeal to the tribunal by the claimant against the insurance officer's decision that the accident was not an industrial accident." A form L.T.42A was enclosed with the letter on which it was stated that the chairman's decision to refuse extension of time "is in fact a decision of the local appeal tribunal" and that the association wished to appeal to the Commissioner against this decision. Having regard to the provisions of the Family Allowances and National Insurance Act, 1959 the request for leave to appeal was treated by the insurance officer concerned as an appeal.

5. It is clear that the claimant cannot pursue his claim for disablement benefit unless the decision of the local insurance officer of the 6th October 1950 that the accident was not an industrial accident is reversed. Since a local insurance officer's decision can only be reversed by a local appeal tribunal the claimant's first step must be to nullify the refusal of the chairman of the local appeal tribunal on the 4th July 1958 to extend the time for appealing against the insurance officer's decision. The claimant's association seek to do this by an appeal to the Commissioner from this refusal. The Commissioner's jurisdiction is created and limited by the provisions of the National Insurance (Industrial Injuries) Acts and the regulations made thereunder. Section 47 provides that an appeal shall lie to the Commissioner from any decision of "a local appeal tribunal." The refusal of the claimant's application for an extension of time for appealing to the local appeal tribunal from the decision of the local insurance officer was the act of the chairman

sitting alone. In refusing the application the chairman clearly purported to act under section 46(1) of the above-mentioned Act which provides that a claimant may appeal "in the prescribed manner and *within the prescribed time* and the case shall be referred to the local appeal tribunal." The "manner" and "time" are prescribed by regulation 17(1) of the National Insurance (Industrial Injuries) (Determination of Claims and Questions) Regulations, 1948 [S.I. 1948 No. 1299] (hereafter referred to as regulation 17(1)) which provides that an appeal against a decision of an insurance officer shall be brought ". . . within 21 days after the date of that decision or within such further time as the chairman of a local appeal tribunal may for good cause allow."

6. As I understood his argument the claimant's solicitor contended that since the jurisdiction to hear appeals from the decisions of local insurance officers was conferred on the local appeal tribunal as a whole the chairman must be regarded as a mere representative or delegate of the local appeal tribunal and not as a separate authority. Consequently his decision to refuse leave to appeal must be regarded as a decision given on behalf of, and therefore in law by the local appeal tribunal. It followed that an appeal would lie from that decision to the Commissioner under section 47(1).

7. I cannot accept this contention. As was pointed out by the representative of the insurance officer now concerned the distinction between the chairman and the local appeal tribunal is clearly preserved in the relevant provisions of the Act and regulations. See for example section 43(1) which provides that the *tribunal shall* "consist of one or more members and a chairman", thus drawing a clear distinction between the tribunal as an entity and the chairman. Again, whereas the above-mentioned regulation 17(1) provides that the "appeal shall be brought . . . within such further time as the chairman of a local appeal tribunal may for good cause allow" regulation 20 (now revoked) (which dealt with applications for leave to appeal against a decision of the tribunal and extension of time for appealing) provided that the application must be made to "such *tribunal*."

8. It follows that I must hold that the jurisdiction to extend the time for appealing to the local appeal tribunal is vested in the chairman alone and neither the National Insurance (Industrial Injuries) Acts nor the regulations made thereunder confer a right of appeal from a chairman's refusal of such an extension of time.

9. The association's appeal to the Commissioner is therefore a nullity and I cannot entertain it.
