

SICKNESS BENEFIT

Appeal to a Commissioner on a point of law only—Importance of adequate evidence being led before the tribunal.

The claimant, a heavy goods vehicle driver, had been in receipt of sickness/invalidity benefit since 26.6.85. He was examined by 2 doctors of the Divisional Medical Office of the DHSS who both found him capable of his normal occupation. The adjudication officer disallowed the claim from 16.12.85. The appeal tribunal adjourned to enable the claimant to obtain a report from his consultant but he failed to do so. At the reconvened hearing the tribunal majority upheld the adjudication officer's decision. The claimant appealed to the Commissioner. The appeal was on fact and law. There was an oral hearing of the appeal at which the claimant adduced further medical evidence.

The Commissioner *held* that:

- (i) sickness benefit was payable for the inclusive period 16 December 1985 to 4 January 1986 because the claimant had proved that throughout that period he was incapable of work by reason of some specific disease or bodily or mental disablement;
- (ii) an appeal tribunal does not err in law simply because it takes no account of evidence which was not laid before it;
- (iii) appeal tribunal decisions recorded in writing on or after 6.4.87 can only be appealed to the Commissioner on a point of law and it is therefore essential that claimants have their medical evidence in good order *before* the appeal tribunal hearing as this will likely be the final occasion where such evidence can effectively be produced;
- (iv) appeal tribunals should for their part keep in mind their power to make medical references under the provisions of regulation 8 of the Social Security (Adjudication) Regulations 1986.

The appeal was allowed.

[Only para 3 of the Commissioner's decision is reproduced as the remainder relate only to the particular case which has been decided.]

3. This is a type of case of which I have seen many during my seven years as a Commissioner. It began as a straightforward conflict of medical opinion between, on the one hand, the claimant's own doctor and, on the other hand, two medical officers of the Department. In that form it came before the appeal tribunal. The tribunal (by a majority) preferred the opinions of the medical officers. As the case then stood, that was a decision to which the majority was perfectly entitled to come. But—as has so often happened in this type of case—the claimant has, for the purpose of his appeal to the Commissioner, produced further medical evidence which puts the matter in a different light. Away back in 1981—when the requirement for leave to appeal to the Commissioner had been recently introduced—I drew attention to the pressing need for claimants to have their medical evidence in good order *before* the appeal tribunal hearing, since they could no longer rely as of right upon having a second bite at the cherry by appealing to the Commissioner. My own experience suggests that—to a large extent—that advice fell on deaf ears. It falls to be repeated here, however, with even more emphasis. In respect of *all* appeal tribunal decisions recorded in writing on or after 6 April 1987 appeal to the Commissioner lies only in point of law. An appeal tribunal does not err in law simply because it takes no account of evidence which was not laid before it. In a sickness benefit or invalidity benefit case a further or fresh opinion expressed by a medical expert does not, of itself, justify review and revision of an earlier decision (see, for example, paragraph 10 of and the Appendix to Decision R(M) 5/86).

Accordingly, claimants—and their representatives—must bear in mind that the appeal tribunal hearing is very likely to be the final occasion upon which they can effectively produce medical evidence. It has been my experience that claimants are not infrequently thwarted by the fact that the general practitioner or specialist from whom they seek supportive evidence requires a fee for furnishing the same. For their part, accordingly, appeal tribunals will keep well in mind their power to make medical references (see regulation 8 of the Social Security (Adjudication) Regulations 1986).

Commissioner's File: CS 219/86

(Signed) J. Mitchell
Commissioner
