

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
CROWN OFFICE LIST

PA/1/99

Royal Courts of Justice
Strand
London WC2

Friday 2nd July 1999

B e f o r e:

MR JUSTICE ALLIOTT

SECRETARY OF STATE FOR SOCIAL SECURITY

- v -

MRS BARBARA BISHOP

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(Official Shorthand Writers to the Court)

MISS A FOSTER (instructed by the Office of the Solicitor,
Department of Social Security, London, WC2) appeared on behalf of the
Appellant.

MR A METHUEN QC (instructed by Messrs Vizards, London, WC1)
appeared on behalf of the Respondent.

J U D G M E N T
(As Approved by the Court)

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MR JUSTICE ALLIOTT: This is an appeal by the Secretary of State for Social Security, by leave of the President of the Pensions Appeals Tribunal dated 21st January 1999, against the decision of the Pension Appeals Tribunal dated 12th August 1998. That decision found the death of the applicant's late husband, Samuel Bishop (the deceased) was due to or hastened by an injury which was attributable to service.

The deceased had died when on terminal leave from the Royal Navy on 13th February 1995, having served since 17th January 1967. The cause of death on the death certificate was recorded as:

- "1. Severe fatty change of the liver.
2. Terminal aspiration of vomitus; ulcerated oesophagus."

Both causes of death were attributed in the post mortem report to chronic alcohol abuse. The applicant's evidence, which the Tribunal described as "cogent and entirely credible", can be summarised in a sentence, that the deceased's experiences in the Falklands conflict, particularly in respect of the sinking of HMS Antelope, had driven him to drink. The Tribunal correctly held that they had to consider the issue under Article 4 of the Naval, Military and Air Forces etc (Disablement and Death) Services Pension Order (as amended) which reads:

"1. Where not later than 7 years after the termination of service of a member of the armed forces, a claim is made in respect of disablement of that member and the death occurs of that member and a claim is made (at any time) in respect of that death, such disablement or death as the case may be shall be accepted as due to service for the purposes of this Order provided it is certified that - -

(b) the death was due to or hastened by - -

(i) an injury which was attributable to service or:

(ii) the aggravation by service of an injury which existed before or arose during service.

2. Subject to the following provisions of this article, in no case shall there be an onus on any claimant under this article to prove the fulfilment of the conditions set out in paragraph (1) and the benefit of any reasonable doubt shall be given to the claimant."

'Injury' is defined in Article 5(3) of the SI 1994/772 (as from 28th March 1994) as follows:

"Injury includes wound or disease but excludes any injury due to . . .

(b) the consumption of alcohol; except that ... paragraph (b) above shall not apply where the person suffers from a mental condition which is attributable to service if - -

(i) the degree of disablement in respect of that condition has been assessed at 50% or more; and

(ii) he started or continued to ... consume use tobacco or continue to consume alcohol due to that condition.”

There had been no assessment of the deceased’s mental condition at all, still less one where the degree of disablement had been assessed at 50 per cent or more. Indeed, despite numerous recordings of his drink problems in his service record, he had successfully completed his service and was, as previously stated, on terminal leave when he died. The Tribunal was well aware of the terms of SI 1994/772 as they state in their decision, but they continue:

“As Mr Bishop was still in service it was not possible for him to claim a pension and in these circumstances it was impossible to obtain an assessment of 50 per cent or any assessment at all. The Tribunal in the light of impossibility decided the justice of the case required it to disregard the requirements of an actual assessment of 50 per cent and to allow the appeal.

The Tribunal decided Mr Bishop’s death was due to an injury which was attributable to service.”

It is not open to the Tribunal on compassionate, or any other grounds, to disregard the law. They have no discretion and must administer the law in accordance with the statutory provisions. All that Mr Methuen QC, on behalf of the applicant, accepts. He does not attempt to uphold the Tribunal’s decision. But he argues that I should remit the matter to the same or a different Tribunal in order that consideration should be given to the approach to the matter for which he contends; a five point approach elaborated in his skeleton argument at paragraph 14 onwards:

“It is suggested that the correct approach to the definition should have involved the Tribunal posing and answering the following questions:

(i) Was Mr Bishop’s death due to ‘injury’, due to consumption of alcohol?

(ii) If so, did Mr Bishop suffer a mental condition?

(iii) If so, was that mental condition attributable to service?

(iv) If so, was the degree of disablement in respect of that condition to be assessed at 50% or more?

(v) If so, did Mr Bishop start to drink or did he continue to drink due to that condition?”

The answer to the first question was plainly “yes”. Therefore, the remaining questions fell to be answered. The second, third and fifth questions were answered by the Tribunal in Mrs Bishop’s favour (see paragraph 7). (I interpolate that is the paragraph in which Mr Methuen has summarised her evidence). However, the fourth question was not answered by the Tribunal. “The matter should therefore be remitted to the Tribunal for that question to be answered.”

Miss Foster, for the appellant, took a number of some legislative points on the construction of the legislation to demonstrate how such an approach could not be justified under the legislation. Preferring as I do to decide issues as close to the merits as I can, I decide the matter in Miss Foster’s favour upon her submission that an assessment of 50% or more disablement is wholly inconsistent with the deceased successfully completing his service. Upon the evidence before the Tribunal and properly applying the law, no reasonable Tribunal could have allowed the appeal and held that the death of the deceased was due or hastened by an injury which was attributable to service. Accordingly, the Secretary of State has shown beyond reasonable doubt that the requirements for an award are not fulfilled. This appeal is allowed.

I decline to remit the matter for a rehearing on the ground that, even if it were open for a Tribunal to do so, no reasonable Tribunal could find that the deceased had a disablement of 50% or more.
