

**HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

(Edmund Davies, J.)

25th May 1966

**COE v. THE MINISTER OF PENSIONS AND  
NATIONAL INSURANCE**

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JUDGMENT

MR. JUSTICE EDMUND DAVIES: In this case the Applicant, Mr. Coe, was in the Navy from March, 1946 till May, 1947 when he was discharged on Class A release. Subsequently he exhibited symptoms of Behcet's Syndrome. He applied for a service pension and was refused one by the Minister. A Pensions Appeal Tribunal on the 19th November, 1965, dismissed his appeal by holding that the Minister had established beyond reasonable doubt that the disease was neither attributable to nor aggravated by his naval service. In March of this year the Tribunal refused leave to appeal to this Court on the ground that no point of law arises. The Applicant thereafter applied to me as the nominated judge and I granted him leave. That a point of law most certainly was involved has been manifested within the last five minutes by Mr. David Peck who appears here for the Ministry, conceding that there is a question of law involved and that it is one to which the answer must be in favour of the Applicant. In other words, the Ministry now consents to an award to the Applicant on the grounds of attributability.

This Court could leave the matter there, but having considered some of the cases, thinks that this may be not an inopportune time to seek to lay down some general principles in the hope that they may be of some assistance to the Tribunal when dealing with applications for pensions on the ground that a serviceman or ex-serviceman has contracted a disease of unknown origin. As to policy, two views may be entertained. On the one hand, it can be said that it is grossly unfair that the Ministry should be obliged to grant a pension in such cases, even though there is not the slightest proof that service conditions played any part in the inception or progress of the disease. On the other hand, it may be urged that, since *ex hypothesi* it is impossible to know whether or not the exigencies of service have played a causative or aggravating part, the man who has served his country should as of right get a pension, either on the ground of attributability or (at least) aggravation, in every such case. Neither view has any relevance to the task the Tribunal is called upon to discharge. Its sole duty is to apply the tests laid down in the Royal Warrant to the facts of each case and come to its conclusion thereon, regardless of whether the outcome can or cannot be regarded as politic. If the application of the Royal Warrant is considered to lead to unjust results, then the remedy is to have it amended.

As I have said, in the light of decided cases, it may prove useful in this Court to seek to enunciate some principles or rules for the future guidance of Tribunals. That I proceed to attempt.

*Rule 1.* If the medical evidence before the Tribunal is simply to the effect that nothing is known about the cause of the disease, the presumption of entitlement in the applicant's favour created by Articles 4(2) and/or 4(3) of the Royal Warrant is not rebutted, and an application for a pension on the ground of attributability must succeed. See *Brown v. Minister of Pensions* (1946) 2 War Pensions Appeals, page 461; *Miller v. Minister of Pensions* (1947) 1 W.P.A., page 615; and *Scott v. Minister of Pensions* (1947) 2 W.P.A. page 589.

*Rule 2.* But if there is evidence before the Tribunal to the effect that, although its aetiology is unknown, the disease is one which arises and progresses independently of service factors and the Tribunal is convinced thereby and accordingly refuses a pension, this Court will not interfere. See *Donovan v. Minister of Pensions* (1946) 1 W.P.A., page 609, and *Docherty and Others v. Minister of Pensions* (1948) 2 W.P.A., page 655.

*Rule 3.* On the other hand, it will not suffice to rebut the presumption in the applicant's favour to adduce evidence merely to the effect that "... in the light of modern knowledge, it cannot be accepted that service factors are associated in any way with the onset of the disease or that any circumstances associated in any way with the onset of the disease or that any circumstances of service hastened its course." For evidence of that nature does not establish that service factors played no part, but merely declines to accept the positive assertion that service factors played a part in causing the disease. In such circumstances there would have to be an award on the basis of attributability. See *King v. Minister of Pensions* (1947) 1 W.P.A., page 809, a case of leukaemia.

Rule 2 calls for some comments. (a) If one were free to consider this topic *de novo* and without reference to earlier decisions, in my judgment a strong case could be made out for holding that, whenever the applicant's disease (first manifested after he entered the armed forces) was of entirely unknown origin, he would *ipso facto* be entitled to a pension on the basis of attributability, since it could be urged that in these circumstances the Minister could never discharge the heavy burden of disproof cast upon him by Article 4(2) and *a fortiori* by Article 4(3). Indeed, an observation of Mr. Justice Denning (as he then was) in *Miller's* case, already referred to, was at one time regarded as then supporting that contention, but in *Docherty's* case (*ante*) such an interpretation of his words was held to be unsound.

In view of past decisions, I therefore do not consider that it is now open to me - whatever my own views might otherwise have been - to hold that in all cases of the type now under consideration the applicant is of necessity entitled to a pension. Nevertheless, it is well to state that in my judgment the evidence in the Minister's favour needs to be very clear and cogent before a pension can be refused and evidence of the kind held in *Miller's* case (*ante*) to justify a Tribunal in refusing a pension, on the grounds that it showed that attributability "is possible, but not in the least probable," would now require to be looked at afresh in the light of the recent decision of this Court in *Judd v. Minister of Pensions* (1966) 2 Weekly Law Reports, page 218, as to the nature of the onus cast upon the Minister by the Royal Warrant.

(b) It would obviously be neater and more satisfactory, at least in the eyes of the layman, if all decisions in respect of a particular disease of unknown aetiology were uniform, whether they be for or against the applicant for a pension. But to lay this down as a rule would be to exalt a finding of fact in a particular case into a principle of law applicable to all cases. That would be wrong, for, as Lord Wright said in *Tidy v. Battman*

(1934) 1 King's Bench Division, page 319, at page 322): "It is unfortunate that questions which are questions of fact alone should be confused by importing into them as principles of law a course of reasoning which has no doubt properly been applied in deciding other cases on other sets of facts." And as Lord Thomson said in *Docherty's case (ante)*, " ... there is no overhead method of solving the possible problems that may arise. The use of formulas and categories may cause injustice. The task of the Tribunal is to decide each case on the material before it." In the result, different conclusions as to attributability have been arrived at in appeals to the High Court in different cases relating to the same disease, albeit of unknown aetiology. Some examples of such differing decisions are the following: A pension in respect of schizophrenia was refused in *Briggs v. Minister of Pensions* (1946) 1 W.P.A., page 211 and *Bubridge v. Minister of Pensions* (1947) 1 W.P.A. page 307; but granted in *Forster v. Minister of Pensions* (1946) 1 W.P.A., page 145 and *Bott v. Minister of Pensions* (1948) 3 W.P.A., page 2167; and a claim to a pension in respect of Hodgkin's disease failed in *Mitchell v. Minister of Pensions* (1948) 2 W.P.A. page 655 at page 676, but succeeded in *Donovan v. Minister of Pensions* (1946) 1 W.P.A. page 609.

So much for general observations. It merely remains to refer to one paragraph in the Medical Services opinion in the present case of Coe to illustrate the point which Mr. Ripman was making before Mr. Peck's intervention, namely that here the Tribunal could not, upon the evidence, be satisfied beyond reasonable doubt that, in this Article 4(2) case, the Appellant was not entitled to a pension on the grounds of the attributability to service conditions of his Behcet's syndrome which has resulted in his blindness. Medical Services said that, "The aetiology of this disorder is, for the moment, unknown." They then proceeded to set out some seven or eight theories which have been canvassed as to the cause of this dreadful disease. Then one has this significant paragraph: "From the published literature, it would appear that it is highly improbable that any of the factors common to service life are in any way responsible for the origin or aggravation of Behcet's syndrome. Despite numerous investigations which have been carried out, it has never been shown that trauma, dietetic or climatic hardships, physical or mental stress and strain, sudden, cumulative or prolonged, play any part in the causation of the disease." To hold, on these grounds, that the applicant was disentitled to a pension is, in my judgment, in effect to place some sort of onus of proof upon him, and that of course, is wrong.

For these reasons, I entirely agree with the course taken by the Ministry in this case in acceding, on further reflection, to the application for a pension on the grounds of attributability. This appeal is accordingly, by consent, allowed and there will be an award accordingly.