

HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

(Denning, J.)

13th January, 1948

HARRIS v. THE MINISTER OF PENSIONS

JUDGMENT

MR. JUSTICE DENNING:- In this case I give leave to appeal because a question arises as to the meaning of "Disablement" in the Warrant, and in the Act: and in accordance with recent practice, I proceed to decide the appeal. Eric Charles Kitchener Harris joined the Army in 1940. He had two accidents during his service, a sprained right ankle on two occasions which left him with a post-traumatic arthritis. That was treated during service and he suffered very little ill effect for the last two years of his service. When he was released he claimed a pension on the ground of arthritis. He said he had pain in both ankles. He was examined. The movements of both ankles were found to be normal and there was no deformity other than a slight thickening around the right metatarso-phalangeal joint. The effect of the disability on his function was said to be very slight. His claim to a pension was rejected by the Minister who said that there was no disability as a result of arthritis. He appealed to the Tribunal. He was examined by the Medical Member, who reported: "He can stand on his toes, jump up and return to his toes. The joints are normal in appearance. Movements are full and free. There is no grating or creaking and there is no pain or discomfort on all active or passive movements. There is no bony abnormality in either ankle joint and no arthritis is present or evident today. There is no disability in the ankle joints. On that evidence the Tribunal rejected the appeal. The man appeals to me, his point being that, although there is no disability, he is still entitled to an award of entitlement even though the amount of any pension may now be nothing, because, he says, if it should get worse in the future, he would then be entitled to a pension.

I am quite satisfied that, under the Warrant in order that there should be an award of entitlement, there must be a "disablement". The existence of "disablement" is a necessary condition of an award of entitlement. If it is a case where there is no "disablement" at the moment, it follows that there should be no award of entitlement; but if "disablement" does appear later and the requisite conditions are fulfilled, then an award may be made. But, "disablement" does not mean, in this Warrant, disablement in the ordinary sense of "incapacity". It is defined by the Warrant as meaning: "Physical or mental injury or damage, *or* loss of physical or mental capacity". The word used is "*or*". On that definition if there is a physical injury or damage, even though not causing any loss of capacity at the moment, that is, nevertheless, a "disablement" within the meaning of the Warrant. The case has been put in the course of the argument of a shell splinter in a man's arm which may cause no loss of capacity at the moment but may do so later. It is a physical injury which is a "disablement" on which an entitlement award may be based; but if it causes no loss of capacity at all, either for work or enjoyment of life, the amount of the pension would be nil. It is parallel to a declaration of liability under the Workmen's Compensation Act. You may have an award of entitlement which will not give rise to the actual grant of a pension unless and until incapacity appears.

Applying that to this case, it is plain that there was a disablement within the definition. The diagnosis when the man left the Army was "? Arthritis both ankles", and giving him the benefit of any reasonable doubt, it should be held in his favour that arthritis was then present and was attributable to war service. It was post-traumatic arthritis which was a "physical injury or damage" and was therefore a disablement. But, on the evidence it is plain that for the time being, he is not entitled to any money; It is a case of a nil assessment, at all events at the moment. I allow the appeal and an award of attributability must issue but in the present circumstances it is a case of a nil assessment.