

HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

(Willis, J.)

1st April 1969

SECRETARY OF STATE FOR SOCIAL SERVICES v. YATES

JUDGEMENT

MR. JUSTICE WILLIS: This is an appeal by the Minister – a rare occurrence – from a decision of a Pensions Appeal Tribunal given on the 16th November, 1967, that the Respondent's angina pectoris was consequential upon his accepted disability of bronchitis, and was therefore attributable, as was the bronchitis, to war service.

Mr. Yates has had a very unfortunate medical history, and, resulting from his period in the Army between December 1942 and February 1947, he has a pension in respect of rhinitis sicca, bronchitis, and more recently, emphysema, as being attributable to war service.

On the 16th May, 1966 the Respondent claimed that he was suffering from angina pectoris and asked the Ministry for it to be treated as caused by bronchitis. On the 11th July, 1966 the claim was rejected by the Ministry who took the view, which they have maintained ever since, that angina was merely a symptom of underlying heart disease, the relevant disease in the present case being coronary atheroma – a degenerative condition – and was quite unconnected with bronchitis. Thereafter a pension was claimed for coronary atheroma and hypertension, and an appeal was brought before the Tribunal on those two heads, to which, after an adjournment and reference to the Minister, there was added the label "angina". The Tribunal held that neither coronary atheroma nor hypertension was attributable or aggravated, but, giving the Respondent the benefit of Article 5(4) of the Royal Warrant, they held that "his angina is consequential upon accepted disability and is itself attributable to service like the accepted bronchitis".

The reasoning by which the Tribunal reached its conclusion is not entirely easy to follow. It is said that angina was capable of being "a separate justifiable issue". This is not a phrase which appears in any relevant statute or rule, and both Counsel agree that it must mean "capable of being a separate injury (i.e. disease) attributable to or aggravated by service". There follow words which indicate that the Tribunal may have been led to this view because the Minister referred angina separately from the other two complaints. If this indeed were so, Mr. Ripman agrees that the decision could not be supported. Finally, the Tribunal say that angina can be "a symptom or sign or development" of either atheroma or bronchitis, and on the admitted view that bouts of coughing due to bronchitis bring on what the Ministry calls "angina of effort" they conclude that bronchitis is "a substantial cause of the angina".

What is said by Mr. Slynn, to put it shortly, is that the Tribunal have gone wrong in law in holding that angina was itself a disease when all the evidence before them pointed to it being merely a symptom of the underlying heart disease of atheroma, that there was no evidence that angina could or did in this case develop from bronchitis, and that if, contrary to the Ministry's view, it could be said to be a sign or symptom of bronchitis, that is a question of assessment and not of entitlement. He says that, on the evidence, the only reasonable inference was that angina was a symptom of atheroma,

and, if so, it is an impossible result that the underlying disease is found to be not attributable while the symptom is held to be itself a disease and attributable.

I find myself, as did the Tribunal, without a signpost to point the way. If, however, authority were needed for the proposition that in the field of entitlement there is a distinction to be drawn between an underlying disease and pain which is no more than a symptom of that disease it is, I think, to be found in the cases of *Goodman* (Volume 5, page 13) and *Padgett* (Volume 3, page 2127).

Mr. Ripman, on the other hand, relies on those two cases for his proposition that whether or not angina is a separate disease is a question of fact which has been determined in his favour, and he relies on the cases of *Rees* (Volume 1, page 355) and *Hayman* (Volume 1, page 1333) for the proposition that angina pectoris can be separate disease. Although those decisions are not, strictly, binding upon me, I would unhesitatingly follow them if I felt that they established that angina pectoris was capable of being a separate injury attributable to or aggravated by war service, and that whether it was so or not was a question of fact for the Tribunal. I do not so read them. Even if that were their effect, it seems to me that there must always be a basis of primary fact from which the inference can properly be drawn.

I am very conscious of the fact that I am being invited to say that this distinguished Tribunal, including a medical member, has erred in law in the conclusion it has reached, and I have read the evidence in the statement of case with the closest attention. Having done so it seems to me that the evidence was all one way that the angina was no more than a symptom of the underlying disease atheroma.

The effort involved in coughing happened, in the case of the Respondent, because he was bronchitic, to bring on the pain more frequently than other forms of physical effort, but I have been unable to find anything in the evidence to suggest that the pain described as angina pectoris was a development of bronchitis. On the contrary, I think the only possible inference from the facts was that the angina was merely a symptom of the underlying heart disease.

It seems to me impossible to say that what is merely a symptom of a disease can itself be an attributable injury, particularly when the underlying disease is found to have been neither attributable to nor aggravated by service. I think, therefore, that the decision of the Tribunal did involve an error in law, and that the appeal must succeed. I should add that it was part of the Minister's submission that the anginal condition could only, in law, be considered by the assessment body. I agree with this, and I am glad to know that a reassessment has taken place and that the Respondent's disability is now assessed at 90 per cent by taking into account that the angina brought on by coughing renders the bronchitis more disabling than it would otherwise be.

MR. JACK (for Mr. Slynn): My Lord, then the appeal will be allowed.

MR. JUSTICE WILLIS: Yes. There is no question of costs?

MR. RIPMAN: My Lord, the costs are provided for by the rules without calling upon your Lordship.