

IN THE SUPREME COURT OF BELIZE, A.D. 2009

CLAIM NO. 771

AMADA MAZARIEGOS

APPLICANT

BETWEEN AND

SOCIAL SECURITY BOARD

RESPONDENT

Hearings

2009

9th October

13th October

20th October

Miss Darlene M. Vernon for the Applicant

Mr. Darrell Bradley for the Defendant

LEGALL J.

JUDGMENT

1. The applicant was employed by Rima Company Ltd. situate at Corozal Town, Free Zone, Belize. On 19th January, 2007, at about 11:00 a.m. she suffered injury during the course of her employment to her back when she slipped from a ladder at her place of employment. She therefore made a claim under section 15 of the Social Security

Act Chapter 44 of the Laws of Belize (The Act) for disablement benefit, as provided for under section 12 (1) (b) of the Act.

2. After following procedures stipulated in the Act, the applicant appeared with respect to her claim before a medical board appointed under Regulation 7(1) of the Social Security (Determination of Claims and Questions) Regulations. The medical boards are appointed by the Social Security Board established under section 28 (1) of the Act and a medical board consists of two or more medical practitioners.
3. The medical board on 7th November, 2008 heard the applicant's claim and decided that the degree of her disability was 7%. The applicant disagreed with the decision of the medical board; and under regulation 10 (1) of the Regulations appealed to an appeal tribunal. Regulation 10 (1) states:

10. (1) Any person aggrieved by the determination of any disablement question by a medical board or medical referee may appeal therefrom to an appeal tribunal on the ground that the determination was erroneous on a point of law.

4. The appeal tribunal on 2nd July, 2009 heard the applicant's appeal. The applicant was unrepresented by counsel at the hearing, but submitted letters by two doctors concerning her injuries. One doctor – Dr. John Sosa – said that the degree of her disability was 15%. The other doctor, Dr. Cervantes, did not give a percentage of her

disability. But in a letter to the tribunal he said that there was a “25% to 50% slippage of bony vertebral elements L5 and S1 from the lower spine.” The defendant by affidavit in this matter dated 7th October, 2009 exhibited to the court a medical report by Dr. Mynar Villada Corada who, in Spanish assessed her disability, to use his own words, as “grado incapacidad 45%” that is, rate of incapacity 45%. But there is no evidence whether the medical board or the appeal tribunal considered his report. The tribunal on 7th July, 2009, dismissed the applicant’s appeal. The main reason for the decision to dismiss the applicant’s appeal was given by the tribunal in writing as follows –

“The appeal tribunal is not in a position to determine whether or not the degree of disability is seven or fifteen percent, nor can the tribunal elect to substitute one evaluation for the other as the law does not allow the tribunal to do that. The tribunal can only disagree with the decision of the medical board where it is shown that the board erred on a point of law. In this appeal the Appellant did not do so and as a consequence the tribunal is impelled to the conclusion that her appeal should be dismissed.”

5. The applicant stated that she did not hear from the appeal tribunal concerning the result of her appeal until 6th August, 2009, by a letter dated 28th July, 2009. The letter, although it indicated to the applicant that a copy of the decision of the tribunal was enclosed, no such decision was enclosed. The written decision of the tribunal was eventually given by the tribunal to the attorney-at-law for the applicant on 17th August, 2009.
6. With respect to appeals from a decision of a tribunal, regulations 15 (1) (b) and 3 (a) state as follows:

15. (1) An appeal shall lie with the leave of the court to the Supreme court on a substantial question of law arising from –

(a)

(b) a decision of an appeal tribunal.

(2)

(3) An application for leave to appeal made under paragraph (1) of this Regulation shall –

(a) be made in writing to the Registrar of the Supreme Court not later than twenty-one days after the decision appealed against is given;

7. The tribunal handed down its decision, as we have seen above, on the 7th July, 2009. Twenty one days – the period within which to appeal –

from the 7th July, 2009 would be 28th July, 2009, the date on which the tribunal sent the letter to the applicant informing her of its decision. The applicant, therefore, it was submitted, did not have the opportunity to comply with, and was indeed prevented from complying with regulation 15 (3) (a) for purposes of filing her application for leave to appeal. Hence the present application for an extension of time to do so.

8. Learned counsel for the respondent objected to the application on several grounds. It was submitted, first of all, that there was no statutory provision in the Regulations which provided for an extension of time to apply for leave to appeal. Secondly, it was submitted that leave to appeal under regulation 15 (3) (a) should be granted only if there was a substantial question of law arising from the decision of the tribunal. In this case, says the submission, there is no substantial question of law that arises from the decision of the tribunal. They are questions of fact which arise. Whether or not the disability is 15%, 7% or 45% is not, according to the submission, a question of law, but a question of fact.
9. Thirdly, it was submitted, that the applicant was guilty of laches, because she slept on her rights from the 28th July, 2009, when she received the letter dismissing her appeal, to 1st September, 2009, when she made the present application to the Supreme Court for an extension of time. According to the submission, when the applicant learnt on 28th July, 2009 that the tribunal had dismissed her appeal, she should have promptly applied to the Supreme Court for the

extension of time. She should not have waited until 1st September, 2009 to do so.

10. Moreover, says learned counsel for the respondent, the applicant hands are not clean, because she misled the court when she swore that three tribunals heard the same claim by her and came to different conclusions. The truth, according to the submission, is that two tribunals heard her claim; but the hearing dealt with different issues. For the above reasons, it was submitted, the application for extension of time ought to be denied.
11. With respect to the submission of the respondent, that there was no statutory provision authorizing the application, learned counsel for the claimant submits that it is well established that where the local civil procedure rules are silent, then the U.K. civil procedure rules will apply. Since the U.K. rules make provision for an extension of time in a case such as the present, these rules apply to Belize, and constitute a statutory provision under which the court could exercise its discretion and grant the extension of time for leave to appeal.
12. Reliance was placed on Rule 52.6 of the U.K. civil procedure rules. These rules, I observe, do not specifically apply to tribunals or boards; and do not specifically authorize the court to extend time for leave to appeal from decisions of any social security board or tribunal established by any U.K. social security legislation. The U.K. rules are general rules which, according to Rule 52.1 of the said U.K. rules, apply to appeals to “the civil division of the Court of Appeal; the High

Court and County court.” The said U.K. rules do not apply to medical boards or tribunals.

13. For purposes of this submission, I think it is essential to carefully examine regulation 15 (3) (a). I repeat the regulation:

15. (3) An application for leave to appeal made under paragraph (1) of this Regulation shall –

(a) be made in writing to the Registrar of the Supreme Court not later than twenty-one days after the decision appealed against is given;

14. I interpret the clause “after the decision appeal against is given” to mean given to the applicant. I believe that the intention of the regulation is that the applicant must know of the decision before the twenty-one days begin to run. The drafters of the regulation could have easily used the clause “after the decision appealed against is made.” But they deliberately used the word “given,” signifying to me, by the use of that word, that the tribunal must give the decision to the applicant or at least bring it to her attention.

15. Since the word given in regulation 15 (3) (a) is, in my view, ambiguous, fairness and justice require, it seems to me, an interpretation of the rule that would require the decision to be given to the applicant or at least brought to her attention before the twenty-one days begin to run.

16. Alternatively, I do not think that the respondent ought to be permitted to take advantage of the provisions of regulation 15 (3) (a), when the respondent was solely, on the evidence, responsible for preventing the applicant from applying for leave within the time specified by regulation 15 (3) (a). The respondent, in my judgment, ought not to be allowed to take the benefit of this regulation, when it was the same respondent, who by its actions, prevented the claimant from complying with the regulation. The hands of the respondent are not clean; and therefore, the equitable jurisdiction of the Supreme Court would not allow the respondent to take the benefit of its own wrong.
17. But the basis for my decision on this submission, is not on the interpretation above, but on the fact that the respondent was solely responsible for the claimant not being in a position to comply with the said regulation and therefore cannot, in my view, be allowed to take the benefit of that regulation.
18. With respect to the submission that there is no substantial question of law arising from the decision of the tribunal, it was submitted for the applicant that the respondent exceeded its jurisdiction by not following the appeals procedure under the Act; that is to say, by allowing two tribunals to hear the same issues, and arriving at different conclusions. It was also submitted that the decision of the appeal tribunal was unreasonable and could not be supported having regard to the evidence. Therefore, says the submission, these are substantial questions of law which arise from the decision of the

tribunal and an extension of time to apply for leave to appeal should be granted.

19. I am satisfied, after reading the decision of both tribunals, that they were not dealing with the same, but different issues. The tribunal decision dated 23rd October, 2007, dealt with employment injury benefit; and the other tribunal decision dated 2nd July, 2009 dealt with the degree of the claimant's disability. I therefore do not agree with the applicant's submission that the respondent allowed two tribunals to hear to the same issues and made different conclusions.

20. But is there another substantial question of law which arises? The evidence is that the medical board assessed the applicant's disability at 7%. Was there a legal duty on the medical board, in giving their decision, to give reasons for arriving at the 7% disability? The medical board did say, under the heading "recommendations," that the "patient can work the job that does not need lifting heavy weight" Does this recommendation amount to reasons for arriving at 7% disability? And further was there a legal duty on the part of the appeal tribunal to consider whether or not the medical board gave reasons for arriving at the 7% disability? And if the Board did not give reasons, did that failure amount to an error by the medical board on a point of law? Did the tribunal err in law by failing in their written decision to address their minds as to whether or not the medical board gave reasons for arriving at the 7% disability?

21. These questions bring into focus an important point of law in relation to natural justice: Is there a legal duty to give reasons? It is clear that in appropriate cases there is a legal obligation to give reasons for decisions. In the very popular *R v. Civil Service Appeal Board ex parte Cunningham* 1991 4 All E.R. 410 a low compensation award was quashed by the Court of Appeal on the ground that natural justice required the giving of reasons in assessing compensation, and that industrial tribunals were obliged by law to give reasons.
22. But there is no general rule that all decision makers must give reasons for their decisions. The court may, from the interpretation of any relevant statutory provision, decide that the intention of the provision is that reasons must be given. The court may also, in its common law jurisdiction, hold that as a matter of justice and fairness, reasons ought to be given.
23. In this particular case before me, consideration of the Regulations may assist in deciding whether it was the intention of the drafters that reasons should be given. As we saw above, regulation 7 provides for the appointment medical boards. The medical board is required to give its decision in writing, which must include a statement of its findings; and its decision could be by simple majority: regulation 7 (6). As we saw above, a person is given the right to appeal to an appeals tribunal from a determination of a medical board “on the ground that the determination by the medical board was erroneous on a point of law”: regulation 10 (1). The person who desires to appeal must include in the notice of appeal a statement of the point of law

and the grounds upon which the determination appealed against is alleged to be erroneous”: regulation 10 (6).

24. The Regulations provide for an appeal from the appeals tribunal, with leave of the Supreme Court, to the Supreme Court on a substantial question of law arising from a decision of an appeal tribunal: regulation 15 (1). The applicant for leave to appeal has to include a short statement of the decision appealed against, and a statement of the substantial question of law arising from the decision and facts material to the case: regulation 15(3).

25. Are the above requirements of the Regulations, amount to factors which imply a requirement for the medical board and the appeal tribunal to give reasons for their decisions. Is providing a system of appeals indicative of a statutory intention that reasons must be given by the medical board and appeal tribunal? The Privy Council in *Dr. Marta Stefan v. General Medical Council No. 16 of 1998* has held that the existence of a right of appeal has been taken as a factor pointing towards a requirement for giving reasons. Lord Clyde continued:

In *Norton Tool Co. Ltd. v. Tewson* [1972] I.C.R. 505 a requirement to give reasons was identified on the ground that otherwise the parties would in effect be deprived of their right of appeal on a question of law. So also in *Hadjianastassiou v. Greece* (1992) 16 E.H.R.R. 219, 237 it was observed that the grounds of a decision

must be stated with sufficient clarity as that is one of the factors which makes it possible for an accused to exercise usefully the right of appeal open to him.”

26. But the Privy Council also pointed out that the appeal provisions may also point, in certain cases, towards not giving reasons. The Privy Council however concluded:

In the first place there is the consideration that the decision was one which was open to appeal under the statute. The appeal was only on a ground of law but, as has already been mentioned, the existence of such a provision points to the view that as matter of fairness in deciding whether there are grounds for appeal, and as a matter of assistance in the presentation and determination of any appeal, the reasons for the decision should be given.

27. The submission was made by the respondent that regulation 3 (3) requires the medical boards to give reasons for their decisions with respect to specific matters, not the subject of this application; and that regulation 4 (3) requires giving of grounds for the decisions of managers appointed under the Act. The Regulations do not, according to the submission, say that the medical boards in making decisions with respect to disablement benefit must give reasons; and this is indicative that if the framers of the Regulations intended that the medical boards, must give reasons, with respect to disablement

benefit, they would have specifically so provided, as they did in relation to the specific matters in regulations 3 (3) and 4(3).

28. This issue was answered by Lord Donaldson of Lynton M.R. in *Reg v. Civil Service Appeal Board, Ex parte, Cunningham 1992 I.C.R. 816*. “I do not.” His Lordship said “accept that just because Parliament has ruled that some tribunals should be required to give reasons for their decisions, it follows that the common law is unable to impose a similar requirement upon other tribunals, if justice so requires.”
29. The respondent had also submitted that the claimant was guilty of laches. The delay in this case was about one month – a relatively short period. The court has a discretion whether to dismiss the application because of delay; but that discretion has to be exercised reasonably after considering the circumstances of the case. Because of the short period of the delay, I do not think it would be proper to exercise the discretion against the applicant.
30. I hold that a substantial question of law arises from the decision of the appeal tribunal, namely, whether the medical board had a legal duty to give reasons for awarding 7% disability benefit; whether the recommendations of the medical board amount to reasons for their decision; and whether the appeal tribunal had a legal duty to consider in their written decision, whether the medical board gave reasons for their decision to award 7% disability benefit. Did the appeal tribunal err in law by failing, in their written decision, to address their minds

to whether or not the medical board gave reasons for arriving at the 7% disability? Did the appeals tribunal err in law in finding that no point of law arose in the appeal?

31. I must however emphasize the point that it is for the court hearing the appeal to decide whether the substantial question of law will succeed. My duty at this stage is to decide whether a substantial question of law arises from the decision of the appeal tribunal. The court hearing the appeal will decide whether the substantive question of law will be successful. My decision at this stage is simply that a substantive question of law arises. I do not pronounce on the success or otherwise of the question. That is for the court hearing the appeal.
32. Bodies established by legislation ought to appreciate that the giving of reasons can be beneficial. Lord Clyde in *Dr. Marta Stefan* above quoting Lord Scarman in *Rai v. General Medical Council* said:

“Their Lordships suggest that the giving of reasons can be beneficial and assist justice.because a reasoned finding can improve and strengthen the appeal process.”

33. In order to prevent delays and the duplication of legal arguments, I have decided, instead of ordering a separate application for leave to appeal, to deal with both leave to appeal and an extension of time in this application.

34. I therefore make the following orders:

1. An extension of time to apply for leave to appeal is granted to the applicant to the date of this application – 1st September, 2009.
2. The applicant is granted leave to appeal the decision of the appeal tribunal dated 7th July, 2009 to the Supreme Court, and the Registrar of the Supreme Court is instructed after the appeal is filed to set the appeal down for hearing as an appeal under Part X of the Supreme Court of Judicature Act Chapter 91.

Oswell Legall
JUDGE OF THE SUPREME COURT
20th October, 2009