

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO.:PFA/NP/172/99

In the complaint between:

K T Tshehla N.O.

Complainant

and

Iscor Provident Fund

Respondent

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT OF 1956

1. This is a complaint lodged with the Pension Funds Adjudicator in terms of section 30A of the Pension Funds Act relating to the pension benefit which the complainant's deceased father received on his retirement. The complainant asserts that his deceased father was entitled to a disability benefit whereas the fund paid him a withdrawal benefit.
2. No hearings were conducted and therefore, in determining this matter, I have relied on the documentary evidence and the investigation conducted, under my supervision, by my investigator, Lisa Shrosbree.
3. The complainant is Mr K D Tshehla, son of the late D J Tshehla ("the deceased") and sues in his official capacity as the executor of the deceased's estate.
4. The deceased was employed by Iscor Limited prior to his death. Initially he joined the Iscor Retirement Fund and thereafter, on 1 May 1992, transferred to the Iscor Provident Fund, a defined contribution fund.
5. On 23 September 1992, the deceased, who had been suffering from Asthma and hypertension from some years, was put on early retirement by his

employer on the grounds that he could no longer perform his duties in the workplace.

6. Rule 9 governs early retirement benefits and reads:

If a MEMBER leaves the service of the EMPLOYER before the NORMAL RETIREMENT DATE and provided that he is not entitled to any other benefit in terms of these rules, he shall become entitled to one of the benefits payable in accordance with the provisions of this rule.

9.1 LUMP SUM BENEFIT

The MEMBER shall become entitled to receive a lump sum benefit equal to his ACCUMULATED CREDIT in the FUND as at the date of termination of his service.

9.2 PRESERVATION BENEFIT

Instead of receiving the lump sum benefit specified in rule 9.1 a MEMBER shall have the right to request the TRUSTEES to transfer the benefit to which he is entitled to another APPROVED FUND of his choice. In this event the FUND shall transfer the MEMBER'S benefit directly to such APPROVED FUND on behalf of the MEMBER whereafter the former MEMBER shall have no further claim against the FUND.

9.3 DEFERRED RETIREMENT BENEFITS

Instead of receiving the lump sum benefit specified in rule 9.1 or electing the preservation benefit specified in rule 9.2, a MEMBER shall have the right to request the TRUSTEES to defer the payment of the benefit to which he is entitled until his retirement. In this event the MEMBER'S benefit shall be retained in the FUND and payment of his ACCUMULATED CREDIT shall be deferred until the NORMAL RETIREMENT DATE or the MEMBER'S earlier retirement or death, as the case may be.

7. A letter dated 13 September 1993 from the fund addressed to the deceased confirms that the amount of R31 921.46 equal to the deceased's share of the fund was paid directly into his bank account. Therefore the deceased received the lump sum benefit in terms of rule 9.1.

8. The complainant's complaint is that the deceased ought to have received a disability benefit on his retirement and not a withdrawal benefit since his employment was terminated on the grounds of ill health.
9. The deceased's benefit statement dated 17 September 1992 states that the deceased was entitled to a lump sum ill health benefit of R67 194.74 as at that date. Thus the disability benefit would have been considerably more than the early retirement benefit.
10. The question for determination is whether the deceased was entitled to the ill health benefit in terms of the rules. Rule 10 governs disability benefits. Rule 10.1 reads:

Subject to the provisions of rules 10.4 and 10.5, if a MEMBER has, for an uninterrupted period of 26 weeks as a result of an injury, surgical operation or disease been prevented from carrying out his own occupation and any other occupation which the MEMBER could reasonably be expected to follow, taking into account his education, training, status, ability or experience and provided that the TRUSTEES and the INSURER are satisfied that such disablement is permanent, such MEMBER shall qualify to receive a disability benefit. [My italics]

11. Rule 10.1 is subject to rule 10.4 which reads:

No disability benefit shall be paid to or in respect of any MEMBER if such MEMBER'S disablement arises from, is attributable to or is accelerated by any cause or circumstances that are specifically excluded under any policy of insurance in terms of which the disability benefit is insured by an INSURER as provided in rule 10.5.

12. At the time that the deceased was a member of the fund, death and disability benefits were insured under a policy of insurance with Old Mutual ("the policy"). Thus in terms of rule 10.4, any exclusion contained in the Old Mutual policy was applicable to the deceased on his retirement. Section 6.6 of the said policy reads:

No disability benefit will be payable in respect of disablement arising directly or indirectly from

1. self-inflicted injury;
2. injury or disease in respect of which the member has received medical treatment of any kind during the six months preceding the date on which his disability benefit cover commenced or surgical operation undergone during such period, if
 1. the waiting period begins, or
 2. the member becomes disabled in terms of clause 6.5.3 or clause 6.5.5

within the twelve months following the date on which the member's disability benefit cover commenced.

13. In terms of the above, a member is not entitled the disability benefit if he received medical treatment for his disablement during the six months preceding the date on which his disability benefit cover commenced if the waiting period began within twelve months following that date.
14. The Old Mutual policy commenced on 1 May 1992, the date on which the deceased became a member of the fund. Therefore the date on which the deceased's disability benefit cover commenced was 1 May 1992.
15. In his complaint the complainant states the following:

His employer has sent him [the deceased] to retirement due to a constant ill-health caused by an hypertension and asthma, he was suffering from *since ten years prior to his joining ISCOR EMPLOYEE'S PROVIDENT FUND*.
It is clear that he was already disabled by the mentioned diseases when he was transferred to the said fund as at 1 June 1992 and within a period of three months after joining it he was declared a pensioner on the 23-09-1992. [sic] [My italics]
16. In addition to the above, a form dated 25 February 1993 completed by the deceased and signed by him states that he first consulted a medical doctor in

connection with his illness ten years prior and received treatment periodically thereafter.

17. The above reveals that the deceased was suffering from and received treatment for asthma and hypertension six months preceding the date on which his disability benefit cover commenced.
18. The "Waiting Period" is defined in the rules as the period of absence from the employer's service equal to 6 consecutive months, calculated from the commencement of the member's absence from work. The commencement of the deceased's absence from work was 23 September 1992. Therefore the waiting period began on 23 September 1992, some 4 months following the date on which the disability cover commenced (1 May 1992).
19. Therefore the deceased received medical treatment for his disablement during the six months preceding the date on which his disability benefit cover commenced and the waiting period began within twelve months following that date.
20. Thus in terms of rule 10.1 and section 6.6 of the Old Mutual policy, the deceased was excluded from receiving the disability benefit and the fund correctly paid him the benefit in terms of rule 9 on his early retirement.
21. For the foregoing reasons, the complainant is not entitled to the relief requested and the complaint is accordingly dismissed.

DATED at CAPE TOWN this 28th day of FEBRUARY 2001.

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JOHN MURPHY
PENSION FUNDS ADJUDICATOR

