

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO.:PFA/NP/38/99/LS

In the complaint between:

A Trollip

Complainant

and

Godrich Motors Pension 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 relating to the fund's refusal to admit the complainant's claim for a lump sum disability benefit.

No hearings were conducted in this matter and I have therefore relied on the documentary evidence, written submissions and the investigation conducted by my investigator, Lisa Shrosbree.

2. The complainant is a qualified diesel mechanic. Initially he worked for Godrich Motors (Pty) Ltd ("the employer") in Bronkhorstspuit for a period of 5 years. He later rejoined Godrich Motors and worked there for a continuous period of 16 years.
3. The complainant was a member of two funds whilst in the employ of Godrich Motors, namely, the Motor Industries Pension Fund and the Godrich Motors Pension Fund respectively.
4. In December 1997 the complainant fractured his patella and in April 1998 he fractured it for the second time. The complainant's doctor, Dr de Villiers, accordingly advised him to stop working as his occupation as a diesel mechanic would only exacerbate the injury to his knee.

5. The complainant thereafter applied for disability from the two funds of which he was a member. The employer states that the complainant continued to work at the company in the capacity of salesman pending his disability claims. However for much of this period he was not at work on account of the various operations which he underwent to his knee.
6. Both the Motor Industries Pension Fund and the Godrich Motors Pension Fund offer an ill health early retirement pension as well as an insured lump sum disability benefit.
7. The Motor Industries Pension Fund grants a lump sum disability benefit to a member who becomes incapable of performing his own occupation whereas the Godrich Motors Pension Fund grants the same to a member who becomes incapable of performing not only his own occupation but also any other occupation to which he is suited.
8. The complainant submitted the medical report of Dr de Villiers dated 29 May 1998 with his applications to both funds for a disability benefit. The report stated that on account of his injury to his knee, the complainant could no longer work as a diesel mechanic. Dr de Villiers went on to say:

Ek dink regtig dat die pasient 'n ander tipe werk sal moet kry. Hy kan nie meer in die veld werk as swaarvoertuig dieselwerktuigkundige nie ..

9. On the basis of Dr de Villier's report, the Motor Industries Pension Fund admitted the complainant's claim for a disability lump sum benefit as well as the ill health early retirement pension. The complainant was paid his disability benefit of R152 957.60 (after tax) on 20 January 1999. At the same time, the fund commenced payment of the complainant's early retirement pension.

At this point, the complainant left the employer and he has not worked since then.

10. The Godrich Motors Pension Fund (hereinafter referred to as “the fund”) similarly granted the complainant an ill health early retirement pension which he now receives on a monthly basis. However it repudiated the complainant’s claim for a lump sum disability benefit on the grounds that although he was incapable of performing his own occupation on account of his disability, he was not incapable of performing any other occupation as required in terms of the rules to qualify for disability.

In January 1999, the complainant requested that the fund’s decision be reviewed but his claim was repudiated again on the same grounds. This repudiation forms the basis of the complaint.

11. Rule A6.0.0 of the fund’s rules governs disability benefits. Rule A6.5.1 reads:

A MEMBER who is in SERVICE and who is totally and permanently disabled shall be paid the disability RISK BENEFIT after the expiry of a waiting period of six months, provided that the disability endures until the expiry of the said waiting period. This waiting period shall commence on the last day during which the MEMBER was at work attending to his normal duties.

Rule A6.1.1 defines “totally and permanently disabled” as follows:

A MEMBER shall be regarded as totally and permanently disabled if, prior to the earlier of his NORMAL RETIREMENT DATE and his sixty fifth birthday, in the reasonable opinion of THE SOUTHERN he has been so disabled by injury or illness as to be continuously, permanently and totally incapable of engaging in remuneration or profit

1. in his own occupation, or
2. in any other occupation to which he is suited or for which he is or could reasonably be expected to become qualified by his

knowledge, training, education, ability and experience.

12. The insurer initially assessed the complainant's claim on 14 September 1998 and it was decided that additional medical information was required. The complainant was accordingly referred to Dr Odendaal, an orthopaedic surgeon, for an examination which was performed on 10 October 1998.
13. The resultant medical report of Dr Odendaal dated 15 October 1998 stated that although the complainant had sustained two injuries to his knee and undergone three surgical procedures thereto, he was totally disabled from performing his own occupation *only* and that he should be able to adjust to most of his former job demands under less strenuous conditions. Dr Odendaal also stated that the complainant's knee was amenable to further treatment and his disability must therefore be regarded as temporary.

Dr Odendaal's report concludes as follows:

It is recommended that he undergo patellectomy at the hands of a skilled Orthopaedic Surgeon. Dr I M Dymond at the Morningside Clinic in Sandton is recommended. Recovery is likely to be protracted (6 months or longer) but there is a good chance that he will be fit for his occupation thereafter.

14. Dr de Villiers also submitted a further report dated 14 July 1998 in the interim wherein he stated that he regarded the complainant as totally and permanently disabled from performing his own job but not from attending to any other occupation.
15. On the basis of the above medical reports and the fact that the complainant had, subsequent to the date of disability in April 1998, worked as a salesman for his employer, the insurer declined the complainant's application for disability on 5 November 1998. The insurer did not consider the complainant to be continuously, permanently and totally incapable of performing an alternative

occupation as required by the definition, that is, the medical evidence did not support the complainant's inability to perform an alternative occupation according to the fund.

16. The complainant asserts that the insurer and the fund erred in refusing to admit his claim for disability. Hence his complaint relates to the interpretation and application of rule A6.0.0 and A6.1.1 and alleges a dispute of fact and law. The complainant contends that he has tried to find alternative employment but without success. His complaint reads in part:

... Dr Odendaal het egter besluit dat ek nog geskik is vir 'n ander tipe werk in die firma. My egter firma het nie so 'n pos vir my nie met die gevolg dat ek nou werkloos is, en Southern Life weier om my pensioen uit te betaal ... Ek rig my skrywe aan u vir beoordeling...

17. The rules give the insurer a discretion to determine who falls within the ambit of the definition of permanently disabled and is accordingly entitled to the lump sum disability benefit. This discretion is borne out by the italicized phrase below:

A MEMBER shall be regarded as totally and permanently disabled if ... *in the reasonable opinion of THE SOUTHERN* he has been so disabled by injury or illness as to be continuously, permanently and totally incapable of engaging in remuneration or profit ... [My italics]

18. The crux of the matter is therefore whether or not the insurer had reasonable grounds to believe that the complainant did not fall within the ambit of the second part of the definition, that is, that he was not totally and permanently incapable of engaging in an alternative occupation.
19. The insurer has conceded that the complainant probably fell within the ambit of the first part of the definition, that is, that he was incapable of performing his own occupation as a diesel mechanic at the date of disability. However it states that the complainant was excluded by virtue of the second part of the definition.

20. My investigator wrote to the insurer in a letter dated 2 March 2000 requesting it to address me on the meaning of the expression of 'other occupation' contained in the definition and its application to the complainant . The insurer responded in a letter dated 8 March 2000 referring me to the Dictionary of Occupational Titles (DOT) published by the US Department of Labor, Employment and Training Administration and the US Employment Service. According to DOT, a diesel mechanic requires the following skills:

High degree of strength

A reasoning development level which involves the application of rational systems to solve practical problems and interpret instructions in the written, oral, diagrammatic or schedule form (*Level 4*)

A mathematical development level which includes computing discounts, profits and loss, markup and selling price, ratios, percentages, calculating surfaces, volumes, weights and measures (*Level 3*)

A language development level which includes the ability to read books, magazines, encyclopedias, read safety rules, instructions in the use and maintenance of shop tools and equipment and writing reports with proper format (*Level 3*)

DOT then lists the following alternative occupations as fulfilling the criteria of a diesel mechanic outlined above:

Salesperson of automobile accessories (retail and wholesale) requires the following skills:

Low degree of strength

A reasoning development level 4

A mathematical development level 3

A language development level 4

Warehouse Manager, Store Keeper, Superintendent, Storage Area (Storeman in South African terms) requires the following skills:

Low degree of strength

A reasoning development level 4

A mathematical development level 3

A language development level 4

21. The above reveals how for example a diesel mechanic is suited to the occupation of a salesperson of automobile parts. It would appear that the only difference between the two occupations is that a diesel mechanic requires a high degree of strength whereas a salesperson does not. Thus the occupation of salesperson of automobile parts is not only suitable for a person with the complainant's qualifications but actually accommodates the complainant's disability insofar as it relieves him of precisely those tasks which his injury prevents him from performing and which were required of him in the capacity of diesel mechanic, for example, getting on and off large trucks and working with heavy machinery.
22. To reiterate, the definition of permanently disabled in the present case requires the claimant to be incapable of engaging in his own occupation or "*in any occupation to which he is suited or for which he is or could reasonably be expected to become qualified by his knowledge, training, education, ability and experience.*"

The DOT reveals that the complainant is capable of engaging in alternative occupations, namely, salesperson, warehouse manager, store keeper and superintendent. As stated, the complainant actually worked as a salesperson after the date of disability pending the outcome of the present disability claim. According to the insurer, he is ideal for this job as he has, in addition, the skills and knowledge to provide advice with regard to the use and replacement of the different parts and accessories.

23. In light of the above, I am satisfied that the insurer had reasonable grounds for concluding that the complainant was capable of engaging in an alternative occupation to which he is suited at the date of disability.
24. The complainant states that he has however been unable to find alternative employment and the suggestion seems to be that on that account he is entitled to the disability benefit from the fund. However disability cover assures against disability and not unemployment. The non-availability of a particular occupation is irrelevant unless it goes to proving that the suggested alternative occupation is no more than fanciful. The alternative occupations which appear to be available to the complainant certainly do not fall into this category.
25. For the foregoing reasons, the complaint is dismissed.

DATED at CAPE TOWN this 5th day of APRIL 2000.

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JOHN MURPHY
PENSION FUNDS ADJUDICATOR