



**THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

**UPPER TRIBUNAL CASE No: CI/0235/2021
[2021] UKUT 191 (AAC)
DR V THE SECRETARY OF STATE FOR WORK AND PENSIONS**

Decided without a hearing

Representatives

Claimant	Andrew Parkes of Derbyshire Unemployed Workers' Centre
Secretary of State	DMA Leeds

DECISION OF UPPER TRIBUNAL JUDGE JACOBS

On appeal from the First-tier Tribunal (Social Entitlement Chamber)

Reference: SC308/20/00344
Decision date: 27 October 2020
Venue: Birmingham

The decision of the First-tier Tribunal did not involve the making of an error on a point of law under section 12 of the Tribunals, Courts and Enforcement Act 2007.

REASONS FOR DECISION

A. What this case is about

1. This appeal concerns prescribed disease A15 (Dupuytren's contracture). I do not need to trace the history of the prescription of this condition. It dates back to the 2014 report of the Industrial Injuries Advisory Council on *Dupuytren's contracture due to hand-transmitted vibration* (Cm 8860). The Chairman of the Council described this condition in the letter presenting the report to the Secretary of State:

Dupuytren's disease is a disorder of the hand in which thickening of fibrous tissue of the palm and finger tendons leads, in more advanced cases, to the digits becoming permanently bent (flexed) into the palm, this last state being called 'Dupuytren's contracture'.

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2. I have to decide whether the onset of the disease occurs (a) when the claimant first experiences Dupuytren's disease or (b) only when the signs of the contracture stage, as contained in the statutory definition, manifest themselves. My answer is: (b).

B. History and background

3. The claimant made a claim for disablement benefit in respect of prescribed disease A15 on 23 December 2019 on the basis of work he had done when employed by the National Coal Board. There is no dispute about either his employment or the nature of his work. His employment ended in 1994. The only issue is whether he had the prescribed disease. Following a medical examination, the medical adviser gave this opinion:

[The claimant] worked with vibrating tools for about 12 years as a miner from 1982-1994. He reports he first noticed thickening and lumps to both his palms in about 1990. In about 2000 he noticed some involvement of the knuckle of the left little finger and by 2012 all the joints of the left little finger were affected and the left little finger was completely bent over. He was unsure when the small joints of the fingers first became affected. He had surgery in 2013 but the condition returned and he had further surgery in 2015. He feels the condition has returned again within about a year of this surgery. He has now been discharged from specialist input.

Examination today showed he had fixed flexion deformity to the little and ring fingers of the left hand but other fingers had no evidence of fixed flexion deformity. There was evidence of thickening and nodules present to both palms consistent with Dupuytren's contracture.

Based on today's findings he does have the clinical disease of Dupuytren's contracture however the fixed flexion deformity of his fingers wasn't present whilst he was working with vibrating tools and therefore criteria PDA15 is not met and PDA15 is not diagnosed today.

On the basis of that opinion, the decision-maker refused the claim on 11 February 2020.

4. The First-tier Tribunal dismissed the claimant's appeal, but gave him permission to appeal, limited to these issues:

a. Whether, in order to meet the prescription for Prescribed Disease A15, being Dupuytren's Contracture, provided by Part 1 of Schedule 1 to the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985 ("the Regulations"), the claimant must exhibit a fixed flexion deformity of one of more inter-phalangeal joints of one of more digits *within the period or periods of use of the tools specified* (my emphasis), which reduces to the question whether "the onset of the disease" means the disease in its prescribed form or the onset of signs or symptoms likely to lead to the disease in its prescribed form; and

b. Whether the presumption at Regulation 4(2) of the Regulations operates in a way that favours those in the position of the claimant, where the disease in its

prescribed form was not present during the prescribed period or periods but where signs or symptoms were then present.

I will refer to ground (a) as the onset question and ground (b) as the presumption question.

5. The Secretary of State's representative has not supported the appeal and the claimant's representative has made a 'no further comments' reply.

C. The prescribed disease legislation

6. Section 108(2) of the Social Security Contributions and Benefits Act 1992 provides:

(2) A disease or injury may be prescribed in relation to any employed earners if the Secretary of State is satisfied that ...

7. The relevant legislation is contained in the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985 (SI No 967). Regulation 1(2) contains the definitions. It provides:

'prescribed disease' means a disease or injury prescribed under Part II of these regulations ...

Regulation 2, which is in Part II, provides that the prescribed diseases are set out in Schedule 1.

2 Prescription of diseases and injuries and occupations for which they are prescribed

(a) subject to the following paragraphs of this regulation and to regulation 43(3), (5) and (6), each disease or injury set out in the first column of Part I of Schedule 1 hereto is prescribed in relation to all persons who have been employed on or after 5th July 1948 in employed earner's employment in any occupation set against such disease or injury in the second column of the said Part; ...

A15 is defined in Schedule 1 as

Prescribed disease or injury

Dupuytren's contracture of hand resulting in fixed flexion deformity of one or more of inter-phalangeal joints of one or more of the digits.

and is prescribed for these occupations:

Occupation

Any occupation involving the use of hand-held powered tools whose internal parts vibrate so as to transmit that vibration to the hand (but excluding those tools which are solely powered by hand) where—

- (a) the use of those tools amounts to a period or periods in aggregate of at least 10 years;
- (b) within that period or those periods, the use of those tools amounts to at least 2 hours per day for 3 or more days per week; and

- (c) the onset of the disease fell within the period or periods of use specified in this paragraph.

Regulation 4(2) provides for a rebuttable presumption that the disease is due to the nature of the claimant's employment:

- (2) Where a person has developed a disease which is prescribed in Part I of Schedule 1 in paragraphs ... A15 ..., that disease shall, unless the contrary is proved, be presumed to be due to the nature of that person's employed earner's employment if that employment was in any occupation set against that disease in the second column of that Part.

Regulation 6 deals with the date of onset:

6 Date of onset

- (1) For the purposes of the first claim in respect of a prescribed disease suffered by a person, the date of onset shall be determined in accordance with the following provisions of this regulation, and, save as provided in regulation 7, that date shall be treated as the date of onset for the purposes of any subsequent claim in respect of the same disease suffered by the same person, so however that—

(a) ... any date of onset determined for the purposes of that claim shall not preclude fresh consideration of the question whether the same person is suffering from the same disease on any subsequent claim for or award of benefit; and

(b) if, on the consideration of a claim, the degree of disablement is assessed at less than one per cent, any date of onset determined for the purposes of that claim shall be disregarded for the purposes of any subsequent claim.

- (2) Where the claim for the purposes of which the date of onset is to be determined is—

(b) a claim for disablement benefit (except in respect of occupational deafness), the date of onset shall be the day on which the claimant first suffered from the relevant loss of faculty on or after 5th July 1948; ...

D. Ground (a): the onset question

8. It is common to refer to a 'prescribed disease'. That is a convenient shorthand, but it is important not to misunderstand it. The way the legislation works is this. It sets out a disease (the left-hand column in Schedule 1) and then prescribes it in relation to claimants who satisfy what I will call the occupation condition (the right-hand column in Schedule 1). See how the language is used in regulations 2(a) and 4(2), following the language of section 108(2) of the Social Security Contributions and Benefits Act 1992.

9. What is prescribed is not the disease itself, but the relationship between the disease as described and the occupation. I will refer to the disease being 'described' rather than 'prescribed' to make this distinction clear; I could equally have used 'defined'. So A15 is described as 'Dupuytren's contracture of the hand resulting in

fixed flexion deformity of one or more of inter-phalangeal joints of one or more of the digits.’ It is then prescribed in relation to the occupation condition.

10. Careful reading is necessary to notice this distinction, because of the way the Regulations are sometimes worded. The definition of prescribed disease in regulation 1(2) may appear to refer to the disease itself being prescribed, but actually it does not do so. It refers to a disease prescribed under Part II, and Part II prescribes a disease in relation to claimants who satisfy the occupation condition. Also, the left-hand column in Schedule 1 is headed ‘Prescribed disease or injury’ and the right-hand column is head ‘Occupation’, but the whole is headed ‘List of prescribed diseases and the occupations for which they are prescribed’. That is better, but still capable of producing some confusion.

11. This is not mere semantic pedantry. It is important because of the wording of head (c) of the occupation condition for A15. This uses ‘disease’ rather than ‘prescribed disease’ and may appear to draw a distinction between the two. That allows an argument that any signs or symptoms of Dupuytren’s disease will suffice, not just those of the contracture stage. Properly understood, however, head (c) is not drawing any such distinction. It refers to the disease as described, not to something different.

12. This conclusion is consistent with a different approach. The date of onset is governed by regulation 6. If it allows signs and symptoms of Dupuytren’s disease to determine the date of onset, it has the effect of qualifying that regulation. But the regulation makes no provision for being subject to any other provision. The claimant’s argument comes to this: a claimant can satisfy head (c) without reaching the contracture stage at that time, and then make a claim once the contracture stage is reached, and only if it is reached. I do not accept that interpretation. It is singularly inappropriate to use the concept of ‘onset’ in two different ways. Also, to circle back to my earlier analysis, there is no need for this contortion once it is understood that disease naturally refers back to disease as described.

E. Ground (b): the presumption question

13. Regulation 4(2) does not help the claimant. The paragraph sets out a condition and a consequence. The condition is satisfied once a person has developed a disease that is described. A15 is described as ‘Dupuytren’s contracture of hand resulting in fixed flexion deformity of one or more of inter-phalangeal joints of one or more of the digits.’ That is what must exist in order to satisfy the condition.

14. Head (c) is not part of the description of the prescribed disease. It is only part of the occupation. Regulation 4(2) distinguishes between the disease described in Schedule 1 and the occupation set against that disease. The terms of the occupation are not part of the terms of that disease.

15. If the condition is satisfied, then and only then the consequence follows. This is a rebuttable presumption of a link between the disease and the claimant’s occupation. The presumption cannot operate to help in showing that the claimant has contracted the disease, as it is the existence of the disease that created the presumption. Without the disease as prescribed, there can be no presumption.

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F. Caselaw

16. The Secretary of State's representative has cited a decision of Mr Commissioner (later Upper Tribunal Judge) Williams in *CI/6027/1999*, which relied on the decision in *CSI/382/2000*. I prefer to reach my conclusion on the reasons above, given the different wording of the relevant prescriptions.

**Signed on original
on 04 August 2021**

**Edward Jacobs
Upper Tribunal Judge**