Casebase Number: G0131

Title of Payment: State Pension (Contributory)

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Date of Final Decision**: 27 June 1997**

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Keywords: State Pension; Fair Procedures; Natural Justice; Fair Hearing; Oral Hearing; Cross Examination; Witnesses; Incomplete Records; Evidence; Estoppel

Organisation who represented the Claimant: N/A

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Case Summary:
The case reference is ***Galvin v Chief Appeals Officer*** [1997] IEHC 218.

The case concerned a challenge to the decision by the Chief Appeals Officer of the Department of Social Welfare (the "**Respondent"**) when assessing the application of Mr Galvin (the "**Applicant**") for a contributory old age pension. The Chief Appeals Officer (and before them the deciding officer and appeals officer) had denied this application. The reason for this decision was that the Department did not have records to show that the Applicant had made sufficient social insurance contributions to be eligible to receive this benefit.

The Applicant asked the High Court to review the decision. He claimed that the failure to offer him an oral hearing where he could cross-examine the persons in charge of the records of the Department and produce his own evidence to support his claim that he had made sufficient social insurance contributions was a breach of his right to fair procedures. He also said that, in any event, he should be entitled to receive the contributory old age pension because he had received a letter from the Department of Social Protection saying that he didn't need to make further contributions to receive a pension. The Department said that it was entitled to rely on its own records, which showed that he hadn't made enough social contributions, and that while an appeals officer had the power to convene an oral hearing under the relevant legislation, it wasn't obliged to do so.

The High Court found that while there is no general right to an oral hearing in all cases. However, the Applicant in this case should have been afforded an oral hearing where he could cross examine witnesses and give evidence. This decision was based on the specific circumstances of the Applicant's case. The Department was ordered to schedule an oral hearing and to allow the Applicant a right to appeal any decision made by the appeals officer at that oral hearing to the Chief Appeals Officer.

The High Court didn't agree with the argument that the letter sent by the Department of Social Protection entitled the Applicant to receive a pension. The Applicant said that the sending of this letter prevented (or, to use the legal term, "estopped") the Department from denying the Applicant a pension because that would be inconsistent with that communication. The Court said that even if the Department had not said to the Applicant that he had made enough social insurance contributions, the Applicant wouldn't have been able to change the question of his eligibility to receive a pension by making more social insurance contributions, and that this meant that this argument must fail.

Key Conclusions:

- Section 313 of the Social Welfare Consolidation Act 2005 provides that when deciding a case, an Appeals Officer has the discretion to afford an oral hearing in Social Welfare Appeals.
- The detail of how this discretion is exercised is regulated by the relevant Social Welfare (Appeals) Regulations, which confirm that the right is a discretionary right of the Appeals Officer: currently there is not a statutory right for an applicant to ask for an oral hearing.
- However, the *Galvin* decision shows that applicants can still ask for an oral hearing, and that in some circumstances, the Appeals Officer must grant it – the reason is that Appeals Officers must not exercise their discretion in a manner that is against the law. The relevant law in this case is the constitutional right to natural justice and fair procedures.
- The *Galvin* case confirms there is no automatic right to an oral hearing all cases. This is a matter that will be decided on the facts of the case, considering the particular circumstances of the case, including whether an oral hearing has been requested. If applicants want an oral hearing, they should always ask for it, and they should try to show why an oral hearing is necessary in their opinion to determine the issues.
- In the *Galvin* case, the High Court considered the sections of the act that at that time were equivalent to the current rules concerning an oral hearing, set out above. It found that an oral hearing was required because an important right was in issue (the right to a pension for life), the relevant legislation allowed oral hearings and cross examination, a request for an oral hearing had been made and the issue couldn't be resolved without an oral hearing because:
    - the passage of time increased the possibility that the Department's records were wrong;
    - the Department accepted that it had, at earlier stages of the Applicant's claim, made errors in reviewing its records;
    - the Department wrongly applied a strict rule that its own records were the single source of truth and couldn't be challenged: to resolve the dispute, the Department should have assessed the strength of the Applicant's case because the Applicant had evidence to show that the Department's records might not be accurate.
- A more detailed summary of the facts is set out below to show what factors might be relevant when an Appeals Officer is making a decision whether or not to afford an oral hearing.

Background

The Applicant said that he had started working from the age of 18 for a company, and that in his first job (1944-1945), social insurance contributions had been paid for him. It later became clear that Department records showed that this was true.

The Applicant said he then left to work for his father, and after that he got a job in another company. He said that when working for this company (1948 – 1961), social insurance contributions had been paid for him. An accountant who worked for the company wrote a letter to the Department of Social Welfare on 4 May 1993 to confirm that this was the case. However, there were no records of any social insurance contributions to cover this period

held by the Department. The Department said that they conducted appropriate searches to try and find the records but that no records were found.

The Applicant set up his own business in 1961. It was agreed that no social insurance contributions were paid from this period until he closed the business in 1981.

In 1982, he started work with another employer. It was accepted that social insurance contributions were paid during this period until 1992.

In 1987, he wrote to the Department to ask if he would be entitled to a pension or whether he would need to purchase additional stamps to receive this. The Department wrote to the Applicant to say that its records showed that he didn't need to purchase any additional stamps. The Department provided the Applicant with a calculation of his contributions. During the High Court case, it was established that there was an error in this calculation, because the Department wrongly included social insurance contributions for the period where the Applicant had set up his own business, even though everyone agreed no contributions were made during this period.

In 1993, the Applicant applied for a contributory old age pension. This application was refused by a Deciding Officer. The reason given for the decision was that according to the Department's records, the first time the Applicant had made social insurance contributions was in 1982, after his 56th birthday, which broke an eligibility rule that you had to start making contributions before the age of 56. The Applicant said this wasn't true, and he had previously made social insurance contributions in his other jobs (including with his first company from 1944-1945 and his second company from 1948 – 1961). At the time, the Department said it had no records of either of these periods of employment.

The Applicant appealed the decision to the Social Welfare Appeals Office. This was refused, but for a different reason to that provided by the Deciding Officer. The Appeals Officer said that the Applicant hadn't made enough social insurance contributions between 1953 and 1992. It became clear that the Appeals Officer was assuming that no social insurance contributions had been made during period of employment with the second company (1948-1961), but that they did accept that the Department had records from the first company (1944-1945).

The Applicant appealed this decision to the Chief Appeals Officer. The Chief Appeals Officer said that he was satisfied that while the Department had records of the Applicant's job with the first company (1944-1945), the only other records of social insurance contributions they had were for the period he worked for the third company (1982 – 1992). If the Appeals Officer had accepted that the Applicant had made social insurance contributions in the second company, the Applicant would have made enough contributions to receive a pension. However, the Chief Appeals Officer said that *"the Department is satisfied that its files accurately reflect the position with regard to Mr Galvin's social insurance record."* The Applicant asked for an oral hearing, but this request wasn't granted.

The Applicant made an application to the High Court for judicial review of the decision of the Chief Appeals Officer.

The High Court Decision

The High Court observed that:

- because of the meaning of the relevant statutory provisions, the Applicant's claim for a state pension turned on whether it was accepted that social insurance contributions were made when the Applicant worked for the second company. The Applicant said they were made. The Department said they were not;
- Section 258 of the Social Welfare (Consolidation) Act 1993 provided an Appeals Officer with the power to take evidence on oath and to administer oaths to people attending as witnesses to an oral hearing;
- Section 263 of the 1993 Act allowed a Chief Appeals Officer to revise a decision of an Appeals Officer if it appears that a mistake was made in relation to the law or the facts;
- The Applicant's case was that if he was going to be denied access to a pension on the basis that there were no records in the Department to support his claim, he was entitled to challenge this decision at an oral hearing where he could present his own evidence and cross-examine relevant officials at the Department who were responsible for record-keeping. The Department's case was that it was entitled to rely on its own records.

When considering these issues, the Court said that:

- There are no hard and fast rules that say when the general rules of fairness require them to have an oral hearing. This depends on (1) the circumstances (2) the nature of the issue being considered (3) the applicable rules and (4) the subject matter of the case. Account must also be taken as to whether an oral hearing has been requested by an applicant.
- In this case, it was clear that an important right was at issue, the rules allowed an oral hearing and a request for an oral hearing was made. What needed to be decided was whether the dispute made it necessary for witnesses to be examined.
- Taking everything into account, the dispute couldn't be resolved without an oral hearing because:
    - There was a real possibility that the Department's records were not reliable due to the passage of time;
    - The reliability of the Department's records had already been called into question and the Department had already accepted that it made two errors when considering the case: firstly, by finding that there were no records in relation to the first company (which were later discovered) and then by incorrectly including the years that he was self-employed when writing to him to confirm that he didn't need to buy stamps.
    - To properly resolve the dispute, the decision makers needed to assess the strength of the Applicant's case – however, in applying a rule that departmental records are the only evidence relevant to making this determination, the relevant decision makers had effectively automatically disallowed the case. The Court said that while the rule was probably appropriate for lots of cases, the decision makers should take into account the fact that in some cases (such as this one), it may be appropriate to consider other evidence rather than automatically dismissing it.
    - The Court felt that the decision makers should have considered the Applicant's submissions in relation to the contributions made by the second company, particularly as there was a witness from the company who said

that the contributions had been made. This wasn't done, and this was a breach of the constitutional right to fair procedures.

The Court made an order requiring an Appeals Officer to hold a hearing within 4 weeks, and that the Applicant should also keep his right to appeal to the Chief Appeals Officer after that hearing.

Second argument: Estoppel/legitimate expectations

The Applicant also argued that that the Department informed him verbally and in a letter that he didn't need to purchase any additional stamps to qualify for a pension and that because he relied on this assurance and didn't purchase additional stamps, the Department had to grant his application. This is a legal argument known as "the doctrine of estoppel".

The Court didn't accept this argument. While the Department's representation wasn't correct because it had been made based on an incorrect calculation, the statutory rules applicable at the time that the letter was sent didn't allow him to make increased weekly contributions that would have made a difference to his eligibility to receive a pension. Accordingly, he didn't rely on the representation to his detriment, because it wouldn't have made any difference. The doctrine of estoppel doesn't apply where an applicant isn't statutorily entitled to a benefit claimed.

Observations:

This case highlights the importance of an oral hearing where there is a dispute over the facts in an appeal. An oral hearing will be necessary in certain circumstances in order to ensure fair procedures and principles of natural justice. Where an oral hearing is refused, the principals in this case can be cited to the Social Welfare Appeals Office. Also see **Casebase Case Report G0130** on *Z.K. v The Minister for Justice & Equality and Ireland and The Attorney General* [2022] IEHC 278,. If an oral hearing continues to be unreasonably refused, a judicial review to the High Court within 3 months of the refusal may be in order and legal advice should be sought.

Based on information in the Annual Reports of the Social Welfare Appeals Office, there is an increased rate of success in appeals where an oral hearing is held. An oral hearing may be relevant to a range of issues, eg impact of an illness or disability, extent of care required by a caree, and nature of relationship in cases of cohabitation are just some examples.

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