IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYRIACOS DIOSMIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF LABOUR AND SOCIAL INSURANCE,

Respondent.

(*Case No.* 81/75).

Administrative Law—Administrative decision—Due reasoning—Decision refusing application for disability pension—Letter incorporating, by reference, an earlier one in which the reason for rejecting applicant's claim was stated—A duly reasoned communication of the sub judice *decision—In any event the reasoning for the decision can be amply derived from the whole contents of the relevant official file.*

Administrative Law—Administrative Acts—Presumption of regularity.

Applicant, on April 23, 1973, applied for a disability pension under section 23* of the Social Insurance Law, 1972 (Law 106/72).

On September 7, 1973, he was informed that his claim could not be met because the condition laid down by paragraph (b) of subsection (1) of the said section 23 had not been satisfied.

After applicant's request for a review of his case under section 62 of Law 106/72 had been rejected he filed a recourse which he withdrew on the understanding that the respondent would re-examine the matter and reach a new decision thereon.

On March 19, 1975, applicant applied again for a disability pension and forwarded a further medical certificate dated March 18, 1975; he was examined by a Medical Board which

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* Quoted at p. 463 *post*.

reported that he was capable of light manual work As a result applicant was informed on May 30, 1975 that the previous decision in the matter, which was communicated to him on September 7, 1973, could not be reversed Hence the present recourse whereby applicant mainly contended

(a) That the complained of decision, as contained in the letter of May 30, 1975 is not duly reasoned,

(b) that it does not appear anywhere in the relevant administrative records that the medical certificate forwarded on March 19, 1975 has been duly taken into account before the *sub judice* decision was reached,

(c) that the respondent has not actually re-examined the case of the applicant, as it was agreed when the said recourse was withdrawn, but proceeded merely to confirm the earlier decision in the matter.

Held, (1) The letter of May 30, 1975, by incorporating, by reference, the earlier one of September 7, 1973 (in which the reason for rejecting the applicant's claim was stated) has to be treated as a duly reasoned communication of the *sub judice* decision; and, in any event, there can be amply derived, from the whole contents of the relevant official file, the reasoning for such decision (see, Δένδια "Διοικητικὸν Δίκαιον" 5th ed. vol. A, p. 151).

(2) The inference that the certificate forwarded on March 19, 1975, was duly considered is irresistible and inevitable, not only because of the presumption of regularity of administrative acts—which has not been rebutted by anything to the contrary—but, also, because by a letter dated April 4, 1975, there was acknowledged receipt of the letter dated March 19, 1975, to which the said certificate was attached, and it was stated that the necessary arrangements had been made for a new examination of the applicant, and, actually, he was, as a result, examined by a Medical Board on April 22, 1975.

(3) I cannot accept the submission, that applicant's case has not been re-examined, as a valid one, in view of the contents of the letter of April 4, 1975 (*supra*) as well as of the fact that, though the eventual new decision confirmed the earlier one,

such later decision was taken after the applicant had been examined once again by a Medical Board.

Application dismissed.
No order as to costs.

Recourse.

Recourse against a decision of the Director of the Department of Social Insurance by means of which applicant was refused a disability pension, under section 23 of the Social Insurance Law, 1972 (Law 106/72).

E. Nicolaou (*Miss*), for the applicant.

G. Constantinou (*Miss*), for the respondent.

Cur. adv. vult.

The following judgment was delivered by:–

TRIANTAFYLLIDES, P.: The applicant complains against a decision of the Director of the Department of Social Insurance—(who comes under the respondent Ministry)—by means of which he was refused a disability pension, under section 23 of the Social Insurance Law, 1972 (Law 106/72).

The relevant part of section 23 is subsection (1), which reads as follows:–

" 23.–(1) Τηρουμένων τῶν διατάξεων τοῦ παρόντος Νόμου, ἠσφαλισμένος δικαιοῦται εἰς σύνταξιν ἀνικανότητος ἐὰν –

(α) ἦτο ἀνίκανος πρὸς ἐργασίαν δι' ἑκατὸν πεντήκοντα ἓξ ἡμέρας ἐντὸς οἱασδήποτε περιόδου διακοπῆς τῆς ἀπασχολήσεως ληγούσης οὐχὶ ἐνωρίτερον τῆς ὁρισθείσης ἡμερομηνίας·

(β) ἐντὸς τῆς τοιαύτης περιόδου διακοπῆς τῆς ἀπασχολήσεως, ἀποδείξῃ ὅτι προβλέπεται νὰ παραμείνῃ μονίμως ἀνίκανος πρὸς ἐργασίαν·

(γ) δὲν συνεπλήρωσε τὴν συντάξιμον ἡλικίαν· καὶ

(δ) πληροῖ τὰς σχετικὰς προϋποθέσεις εἰσφορᾶς."

(" 23–(1) Subject to the provisions of this Law, an insured person is entitled to disability pension if –

(a) he was incapable of work for a hundred and fifty-six days during any period of interruption of his employment ending not earlier than the appointed date;

(b) within such period of interruption of his employment proves that it is anticipated that he will remain permanently incapable of work;

(c) he has not reached pensionable age; and

(d) fulfils the relevant contribution prerequisites").

The *sub judice* decision was communicated to the applicant by letter dated May 30, 1975 (which is document No. 14 in the relevant file, *exhibit* 1).

The salient facts of this case are as follows:-

On April 23, 1973, the applicant applied for a pension, as aforesaid. In support of his application he wrote, also, a letter, which was received by the respondent Ministry on July 3, 1973, and to which there was attached a relevant medical certificate.

On September 7, 1973, he was informed that his claim could not be met because the condition laid down by paragraph (b) of subsection (1) of section 23, above, had not been satisfied; and, it may be pointed out, at this stage, that it is clear from the contents of this subsection that the various conditions set out therein are of a cumulative nature.

On April 29, 1974, counsel acting for the applicant requested in writing a further examination of the matter, in the light of a new medical certificate dated April 26, 1974. The applicant filed, also, a new application for a disability pension on June 20, 1974. As a result of this application he was examined by a Medical Board on June 20, 1974; apparently his new application was filed on the date when he appeared before the Medical Board. According to the report of such Board he was found to be capable of light work.

Then, the applicant requested a review of his case, under section 62 of Law 106/72, and the respondent Minister rejected his request on June 29, 1974.

The applicant filed, on August 8, 1974, recourse No. 347/74, which was, eventually, withdrawn on February 8, 1975, on the

understanding that the respondent would re-examine the matter and reach a new decision thereon.

On March 19, 1975, the applicant—through his counsel—applied again for a disability pension, and he forwarded a further medical certificate dated March 18, 1975. On April 22, 1975, he was examined again by the Medical Board, which submitted its report on April 25, 1975, to the effect that the applicant was capable of light manual work. As a result the applicant was informed on May 30, 1975, that the previous decision in the matter, which was communicated to him on September 9, 1973, could not be reversed.

The present recourse was filed on June 12, 1975; it was heard on October 30, 1975, and judgment was reserved till today.

Counsel for the applicant has not insisted at the hearing of this recourse that on a proper application of section 23 of Law 106/72 to the facts of this case the applicant should have been found to be entitled to a disability pension; she has, very rightly, not challenged the conclusion of the Medical Board that the applicant is capable of light work; it would, indeed, be, normally, beyond the competence of this Court, in a case of this nature, to examine the correctness, from the scientific aspect, of the report of the Board (see, *inter alia*, Decision No. 2501/1970 of the Council of State in Greece).

Counsel for the applicant has contended, first, that the complained of decision, as contained in the letter of May 30, 1975, is not duly reasoned, because, as she has argued, it was not sufficient, in order to meet the requirement for due reasoning, to refer only to the decision communicated by the earlier letter of September 7, 1973.

I cannot agree with the above contention; first I am of the opinion that the letter of May 30, 1975, by incorporating, by reference, the earlier one of September 7, 1973 (in which the reason for rejecting the applicant's claim was stated) has to be treated as a duly reasoned communication of the *sub judice* decision; and, in any event, there can be amply derived, from the whole contents of the relevant official file, the reasoning for such decision (see, in this respect, Δένδια "Διοικητικὸν Δίκαιον", 5th ed., vol. A, p. 151).

It has, also, been submitted by counsel for the applicant that from the contents of the letter dated September 7, 1973, it appears that an erroneous reason was given for rejecting the

claim of the applicant, namely that he was only temporarily unfit for work. I do not think that this is so; in my view it is clear, on a fair reading of the said letter, either on its own or in conjunction with the rest of the relevant administrative records, that the applicant was found fit for only light work—and not only temporarily unfit for work—and, consequently, he was treated as not satisfying the requirement laid down by paragraph (b) of subsection (1) of section 23 of Law 106/72; and, it must be recalled, in this connection, that counsel for the applicant does not complain that section 23 (1) was wrongly applied to the facts of the present case.

Another contention which was advanced on behalf of the applicant has been that it does not appear anywhere in the relevant administration records that the medical certificate forwarded to the respondent, by counsel for the applicant, on March 19, 1975, has been duly taken into account before the *sub judice* decision was reached. In my opinion the inference that this certificate was duly considered is irresistible and inevitable, not only because of the presumption of regularity of administrative acts—which has not been rebutted by anything to the contrary—but, also, because by a letter dated April 4 1975, there was acknowledged receipt of the letter of counsel for applicant dated March 19, 1975, to which the said certificate was attached, and it was stated that the necessary arrangements had been made for a new examination of the applicant; and, actually, he was, as a result, examined by a Medical Board on April 22, 1975.

The last submission of counsel for the applicant with which I have to deal is that the respondent has not actually re-examined the case of the applicant, as it was agreed when the aforementioned recourse No. 347/74 was withdrawn, but proceeded merely to confirm the earlier decision in the matter. I cannot accept this submission as a valid one, in view of the contents of the just referred to, above, letter of April 4, 1975, as well as of the fact that, though the eventual new decision confirmed the earlier one, such later decision was taken after the applicant had been examined once again by a Medical Board.

For all the foregoing reasons this recourse has to be dismissed; but, without costs against the applicant, in view of the nature of the case.

Application dismissed. No order as to costs.