1978 April 8

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS PITSILLIDES,

Applicant,

v.

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

Respondent.

(*Case No.* 115/77).

Social insurance—Disability pension—Section 23 *of the Social Insurance Laws* 1972 *to* 1975—*Power of respondents to order applicant to subject himself to a second medical examination—Section* 23 (3) (*a*) *of the Law—Medical Board finding that applicant able to do light duties—Application for disability pension rightly rejected—Section* 23 (1) (*b*) *of the Law.*

Administrative Law—Application for disability pension—Medical report—Administrative Court cannot normally examine the correctness, from the scientific aspect, of such report.

Administrative Law—Administrative decision—Misconception of fact—Decision on application for disability pension—Taken after consideration of medical reports concerning condition of applicant's health—No misconception of fact.

The applicant was a clerk 2nd Grade in the Water Development Department and as such he was an "insured person" within the meaning of the Social Insurance Laws 1972 to 1975. In September, 1976, he was examined by a Medical Board, constituted by two Government Medical Officers, who found him to be suffering from chronic bronchitis and considered him unfit for further service.

On January 12, 1977 he applied to the respondent for disability pension under section 23* of the above Law, and attached

* Quoted at p. 104 *post.*

thereto the report of the above Medical Officers and the report of his physician, which stated that he was incapable of doing any work at all due to chronic bronchitis. The respondents in exercise of their powers under s. 23 (3) (a)* of the Law directed applicant to undergo a new medical examination. He was then examined by a Medical Board constituted by two Government Medical Officers, other than those constituting the first Medical Board. The findings of this Board were that he was suffering from chronic bronchitis and liver cirrhosis and that he was not fully incapable of work but he was able to do light duties. Thereupon the respondents rejected applicant's application for disability pension on the ground that requirement (b) of section 23 (1) of the Social Insurance Laws, to the effect that he should prove that he will remain permanently incapable for work, was lacking. Hence the present recourse:

Counsel for Applicant contended: (a) that the act or decision of the respondent was based on a misconception of the real facts *i.e.* the Medical evidence adduced by which it was clear that the applicant was completely incapable for work for ever within the meaning of section 23 (1) (b) of the Law; (b) that the respondents failed to carry out a proper inquiry; (c) that the said act or decision was contrary to section 23 (1) (b) of the Law as the required medical evidence that applicant would remain permanently incapable for work had been adduced and that the decision was taken in excess of powers; (d) that the *sub judice* decision was not duly reasoned.

Held, dismissing the recourse (1) that there could be no misconception of fact since all the material facts were before the respondents, including the medical reports concerning the condition of applicant's health; that the conclusions of the last Medical Board, that applicant was capable of doing light work cannot, as a general rule, be challenged by this Court, as it is 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 Medical Board; that the respondents did not have to make any further enquiry into the matter after having before them the report of the second Medical Board; that it was within the powers of the respondents to instruct applicant to be medically examined again (see s. 23 (3) (a) of

* Quoted at p. 104 *post.*

the Law) and to rely on the last report; and that the *sub judice* decision was duly reasoned, the reason clearly appearing in a letter to the applicant where it was stated that the provisions of s. 23 (1) (b) were not complied with.

Application dismissed.

Cases referred to:

Decision No. 2501/70 *of the Greek Council of State.*

Recourse.

Recourse against the refusal of the respondent to grant applicant a disability pension.

St. Erotokritou (*Mrs.*), for the applicant.

Gl. Michaelides, for the respondent.

Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicant was at the material time a clerk 2nd Grade in the Water Development Department and as such he was an "insured person" within the meaning of the Social Insurance Laws 1972 to 1975. In September, 1976, he was examined by a Medical Board constituted by Dr. A. Markides and Dr. S. Stylianou who found him to be suffering from chronic bronchitis and he was considered unfit for further service. In the opinion of these Medical Officers he was incapable by reason of this infirmity of body of discharging the duties of his office and his infirmity was likely to be permanent. These findings appear in a Medical Report dated 21/9/76, (*Exhibit* 3).

On 12/1/77 the applicant applied to the Ministry of Labour and Social Insurance for disability pension. The above Medical report and a report of his physician, namely, Dr. A. Petsas, were attached to the said application. In the report of his physician, (*Exhibit* 4), it is stated that the applicant is incapable of doing any work at all due to chronic bronchitis since September, 1976.

Upon receiving the application the respondents directed the applicant to undergo a new medical examination. The applicant in compliance with the above instructions on 10/2/77 he underwent an examination by a Medical Board, which was constituted by Dr. L. Pilides and Dr. Avraamides, who issued the relevant report, *Exhibit* 5. Their findings were Pulmar Ery-

thema, Clupping seen in both hands, Pilateral Wheezening, and their conclusions were that the applicant was suffering from chronic bronchitis and liver cirrhosis. However, in their opinion, he was not found fully incapable of work but he was able to do light duties.

The respondents then, having examined the Reports, decided that the applicant should not be granted a disability pension and communicated their decision to the applicant by letter dated 16/2/77, *Exhibit* 1. By this *exhibit* the applicant was informed that requirement (b) of section 23 (1) of the Social Insurance Laws, which is to the effect that he should prove that he will remain incapable for work for ever, is lacking in his case and, therefore, his application was rejected.

After receiving this letter the applicant on 5/4/77, filed the present recourse seeking a declaration of the Court that the act and/or decision of the respondents, which was communicated to the applicant by letter dated 16/2/77, by which they decided not to grant to him a disability pension, is *null* and *void* and of no legal effect whatsoever.

The grounds of law on which the application is based, as stated therein, are the following:

1. The act or decision of the respondent was based on a misconception of the real facts *i.e.* the medical evidence adduced by which it is clear that the applicant is completely incapable for work for ever, within the meaning of section 23 (1) (b) of the Social Insurance Law.

2. The said act and/or decision of the respondent is contrary to the provisions of section 23 of the Social Insurance Law as the applicant adduced the required medical evidence by which it is clear that the applicant will remain permanently incapable for work.

3. The act and/or decision of the respondents was taken in excess of powers and/or in excess of the specific provisions of section 23 (1) (b) of the Law.

4. The respondents failed to carry out a proper enquiry, and

5. The decision of the respondent is not duly reasoned.

Counsel for applicant argued that the decision of the respondents was taken under a misconception of fact, in that the report of the Medical Board dated 10/2/77, *Exhibit* 5, was not considered and interpreted in the light of the other two reports, *Exhibits* 3 and 4 where it was stated that the applicant was incapable of doing any work at all. She further argued that the respondents failed to carry out a proper enquiry, which was necessary in view of the difference between the medical reports.

I am of the view that the above arguments of counsel cannot stand as there could be no misconception of fact since all the material facts were before the respondents, including the medical reports concerning the condition of the applicant's health. It is clear from the facts of this case that the medical report, *Exhibit* 3, was issued by a Medical Board constituted to examine the applicant and report as to whether he was in a position to discharge his duties as a clerk 2nd Grade. It was not concerned with his capacity to work in general. The only report that supports the view that the applicant is completely incapable to do any work for ever is *Exhibit* 4, which was issued by his own physician.

The respondents on examination of these two reports required the applicant to undergo a new medical examination, who, as a result, subjected himself to a medical examination by a Medical Board which issued the relevant report, *Exhibit* 5. This Medical Board was constituted under section 51 (1) of the Social Insurance Laws 1972 to 1975, which reads as follows:

> " 51 (1) A Medical Board appointed for the purposes of this Law consists of two medical officers selected from a panel of Medical Officers prepared by the Minister on the approval of the Council of Ministers."

It was, therefore, reasonably open to the respondents to rely on the report of this Medical Board, which was properly constituted.

The conclusions of the Medical Board that the applicant is capable of doing light work cannot, as a general rule, be challenged by this Court. It is 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 Medical Board.

(See in this respect the Decision No. 2501/1970 of the Greek Council of State).

Furthermore, taking into consideration the material before the respondents I do not think that they had to make any further enquiry into the matter after having before them the report of the Medical Board, *Exhibit* 5.

Counsel for applicant also argued that the said act and/or decision of the respondents is contrary to the provisions of section 23 (1) (b) of the Social Insurance Law as the required medical evidence to the effect that the applicant would remain permanently incapable for work had been adduced and that the said decision was taken in excess of their powers. Section 23 (1) of the Law reads as follows:

> " 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."

These contentions of counsel for applicant cannot stand either since it was within the powers of the respondents to instruct the applicant to be examined again, under the powers given to them by section 23 (3) (a) of the Law which reads:

> " 23 (3) Every person to whom disability pension has been granted or who adduced a claim for disability pension, should comply with any instruction issued to him at any time by the Director by which he is called upon to —
>
> (a) Subject himself to medical examination or re-examination by the Medical Board."

It was also within the powers of the respondents to rely on the last report, *Exhibit* 5, which, as I have already said, is to the effect that the applicant was capable of doing light work.

As regards the argument of counsel that the decision of the respondents is not duly reasoned, the reason clearly appears in their letter to the applicant, *Exhibit* 1, where it is stated that the provisions of section 23 (1) (b) of the Law are not complied with.

For all the above reasons this recourse fails.

In the circumstances, I make no Order as to costs.

Application dismissed.
No order as to costs.