Industrial injuries benefits

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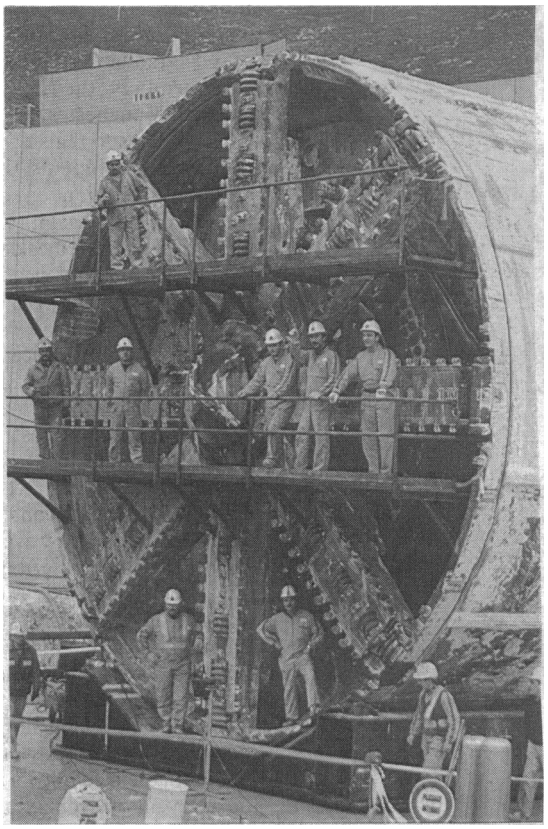
Contributory benefits
Retirement pension
Widow's benefit
Unemployment benefit
Sickness benefit
Invalidity benefit
Maternity allowance

Non-contributory benefits
Child benefit
One parent benefit
Attendance allowance
Invalid care allowance
Mobility allowance
Severe disablement allowance
Industrial injury benefit
Statutory sick pay and maternity pay

Means tested benefits
Income support
Housing benefit
Community charge benefit
Family credit
Social fund

Benefits for the victims of industrial accidents and for those with industrial diseases have been in existence longer than any other part of the social security system, dating back to the workman's compensation schemes of the nineteenth century. Traditionally, those qualifying for industrial injuries benefits have been treated considerably more generously than those whose injuries or disabilities are caused in some other way. In recent years, however, the scheme has been subject to a series of cuts, which have considerably reduced the importance of the scheme for many patients.

Since 1986 changes to disablement benefit have severely restricted awards on new claims from people whose disablement is assessed at less than 14%, unless they have pneumoconiosis, byssinosis, or diffuse mesothelioma. This change alone meant that nine out of 10 claimants with industrial injuries no longer receive disablement benefit. Since October 1990 no new claims for reduced earnings allowance—a benefit for lost earning power—have been accepted. This has removed any benefit entitlement from patients with injuries or diseases resulting in an assessed disability of less than 14% and appreciably reduced the benefit entitlement of many others.



GAMMA

Working in a job in which accidents are common does not preclude people from industrial injuries benefit

Key features

Patients are covered by the scheme if they work for an employer. It does not matter how many hours a week they work, how much they earn, or how long they have worked for that employer; they could be part time workers on their first day at work. The two main groups who are excluded are trainees on government schemes (such as youth training), who are covered by a similar scheme operated by the Training Agency, and the self employed. It can be worth some people who describe themselves as self employed getting legal advice as some "employers" will describe their workers as self employed subcontractors to avoid the responsibilities of being an employer. A final decision is made by the Department of Social Security in any cases of doubt. Some workers, such as taxi drivers, apprentices, and agency workers, are treated as employees by the regulations.

Unlike the case when patients sue an employer for negligence under common law, entitlement to industrial injury benefits does not depend on whose fault the accident was. There is no need to prove blame in any case. In addition, none of the benefits under the industrial injuries scheme are dependent on the claimants having paid National Insurance contributions. This is particularly important for part time workers and those who may have only recently started work or are on temporary contracts, who might not qualify for statutory sick pay or sickness benefit under the normal rules (see article 6). If workers are ill or incapacitated due to an industrial cause they are deemed to have paid enough National Insurance contributions. For such workers convincing the Department of Social Security their incapacity is industrially caused is crucial, even for those requiring short periods off work for illness or injury that will result in no long term damage. It is important that general practitioners record in their notes when a patient has an injury or disease that seems to be due to their employment as this might be vital evidence in a future claim. Even for minor accidents patients are advised to seek a declaration from the Department of Social Security that they have had an industrial accident. This is done by using form BI 95 available from the local Department of Social Security office.

Injuries caused by industrial accidents

To come within the scope of this scheme patients must have suffered "personal injury . . . by an accident arising out of and in the course of" their employment. Although this may seem straightforward, and in many cases will be, it is one of the most litigated phrases in the English language. What follows is a brief description of what is covered, but any patients with borderline cases should seek advice from their trade union, an advice centre, or a solicitor.

It is usually clear when someone has suffered a personal injury, but it is worth noting that the term includes psychological injuries. For example, a teacher who had a mental breakdown after an attack by pupils was held to have suffered personal injury. Any injury must have been caused by an accident. This can include the deliberate acts of third parties—for example, assaults on security workers or hospital staff. The fact that someone has a heavy or dangerous job in

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which accidents are common, such as mining, does not disqualify the person. Similarly, the fact that patients already have a condition that predisposes them to certain accidents—such as a weak back, asthma, or a history of heart complaints—does not prevent the resulting injuries from being covered by the scheme. Someone who strains an already weak back lifting a heavy weight or who has an acute asthma attack caused by fumes from a machine fire will be fully covered. A subject that has caused many problems is the difficulty in distinguishing between injuries caused by an accident, which are covered, and those caused by the cumulative effect of a process, which are not. It is usually necessary to prove that an identifiable accident or series of accidents happened, even if the precise time is not known.

Only accidents that arise in the course of the employment are covered. This generally means that patients must have been "at work" or, for people not on their employers' premises, they must have been going about their employers' business when the accident happened. Journeys to and from work often cause some difficulties. The general rule is that people are covered once they have arrived at work and until they leave to go home unless they are travelling on transport provided by the employer. If someone is injured while responding to an emergency they will usually be covered, even if the emergency had no connection with their work, such as a milkman rescuing people from a house fire.

Even though an accident happens at work, it must in some way be caused by the employment. That is normally assumed to be the case, but someone prone to heart complaints who has a heart attack while at work, for example, will not be classed as having had an industrial accident unless there was some factor in the work environment that contributed to the attack happening at that time rather than at any other.

Prescribed industrial diseases

In 1948 a specific list of prescribed industrial diseases was established to enable benefit to be paid in cases in which the government's advisors thought that there was a clear occupational link. Various diseases have been added in the past few years, making a total of about 60 conditions now recognised. To qualify for benefit patients have to establish that they have a particular prescribed disease, that they have been employed in an occupation prescribed for that disease, and that the disease was caused by the occupation. Patients can also be covered if they have a disease that is caused by a prescribed disease. Although a causal link has to be established, it is normally assumed that if the patient develops the disease within a month after last working in the prescribed occupation the occupation caused the disease. That is not the case, however, for dermatitis (the most common industrial disease) or nasal cancer. The connection has to be proved by medical evidence. General practitioners can have a key part to play in substantiating the history of patients' conditions to the Department of Social Security and in investigating the causes of diseases, perhaps by referring to consultants in appropriate cases.

Benefits available

INCAPACITY BENEFITS

Benefits such as statutory sick pay, sickness benefit, and invalidity benefit (see article 6) are all available in respect of incapacity from industrial causes. Sickness benefit and invalidity benefit, although normally dependent on sufficient National Insurance contributions having been paid, are available without a contribution test. This is particularly important for those earning too little or with insufficient contributions to qualify under the normal rules.

DISABLEMENT BENEFIT

Disablement benefit may be available to people still suffering from a loss of physical or mental faculty as a result of one or more industrial accidents or diseases 15 weeks after the date of the accident or the onset of the disease. The resulting disablement must have been assessed to be at least 14%, except in the cases of pneumoconiosis, byssinosis, or diffuse mesothelioma.

The amount of weekly benefit paid varies from £76.00 a week, for 100% disablement, to £15.32 a week, for disablements of 14-20%. Disablement benefit is intended as compensation rather than as income maintenance and so is payable on top of wages, invalidity benefit, or other non-means tested benefits. It is not taxable. The degree of disability is determined by adjudicating medical authorities or, on appeal, by the medical appeal tribunal. Some degrees of disablement are laid down by regulations (for example, 40% for loss of one eye and various types of amputation), but in many cases the adjudicating medical authority has to make its own decision based on the results of a medical examination. General practitioners who can have considerable knowledge of a patient's condition, can have valuable evidence to provide if asked. Assessments are usually made provisionally if the condition is not entirely stable, to be reviewed after a set period, but can be final and last for a fixed period or for life. Assessments of occupational deafness are always provisional for five years. If the patient's condition deteriorates during the period of the assessment, or the patient is still disabled at the end of the period of the assessment, he or she should apply for a review of the decision on the grounds of "unforeseen aggravation."

CONSTANT ATTENDANCE ALLOWANCE

This allowance is paid on top of 100% disablement benefit to people needing constant attendance as a result of their loss of faculty. This is similar in many respects to the ordinary attendance allowance described in article 5, although the amount paid can be higher. A patient may not receive both types of attendance allowance at the same time. Constant attendance allowance is paid at a higher rate of £61.40 a week and a lower rate of £30.70, although a lower amount can be paid for part time attendance. Anyone receiving constant attendance allowance at the rate of at least £30.70 a week may also receive exceptionally severe disablement allowance of £30.70 a week.

REDUCED EARNINGS ALLOWANCE

Reduced earnings allowance was abolished for new claims in October 1990. Until then it was an important benefit providing compensation for lost earning power when an injury or disease prevented patients from doing their old job, forcing them to take a lower paid one. It was formerly called special hardship allowance. On retirement those already receiving reduced earnings allowance will be entitled to retirement allowance, which is paid at a much reduced rate.

Disablement benefit and any of the additional payments are claimed from the local Department of Social Security office on form BI 100. More details about these benefits can be found in the Child Poverty Action Group's *Rights Guide to Non-means Tested Benefits*.

Despite the cuts and reductions in the scope of the scheme in recent years the industrial injuries benefit is still an important source of income for many patients who have been injured at work or have contracted industrial diseases. General practitioners are well placed to point out to patients the possibilities of making a claim and to provide supporting evidence in appropriate cases.

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