The majority of the tribunal **(Williams and Pavlin)** said that there was no cogent evidence of any substantial medical disability (either physical or psychological). The most that could be said was that Trempetic's disability derived predominantly from his own satisfaction that he was sick and unable to work:

> It would, we think, lead to results not contemplated by the legislature for entitlement to invalid pension to be established upon the applicant's self-assessment of belief, unsupported by cogent expert evidence of incapacity for work by reason of a medical disability, whether physical or psychic or a combination of both.

(Reasons, p.14)

On the other hand, the dissenting member **(DeMaria)** concluded that Trempetic's symptoms had become an entrenched part of his psychological make-up; and that this problem had been reinforced by his long absence from the workforce, by the grant of sickness benefit to him and by his extended dispute with the DSS over invalid pension.

## MITRIC and SECRETARY TO DSS (No. S84/99)

**Decided:** 29 July 1985 by R. A. Layton, J. T. B. Linn and F. A. Pascoe.

The AAT *set aside* a DSS decision to refuse an invald pension to a 49-year-old man who had worked in several skilled occupations until July 1983 when, because of developing back pain, he had declined a transfer to a labouring position and had been retrenched.

The medical evidence showed that Mitric suffered from degenerative changes to his spine, which incapacitated him from work involving heavy lifting and bending. It was agreed that he could only undertake light work if he were able to set his own pace and take frequent rests.

The local CES office said that Mitric would be most unlikely to obtain this type of employment: most employers would only hire workers below 45 years of age with no previous injury or workers' compepnsation claim; and few employers were prepared to hire a person who could not work at the standard pace.

The AAT concluded that, in the light of Mitric's age, his inability to write English, his injury, the limited work he could perform and the restrictions which must be placed even on that limited work, it was most unlikely that he would find an employer who was willing to employ him. Adopting the approach in *Panke* (1981) 2 *SSR* 9, the Tribunal said that, while Mitric could perform some work, only a sympathetic employer would hire him; that it was not likely that a sympathetic employer could be found; and that, accordingly, Mitric was 'virtually unemployable'.

## PISANI and SECRETARY TO DSS (No. N83/765)

**Decided:** 16 August 1985 by R. A. Hayes, D. J. Howell and J. F. Sutton.

The AAT *affirmed* a DSS decision to reject an application for an invalid pension lodged by a 37-year-old man who had not worked since 1978.

Pisani had migrated to Australia in 1965 and had worked in a variety of unskilled occupations. He had returned to Malta for several extended periods between 1965 and 1980; and, after returning to Australia in 1980 he had been unable to find employment. He was granted unemployment benefit in March 1980 and sickness benefit in June 1981. Payment of that sickness benefit was continuing at the time of the hearing of this matter.

Pisani claimed that he was now permanently incapacitated for work because of his series of injuries suffered in 1973 and 1978. He said that he could not undertake work which involved lifting or prolonged standing or sitting. Although his complaints were supported by his own medical advisers, specialists who had examined him on behalf of the DSS said that he had very little physical disability and that he had adopted a sick role largely because of cultural and personal problems. Amongst the cultural problems was the dislocation involved in moving from a primitive rural environment in Malta to the highly industrialized urban context in Australia; and amongst his personal problems was a degree of instability in his family background.

The majority of the Tribunal **(Hayes and Howell)** concluded that Pisani was not permanently incapacitated for work to the extent of at least 85%:

> In this case, the Tribunal considers the applicant has tended to put the blame for his unemployment upon a physical condition to which he resorts as a rationale for his unemployment, whereas the main cause thereof is a combination of life circumstances and events, unconnected in any material or in any significant way with a permanently disabling injury which, over time, have produced a situation where the applicant finds himself to be unemployable.

(Reasons, p.21)

The dissenting member of the Tribunal **(Sutton)** said that the evidence given to the Tribunal was of questionable standing. In particular, she criticized the assumption that a person with an unstable family background would be likely to display instability. She also referred to 'the possibility the cultural trauma of the change from poverty-stricken life in Malta to the highly industrialized environment in Australian cities can increase susceptibility to trauma such as an industrial accident . . .': Reasons, p.3.

# Invalid pension: permanently blind

## ZIRONDA and SECRETARY TO DSS (No. N83/70)

**Decided:** 2 August 1985 by J. O. Ballard.

The AAT *set aside* a DSS decision to refuse an invalid pension to a man, who was more than 65 years of age and who had severely reduced vision.

Zironda's claim for an invalid pension was based on the alternative qualification that he was 'permanently blind'. (If he were accepted as 'permanently blind', he would receive his invalid pension or an age pension free of the income and assets tests.)

Zironda had migrated to Australia in 1928 and, shortly after, had lost all sight in his left eye. In 1981, he had a cataract removed from his right eye and his uncorrected vision in that eye was now less than 6/60. With the aid of a strong correcting lens, the sight in his right eye was assessed at 6/9—described by medical specialists as 'reasonably good vision as regards his central field of vision'. However Zironda experienced considerable difficulty in wearing his spectacles because of the distortion and reduced field of vision which resulted.

According to expert medical opinion, Zironda's vision in his right eye would be significantly improved if he were to wear a contact lens; but, so far, he had been unable to fit and wear such a lens.

The Tribunal accepted the proposition from *Touhane* (1984) 21 *SSR* 239 that a person was legally blind if that person had less than 6/60 vision. The Tribunal noted that the question whether a person's vision should be measured with or without a correcting lens had been left open in *Touhane*.

The AAT referred to Mann's *Medical Assessment of Injuries*, which declared that the 'visual disability which remains after the refractive error is corrected by the lens is the one which expresses the residual disability produced by the particular injury'. But the AAT noted that in various workers' compensation decisions it had been held that the degree of loss of sight was to be measured without the aid of correcting lenses. These decisions were *Rodios* v *Trefle* [1937] WCR 285, *Keenan* v *Doherty* [1934] WCR 193 and *Moore* v *Schweppes Ltd* (1950) 3 WCBD (Vic) 7.

The Tribunal noted that it had been established in *Dragojlovic* (1984) 18 *SSR* 187 that decisions under workers' compensation legislation were not necessarily applicable to the *Social Security Act*. However, the Tribunal thought that it was appropriate to follow those workers' compensation decisions rather than the text book:

> It seems that the distinction of principle between the two Acts [that is, workers' compensation and social security legislation] predicates the adoption of a more beneficial approach to a claimant under the [*Social Security*] *Act* and can hardly be called in aid to warrant a more restrictive approach.

(Reasons, para. 20)

Accordingly, it followed that Zironda should be treated as permanently blind because his uncorrected vision was below 6/60. The AAT said that, even if his eyesight was to be tested with the aid of correction, the evidence in the present case would establish that he was permanently blind because of his inability to wear lenses or to wear spectacles for any extended period.