pension or benefit. It should not be the responsibility of the taxpayer to support those who choose to commit themselves to voluntary work, however commendable that may be.'

Formal decision

The Tribunal set aside the decision under review and substituted for it a decision that the discretion in s.129 of the Act should not be exercised in Condon's favour.

[J.M.]

Compensation award: discretion to disregard

GREEN and SECRETARY TO DSS (No. 6033)

Decided: 13 July 1990 by T.E. Barnett.

Kimble Green received an award of $73 500, in settlement of his workers' compensation claim, in October 1989. The DSS decided that Green was precluded from receiving a pension for 70 weeks.

On review, the SSAT affirmed that decision. Green asked the AAT to review that decision, on the basis that the circumstances of his case justified an exercise of the discretion in s.156 of the *Social Security Act*.

The legislation

Section 156 allows the Secretary to treat all or part of a compensation award 'as not having been made . . . if the Secretary considers it appropriate to do so in the special circumstances of the case'.

Green was married and had 3 young children. At the time of his industrial injury, he owned his house, subject to a mortgage of $28 000. He was repaying various debts at the rate of about $1280 a month; and working considerable overtime in order to hold his precarious financial position together.

Following his industrial injury, Green was paid periodic compensation at a rate well below his pre-injury earnings. With the assistance of family allowance supplement, G was just able to meet his financial commitments.

However, an amendment to the family allowance supplement income test, which took effect from 1 December 1988, rendered Green ineligible for family allowance supplement. The consequential drop in his income forced him to sell his house, and to rent accommodation at a price which left the family without funds for its necessary expenditure.

Because of these financial pressures and of the emotional strain of being placed under surveillance by his employer's insurers, Green felt considerable pressure to settle his workers' compensation claim.

Following that settlement, Green's application to the WA housing authority for subsidised housing was rejected because of his receipt of the settlement funds. Faced with the prospect of a minimal income until February 1991, high rental payments and a shrinking capital fund, G then purchased a block of land and commenced to construct a new house for himself and his family.

By the time of the hearing of this application for review in April 1990, Green's compensation payment had been reduced to about $10 000, his house was unfinished and his only income came from family allowance supplement payments of $250.70 a fortnight.

The decision

The AAT decided that there were sufficient 'special circumstances' in the present case to justify an exercise of the s.156 discretion.

The Tribunal took into account that Green had $10 000 for the support of himself and his family. If this was expended at the same rate at which invalid pension would have been payable to Green, it would last for about 30 weeks – that is, until 8 November 1990.

It was, the AAT said, appropriate to treat so much of the award of compensation as not having been made as would have the effect of ending the preclusion period on 8 November 1990.

Formal decision

The AAT set aside the decision of the SSAT and substituted a decision that $5606.28 should be treated as not having been made, and payment of invalid pension precluded until 9 November 1990.

[P.H.]

Invalid pension: incapacity for work

SECRETARY TO DSS and VXK (No. 6458)

Decided: 30 November 1990 by H.E. Hallowes.

VXK claimed an invalid pension in April 1989. The DSS rejected the claim. On appeal, the SSAT set aside that decision and decided that VXK was qualified for an invalid pension. The DSS asked the AAT to review that decision.

The facts

VXK was born in 1953 and was last employed in August 1985 when he injured his back and was advised not to do any heavy lifting or bending. His work experience had been solely in industries requiring heavy lifting, bending and driving.

In May 1989 VXK's treating doctor advised that VXK was fit only for light duties due to facet joint pathology. On 23 May 1989 a CMO reported the affected area was the thoracic and lumbar spine with a loss of more than half the range of movement, limiting him to light duties and that prolonged standing or sitting would aggravate his pain. In May 1988 an orthopaedic surgeon reported that VXK had evidence of lumbar disc degeneration and significant functional overlay with a permanent disability amounting to approximately 25% reduction in his working capacity.

VXK gave evidence that he attended school to age 14 and worked in the meat trade. In June 1985 he hurt his back delivering pig carcasses and had 6 weeks off work. He returned to light duties but left work in late 1988 because he was asked to do heavy lifting. In late 1988 he attempted a return to work peeling potatoes but lasted for only half an hour. A rehabilitation report noted that he was willing to try anything. In June 1990 he was an active member of a bowling club. Medical evidence indicated VXK was overweight.

The DSS submitted that the Tribunal should accept the medical evidence of a surgeon, who appeared before the Tribunal, and find that VXK was a malingerer. The Tribunal found some support for this from VXK's doctor, who was by then responsible for his ongoing management. However, VXK's treating orthopaedic specialist gave a different picture.