

and his convictions for violence were tendered at the hearing.

Gardiner became addicted to drugs in 1969 and spent time in prison for drug related offences. Following rehabilitation he no longer suffered from drug addiction after 1982. In 1983 he became active in touch football and continued to play 2 games a week, occasionally refereed, and for 2 years until mid-1988 he worked voluntarily as administrator in the sport. He gave evidence that he could cope with work where he was his own boss, but became aggressive if he had to work with people telling him what to do.

Medical evidence

An orthopaedic surgeon who examined Gardiner for the DSS expressed the view that Gardiner had no clinical evidence of disability in his neck or back, but there was evidence of early osteoarthritic change in his left knee and the odd ache or pain in his right hand because of an old injury. There were few occupations which Gardiner could not do from an orthopaedic point of view. A gastroenterologist for the DSS noted an irritable bowel condition which would not prevent Gardiner working.

A psychiatrist for the DSS, whose specialty was drug addiction, had concluded in a written report that Gardiner suffered from no mental illness. At the hearing he said the applicant suffered from a recognised psychiatric disorder known as an anti-social personality, which was permanent, but capable of improvement. His condition was not severe enough to prevent him from working, but restricted the environments in which he could work and the type of work he could do. He needed a 'tough minded' boss prepared to meet violence and he should not work dealing with members of the public.

A psychiatrist who had treated Gardiner for drug dependency considered that Gardiner did not possess the requisite social, interpersonal and communication skills to re-enter the workforce. She noted his long term drug abuse which had segregated him from mainstream society for a long period of time. If forced to re-enter the workforce, she said, he would be likely to respond with violence and anti-social behaviour. She diagnosed him as having an anti-social personality disorder which became evident in adolescence and persisted to the present. It was not work itself which was likely to trigger his aggressive behaviour, but supervision by others, or interaction with others. She saw little prospect of recovery.

The decision

The issues were whether Gardiner was permanently incapacitated for work and, if so, was at least 50% of such incapacity directly caused by a mental impairment. The AAT found that Gardiner's physical impairments contributed to a very limited degree to his inability to work.

The AAT acknowledged that it had the benefit of far more extensive psychiatric evidence than did the SSAT, and concluded that Gardiner's psychiatric impairment contributed to at least 50% of his incapacity for work. The opinion of Gardiner's treating psychiatrist was preferred as she had the advantage of treating him over a period of time. The AAT also witnessed an outburst of behaviour by Gardiner during the hearing which, it said, was of the type which would make it highly improbable for him to maintain any paid work.

Formal decision

The AAT set aside the decision of the SSAT and decided that Gardiner was at all relevant times qualified to receive invalid pension.

[B.W.]

Invalid pension: personality traits and mental illness

EDGE and SECRETARY TO DSS
(No. N89/224)

Decided: 9 November 1990 by M.D. Allen.

Edge was granted invalid pension in 1978, having been injured in a motor vehicle accident in 1971. The DSS cancelled his pension from April 1988. The SSAT affirmed the decision under review and Edge appealed to the AAT.

The facts

Edge was attempting to set up a business growing lettuces hydroponically. He had also undertaken some fencing and timber cutting on his property. Former employees gave evidence that he was a hard worker and a good employer but he had financial difficulties. The DSS argued that Edge had made a good recovery from the car accident and was fit for light work but conceded he could not do heavy labouring.

A clinical psychologist agreed with evidence given by a psychiatrist that the applicant did not exhibit any evidence of mental illness. He considered, however, that Edge would have difficulties in any occupation in which he would have to 'interface' with the public and in situations where he was subject to persons in authority over him. He considered Edge had a rigid, dominant personality and that he would be difficult to work with.

Edge's orthopaedic surgeon considered that Edge had suffered a severe injury which left him with a permanent physical disability which prevented him engaging in heavy labouring work. When the evidence of the former employees was put to him on cross-examination he agreed that Edge was far fitter than he would have expected and, if he could do the tasks suggested, he was capable of undertaking light work.

The decision

Section 27 of the *Social Security Act* refers to a permanent incapacity for work that is caused by mental impairment. 'Impairment' is not defined in the Act but the AAT agreed with *Mancuso* (1989) 53 SSR 705 in which impairment was said to refer to some diminished or reduced capacity. It said there was no doubt that a mental state which caused a person to be well nigh unemployable because of unacceptable personality traits would amount to such an impairment.

The AAT found that the accounts given by the former employees showed Edge's capacity for work to be greater than might be expected given the severity of his injuries. He lived in an isolated area where the principal occupations were rural-based and was unfit for day to day work in a labouring type occupation. Section 27(b) states that 50% of an applicant's permanent incapacity must be directly caused by physical or mental impairment. In this case that had not been shown and any inability to obtain the light work of which Edge was capable was a factor of where he lived and its restricted labour market, rather than his capacity to undertake suitable employment.

Formal decision

The AAT affirmed the decision under review.

[B.W.]