nerate the injured person.

The AAT found that factors (other than the medical factors) which needed to be taken into account included the fact that he had no formal qualifications, and no skills or experience for clerical work. Job prospects in Port Augusta were very poor and Ashton's prospects were exacerbated by his medical conditions. The AAT decided that Ashton was virtually unemployable, considering the nature and extent of his disabilities, his inability to sustain his work effort throughout a normal working day, or week, his low educational standard and the absence of work in the community where a person with those same characteristics may reasonably be expected to perform. He thus satisfied the criteria set out in s.27(a) of the Act.

In finding that Ashton satisfied s.27(b) the AAT considered that he lacked the ability to attract an employer prepared to engage and remunerate him, and that this was directly related to his physical impairment.

Formal decision

The AAT set aside the decision under review and substituted a decision that Ashton was entitled to invalid pension from the date of his claim.

[B.W.]

Invalid pension: incapacity and impairment

HOCKING and SECRETARY to DSS

(No. 7798)

Decided: 5 March 1992 by S.A. Forgie.

Barry Hocking lodged a claim for invalid pension which was rejected by the DSS in December 1989. The SSAT affirmed that decision and Hocking asked the AAT to review the SSAT decision.

The legislation

The AAT said that there was no dispute between the parties that ss.27 and 28 of the *Social Security Act 1947* were the applicable provisions in the present case.

Section 28 provided that a person who met age and residence requirements and was 'permanently incapacitated for work' (or permanently blind) was eligible for invalid pension.

Section 27 provided that a person would be permanently incapacitated for work if the degree of the person's permanent incapacity for work was not less than 85% and at least 50% of that incapacity was directly caused by a permanent physical or mental impairment.

The evidence

Hocking was born on 27 September 1940. After leaving school at the age of 15 and undergoing 4 years' training, he worked as a pharmaceutical assistant for about 20 years, and as a hotel manager for 4 years.

In 1984, Hocking moved to Queensland, where he could not find a job.

Hocking suffered from degenerative changes to his lumbar spine, and suffered pain in his back. He was unable to sit or stand for any significant period without changing his position.

Although his doctor expressed the opinion that Hocking was unfit for work, other medical practitioners said that he could undertake sedentary work, particularly if he reduced his weight, increased his fitness and adopted pain management strategies. Two medical practitioners who had examined Hocking on behalf of the DSS assessed his medical impairment at no greater than 20%.

The AAT's conclusion

The AAT noted that, although Hocking's doctor had said that Hocking was unfit for work, the doctor had not addressed the degree of disability suffered by Hocking. The only evidence of that, the AAT said, was the evidence of the two practitioners who had reported for the DSS.

The AAT accepted their evidence: because they had put the degree of Hocking's medical impairment at no greater than 20%, the AAT was 'unable to find that the degree of any impairment of Mr Hocking's is at least 50% of any permanent incapacity from which he suffers': Reasons, para. 22.

Formal decision

The AAT affirmed the decision under review.

[P.H.]

Backdating invalid pension: claim for another payment

CALDERARO and SECRETARY TO DSS (No. 2)

(No. 7038A)

Decided: 5 June 1992 by I.R. Thompson.

Rosanna Calderaro was born in 1959 and left school at the end of 1975. She abandoned a business college course a few months later because of ill health and had never been in paid employment.

In November 1976, Calderaro claimed sickness benefit, which was granted and paid until July 1977. In July 1983, she claimed unemployment benefit, which was granted and paid until October 1986.

On 31 March 1989, Calderaro claimed invalid pension, which the DSS granted from 13 April 1989.

Calderaro appealed to the SSAT against the decision to pay her invalid pension from 13 April 1989. When her appeal was dismissed, she applied to the AAT for review. The AAT affirmed the SSAT's decision: *Calderaro* (1991) 62 *SSR* 874.

On appeal, the Federal Court set aside the AAT's decision and remitted the matter to the AAT for reconsideration: *Calderaro* (1991) 65 *SSR* 924.

The legislation

At the time of the first AAT decision, s.159(5) of the *Social Security Act 1947* gave the Secretary a discretion to treat a claim for one payment under the Act as a claim for another payment that was 'similar in character'.

The Federal Court decided that, although the AAT was correct that Calderaro's 1983 claim for unemployment benefit could not be treated as a claim for invalid pension (because the 2 payments were not 'similar in character'), the AAT had taken too narrow an approach when considering whether the 1977 claim for sickness benefit should be treated as a claim for invalid pension.

By the time the matter came back to the AAT, the 1947 Act had been repealed and replaced by the *Social Security Act 1991* (from 1 July 1991); and provisions in the 1991 Act dealing