

THE HIGH COURT

[2013 No. 603 S.P.]

BETWEEN

JOSEPH O'LOUGHLIN

PLAINTIFF

AND

MINISTER FOR SOCIAL PROTECTION

DEFENDANT

JUDGMENT delivered by Mr. Justice Michael White on the 17th December, 2014

1. The Plaintiff issued a Special Summons on the 21st October, 2013 seeking various reliefs.

2. His claim is set out at paragraph 4 of the Special Summons which states:-

"At one level this claim is simple. The fact is the 2006 appeal of a 2005 occupational injury appeal decided as successful in 2007 was left recorded as illness benefit until 2011. No comfort could be taken nor can be taken without the establishment of the right to recrudescence. The claim history is being lied about. There has been failures of procedure, significant delays (such as to pervert justice) and wilful concealment of material facts. "

3. At paragraph 17 the summons states:-

"The Plaintiff's claim is an appeal under Section 318 of the Social Welfare Consolidation Act on the grounds of errors of fact".

4. The Special Summons is headed "In the Matter of Section 318 of the Social Welfare Consolidation Act".

5. The Plaintiff in the summons makes serious allegations against Padraig O'Callaghan an officer of the Department.

6. The Defendant, has issued a motion on the 10th January, 2014 seeking to strike out the summons, on the grounds that it discloses no reasonable cause of action and is frivolous and vexatious.

7. The relevant decision which is the subject of the Plaintiff's claim is an Appeals Officer's decision of the 2nd April, 2007 following an oral hearing on the 26th February, 2007. The Appeal number is 06/06703.

8. The Plaintiff had claimed occupational injury disablement benefit from the 10th October, 2005 in respect of a carpal tunnel injury relating to his work at Dell. This claim was disallowed by a Deciding Officer. The Plaintiff appealed the decision and the appeal was allowed. He was informed by letter of the 18th April, 2007. The Plaintiff's main complaint is that this appeal which was determined in his favour incorrectly recorded the decision.

9. The Plaintiff appealed another decision of a Deciding Officer in respect of Disability Allowance and Occupational Injury Benefit. The record numbers are AP08/05150 and AP08/00313. The Appeals Officer's decision of the 29th May, 2008 found that:-

"The Occupational Injury Benefit appeal is more complex, Injury Benefit is payable within the Injury Benefit period, the six month period immediately following the date of an occupational accident or development of a prescribed disease. It was decided by an Appeals Officer that the Appellant in this case developed carpal tunnel syndrome on the 6th October, 2005 (first day of incapacity for work) due to the nature of his employment with Dell. The claim at issue in this current appeal is in respect of carpal tunnel syndrome developed in the course of later employment with, or at the business of Valencia Technologies. The Deciding officer decided that he did not develop a prescribed disease due to this employment. The Appeals Officer decided that the Deciding Officer's decision was correct".

10. There was a review carried out in accordance with Section 318 of the Social Welfare Consolidation Act 2005 by the Chief Appeals Officer in respect of the Plaintiff's various appeals. A written decision was sent to the Plaintiff dated 13th March 2014.

11. The Chief Appeals Officer found the Plaintiff's contention that the 2006 appeal decision was wrongly implemented was incorrect.

12. Section 318 of the Social Welfare Consolidation Act 2005 states:-

"The Chief Appeals Officer may, at any time, revise any decision of an appeals officer, where it appears to the Chief Appeals Officer that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts."

13. Section 327 of the Social Welfare Consolidation Act 2005 states:-

"Any person who is dissatisfied with –

(a) the decision of an appeals officer, or

(b) the revised decision of the Chief Appeals Officer,

on any question, other than a question to which *section 320* applies, may appeal that decision or revised decision, as the

case may be, to the High Court on any question of law. ”

14. Order 84C of the Rules of the Superior Courts states:-

“(3) Where the relevant enactment provides only for appeal to the High Court on a point of law, the notice of motion shall state concisely the point of law on which the appeal is made.

(4) Where the relevant enactment provides that the Court may grant relief consequential upon or in addition to determining the appeal, the notice of motion shall state concisely the consequential or additional relief sought.

(5) Subject to any provision to the contrary in the relevant enactment, the notice of motion shall be issued –

(a) not later than twenty-one days following the giving by the deciding body to the intending appellant of notice of the deciding body’s decision, or

(b) within such further period as the Court, on application made to it by the intending appellant, may allow where the Court is satisfied that there is good and sufficient reason for extending that period and that the extension of the period would not result in an injustice being done to any other person concerned in the matter”.

15. Order 19, paragraph 27 states:-

“27. The Court may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if it shall think fit, order the costs of the application to be paid as between solicitor and client.

28. The Court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court may order the action to be stayed or dismissed, or judgement to be entered accordingly, as may be just. ”

16. The Plaintiff is not permitted by law to challenge the decision of an Appeals Officer or a Chief Appeals officer on review in respect of any claim for benefit under the Social Welfare Acts, other than in accordance with Section 327 of the Social Welfare Consolidation Act 2005, unless the Applicant is proceeding by way of Judicial Review.

17. The procedure followed by the Plaintiff in issuing a Special Summons is incorrect.

18. The content of the Special Summons is incoherent and is hard to follow. There is no clearly stated point of law for the court to consider.

19. This Special Summons contains a lot of scandalous material where serious allegations are being made against an Officer in the Department of Social Protection, which are general in nature and incoherent.

20. The Court grants an order pursuant to Order 19 Rule 28 of the Rules of the Superior Courts striking out the Plaintiff’s Special Summons on the grounds that it discloses no reasonable cause of action and is frivolous and vexatious.