

DL7588

BENEFIT OF THE DOUBT (See under Section 9. "General Review")

A strong argument is set forth as to why Section 73 of the Act should be interpreted more liberally than at the present time. It is stated that, in the belief of the Associated Veterans, "it was intended to go farther than it does as at present interpreted".

The Chairman of the Pension Tribunal has stated, in regard to this matter, as follows:

"Insofar as the Pension Tribunal is concerned, I can assure you that no decision is reached in respect to any application which comes before it without giving consideration to Section 73, and, the principle of "Benefit of the Doubt" which it enunciates is fully recognized. In this regard, however, it should I think be pointed out that the use of this Section is not left entirely to the discretion of the Tribunal inasmuch as the Pension Appeal Court - with whom such jurisdiction lies - has given its interpretation of this Section of the Act, and the meaning of "reasonable doubt", and, it would be inconsistent with the Statute if such interpretation were disregarded by the Tribunal."

The President of the Pension Appeal Court has stated:

"I have no particular comment to make on this except to say we have, to the best of our ability and judgment, in all cases, given the full benefit of all reasonable doubt to the applicant, and have always drawn every possible inference in his favour. At the very opening session of the Court last February, we stated what we believed to be the proper interpretation of the Act, and with special reference to Section 73, in the following language:

"I think that every member of the Court appreciates that Parliament, by the legislation of 1930, intended that full justice must be done each and every applicant if proper proof is adduced that his claim falls within any of the classes or categories specified in the statute for which pensions are provided.

"It is also clear that neither this, nor any other body, has authority, or jurisdiction, to award pension in respect of an applicant should the necessary qualifications for same under the law be lacking, no matter what his past record may have been or how deserving he otherwise may be, or how distressing his situation. Unless it is established satisfactorily that it falls within one of the classes which alone will entitle him to pension we cannot assist him.

"Although this Court is one of the last resorts in matters falling within its jurisdiction, nevertheless we must be guided by certain well settled fundamental rules of law, evidence and justice.

"Whilst we may not be bound by any purely technical rules of evidence or procedure in the way or to the extent perhaps that ordinary Courts of Law are bound, yet we must observe, as stated above, certain well-known and settled principles. What I should particularly refer to is the question of adequacy of proof of any material allegation, for example, that a certain disability, or death, was attributable to or was incurred during military service.

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