Neutral Citation no. [2005] NICA 25

Ref:	**KERF5288**

Judgment: approved by the Court for handing down
(subject to editorial corrections)

Delivered:	**19/05/05**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

APPEAL BY WAY OF CASE STATED FROM A DECISION OF AN INDUSTRIAL TRIBUNAL

WILLIAM ROSS

Appellant;

-and-

PRECISION INDUSTRIAL SERVICES LIMITED and DU PONT (UK) LIMITED

Respondents.

Before Kerr LCJ, Nicholson LJ and Campbell LJ

<u>KERR LCJ</u>

Introduction

[1] This is an appeal by way of case stated from a decision of an Industrial Tribunal whereby it held at a preliminary hearing that the appellant did not suffer a disability within the meaning of section 1 of the Disability Discrimination Act 1995.

[2] The opinion of this court was sought on two questions:

1. Was the tribunal correct in law in holding that the appellant was not a disabled person for the purposes of section 1 of the 1995Act?

2. In reaching the conclusion that he was not a disabled person for the purposes of Section 1 of the Act was the tribunal correct in law in taking into account the appellant's condition at the date of hearing?

Factual background

[3] Precision Industrial Services Ltd (Precision) had been awarded a contract to provide services at the factory premises of DuPont (UK) Ltd (DuPont) at Maydown, Londonderry. The appellant was employed by Precision from 9 March 1994 in the inspection and packing area of its lycra plant. In August 2001, Precision decided that a number of employees should be placed on shifts to facilitate "round the clock packing" and in order to achieve increased flexibility of workers, additional personnel were to be trained in the spinning operation of the plant.

[4] The appellant suffered from seborrhoeic eczema. When in August 2001 he became aware of the change to the shift system, he indicated in writing that he wished to be considered for shift work but asked that he should not be required to go into the spinning area as the warm atmosphere would exacerbate his skin condition. In January 2002, when other employees were changed to the shift system, the appellant was not assigned to shift work. He believed that this was because of his medical condition. In June 2002 a number of spinning operative positions became available but the appellant was not considered for these. Again he believed that this was because of his skin condition.

[5] During September 2002, Precision asked all employees, including the appellant, to go on a four week rotating shift pattern. The appellant claimed that as a result of this shift pattern he was carrying out essentially the same job as a spinning operative assistant apart from those duties performed in the spinning area. In January 2003 further spinning operative assistant positions became available. Again the appellant was not offered this position. Again he believed that this was because of his medical condition. In January 2003 he was redeployed to the job of pack/ship operator. He was paid less for this job than he had previously earned.

[6] The appellant presented an originating application to the Office of the Industrial Tribunals and the Fair Employment Tribunal on 8 April 2003, in which he claimed that he had been refused the position of spinning operative assistant because of his medical condition and that this amounted to disability discrimination in that Precision treated him less favourably for a reason relating to his disability than it treated or would treat others to whom that reason did not or would not apply.

The proceedings before the tribunal

[7] By way of preliminary hearing, the Industrial Tribunal dealt with the issue whether the appellant had a disability within Section 1(1) of the Disability Discrimination Act 1995. The tribunal made a number of findings of fact and set these out in paragraph 4 of the case stated, together with an account of some of the appellant's evidence as follows: -

> "(a) The appellant had been employed by the respondent since March 1994 and had worked at that time at the DuPont plant at Maydown near Londonderry in the inspection and packing area of the plant. He had an excellent attendance record and had not experienced any difficulty in carrying out his work. This involved packing and carrying boxes of product, tying off lycra filaments and distributing work to colleagues, using computerised systems and inspecting the finished product. He wore gloves for some tasks, but not for all tasks.
>
> (b) The appellant developed seborrhoeic eczema in 2001. Two reports from Doctor Podmore, consultant dermatologist, were produced to the tribunal. The first of these was provided by Dr Podmore for production to the appellant's employers in 2001 when he had asked not to be required to work in the spinning area because it would exacerbate his skin condition. In that report she stated that the appellant was currently working in an environment which was not really proving troublesome to him but
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>> 'if he changed to a warmer working environment he would be likely to suffer an exacerbation of his condition which was certainly fairly severe at his previous episode'.
>
> (c) In the second report of December 2003, which was prepared specifically for the tribunal hearing, Dr Podmore was asked to comment on the effect of the appellant's condition on his ability to carry out day to day activities. She wrote in that report:
>
>> 'Mr Ross suffers from severe seborrhoeic eczema, which tends mainly to affect his face, trunk and back. It can

> occasionally affect the hands and would also predispose him to an irritant contact dermatitis on his hands. He tends to flare in a warm dusty environment and it would also flare if he was under stress or under pressure…. If it affected his hands it would cause hacking, pain and discomfort which would certainly effect (*sic*) his manual dexterity. If it affected his hands, it would be difficult for him to carry every day objects'.

She did not mention any actual problems with the appellant's hands. The appellant indicated that he had been prescribed laser treatment for his eczema as well as creams and lotions although no specific treatment for his hands were prescribed by Dr Podmore. The appellant had attended Dr Podmore on nine or ten occasions between his first referral in 2001 and the date of the tribunal in December 2003.

(d) The appellant gave evidence to the tribunal that his ability to carry out normal day to day activities had been adversely affected in two ways by the dermatitis which he suffered. The first of these was his manual dexterity and secondly his ability to lift, carry or otherwise move everyday objects as referred to in Schedule 1 to the Disability Discrimination Act 1995.

(e) The work environment in which the appellant was asked to work at the time of his complaint did not cause any specific difficulties. The appellant had an excellent work record and did not appear to have any difficulties at work. This was at variance with his evidence about his ability to carry out day to day activities. He was able to tie off fine lycra filaments at work but maintained he could not tie his shoelaces. He could not lift shopping bags but could lift cakes of lycra product. He was sufficiently dextrous to be able to operate a computer at work but said that he could not lift a teacup with one hand or cooking pots at home.

(f) The appellant maintained at the hearing that his condition was ongoing and then qualified this by saying "when it is bad…." or "when it flares up". He indicated however that he used creams on his hands on an ongoing basis to prevent flare ups of his condition and wore gloves to stop the hacking becoming worse.

(g) The tribunal did view the appellant's hands on the day of the tribunal. At that stage he said that he was not suffering hacking but indicated that there was redness and irritation on his hands. At that time the appellant had been off work for two and a half months due to stress and depression and indicated he had attempted suicide. The panel members were unanimous that there was little or no evidence of redness and none of hacking on the appellant's hands on the day of the hearing. The tribunal felt it appropriate to see what the appellant considered to be redness and irritation on his hands given that he took the view that even without hacking on his hands, the condition caused him difficulties."

[8] The tribunal addressed the four questions which, according to the decision in *Goodwin v The Patent Office* [1999] IRLR 4, must be considered in deciding whether a person has a disability within the meaning of Section 1 of the Disability Discrimination Act 1995. These are: -

(1) Does the applicant have an impairment which is either mental or physical?

(2) Does the impairment affect the applicant's ability to carry out normal day-to-day activities in one of the respects set out in Schedule 1 paragraph 4 (1) of the 1995 Act and does it have an adverse effect?

(3) Is the adverse effect substantial?

(4) Is the adverse effect long term?

[9] The tribunal found that the applicant suffered from seborrhoeic eczema and that this amounted to a physical impairment. It considered questions (2) and (3) together and found that the general condition of seborrhoeic eczema could have an adverse impact on a person's ability to carry out normal day-to-day activities. It decided that the evidence did not establish that the extent to which this condition affected the appellant's hands

had a substantial, adverse impact on his ability to carry out normal day-to-day activities. In light of the findings made on questions (2) and (3) the tribunal felt it unnecessary to address the last question. The tribunal therefore concluded that the appellant did not suffer a disability within the meaning of Section 1 of the 1995Act.

Statutory background

[10] Section 1(1) of the Disability Discrimination Act 1995 provides: -

> "**Meaning of 'disability' and 'disabled person'**
>
> 1. – (1) Subject to the provisions of Schedule 1, a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.
>
> (2) In this Act 'disabled person' means a person who has a disability."

[11] It was the extrapolation of this provision which allowed the court in the *Goodwin* case to devise the four questions designed to establish whether an individual was to be treated as having a disability for the purposes of the 1995 Act.

[12] Paragraph 4 (1) of Schedule 1 to the Act deals with the question of an impairment affecting day-to-day activities. It provides: -

> "*Normal day-to-day activities*
>
> 4.—(1) An impairment is to be taken to affect the ability of the person concerned to carry out normal day-to-day activities only if it affects one of the following—
>
> (a) mobility;
> (b) manual dexterity;
> (c) physical co-ordination;
> (d) continence;
> (e) ability to lift, carry or otherwise move everyday objects;
> (f) speech, hearing or eyesight;
> (g) memory or ability to concentrate, learn or understand; or
> (h) perception of the risk of physical danger."

[13] The appellant accepted that, of the various types of impairment listed in this provision, the only relevant conditions in his case were those which arose in relation to manual dexterity and the ability to lift, carry or otherwise move everyday objects.

[14] Paragraph 6 (1) of Schedule 1 deals with the effect of medical treatment as follows: -

> "*Effect of medical treatment*
>
> 6. – (1) An impairment which would be likely to have a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities, but for the fact that measures are being taken to treat or correct it, is to be treated as having that effect.
>
> (2) In sub-paragraph (1) "measures" includes, in particular, medical treatment and the use of a prosthesis or other aid.
>
> (3) Sub-paragraph (1) does not apply –
>
> (a) in relation to the impairment of a person's sight, to the extent that the impairment is, in his case, correctable by spectacles or contact lenses or in such other ways as may be prescribed; or
>
> (b) in relation to such other impairments as may be prescribed, in such circumstances as may be prescribed."

[15] The appellant claimed that, applying this provision, the ameliorating effect on his skin condition provided by the application of creams had to be disregarded in deciding whether he was a person suffering from a disability for the purposes of the Act.

[16] Section 50 of the Act established a national disability council and section 51 requires the council to prepare codes of practice at the request of the Secretary of State. Section 51 (2) provides that the Secretary of State may issue codes of practice in response to proposals made by the Council. A Code of Practice made under these provisions deals in paragraph 6 with the question 'what is a substantial adverse effect?' The Code states that it is something more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a

limitation going beyond the normal differences in ability that might exist among people. Paragraph 10 of the Code indicates that 'normal day-to-day activities' are those which are "carried out by most people on a fairly regular and frequent basis".

Medical evidence

[17] The appellant was referred to Dr Podmore by his general practitioner. In her first report of 20 September 2001, Dr Podmore expressed the opinion that is quoted at paragraph 8 (b) above. She also reported: -

> "This gentleman suffers from a skin condition known as seborrhoeic eczema. This is a skin condition which tends to be generalised and can be, particularly in his case, quite severe. It is particularly flared up by a warm sweaty environment."

In her second report of 2 December 2003 Dr Podmore provided the opinion that is set out at paragraph 8 (c) above.

[18] At the request of DuPont, the appellant also saw Dr Rodney Gamble, their company doctor. On 28 September 2001, Dr Gamble noted the appellant had a "skin problem" and recommended: -

> "…while [his skin problem] would not affect his fitness for shift work, I would recommend that he avoids work in spinning due to the particular environment there."

[19] In a letter dated 3 March 2003, Dr Mary McClay, the appellant's general practitioner, reported:

> "… William Ross … has a history of seborrhoeic eczema. This would flare up at times. Flare ups are usually caused by working in a hot environment. During a flare up his skin is cracked, painful and broken and when this happens even washing his hands or working with certain materials can exacerbate his condition. However his condition does not hinder his ability to carry out his job. He is not at any time off work due to his seborrhoeic eczema. He currently uses Lamicil and Protopic creams and had a recent course of laser treatment. He attends Dr Pat Podmore consultant dermatologist at Altnagelvin, he has been attending Dr Podmore over the past few years and is still under review by Dr Podmore and it

> is Dr Podmore who has suggested his current treatment and who recommended the course of TLO1 light treatment in the past for him."

[20] At the request of Precision, the appellant saw Dr Craig of the Foyleside Family Practice. In a letter dated 6 March 2003, Dr Craig stated: -

> "**Conclusion**, this man suffers from seborrhoeic eczema which is a generalised skin condition and flares up in warm sweaty conditions. The place where he is working at present is not proving troublesome but with a change to warmer conditions he is likely to suffer a flare-up of his condition and should be avoided.
>
> He has been transferred to a different job in the same environment and therefore should be fit for the job in that area…"

The arguments for the appellant

[21] Mr O'Hara QC for the appellant pointed out that the tribunal did not refer to the medical evidence from the appellant's general practitioner that, if there was a flare up of the eczema, even washing his hands or working with certain materials would worsen his condition. This was particularly important, Mr O'Hara claimed, because of the requirement that the tribunal address the question whether the effect on the appellant was more than trivial. The tribunal had ignored this evidence, counsel suggested. The failure to take it into account was all the more significant because the tribunal had stated that Dr Podmore had not mentioned any actual problems with the appellant's hands. In as much as that statement suggested that the appellant was not affected in his day-to-day activities by the seborrhoeic eczema, it was, Mr O'Hara said, plainly wrong, for the dermatologist had said that his hands were occasionally affected and when that happened there was hacking, pain and discomfort which would certainly affect his manual dexterity and his ability to carry every day objects. The tribunal proceeded on the basis that the appellant did not have problems with his hands, Mr O'Hara claimed, but, properly understood, her reports signify that he did experience such problems and they were significant.

[22] Relying on *Law Hospital NHS Trust v Rush* [2001] IRLR 611 Mr O'Hara submitted that normal day-to-day activities could include conditions experienced at work. While he accepted that working in the warmer atmosphere of the spinning area could not be described as 'day-to-day activities', some aspects of work could be so classified such as lifting weights; washing his hands; coming into contact with detergents; and other activities

requiring a measure of manual dexterity. The appellant's account of how he was affected, taken together with the medical evidence should have convinced the tribunal that the appellant was affected in his day-to-day activities and that the effect was substantial.

[23] Mr O'Hara challenged the propriety of the tribunal's inspection of the appellant's hands and its conclusion based on that inspection. He suggested that this was not only inappropriate but ran counter to the medical evidence. It was not for a lay tribunal to make a diagnosis on the basis of the absence of evidence on the appellant's hands on the day of the hearing.

[24] On the question of whether the appellant's condition should be classified as a *substantial* adverse effect on his ability to carry out normal day-to-day activities, Mr O'Hara pointed out that he had had to attend Dr Podmore on nine or ten occasions. He was required to apply creams regularly and had had to undergo laser treatment. Despite all these treatments he continued to have problems from time to time. The tribunal appears to have concluded that the appellant's condition was not serious because his hands were only "slightly red" at the time of their inspection. But they were obliged to make a judgment on the level of severity of the condition leaving out of account the ameliorating effect of the creams. It was incumbent on the tribunal, therefore, to decide what the condition would have been had he not applied creams. They had failed to do so, Mr O'Hara argued.

[25] In this context counsel suggested that the tribunal should leave out of account the fact that the appellant's employer accommodated him in not requiring that he work in conditions that were liable to cause a flare up of his condition. We cannot accept this submission. The task of the tribunal on this point was to decide whether the appellant was substantially affected. In addressing that question it is bound to examine the history of the appellant's skin problems. Of necessity that must embrace an assessment of how and when his skin condition is aroused or exacerbated. It would be illogical to disregard the fact that his employer had taken measures to reduce the chances of this happening. Whether these steps had been taken and, more importantly, whether they had been successful, is directly relevant to the question that the tribunal had to answer.

[26] Mr O'Hara argued that the tribunal was wrong to conclude that because the appellant had an excellent work record and did not experience difficulties in the work setting, his account of his ability to carry out day-to–day activities away from work should be rejected. The tribunal had recorded the appellant's evidence on this in the following passage from its decision: -

> "At home, he did not do any household tasks around the home because contact with detergents and water irritated his hands. He said he did not do

> supermarket shopping because he could not lift bags of shopping as the plastic carrier bags exacerbated cracks on his hands and made them sore and painful. Although he could tie off fine Lycra threads at work, he said he could not tie his own shoelaces and could not lift cooking pots. He had difficulty with buttons when dressing and with toileting."

[27] Counsel also suggested that the tribunal had been wrong to compare the appellant's ability to use a computer keyboard with his claimed inability to lift a tea cup with one hand or to lift cooking pots at home. Mr O'Hara suggested that we should reject the tribunal's analysis and accept that the appellant was incapacitated to the extent that he claimed. In this context he relied on a letter of 19 March 2003 from a human resources supervisor in Precision to the appellant in which he said, "I have no doubt about the nature of your condition and that it affects your daily life."

For the respondents

[28] Ms McGrenera QC for the respondents did not dispute that the appellant was affected in his day-to-day activities by the seborrhoeic eczematous condition but suggested that the preponderance of evidence strongly favoured the conclusion that this did not amount to a substantial adverse effect. In making its judgment as to the level of disability the tribunal was entitled to have regard to the lack of difficulty experienced by the appellant at work. It was also entitled to observe the lack of specific medical records in relation to the appellant's hands and the fact that he did not need a special cream for his hands. She robustly defended the tribunal's decision to examine the appellant's hands, pointing out that the appellant himself had asserted that there was redness and irritation of his hands at the time of the hearing. Moreover, Dr Podmore in her second report had recorded the appellant as giving a history that his condition "would also flare if he was under stress or under pressure".

[29] Ms McGrenera refuted the claim that the tribunal had ignored the fact that the cream applied by the appellant had an ameliorating effect on his condition. At paragraph 16 of its decision the tribunal had acknowledged that if a "condition, with treatment, allows an individual to carry on normal activities, it can still qualify as a disability if it would have a substantial adverse effect if left untreated." In assessing the appellant's credibility, however, the tribunal was entitled to contrast the undisputed history that he was able to cope with various aspects of his employment with his claims that he was substantially impaired in relation to domestic activities. If the creams were efficacious to keep his condition at bay for work purposes, why did they fail to have that effect in relation to household chores and activities?

[30] Finally Ms McGrenera submitted that the appellant had failed to adduce sufficient evidence to support the claim that he was substantially affected in his day-to-day activities by the skin condition. She argued that this court should be slow to interfere with the tribunal's findings of fact. There was sufficient material available to the tribunal to justify its conclusion that the appellant was not substantially affected in his normal day-to-day activities.

A physical impairment

[31] The tribunal found that the appellant suffered from a physical impairment and this issue is therefore not controversial on the appeal nor was it in the proceedings before the tribunal. A skin condition such as seborrhoeic eczema is clearly an impairment; it is, as the tribunal said in paragraph 14 of its decision, a clinically recognised condition. The first of the *Goodwin* tests is clearly satisfied in this case.

Day-to-day activities

[32] The tribunal considered the question whether the impairment affected the appellant's ability to carry out normal day-to-day activities compendiously with the question whether the effect on his ability to do so was substantial. We can understand why the tribunal chose this course because much of the evidence was relevant to both issues. Such an approach can give rise to difficulties, however, as this case perhaps exemplifies and we would recommend that, in general, the two aspects should be dealt with separately.

[33] The phrase 'normal day-to-day activities' is designed to cover general experience rather than the particular circumstances of an individual claimant. The Employment Appeal Tribunal in *Goodwin* put it in this way: -

> "**36.** What is a day-to-day activity is best left unspecified: easily recognised, but defined with difficulty. What can be said is that the inquiry is not focused on a particular or special set of circumstances. Thus, it is not directed to the person's own particular circumstances, either at work or home. The fact that a person cannot demonstrate a particular skill, such as playing the piano, is not an issue before the tribunal, even if it is considering a claim by a musician. Equally, the fact that a person had arranged their home to accommodate their disability would make inquiries as to how they managed at their particular home not determinative of the issue."

[34] One must focus on the ordinary incidents of life, therefore, in considering whether the claimant is affected in the requisite way. Activities at work can, of course, provide some insight into the question because these may replicate circumstances that are normally encountered outside the workplace. Thus in *Rush* the Court of Session acknowledged that some work activities may be relevant. At paragraph 17 the court said: -

> "… it is not, in our opinion, correct to say as a matter of principle that the duties performed by an applicant at work, and the way in which they are performed, cannot be relevant to the assessment which the tribunal has to make of the applicant's evidence. Whether any such evidence is, in fact, relevant must depend on the circumstances of each case."

[35] In considering whether day-to-day activities are affected one must keep in mind that the effect must take one of the forms prescribed by paragraph 4 (1) of Schedule 1 to the 1995 Act. In the appellant's case the two aspects identified by him are manual dexterity and the ability to lift, carry or otherwise move everyday objects. The appellant did not give evidence of having experienced difficulty with either of these facilities in the workplace. But the fact that he was required to undertake tasks at work which would have involved both dexterity and lifting capacity could legitimately be taken into account by the tribunal in assessing whether he was affected in his day-to-day activities not only because some of the work related activities were such as one would undertake normally but also because an ability to carry out such tasks could provide a helpful indicator of the reliability of his claims in relation to how he was affected outside the working environment. This point was made by the Court of Session in *Rush* in an earlier passage from paragraph 17: -

> "… if an employee has given evidence that he or she is unable to carry out certain normal day-to-day activities at home, or can only do so with great difficulty, it is, in our opinion, clear that evidence as to his or her ability to carry out those activities while at work without significant difficulty could have a bearing on the credibility of the applicant. Evidence that the applicant could not carry out such activities at work, or could only carry them out with considerable difficulty, could support his or her evidence. Further, in certain circumstances evidence as to particular duties carried out by the applicant at work could equally have a bearing on the tribunal's assessment of his or her credibility and reliability. For example, if an applicant gave evidence of being

> unable to lift a kettle with his or her right hand at home, evidence that at work the applicant regularly lifted heavy weights with his or her right hand without difficulty could certainly have a bearing on the applicant's credibility."

[36] In our judgment the tribunal was entitled to contrast the appellant's ability to perform tasks at work that clearly called for manual dexterity and an ability to lift and move everyday objects with his claims about how he was affected in his domestic life. They were also justified in their conclusion that his ability to carry out all aspects of his work cast considerable doubt on the veracity of his claims about not being able to tie his own shoelaces or lift shopping bags or a tea cup with one hand. We did not consider that there was merit in Mr O'Hara's suggestion that the tribunal's conclusions were undermined by the consideration that the action of lifting a tea cup is markedly different from that required to operate a computer. The actions may be different but we find it impossible to accept that someone who is able to lift cakes of lycra and who can use a keyboard without apparent difficulty would lack the strength or dexterity required to raise a tea cup in one hand.

[37] In our view it would have been preferable if the tribunal had expressed a separate conclusion on the question whether the appellant was affected in his day-to-day activities. It appears to have elided that question by focusing on the issue whether the effect was substantial. At paragraph 18 of its decision the matter was put thus: -

> "The tribunal therefore finds that although the general condition of seborrhoeic eczema could have an adverse impact on a person's ability to carry out normal day-to-day activities, it does not believe that the extent to which this condition affected the applicant's hands is established to show a substantial, adverse impact on his ability to carry out normal day-to-day activities."

[38] Had the tribunal found that the appellant was not affected at all in such day-to-day activities as required manual dexterity and an ability to lift carry and move everyday objects, we consider that such a finding, on the evidence available to the tribunal, could not have been impeached. It rather appears, however, that the tribunal avoided that question by concentrating on the issue whether the effect, if it existed, was substantial. If a clearly expressed view on the existence of the effect had been expressed, much of the debate on the appeal about what is involved in normal day-to-day activities might have been avoided but, in the event, this does not make any difference to the outcome of the appeal and we can understand why the tribunal felt that it was not necessary to address the anterior question.

Substantial effect

[39] The tribunal was unequivocal in its finding that the appellant had not been substantially affected in the two aspects from paragraph 4 (1) of Schedule 1 that he had espoused. We consider that this conclusion was not only justified, it was inevitable. The onus of establishing that he was substantially affected in manual dexterity and lifting ability rested squarely on the appellant. But, apart from his own claims all the evidence pointed firmly towards the conclusion reached by the tribunal. In *Kapadia v London Borough of Lambeth* [2000] IRLR 699 it was said that: -

> "It is not enough, however, for an applicant to maintain that he or she would be badly affected if treatment were to stop – proof, preferably of an expert medical nature, is necessary."

[40] In this case the medical evidence, at its reasonable height, did no more than point to a potential effect on the appellant's manual dexterity and lifting ability should a flare up of his skin condition occur affecting his hands. No record of the appellant ever having been affected to that extent was produced. The tribunal was right to treat sceptically the appellant's extravagant claims, especially as these included the assertion that on the very day of the hearing he was affected. In light of that claim we consider that there was nothing untoward in the tribunal inspecting for itself the condition of his hands. It is clear that this was not done for the purpose of substituting their view for those of the experts but in order to vouch the claim that the appellant had made. We consider that the tribunal was right to assess the condition of the appellant at the time of the hearing. It would not be right, of course, to assess whether he suffered from a disability solely by reference to his condition at that time but, in light of his claim that his hands were affected at that time, and in view of the fact that his condition was liable to be triggered by stress, it was relevant for the tribunal to see for themselves to what extent the condition was manifest.

[41] We must also reject the argument advanced by Mr O'Hara that the tribunal had failed to take account of the amelioration brought about by the application of creams. It is clear from the passage from paragraph 16 of its decision (quoted at [29] above) that this factor was fully taken into account.

Conclusions

[42] None of the arguments advanced by the appellant has succeeded. We will answer the questions posed in the affirmative and dismiss the appeal.