Appeal from MAT: reasons for decision insufficient / MAT incorrect not to adjourn in order to obtain a particular medical report.
Review of earlier decisions on inadequate reasons — MAT not erroneous in law.

VGHH/1/LM

Commissioner's File: CI/370/89

DSS File: Not Known

68/91

SOCIAL SECURITY ACTS 1975 TO 1986

APPEAL FROM DECISION OF MEDICAL APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

Decision

1. This claimant's appeal fails. My decision is that the decision of the medical appeal tribunal (MAT) dated 5 January 1989 is not erroneous in law.

Representation

2. I held oral hearings of this appeal and also of another appeal (Banks), the reference to which on Commissioner's file is CI/081/90, which raises similar questions. In the present appeal, the claimant (who did not appear) was represented by Mr James Latter of counsel, instructed by Messrs Davis, Blank, Furniss, solicitors. The Secretary of State was represented by Mr Robert Jay of counsel, instructed by Miss Fiona Kinsman of the Solicitor's Office, Departments of Health and Social Security.

Nature of the appeal

3. The issue before the MAT was whether there had been unforeseen aggravation of the results of the relevant accident to the claimant in respect of which disablement had been finally assessed by a medical board on 28 November 1984 at 2% for life.

4. A medical board on 5 July 1987 had found that there had been no unforeseen aggravation of the disablement (impaired right grip) resulting from the relevant loss of faculty since the assessment of 2% for life was made (28 November 1984). They found that there had been worsening of the claimant's condition but that it was not due to aggravation of the results of the relevant injury, but was due to constitutional or other causes namely ankylosing spondylitis. The MAT agreed with the board's

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finding that there had not been any unforeseen aggravation and that any deterioration was not due to the accident but was due to the progression of the constitutional condition. They stated that they had read the schedule of evidence. The last three items were specified in the Schedule as being the report of a Mr Chestock, the letter of a Mr Kerns and the letter of a Dr Parker.

5. The appeal against the MAT's decision is on the basis (1) that the reasons given by the MAT for their decision are insufficient to comply with the regulations and (2) the MAT were in error in not adjourning in order to obtain a particular medical report.

6. The crucial question on the first issue is whether or not I should apply the standard of reasoning required by the decisions of Purcell (CM/467/89); Cave (CM/244/87), Fuller (CM/205/88) and Bradshaw (CSM/113/88). This is of general importance because in numerous cases the last three of the above mentioned decisions have been relied upon by the Secretary of State in submitting that MAT decisions were erroneous in law.

7. The second issue involves a consideration of the principles dealing with interference with the discretion of an MAT as to whether or not to adjourn.

The relevant statutory provisions

8. Section 110(2) of the Social Security Act 1975, as amended by Schedule 8 paragraph 23(b) of the Health and Social Services and Social Security Adjudications Act 1983 provides:

> "(2) Any assessment of the extent of the disablement resulting from the relevant loss of faculty may also be reviewed by an adjudicating medical practitioner if he is satisfied that since the making of the assessment there has been an unforeseen aggravation of the results of the relevant injury."
>
> [Unforeseen aggravation falls to be determined by a medical board (i.e. two adjudicating medical practitioners: see regulation 29(2) of the Social Security Adjudication) Regulations 1986).]

9. Regulation 31(4) of the 1986 Regulations (replacing similar provisions) provides:-

> "A medical appeal tribunal shall in each case record their decision in writing in such form as may from time to time be approved by the Secretary of State and shall include in such record, which shall be signed by all members of the tribunal, a statement of the reasons for their decision, including their findings on all questions of fact material to the decision."

The claim for disablement benefit

10. The claimant sustained an industrial accident on 21 January 1981 when she was hit by a motor cycle whilst on duty. She claimed disablement benefit on 10 October 1984.

The final disablement assessment: medical board of 28 November 1984

11. (1) On 28 November 1984, a medical board found (1) injury to neck (2) injury to elbow (R) and (3) injury to wrist (R) to be injuries resulting wholly from the accident. They found no unconnected injuries. They answered the question as to whether the accident had resulted in a loss of physical or mental faculty from the end of the injury benefit period "Yes". In paragraph 8 (Part VI) on the effect of the relevant loss of faculty (where the Board are instructed to describe the way in which the injuries handicap the claimant in the ordinary activities of life) the Board answered (1) No handicap (2) No handicap and (3) Residual discomfort (R) wrist. In Part VI they made a final assessment of disablement resulting from the relevant loss of faculty as 2% for life.

(2) There was no appeal against this decision.

Unforeseen aggravation: review medical board of 15 July 1987

12. On 7 May 1987, the claimant applied for a review on grounds of unforeseen aggravation saying that she suffered "constant pain in back, neck, head, down arms spondylosis of the spine which has deteriorated considerably".

13. A review medical board, who had before them an extract from the hospital case notes of the Devonshire Royal Hospital, on 15 July 1987 made a report on unforeseen aggravation on Form BI 188 R. Their detailed clinical findings are set out in Part III of the report except for back and spine which is the subject of the medical report on Form BI 118 BK. In Part IV (decision on loss of faculty), they found the injuries resulting from the accident to be (1) muscular skeletal injury to neck (2) Injury to R elbow (3) Injury to R wrist. The loss of physical or mental faculty resulting from the accident (now specifically stated, as a result of the criticisms of a Tribunal of Commissioner in decision R(I) 5/84) was stated to be "Impaired Movements R wrist". In Part V the disabilities resulting from the relevant loss of faculty were stated to be (3) Impaired right grip, which was stated to be fully relevant. Ankylosing spondylitis was found to be an unconnected injury having no effect upon the disablement resulting from this disability. The board decision on unforeseen aggravation is set out in Part VI. They answered the question 6(a) "Has there been an unforeseen aggravation of the disablement resulting from the relevant loss of faculty since the assessment was made?" in terms "No". They found in answer to question 6(b) that although there had been worsening of the claimant's condition it was not due to aggravation of the results of the relevant injury but due to

constitutional or other causes which they specified as ankylosing spondylitis.

The unforeseen aggravation appeal: MAT of 5 January 1989

14. The claimant appealed against the decision of the review medical board saying she was in constant pain in back, shoulders and neck which she never had before the accident.

15. (1) The MAT heard the appeal on 5 January 1989. The claimant was present and was accompanied by her husband. The record of the proceedings of the MAT (Form BI 255 (1987)) records that she was medically examined.

(2) The chairman's note records

"Report from Mr M G Morris. Still had neck pain down both arms where it aches. Wrist is better. Pain down back into groin on right side."

(3) The MAT's recorded findings of fact were

"We adopt the clinical findings of the Adjudicating Medical Authority" (i.e. the Review Medical Board of 15 July 1987).

(4) The MAT dismissed the appeal. Their recorded decision was:

"We are not satisfied that since the decision of the Medical Board dated 28 November 1984 there has been unforeseen aggravation of the results of the relevant injury."

(5) The MAT's recorded reasons for this decision were:

"We have read the scheduled evidence, studied the x rays, and heard the claimant. We are told there is a report from Mr M G Morris but it was not made available to us, and the claimant said she was happy to go on without it. We understand the wrist has recovered. The main trouble is neck pain which goes through the shoulders and down both arms, and also down the back into the groin on the right side.

Our examination confirms the findings of the Adjudicating Medical Authority of 15 July 1987 save that the right wrist is now normal, and straight leg raising is now full. We agree that there has not been any unforeseen aggravation here and any deterioration is due to the progression of the constitutional condition."

The arguments on appeal

16. The claimant applied to the chairman of the MAT for leave to appeal saying:

"I wish to appeal against the medical tribunals decision of Jan 5th, 89.

I was quite disgusted at the incompetence of the members in that they hadnt even got an up to date record of my X-rays. they also didnt seem to know anything about the report from doctor Morris which stated my assessment of 2% was very low.

I fail to see what further proof you need other than the fact that I have submitted four different reports all of which agree that my accident if not directly caused my present condition, certainly aggravated it.

I am in constant pain from my back and neck and severe head pains directly attributed to the cervical vertabrea being damaged due to the accident. The members of the tribunal didnt seem to be interested in these problems, only the condition of my wrist, which incidentaly I didnt say was better, I said it didnt bother me, which isn't exactly the same is it?

I am also quoted as saying I was happy to proceed with the tribunal regardless of them having insufficient information on my case. I was certainly far from happy. what I did say was. "that as I had travelled a forty mile round trip, and then been kept waiting forty five minutes after my appeal should have been heard, I did not see any point in having to travel all that way and have to go through the whole frustrating procedure yet again.

I fail to see how all my evidence and reports from four different sources of independant persons and also a letter from my own General Practitioner who sees my on a regular basis. can be undermined by a panel of three persons who have never seen me before, and who after a ten minute verbal and medical interview seem to think they know more about my condition than the proffesional experts, I have been consulting for years.

17. Leave to appeal was refused by the chairman of the MAT but granted by a Commissioner. The Secretary of State, in a written submission, supported the appeal saying:

"it is submitted that the MAT's decision is erroneous in point of law for want of compliance with Regulation 31(4) of the Social Security (Adjudication) Regulations 1986 in that the MAT have failed to adequately explain their reasons for decision. They have not commented on the medical reports of Mr Chestock, Mr Kerns and Dr Parker. These reports were submitted by the claimant in support of her appeal. By the MAT's failure to comment it could be said that the claimant has been left guessing on what to her is a material point."

18. I directed an oral hearing for argument as to whether the

decision of the MAT was erroneous in law on any ground. The three named persons, Mr Chestock (a registered osteopath), Mr Kerns (a senior area health and medical safety adviser) and Dr Parker thought that the accident had contributed to the claimant's condition. They did not consider the question of unforeseen aggravation at all and in my direction I queried how the MAT could be expected to do more than what they did do, which was to find that any deterioration was not due to the accident but was due to the progression of the constitutional condition. The MAT's conclusion was based, the MAT stated, on their own medical examination of the claimant. None of the three persons who thought that the accident had contributed to the claimant's condition did more than state that this was the opinion of the writer. There was no specific contention that required to be dealt with. Where was the error of law?

19. Before me, Mr Robert Jay, on behalf of the Secretary of State, withdrew the above mentioned submission and indicated that the Secretary of State now opposed the appeal.

20. Mr Latter, however, submitted that the decision of the MAT was erroneous in law. The reasons given by the MAT for their decision were inadequate. The test of adequacy was whether the claimant was able to see from the MAT's decision why he had succeeded or failed. He wished to adopt the remarks of Mr Commissioner Sanders in the case of Purcell the reference to which on Commissioner's file is CM/467/89. [The decision is starred under reference 44/91]. The MAT had failed to deal with the substance of the claimant's case which was that the claimant's neck and back condition was aggravated by the injury. Their decision was also contrary to natural justice. The decision was erroneous in law on three separate grounds:

(1) the decision was ambiguous. The worsening of the claimant was found by the MAT to be "due to the progression of the constitutional condition". But they did not deal with the question whether the constitutional condition was aggravated by the accident. So the decision was ambiguous: see R v Deputy Industrial Injuries Commissioner ex parte Howarth reported in the Appendix to R(I) 14/68.

(2) reasons for saying why the aggravation was not caused by the accident should have been given. The claimant was left guessing as in R(I) 30/61 paragraph 8. Reliance was placed on Purcell.

(3) Natural justice. The MAT should not have accepted the claimant's statement that she was happy for them to continue. They should have said to the claimant that she could sent the report to them.

21. Mr Robert Jay opposed the appeal. He submitted that there was no general issue of principle. He was content to accept the correctness of decisions R(I) 18/61 and R(A) 1/72. The Commissioner was bound by the decision of the Court of Appeal in Baron v Secretary of State for Social Security, reported in the

Appendix to decision R(M) 6/86; and the decision of the High Court in Crake v Supplementary Benefits Commissioner [1982] 1 All E.R. 498 was of persuasive authority. [It is not binding on the Commissioner for the reasons given by the Court of Appeal in Chief Supplementary Benefits Office v A.J. Leary [1985] 1 WLR 84 VH]. Mr Jay submitted that a mid-course should be charted between the decision of Mr Commissioner Sanders in Purcell supra and that of Mr Commissioner Rice in West CI/83/1989 (starred as 33/91). The reasoning of the MAT must be sufficient for the claimant to know why he lost. But one must not lose sight of the fact that it was a specialist body charged with the duty to reach conclusions on matters of medical opinion. Contrast the position of a High Court Judge in medical matters. Mr Commissioner Sanders was incorrect in Purcell in saying that the MAT was not a specialist body. There was a difference between those cases where the claimant's doctor asserts a conclusion and the MAT disagree with him. There is no obligation to say why. This should be contrasted with the case where there is a specific contention as when the claimant's doctor supplies specific reasons in support of his conclusion. In such a case, where a specific contention is put forward, the MAT must say why the reject it: see decision R(I) 18/61 at paragraph 13. It was not easy in matters of medical opinion for an MAT to supply reasons for a conclusion based on experience. In the present case there was no specific contention. The three medical reports merely asserted the conclusion that the disabilities were due to the accident. They did not address the issue of unforeseen aggravation after 1984. The present complaint lay in the final sentence of the MAT decision and related to the question what had triggered the constitutional condition. Mr Jay submitted on this that the claimant's evidence did not support her case. Mr Chestock did not deal with aggravation. Mr Kerns found that the road traffic accident aggravated the pre-existing condition of the claimant's spine. He did not say when aggravated or when symptoms arose in light of Board's finding of 1984. Dr Parker was similarly vague. He said there was no problem with arthritis until some time after the accident but he does not say when. It is not possible to go behind the findings of the 1984 Board. In their view there was then no spondylosis. The claimant's case must, in Mr Jay's submission fail since

(1) no loss of faculty said to result from injury to neck even though a worsening

(2) given the finding of the medical board of November 1984 it was not open to the claimant to say the spondylosis was caused by the accident and

(3) the Board were saying in their 1987 determination

(a) spondylosis not consequence of accident but

(b) consequence of constitutional or other causes

If the Board had thought that the accident had triggered the spondylosis, the answer to question 6(b) would not have been

filled in as it was. The Board also found that the spondylosis was unconnected. The reasoning of the MAT clearly refers back to 6(b). So there is no ambiguity in the expression "progression of constitutional condition". There was nothing in the point as to whether this was a result of the relevant injury. It was a necessary inference from 6(b) that it was not. The evidence of the 3 doctors did not develop the claimant's case. Anyhow they did not put forward a specific contention and the MAT could accordingly do the same as the doctors.

22. In reply, Mr Latter submitted that the question of spondylosis arising after 1984 could be raised and that this was a specific contention. The reasoning of the MAT was inadequate because one could not see whether the MAT treated the spondylosis as arising subsequently to 1984.

Is the MAT's decision erroneous in law?

23. No, it is not. My reasons for this conclusion follow.

Medical matters

24. The claimant's original grounds of appeal related to her dissatisfaction with the MAT's medical determination, with which she disagreed. Medical questions relating to unforeseen aggravation are assigned by statute to the medical authorities, of which the MAT are the final judges: see sections 109, 110 and 117(1) of the Social Security Act 1975. Disagreement with an MAT's determination of a medical question is not a ground of appeal. The only ground for appealing from the decision of a MAT is that the decision was erroneous in law: see section 112 of the Social Security Act 1975.

Ambiguity

25. Mr Latter, on behalf of the claimant, has submitted that the MAT's decision is erroneous in law because it is ambiguous, the reasons for decision were inadequate and it was wrong not to adjourn the hearing for the production of Dr Morris's report.

26. (1) The suggested ambiguity in the MAT's decision is that it is impossible to tell whether or not the MAT thought that the constitutional condition was aggravated by the accident, so that the claimant was left in the dark as to whether or not her claim that there had been unforeseen aggravation of the results of the relevant injury had succeeded or not.

(2) Mr Jay submitted that given the finding of the medical board of November 1984 it was not open to the claimant to say that the cervical spondylosis (the constitutional condition) was caused by the accident. I disagree. Mr Latter's argument, as I understand it, is that there was a latent constitutional condition (cervical spondylosis) which was aggravated and developed after November 1984 due to the accident. It was open to Mr Latter to contend this. The Board found (1) injury to neck in 1984 but (2) that no handicap resulted from it. The latter

finding did not conclude the matter as against the review Board or MAT who were considering the question of unforeseen aggravation since that date. They were each giving a further decision. Such decisions fall within section 117(2) Social Security Act 1975. For section 117 of the Social Security Act 1975 (re-enacting in subsection (2) section 5(1) of the 1972 Act in this respect) provides:

> "117(1) Subject to the provisions of this Part of this Act, and to section 14 of the Social Security Act 1980 (appeal from Social Security Commissioners etc. on a point of law) the decision of any claim or question in accordance with this Act shall be final; and subject to the provisions of any regulation under section 114 the decision of any claim or question in accordance with those regulations shall be final.
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> (2) Subsection (1) above shall not make any finding of fact or other determination embodied in or necessary to a decision, or on which it is based, conclusive for the purpose of any further decision." [my underlining].

(3) If there were such an ambiguity that would accordingly have been a clear error of law and a breach of the requirement to give reasons contained in regulation 31(4) of the 1986 Adjudication Regulations. But the decision is quite unambiguous. The MAT found, in terms, in the body of their actual decision that there had not been unforeseen aggravation of the results of the relevant injury and, in giving their reasons, they said that any deterioration was due to progression of the constitutional condition. So the MAT were saying that the progression of the constitutional condition was not a result of the relevant injury. The matter is put beyond doubt by the fact that (as Mr Robert Jay pointed out in argument) the MAT were confirming the findings of the medical board of 15 July 1987 which had found that spondylosis was not a consequence of the accident but was due to constitutional or other causes. The two decisions should be read together: cf R v National Insurance Commissioner ex parte Maiden [1972] 13 K.I.R. 506 which is also reported in the Appendix to decision R(I) 1/73. That was a decision of the Divisional Court. The case of ex parte Howarth (supra) to which Mr Latter relied was a case where there was an ambiguity. Here there is none. The decision of the MAT was not erroneous in law on this ground.

Adequacy of reasons: Purcell's case

27. Mr Latter's second submission was that the reasons for saying why the aggravation of the constitutional condition was not caused by the accident should have been given. He cited in support decision R(I) 30/61 paragraph 8. But that paragraph does not assist me. Sir Robert Micklethwait, who gave this decision, was considering a decision of an MAT which gave different assessments for various periods in place of a single assessment by the medical board whose decision was under appeal and Sir Robert pointed out that as regards one period there were no findings of fact at all and it was not clear whether they

accepted a solicitor's evidence on the case (which was material) or not. He held that the claimant was left guessing as to the facts, which was an error of law, and added that:

> "it would be much better for the medical appeal tribunal always to record expressly a finding showing which parts of the medical board's findings they accept and with what variations or additions (if any)"

That advice was followed by the present MAT.

28. The other authority relied upon by Mr Latter is the case of Purcell the reference to which on Commissioner's file is CM/467/89. That starred decision sets out the principles applied by the Commissioner in other cases of which CM/244/1987, CSM/113/88 and CM/205/88 (which is the unreported decision of a Tribunal of Commissioners) are examples which are frequently relied upon by the Secretary of State in submissions supporting claimants' appeals on the ground that an MAT decision under appeal is erroneous in law.

29. There is no doubt that, if the reasoning of these decisions is adopted, the decision of the MAT is erroneous in law because the MAT did not explain why the aggravation of the constitutional condition was not caused by the accident. On the other hand, if the principles set out in the decision in West the reference to which on Commissioner's file is CI/83/89 and which were applied by the Commissioner in other cases of which decisions Kitchen CI/58/89 and Evans CI/215/89 are examples, there is no doubt that the decision of the MAT to which the present appeal relates is not erroneous in law. If I had found it necessary to consider whether or not to follow the decision in West, and allied cases, I should have acceded to the original request, now withdrawn, by the Secretary of State to adjourn my hearing of the present appeals until the decision of the Court of Appeal in those cases, all of which are under appeal, had been given. But Mr Robert Jay, in submitting that the decisions of the MAT in the two appeals now before me are not erroneous in law placed no reliance on them and I do not need to consider them. There has been no appeal to the Court of Appeal in the case of Purcell and the allied decisions referred to above. Accordingly, it is incumbent on me to consider whether I should follow them.

30. The decision in Purcell holds that:

(1) that a medical appeal tribunal is not a specialist body

(2) that even if it were, that was not a reason for it explaining medical matters less than a lay tribunal. The contrary might well be true and reliance was placed on the decision of a Tribunal of Commissioners reference CM/205/88.

(3) that the premise that the untutored layman must accept what he is told by the experts is quite out of tune with the times. Experts are now expected to explain themselves and they must find the language in which to do it. (In other words, the

standard of reasoning required by regulation 31(4) of the 1986 Adjudication Regulations is higher than that previously accepted under similar regulations).

With respect to Mr Jay, there is an important issue of principle here namely, to what extent is a Commissioner at liberty to depart from previous decisions of the Commissioners and the Courts.

31. There are many decisions of the Court and the Commissioners that a medical appeal tribunal is a specialist body. In the leading case of Regina v Medical Appeal Tribunal ex parte Hubble [1958] 2 Q.B. 228, the Divisional Court (Lord Goddard, Lord Chief Justice, Cassels J. and Diplock J. (as he then was), after quoting section 39 of the National Insurance (Industrial Injuries) Act 1946, now section 108 and 109 of the Social Security Act 1975) referred (page 240) said:

> "As an expert investigating body it is the right and duty of the medical board to use their own expertise in deciding the medical questions referred to them. They may, if they think fit, make their own examination of the claimant and consider any other facts and materials to enable them to reach their expert conclusion as doctors do in diagnosis and prognosis of an ordinary patient. Just as is "the case" of the claimant which is to be referred to the medical board by subsection (1) of section 39, so also it is "the case" of the claimant which is to be referred to the medical appeal tribunal under subsections (2) and (3).
>
> The effect of these subsections is, in our view, to substitute in the cases to which they apply another and presumably more highly qualified expert investigating body for the medical board, and we see no ground for holding that their function is any different from that of the medical board, namely to use their own expertise to reach their own expert conclusions upon the matters of medical fact and opinion involved in "the case" of the claimant."

The decision of the Divisional Court was affirmed by the Court of Appeal, whose decision is reported in [1959] 2 Q.B. 408. Hubble's case was followed, on the above mentioned points, in the following cases; R(I) 18/61 (T); R(I) 31/61; R(I) 40/61; R(I) 12/62; R(I) 5/64; R(I) 14/75; R(M) 3/78; R(I) 7/81

(2) The principle that an MAT is a specialist body entitled to use its own expertise to reach its own conclusions upon matters of medical fact and opinion was affirmed by the Divisional Court in R v Medical Appeal Tribunal ex parte Carrarini reported in the Appendix to decision R(I) 13/65 and by the Court of Appeal in R v National Insurance Commissioner ex parte Viscusi [1974] 1 WLR 646, also reported in the Appendix to decision R(I) 2/73 and in Baron's case (supra) reported in the Appendix to decision R(M) 6/86.

32. The decision in Fuller reference CM/205/88 which is cited

as authority in Purcell's case has not commanded the assent of the majority of Commissioners. The principle for which that case was starred, and for which it is usually cited (see for example decision CSB/113/88) is this:

> "It is necessary that a tribunal explain to a claimant why they have come to their conclusion and that in our view means that they must explain in what way and why that conclusion differs, in cases where it does differ, from earlier conclusions, that is those upon a prior claim, or as it may be claims, which form a sequence with the current claim."

The Court of Appeal has, however, in two cases neither of which is referred to in decision CM/205/88 (Fuller) rejected submissions that the absence of an explanation as to why a tribunal was differing from a previous tribunal upon a claim forming a sequence with a current claim constituted an error of law. See the judgments of Lord Justice Buckley and Lord Justice Roskill in Viscusi's case (supra) and of Lord Justice Balcombe (delivering the first judgment, with which Lords Justice Purchas and Mustill agreed) in the case of Braithwaite v Secretary of State for Social Services reference CA/75/1984 (unreported) judgment delivered on March 17th 1986, a transcript of which is in my case papers.

Precedent and the Commissioners

33. The practice as regards precedent adopted by the Commissioners from 1948 to 1975 is set out in the decision of a Tribunal of Commissioners in paragraphs 16 to 22 of decision R(I) 12/75. Paragraphs 21 and 22 state:

> "21. In so far as the Commissioners are concerned, on questions of legal principle, a single Commissioner follows a decision of a Tribunal of Commissioners unless there are compelling reasons why he should not, as, for instance, a decision of superior Courts affecting the legal principles involved. A single Commissioner in the interests of comity and to secure certainty and avoid confusion on questions of legal principle normally follows the decisions of other single Commissioners (see Decisions R(G) 3/62 and R(I) 23/63). It is recognised however that a slavish adherence to this could lead to the perpetuation of error and he is not bound to do so.
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> 22. The insurance officer, local tribunals and Commissioners on questions of legal principle are all bound to follow the decisions of the High Court and Superior Courts."

34. This statement has been followed, without criticism, ever since. It was referred to with approval by a Tribunal of Commissioners in decision R(U) 4/88, where it was held that in appropriate circumstances a Tribunal of Commissioners could depart from the decision of a previous Tribunal, a point

previously undecided. In decision R(SB) 22/86 a single Commissioner stated that, subject as stated in paragraph 20 above, unreported decisions speak with equal authority to reported decisions. In decision R(SB) 1/90 a Tribunal of Commissioners held that decisions on common provisions by the English Court of Appeal and the Scottish Court of Session must be followed by all Commissioners in Great Britain.

35. There is no statutory provision binding a Commissioner to follow the decision of a Tribunal of Commissioners. Nor is there any appeal from a single Commissioner's decision to such a Tribunal. The obligation to follow a decision of Tribunal of Commissioners rests on comity.

36. But Lord Brandon of Oakbrook, giving his opinion in the House of Lords in Presho v Insurance Officer [1984] A.C. 310, also reported in R(U) 1/84 Appendix 2 stated

> "The observations of the Court of Appeal in Regina v National Insurance Commissioner [1979] 1 Q.B. 361 make it clear that, where there has been a consistent line of decisions in the field of national insurance by specialist tribunals over a large number of years, a Court should be slow to depart from them: see the expressions of opinion by Lord Denning M.R. at p.369A and by Bridge L.J. (as he then was) at p.374 D-E. I agree with these expressions of opinion and regard them as applicable in the present case."

Lords Diplock, Fraser of Tullybelton, Keith of Kinkel and Roskill agreed.

37. There is express Court of Appeal authority that with a single exception, the Commissioners are bound to follow the decision of the High Court. In the case of Chief Supplementary Benefits Officer v Leary [1985] 1 W.L.R 84, R(SB) 6/85, Appendix Lord Justice Lawton, giving the judgment of the Court in a case where the Commissioners adjudged that they were not bound by a decision of Sir Douglas Frank, Q.C. sitting as a Deputy Judge of the High Court in Musgrove v Secretary of State for Social Services said:

> "THE PROBLEM OF PRECEDENCE
>
> Were the Commissioners entitled to treat Musgrove as not binding them? An inferior court is not entitled to disregard a decision of a superior court, however sure it may be that it has been wrongly decided: see Farrell v Alexander (1977) Appeal Cases 59. The Commissioners considered that they were entitled to treat as having no more than persuasive force the decisions of the High Court on points of law made between 1st January 1978 and 24th November 1980 under the jurisdiction conferred upon that court by the combined operation of the Tribunals and Inquiries Act 1971 and the Tribunals and Inquiries (Supplementary Benefit Appeal

76

Tribunals) Order 1977 (1977) Statutory Instrument No. 1735) because during that period the High Court was exercising a jurisdiction which since 24th November 1980 has been vested in them by the Tribunals and Inquiries (Supplementary Benefit Appeal Tribunals) (Revocation) Order 1980 (1980 Statutory Instrument 1601).

A distinction has to be drawn between decisions of the High Court exercising its supervisory jurisdiction which are, and always have been, binding on the Commissioners and the particular jurisdiction conferred on the High Court by the Act and the statutory instrument to which we have referred. The supervisory jurisdiction of the High Court is wide and discretionary. That given to the High Court between 1st January 1978 and 24 November 1980 was much narrower and not discretionary. The effect of the 1980 Order was to transfer the narrow jurisdiction from the High Court to the Commissioners, probably for reasons of convenience. In these circumstances, it cannot, in our judgment, have been intended that when exercising the jurisdiction the Commissioners should be bound by earlier decisions of the High Court. In our judgment, the Commissioners were entitled to decide, as they did, that the decision in Musgrove was not binding on them.

38. Decisions of the High Court are binding on points which have been decided even in cases where there has been no specific argument addressed on the point in question: see Duke v Reliance Systems Ltd 1988 1 Q.B. 109 at p.113 (C.A) and Moodie v IRC The Times Law Report May 2 1991.

39. Accordingly, I decline to follow the decision in Purcell (supra) or any decision based on the principles there set out because those principles are contrary to the decisions of superior Courts which are binding on all Commissioners and Tribunals of Commissioners (as well as inferior tribunals) as well as a series of decisions stretching over many years which the House of Lords has stated should normally be followed. The decision in Purcell accordingly does not assist the claimant.

40. The general principles as regards the need to comply with the requirements of the regulations as to findings of fact and reasons for decision are set out in decision R(I) 18/61. Mr Jay, on behalf of the Secretary of State, accepted these principles and, apart from Purcell and allied decisions, they have been consistently followed by the Commissioner for many years. That decision which was the decision of a Tribunal of Commissioners (Judge David Davies, Mr Owen George and Mr H. Shewan Q.C. They were considering a case where the issue before the MAT was whether there had been unforeseen aggravation of the claimant's condition since December 1954 when the claimant had a life assessment of 10 per cent. A medical board held that there had been no unforeseen aggravation and the MAT affirmed their decision. Their entire decision consisted of the statement "We agree with the Board". The claimant appealed against that decision and the Tribunal of Commissioners held that the decision

77

was altogether invalid and a nullity. The Tribunal said:

> "12. The claimant had worked without any back trouble for $3^1/_2$ years after the final assessment of December 1955 but in July 1959 symptoms of back trouble reappeared. He then had to give up work and seek out-patient treatment at a hospital and the X-ray report of the 4th September 1959 showed a marked degenerative change throughout the spine. These facts point prima facie to a worsening of his condition. In considering whether there had been an unforeseen aggravation of the results of the relevant injury it was necessary for the medical appeal tribunal to decide
>
> (a) whether there was in fact any worsening of his condition since December 1955;
>
> (b) if so, whether that worsening was an aggravation of the results of the relevant injury, or whether it was due to constitutional or other causes;
>
> (c) if it was such an aggravation, whether the aggravation was foreseen and sufficiently allowed for in the life assessment of 10 per cent, or was unforeseen and merited a higher assessment.
>
> The medical appeal tribunal evidently accepted and agreed with all the medical board's findings of fact. Having recorded their conclusion "The decision of the medical board is upheld" the tribunal should then have given the reasons for that conclusion with the three points (a), (b) and (c) mentioned above. From the existing record it is impossible to ascertain whether the tribunal have decided that the claimant's condition has worsened or that it has not worsened. Their decision as recorded may mean that his condition has not worsened at all; or it may mean that, though it has worsened, the worsening is not the result of the relevant injury. The claimant is thus left guessing on a material point.
>
> 13. We respectfully recognise that a medical appeal tribunal are (as described in R. v. Medical Appeal Tribunal, ex parte Hubble [1958] 2 Q.B. 228, [1958] 2 All E.R. at p. 380) a "highly qualified expert investigating body" who "use their own expertise to reach their own expert conclusions on the matters of medical fact and opinion involved in the case of the claimant." Though regulation 13(1) requires that a tribunal shall state their findings of fact and the reasons for their decision, this in a great many cases can be done very briefly. Where the tribunal agree with and accept the findings of fact of the medical board it will no doubt be sufficient merely to say so. In a great many of the appeals which come before a medical appeal tribunal a claimant is seeking a higher assessment than that made by the medical board; in many such cases, if the tribunal are in agreement with the

medical board, it will seldom be possible for them to say more than that the medical board's assessment is just and reasonable and is upheld. On the other hand, in cases where some specific contention addressed to the tribunal has been rejected it would certainly be necessary for the tribunal to give reasons for its rejection. We think that it is important to enable a claimant to understand why it is that a decision has gone against him.

14. In general, when the legal chairman of a medical appeal tribunal has informed himself of the question at issue in any particular appeal he will be able to guide the tribunal to the points on which their findings are required and to which their reasons should be directed. While we must draw attention to the fact that regulation 13(1) requires a tribunal's record to contain findings and reasons, we wish to guard ourselves from appearing to suggest that a great elaboration of these matters is required. The circumstances of the particular case will generally indicate to the chairman the degree of detail required. We would mention, however, that when a claimant has been physically examined by the tribunal this fact should be stated in the record. There is no specific requirement that a medical appeal tribunal shall examine a claimant (though the reference in regulation 13(1) to the tribunal's "findings" suggests that an examination will be made in appropriate cases) but it would be helpful to the statutory authorities, who may have to determine a claimant's capacity for certain kinds of work, to know whether or not he had been physically examined by the tribunal."

41. (1) The Court of Appeal has adopted the same approach and has not accepted arguments from counsel requiring elaborate or detailed reasons in the case of MATs who, in exercise of their medical expertise have given a clear decision on the real point in issue in the light of which the claimant's case must fail.

(2) Thus, in ex parte Viscusi (supra), an MAT had before it on a claim for disablement benefit, a medical report from a consultant who found a swelling in the claimant's right leg "was suspect as the level at which a self-applied tourniquet might be applied". The MAT stated that they agreed with the consultant and discharged the favourable assessment made by the medical board. All three judges in the Court of Appeal held that further explanation was unnecessary. The MAT did not have to indicate whether or not they considered that the claimant was a malingerer. Nor did they need to explain why they differed from an earlier MAT who, when considering the previous period, found that the claimant was suffering from deep femoral thrombosis.

(3) Again, in Braithwaites case (supra) the Court of Appeal unanimously dismissed the suggestion that more elaborate reasoning was required from a DMP.

(4) Baron's case (supra) sets out the relevant principles

on which the Court proceeds. Lord Justice May quoted the following passage from Lord Lane's decision in Regina v Immigration Appeal Tribunal ex parte Khan (Mahmud) [1983] 1 Q.B. 790 at page 793 where he quoted from a decision of Sir John Donaldson in the National Industrial Relations Court in 1974 where he said this

> "It is impossible for us to lay down any precise guidelines. The overriding test must always be: is the tribunal providing both parties with the materials which will enable them to know that the tribunal has made no error of law in reaching its findings of fact?"

Lord Justice May continued:

> "In that particular instance the brief reasons set out did not suffice. In my judgment the reasons given by the Medical Appeal Tribunal in the instant case did suffice. They made it quite clear to the appellant - and indeed to the Department on the other hand - that the grounds upon which they came to their conclusion that the decision of the Medical Board should be upheld, namely that as a matter of degree, although pain and breathlessness were there, applying their medical expertise (and one has to bear in mind that that is one of the functions of the Medical Appeal Tribunal) were that the pain and breathlessness were not sufficient to qualify this appellant for mobility allowance."

He rejected that suggestion, put forward in decision R(M) 1/83, that an MAT should make specific findings as to the distance that people could walk and the extent to which breathlessness and pain caused them to stop. It was, Lord Justice May (with whom the other judges agreed), a matter of degree and

> "It would be an almost intolerable burden on Medical Appeal Tribunals, in deciding cases of this nature as distinct from other types of cases, if they had to make specific findings of distances which people could walk and the extent to which breathlessness and pain caused them to stop."

42. This approach is entirely consistent with that adopted by the Commissioner in decision R(I) 14/75 when he wrote:

> "13. A medical appeal tribunal has been described as an expert investigating body entitled to use their own expertise to reach their own expert conclusions upon matters of medical fact and opinion:- **Regina v. Medical Appeal Tribunal (North Midland Region), Ex parte Hubble** [1958] 2 Q.B. 228 at pp.240/41. In the present case the tribunal were concerned with a diagnosis question and they are not required to find positively what was the nature of the claimant's condition if it was not a prescribed disease. In Decision R(I) 2/73, paragraph 18, I stated that when a medical appeal tribunal did not find a relevant

loss of faculty, in my judgment they were not required to go further and make findings as to when and how any physical or mental condition from which the claimant was suffering at the time of their examination occurred. That decision was before both the Divisional Court and the Court of Appeal on an application for an order of certiorari but throughout those proceedings there were no observations disagreeing with that statement:- **R. v. National Insurance Commissioner, Ex parte Viscusi** [1974] 1 W.L.R. 646, C.A. In my judgment, the medical appeal tribunal in the circumstances of this case were not in breach of compliance with regulation 12(1) of the National Insurance (Industrial Injuries) (Determination of Claims and Questions) (No. 2) Regulations 1967."

43. Applying these principles to the MAT's decision in the present case, their decision was not in my judgment defective for lack of sufficient reasons to comply with regulation 31(4) of the 1986 Adjudication Regulations. The MAT were concerned to decide whether since the making of the assessment by the medical board on 28 November 1984, when the Board found there was no handicap as a result of the injury to the neck, there had been an unforeseen aggravation of the results of the relevant injury. The claimant's own complaints consisted in dissatisfaction with the MAT's medical determination. She preferred the opinions of her own doctors. The Secretary of State initially submitted that the MAT should have explained why they differed. But this submission has since, rightly, been withdrawn. The claimant's medical evidence does not deal with unforeseen aggravation since 1987 at all. It contains no specific contention that required to be met, as Mr Jay explained in his submission with which, in this respect, I am in full agreement. Mr Latter submits that the MAT should have explained why the aggravation of the constitutional condition was not caused by the accident. I do not agree. The MAT were required (a) to find whether there was in fact any worsening of the claimant's condition since 28 November 1984 and (b) if so, whether that worsening was an aggravation of the results of the relevant injury or whether it was due to constitutional or other causes: see decision R(I) 18/61 at paragraph 12 (quoted in paragraph 40 above). They answered (a) "Yes" and (b) that the worsening was due to constitutional causes. They stated what those constitutional causes were namely cervical spondylosis. That conclusion was one which in the exercise of their medical expertise and as a result of their own examination and clinical findings they were entitled to reach.

<u>The decision not to adjourn</u>

44. (1) Mr Latter's final point was that there was a breach of natural justice because the MAT had failed to require the report of Mr Morris to be sent to them. That would have meant adjourning the hearing. The MAT recorded that the report was not available but that the claimant was happy to go on without this report. The claimant disagrees. She stated, in her application for leave to appeal that she was far from happy but as she had travelled a forty mile round trip and then been kept waiting

forty five minutes after my appeal should have been heard she did not see any point in having to travel all that way and have to go through the whole frustrating procedure yet again. Why then, should the MAT have adjourned if, in the light of the claimant's decision, to go on without the report, they accepted her decision, as they did. Clearly, the claimant was being offered an adjournment. She refused it. The case would have been different if the claimant had applied for an adjournment and the MAT had refused it. That would have been an error of law: see Carrarini's case supra. For it would have been a clear breach of the second rule of natural justice as explained by Diplock L.J. in R. v Deputy Industrial Injuries Commissioner, ex parte Moore [1965] 1 Q.B 456 that the parties should be given a fair hearing. As the Lord Chief Justice explained in that case, once there was expert evidence on one side it would require a very strong circumstances to entitlement them to refuse expert evidence on the other side. But that is not this case. Here, the well settled principles as to the interference with the discretion of tribunals, to which the Lord Chief Justice referred in Carrarini's case, and which he indicated he did not wish to go outside, apply. It is convenient to restate them here.

(2) Regulation 2(1) of the Social Security (Adjudication) Regulations 1986 provides that, subject to the provisions of the Act and of the regulations

> "(a) the procedure in connection with the consideration and determination of any claim or question to which these regulations relate shall be such as the Secretary of State, the adjudicating authority or the person holding the inquiry, as the case may be, shall determine, so however that in the case of a tribunal or board, the procedure shall be such as the chairman shall determine."

Regulation 5(2) of the same regulations provides:

> "(2) An oral hearing or an inquiry may be adjourned by the adjudicating authority or, as the case may be, the person appointed to hold the inquiry at any time on the application of any party to the proceedings or of its or his own motion."
>
> "Adjudicating authority" includes an MAT: see regulation 2(1).

The principles relating to the control by the courts of the exercise of a discretion by a statutory body were stated by Lord Scarman in U.K.A.P.E. v Acas [1981] A.C. 434 at page 442 letters C-E in the following terms:

> "the courts will not substitute their judgment for that of the statutory body on matters which the statute has provided for its decision. The extent to which the courts are able to interfere with the judgment or discretion of such a body was laid down in the classic judgment delivered by Lord Greene M.R. in

Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 K.B. 223. In the course of it Lord Greene M.R. observed at p. 229:

> " ..... a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he bound to consider. He must exclude from his consideration matters which are irrelevant ... Similarly, there may be something so absurd that no sensible person would ever dream that it lay within the powers of the authority."

The language of the judgment is very different from the language of industrial relations; but the principle is clear are applicable. The courts will not tell a statutory body how to conduct its business, or what decision, report or recommendation is to be made. They will invalidate the exercise of a statutory body's judgment or discretion only if satisfied that no reasonable person charged with the body's responsibilities under the statute could have exercised its power in the way that it did."

(3) Applying those principles, it is quite impossible to hold that the MAT's decision not to adjourn was an error of law. It is not for the Commissioner to tell the MAT how to conduct their business when they had arrived at the perfectly reasonable conclusion to go on, at the claimant's wish, without Mr Morris's report, or to hold that their decision was erroneous in law.

45. My decision is set out in paragraph 1.

(Signed) V G H Hallett
Commissioner

Date: 22 August 1991