

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is given under section 14(8)(b) of the Social Security Act 1998:

I SET ASIDE the decision of the Middlesbrough appeal tribunal, held on 8 December 2005 under reference U/44/227/2005/01274, because it is erroneous in point of law.

I REMIT the case to a differently constituted appeal tribunal and DIRECT that tribunal to conduct a complete rehearing of the issues that are raised by the appeal and, subject to the tribunal's discretion under section 12(8)(a) of the 1998 Act, any other issues that merit consideration. In particular, the tribunal must answer such of these questions as arise on the evidence:

The key question is: did the claimant suffer personal injury by accident?

If the answer is yes, the following questions arise.

Did the accident result in a loss of faculty?

What disabilities resulted from that loss of faculty?

Was there another effective cause of any of those disabilities?

What was the extent of the disablement resulting from the loss of faculty, applying if necessary regulation 11 of the Social Security (General Benefit) Regulations 1982?

What period is covered by the assessment?

Is the assessment final or provisional?

Error of law:

2. Both the claimant and the Secretary of State have expressed the view that the decision of the appeal tribunal was erroneous in law. That makes it unnecessary to set out the history of the case or to analyse the whole of the evidence or arguments in detail. I need only deal with the reasons why I am setting aside the tribunal's decision, which are as follows.

3. The tribunal decided that the claimant had not suffered 'personal injury caused ... by accident'. That is the legal test under section 94(1) of the Social Security Contributions and Benefits Act 1992. The chairman correctly recorded that occupational stress of itself was not sufficient to satisfy that legal requirement. He then recorded that the remarks made to the claimant were not 'confrontational or aggressive in nature.' That shows that the tribunal misdirected itself on the meaning of 'accident'. An accident has been described as an unlooked for and untoward event. That is judged from the point of view of the claimant. The issue is: was this event looked for by the claimant or untoward from the claimant's point of view? On that test, the nature of the questioning is not necessarily significant; what matters is the impact on the claimant.

4. The chairman also recorded that the tribunal doubted the accuracy of the claimant's diagnosis of post traumatic stress disorder. The tribunal was an expert one and was entitled to take account of the elements in the standard definitions of that disorder. I am not sure if this was just a passing remark or whether it was an independent ground for the tribunal's decision. If the latter, I agree with the Secretary of State that the tribunal should have considered other mental conditions that were apparent on the evidence: stress disorder, depression and anxiety.

Rehearing:

5. I make the following comments for the claimant's information.

6. The claimant's representative has invited me to substitute a decision for that of the appeal tribunal. I decline to do so and have directed a rehearing rather than substitute the decision that the appeal tribunal should have given. This case depends in part on the assessment of the claimant's evidence, which is best undertaken after questioning at an oral hearing which will be more conveniently conducted by an appeal tribunal. Also, the case depends in part on issues of medical causation. The appeal tribunal has, through its medically qualified panel members, access to medical expertise that is not available to Commissioners.

7. At the rehearing:

- The tribunal must follow the directions I have given.
- Unless and to the extent that I have directed otherwise, the rehearing will not be limited to the grounds on which I have set aside the tribunal's decision. The tribunal will consider all aspects of the case, both fact and law, entirely afresh.
- The tribunal will not be limited to the evidence and submissions before the tribunal at the previous hearing. It will decide the case on the basis of the relevant evidence and submissions made at the rehearing.
- The tribunal must come to its own conclusions on issues of both fact and law that it considers. Neither my decision itself nor anything I have written in it is an indication of the likely outcome of the rehearing. Nor will the tribunal be bound by any conclusions of fact or law reached by the tribunal in the decision that I have set aside.

**Signed on original
on 03 October 2006**

**Edward Jacobs
Commissioner**