

MAT's Duty to Give Reasons
Under Commission's Appeal Evidence and
Examination 1

CPAG

* 86/94

JGMI/FS

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SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL TO THE COMMISSIONER FROM A DECISION OF A MEDICAL APPEAL TRIBUNAL UPON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Medical Appeal Tribunal: Glasgow

Case No: 570 02980

1. My decision is the decision of the medical appeal tribunal dated 1 July 1992 is not erroneous in law.
2. This is an appeal with leave on a question of law against the above mentioned tribunal decision.
3. The Secretary of State has usefully summarised the facts of this case leading to the decision of the medical appeal tribunal which is under appeal, as follows:-

"1. On 18 October 1990 the claimant, formerly employed in the clothing manufacturing industry, claimed disablement benefit in respect of prescribed disease D1 - Pneumoconiosis (fibrosis of the lungs due to silica dust, asbestos dust or other dust including the condition of the lungs known as dust reticulation) (pages 1-4).

2. On 13 November 1990 a Special Medical Board, who considered a medical report dated 28 November 1990 (see paragraph 9) and completed their report on 13 December 1990, decided that the claimant was not suffering from prescribed disease D1.

3. Following an appeal made by the claimant (page 7), the Secretary of State's observations on form BI256 (pages 5-6) and the documents as listed in the schedule of evidence on form AT47 (see paragraph 9) were made available to the claimant, her representative and the Medical Appeal Tribunal (MAT) before the hearing of the appeal.

4. The MAT, before whom the claimant did not appear on 24 October 1991, adjourned the hearing of the case in order for the claimant to attend and to enable further evidence to be obtained (pages 8-10). Additional evidence as listed on form BI256A (page 18) was made available to the parties before the resumed hearing.

5. At the resumed hearing on 1 July 1992 the MAT, before whom the claimant appeared represented by an official from Clydeside Action on Asbestos, confirmed the decision of the Special Medical Board dated 13 December 1990 (pages 19-21)."

4. The first written intimation of the tribunal's decision sent to the claimant wrongly informed the claimant that the medical appeal tribunal had adjourned the hearing of the appeal. The claimant thereafter unsuccessfully applied to have the tribunal decision set aside. The claimant's delayed application for leave to appeal to a Commissioner was thereafter granted in May 1994.

5. The medical appeal tribunal confirmed the decision of the adjudicating medical authority and decided that at no time since 10 December 1988 had the claimant suffered from prescribed disease D1 or from a sequela of that disease. In their findings the tribunal stated:-

"We note the clinical findings of the Adjudicating Medical Authority dated 13.12.90 and the report on the chest scan by Dr Cowan of 11.3.92. On examination, the clinical findings of the AMA were confirmed."

The tribunal's reasons for their decision were stated as follows:-

"Having considered all the relevant evidence together with the x-rays and the report from Dr Cowan and having examined the claimant, we find there are no clinical, radiological or functional tests indicating asbestosis and there is no evidence of any other form of asbestos related disease or other form of Pneumoconiosis. The CT scan confirms the above but shows some bilateral localised (not diffused) pleural thickening. We are therefore satisfied on the balance of probabilities that at no time since 10.12.88 has the claimant suffered from PD D1."

6. The claimant's first ground of appeal against the tribunal's decision is based upon the failure to send the claimant a correct intimation of the decision of tribunal until July 1993. I do not consider that this unfortunate mistake in the intimation of the tribunal's decision and the delay in correcting it can constitute an error of law vitiating the tribunal's decision properly made after a hearing attended by the claimant and her representative.

7. The claimant's second ground of appeal is stated as follows:-

"In the written decision it states that "We find that there is no clinical, radiological or functional tests indicating Asbestos". On page 22 of the schedule of evidence there is a C.T. scan report dated 5th March 1992 which states "There are plaques of pleural thickening bilaterally, most of these containing some calcification. The appearances are compatible with pleural changes resulting from Asbestos exposure". It is for this reason we wish leave to appeal."

In my judgement this ground is misconceived. The terms of the tribunal's decision quoted above show that the tribunal noted the report of the chest scan by Dr Cowan. (Incidentally the Secretary of State's representative is mistaken in stating that the tribunal confirmed that report.) Dr Cowan's report was made on the results of a C.T. scan which the tribunal specifically stated in their reasons that they had considered. The reasons then go on to deal first with the evidence on all the other tests, clinical, radiological and functional. They make clear that they were not only considering Pneumoconiosis but also any other form of asbestos related disease. When the tribunal come to refer to the results of the C.T. scan they explain that these showed "some bilateral localised (not diffused) pleural thickening". That makes clear that they took account of Dr Cowan's report in considering, as it was appropriate to do, not only the possibility of the claimant suffering from prescribed disease D1 (pneumoconiosis) which was the disease relied

upon in the claim by the claimant, but also prescribed disease D9 (bilateral diffuse pleural thickening) which can arise from exposure to asbestos. In the circumstances the tribunal have in my judgement adequately explained that the findings of the C.T. scan report did not enable the tribunal to make a favourable diagnosis upon either prescribed disease in this case.

8. In observations on this appeal the Secretary of State's representative has suggested that the decision of the tribunal may be erroneous in law upon another ground as follows:-

"The Secretary of State notes the grounds of appeal and submits that the MAT's decision may be held to be erroneous in law because it does not comply with the requirements of regulation 31(4) of the Social Security (Adjudication) Regulations 1986. In the Court of Appeal Decision Kitchen and Others v Secretary of State for Social Services Neill L J laid down guidelines for MATs to follow when recording their decisions. Amongst other things he said that in cases where the MAT have medically examined the claimant they should record their findings and that these findings by themselves may be sufficient to demonstrate the reason why they reached a particular conclusion. In CI/078/92 the Commissioner expanded on this by saying that it was not satisfactory for the MAT to adopt the clinical findings of the AMA whose decision they were considering. He said that the claimant could be left in the dark as to whether the findings of the MAT's own examination were the same as those of the AMA or whether the AMA's findings were adopted for want of anything better. In this case the MAT have adopted the clinical findings of the AMA and the report of the chest scan by Dr Cowan. In view of what has been said above, it is submitted that the MAT's decision may be held to be erroneous in law."

9. I accept of course that where a medical appeal tribunal have examined a claimant they should, as a rule, record their findings. This is particularly necessary where these differ materially from previous clinical findings in the case. I do not however accept that when the medical appeal tribunal's findings coincide with the findings which have already been recorded by a previous adjudicating medical authority the tribunal must, in order to reach a valid decision, repeat these. In my judgement it is perfectly acceptable in such a case for the tribunal to state that on examination of the claimant those previous findings are confirmed. I do not understand the suggestion that the claimant could be left in the dark as to whether the findings of the medical appeal tribunal's own examination were the same as those of the adjudication medical authority or whether the latter's findings were adopted "for want of anything better".

10. There may of course be circumstances in which it is appropriate for a medical appeal tribunal, whose findings coincide with those of the previous adjudicating medical authority, nevertheless to make some additional comment or finding. It may indeed be that decision CI/078/92 referred to by the Secretary of State is such a case. I note that immediately following the passage referred to by the Secretary of State the Commissioner pointed out that there were differences between the adjudicating medical authority's clinical findings and those of a consultant whose report had been submitted by the claimant. However that may be, I regard as it as a mistaken approach to suggest that a medical appeal tribunal's statement that upon examination the findings of the adjudicating medical authority were confirmed will ipso facto be a breach of the tribunal's obligations under regulation 31(4) of the Social Security (Adjudication) Regulations 1986 constituting an error of law. I deprecate the adoption by representatives of the Secretary of State of the practice which I have observed in a number of recent cases of routinely founding on this as a ground (frequently the sole ground) of error by a medical appeal tribunal.

11. In the present case the tribunal carefully noted the clinical findings of the adjudicating medical authority and the report on the chest scan by Dr Cowan. They then stated that on examination the clinical findings of the adjudicating medical authority were confirmed. In my judgement those findings coupled with the explanations given in the tribunal's reasons satisfactorily fulfilled the tribunal's obligations under regulation 31(4) above mentioned. Their decision is not erroneous in law and this appeal must accordingly be refused.

(signed)

J G Mitchell
Commissioner

Date: *8 September 1994*