

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

Tribunal
decision

**Medical Appeal Tribunal decisions—Requirements of Regulation 13(1) of the
Determination of Claims and Questions Regulations, 1948**

In giving their decision upholding the decision of a medical board which had rejected an application by the claimant for a review under Section 40(2) of the Industrial Injuries Act on the ground of unforeseen aggravation of the results of the relevant injury, a Medical Appeal Tribunal simply stated "We agree with the Board."

Held that the decision of the Medical Appeal Tribunal was a nullity because it did not, in the circumstances of the case, comply with the requirements of Regulation 13(1) of the Determination of Claims and Questions Regulations that a Tribunal shall include in their decision a statement of reasons for their decision, including their findings on all questions of fact material to their decision. The Commissioners discuss the requirement of Regulation 13(1) in the light of the jurisdiction and functions of Medical Appeal Tribunals and point out, *inter alia*, that when a claimant has been physically examined by a Medical Appeal Tribunal, this should be stated in the record.

1. Our decision is that the decision of the medical appeal tribunal of the 25th November 1959 is a nullity and must be set aside.

2. The question at issue in this appeal by the claimant is whether the record of the above-mentioned decision of a medical appeal tribunal fails to include "a statement of the reasons for their decision, including their findings on all questions of fact material to the decision," as required by regulation 13(1) of the National Insurance (Industrial Injuries) (Determination of Claims and Questions) Regulations, 1948 [S.I. 1948 No. 1299], and is, by reason of that failure, a nullity.

3. The claimant is 48 years of age. On the 9th January 1954 he suffered an industrial injury when he strained his back while barrowing concrete away from a concrete mixer. An acute lumbar disc protrusion was diagnosed and on the 6th February 1954 a lumbar disc (between L.V.4 and L.V.5) was removed by operation. He was incapable of work and was paid injury benefit from the 11th January 1954 to the 24th May 1954.

4. He started light work on the 25th May 1954 and was employed at first for about a month at light labouring and then from about the end of June 1954 as a barman, an occupation which he was still following at

the end of 1955. The extent of his disablement was assessed by medical boards as follows :—

<i>Date of board</i>	<i>Degree</i>	<i>Period of assessment</i>
17th June 1954	30% provisional	7 months to 24th December 1954.
29th November 1954	20% „	5 months to 24th May 1955.
3rd May 1955	10% „	3 months to 24th August 1955.
28th July 1955	10% „	5 months to 24th January 1956.
29th December 1955	10% final	25th January 1956 for life.

After he returned to work on the 25th May 1954 he was not rendered incapable of work by any cause connected with his back for more than 4 years (though he was away from work for a fortnight with bruised ribs at the end of February 1956 and for a week with injury to knee and thigh at the beginning of June 1958). On the 25th July 1959 symptoms of trouble in his back reappeared. He was then employed as an oncost colliery worker. From the 25th July to the 1st August 1959 he was certified to be incapable of work because of “lumbago” and from the 21st August to the 12th October 1959 because of “recurrence of back ache” and “strained back.” He was attending hospital as an out-patient during this incapacity. An X-ray examination of his lumbar spine made on the 4th September 1959 showed marked degenerative change with osteophyte formation throughout the spine; the disc space between L.V.4-5 was considerably reduced, the bone structure was normal.

5. On the 4th September 1959 the claimant applied for a review under section 40(2) of the National Insurance (Industrial Injuries) Act, 1946, alleging that there had been unforeseen aggravation of the results of the accident since the final assessment of 10 per cent. made on the 29th December 1955. He was examined by a medical board on the 22nd September 1959. The medical board recorded the claimant’s statement and their own findings of fact. They stated that pain and stiffness in his back interfered with the claimant’s bending and lifting but they decided that there had been no unforeseen aggravation.

6. The claimant appealed against the medical board’s decision to a medical appeal tribunal alleging that he was being treated by the hospital for an aggravation of his old injury.

7. On the 25th November 1959 the medical appeal tribunal on form B.I.255 recorded the following decision: “The decision of the medical board is upheld” and, in the space headed “Reasons for decision, including findings on all questions of fact material to the decision” they wrote “We agree with the Board.”

8. The claimant applied to the medical appeal tribunal for leave to appeal to the Commissioner and stated that the point of law on which he wished to base his appeal was (*inter alia*) that

“Tribunal in form B.I.255B only state in five words ‘We agree with the Board’; Tribunal did not give summary why they agreed with the Board.”

9. The Minister in his observations on the claimant’s application pointed out that by regulation 13(1) of the National Insurance (Industrial Injuries) Determination of Claims and Questions) Regulations, 1948 [S.I. 1948) No. 1299] the record of the decision of a medical appeal tribunal is expressly

required to include "a statement of the reasons for their decision, including their findings on all questions of fact material to the decision." The Minister also pointed out that by regulation 9(1)(a) of the same Regulations a medical board are expressly required to include in the record of their decision "a statement of their findings on all questions of fact material to such decision" but are *not* required to give reasons for their decision. The medical board of the 22nd September 1959, who negatived unforeseen aggravation, in fact gave no reasons for that decision.

10. The Minister submitted that, in the circumstances of this case, the question whether the statement by the medical appeal tribunal "We agree with the Board" is a sufficient statement of the tribunal's reasons and findings of fact to satisfy regulation 13(1) is a question of law which merited consideration by the Commissioner. The medical appeal tribunal granted leave to appeal to the Commissioner. At the ensuing oral hearing of the appeal before us on the 26th October 1960 the Minister's representative supported the claimant's appeal and submitted that the medical appeal tribunal's decision was a nullity because it did not comply with regulation 13(1) since it contained no findings of fact and no reasons for the decision.

11. In our opinion, in the circumstances of this case, that submission is well founded. We feel bound to declare that the medical appeal tribunal's purported decision of the 25th November 1959 is a nullity.

12. The claimant had worked without any back trouble for 3½ 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 dealing 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.

15. In the present case, owing to the tribunal's failure to record the reasons for their decision, it is impossible for the claimant or anyone else to ascertain what their decision was on one of the material questions in the case. There is power under regulation 13G(3) of the above-mentioned Regulations, as amended by the National Insurance (Industrial Injuries) (Determination of Claims and Questions) Amendment (No. 2) Regulations, 1959 [S.I. 1959 No. 1596] to require the medical appeal tribunal to submit a further statement of facts, but we do not think that this course would be appropriate in the present case in which the decision is altogether invalid because it does not comply with statutory requirements. We must therefore send back the case to the medical appeal tribunal to enable them to give a reasoned decision on the lines suggested in paragraph 12 above.

16. The claimant's appeal, which is supported by the Minister, is allowed.
