

with failed to take into account evidence before them (X rays) and to give reasons for rejecting consultant's report.

JJS/9/LS

Commissioner's File: CI/91/1987

DHSS File: I 2271/6656

SOCIAL SECURITY ACTS 1975 TO 1986

**APPEAL FROM DECISION OF MEDICAL APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

Name:

Medical Appeal Tribunal: Newcastle

Original Decision Case No: 77/3/86

1. For the reasons hereinafter stated, my decision is that the decision of the medical appeal tribunal is erroneous in point of law. Accordingly I set it aside and remit the case for determination by a differently constituted medical appeal tribunal who no doubt will bear in mind what I have said in the succeeding paragraphs of this decision.
2. This is an appeal by the claimant to the Commissioner on a question of law from the decision of the medical appeal tribunal which confirmed the decision of the adjudicating medical authority of 5 July which had made a final assessment of disablement at 2 per cent from 30 May 1985 to 29 November 1985. The decision of the medical appeal tribunal was made on 19 March 1986.
3. The claimant is a scaffolder by trade and on 15 February 1984 he stumbled on a pipe and twisted his left knee. This knee had given him trouble in the past and there was a history of pain from 1978 up until early 1983 when the medial meniscus from the knee was removed. He then made a good recovery and was back at work until the accident on 15 February 1984.
4. On 12 July 1984 an initial adjudicating medical authority found injury to the left knee and said that the site of the previous injury and medial meniscectomy was partly relevant. The board provisionally assessed the disablement resulting from the relevant loss of faculty at 5 per cent from 30 May 1984 to 29 November 1984 after offsetting 3 per cent for the previous knee injury and meniscectomy. A reassessment adjudicating medical authority on 15 November 1984 found injury to the left knee and continued the provisional assessment of disablement to 29 May 1985 at 5 per cent after offsetting 3 per cent for previous knee injury and meniscectomy. On 5 July 1985 a further reassessment adjudicating medical authority found injury to the left knee - site of the previous injury and medial meniscectomy partly relevant. The board made a final assessment of the disablement resulting from the relevant loss of faculty at 2 per cent from 3 May 1985 to 29 November 1985 after offsetting 3 per cent for previous knee injury and the meniscectomy.
5. The claimant appealed and the medical appeal tribunal confirmed the decision. Leave to review this decision was refused on 27 August 1986. On 11 February 1987 the claimant's application to the Commissioner for leave to appeal on a question of law from the decision of the medical appeal tribunal was received and such application included reasons for the delay. On 18 May 1987 a Commissioner having extended the time for applying for such leave, granted the claimant leave to appeal.
6. It is conceded by the Secretary of State's representative in his submission dated 25 June 1987 that the decision of the medical appeal tribunal is erroneous in point of law. I agree that the submission is well founded.

7. In the medical appeal tribunal's decision they have recorded among their findings and reasons,

"We have not seen any X-rays."

However listed in the schedule of evidence on the form BI256A dated 17 December 1985 is a report from a consultant radiologist dated 5 December 1985 together with two x-ray films. It is clear by the medical appeal tribunal's statement that they have failed to consider all the evidence which was available to them and which the claimant was expecting to be taken into account in their considerations.

8. There were further errors. The tribunal stated in the reasons for their decision that:

"Altogether symptoms are not suggestive of a torn medial meniscus, and are more suggestive of post-meniscectomy arthritis."

And again

"The temporary exacerbation of the pre-existing condition caused by the relevant accident has in our view now passed off."

This of course was a decision the medical appeal tribunal was entitled to reach in the light of their expert knowledge and experience. However they have failed to explain adequately their reasons for this decision by not stating why they did not accept the evidence of a consultant. It is contained in a report dated 11 July 1986. The consultant had attended the claimant during the previous trouble with his knee and had attended to the removal of the medial meniscus from the knee. He again saw the claimant in August 1984 and had examined him for the purpose of making the report on 17 March 1986. In the course of the report the consultant stated

"There is no doubt that [the claimant] has got a lot of pain and this may be partly due to the development of post meniscectomy arthritis in the left knee joint. The accident in 1984 was so that it definitely produced symptoms in an otherwise painless knee until that accident."

The report also referred to the claimant having pain in the right knee, a point which the claimant had raised in his grounds of appeal to the medical appeal tribunal. It was incumbent upon the tribunal to state their reasons for rejecting the opinions expressed by the consultant so that the claimant could see why his appeal failed. It was also necessary for the members to deal with the question of the pain in the right knee. It is true that the tribunal said that they noted the consultant's report, but they did not say why his view that the continuing pain suffered by the claimant was at least partly due to the 1984 accident was rejected.

(Signed) J J Skinner
Commissioner

Date: 1 March 1988