C I 180/1981

IEJ/BOS

SOCIAL SECURITY ACTS 1975 TO 1980

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision C.I. 16/81

1. This appeal is brought on the claimant's behalf by his trade association; and before embarking upon a formal decision in what will of necessity be complex legal terms I should indicate in simple English that the appeal succeeds.

2. (1) I first declare to have been wholly void, as having been given without jurisdiction, the decision of a single medical practitioner (purporting to act as a review medical board) dated 30 January 1980 to the effect that there had been no unforeseen aggravation of a relevant industrial injury suffered by the claimant on 25 July 1978. The relevance of my so doing is explained later below.

(2) Secondly I set aside the decision given on 14 August 1980 in the claimant's case by a medical appeal tribunal and expressed to confirm the decision dated 13 February 1980 of a review medical board, and I direct that the claimant's appeal from that decision dated 13 February 1980 be re-heard by a differently constituted medical appeal tribunal. The ground on which I do so (which is accepted on behalf of the Secretary of State as obtaining) is failure on the part of the medical appeal tribunal who gave the decision dated 14 August 1980 to comply with regulation 23(1) of the Social Security (Determination of Claims and Questions) Regulations 1975 as to sufficiently stating their findings, their deficiency in this respect being correctly identified in the written submission on the present appeal by the claimant's association.

(3) It is convenient to interpose at this juncture that the appeal comes before the Commissioner pursuant to leave granted by the chairman of the medical appeal tribunal.

3. I can deal quite shortly with the facts material to my decision:

(1) The claimant having applied for a review on grounds of unforeseen aggravation of an industrial injury suffered on 25 July 1978 in respect of which he had claimed disablement benefit and on 2 March 1979 an initial medical board had assessed disablement resulting from the relevant loss of faculty at 13% from 23 January 1979 to 22 September 1979, a review medical board was arranged for 30 January 1980, to consist of two medical practitioners.

(2) By the time the claimant arrived - it is said he was late, but nothing turns on that for my purposes - one of the two medical practitioners had left, leaving only the other present.

(3) That single remaining practitioner dealt with the case alone and gave his decision dated 30 January 1980 as that of a review medical board and to the effect that there had been no unforeseen aggravation.

(4) For a reason I will shortly indicate it is the normal practice of the Secretary of State to direct reference of a case where what I have indicated above has ensued to a medical appeal tribunal to have the decision so given "set aside", and to have the case brought before a review medical board afresh once that has been done.

(5) In the present case the claimant's application for review on the grounds of unforeseen aggravation was brought before a medical review board on 13 February 1980 without the decision given by the single medical practitioner on 30 January 1980 having been "set aside" (due to an omission, by administrative oversight, to follow the practice above mentioned).

(6) On that occasion, 13 February 1980, two medical practitioners constituted and dealt with the application as a review medical board and gave their decision so dated - they decided in the same sense as the decision given on 30 January 1980, namely that there had been no unforeseen aggravation. But the claimant, being dissatisfied with that decision, appealed from it to a medical appeal tribunal and that tribunal heard the appeal on several occasions and ultimately on 14 August 1980 when they confirmed the review medical board's decision of 13 February 1980 - though by proceedings the record of which is defective in the respect I have already indicated.

4. As the matter now stands before me it is contended on the claimant's behalf and conceded on behalf of the Secretary of State that the defect above referred to obtains as regards the record of the proceedings of the medical appeal tribunal. But on behalf of the Secretary of State it is further contended that the decision expressed

as given on 14 August 1980 by the medical appeal tribunal is and should be declared a nullity because, it is said, there was, having regard to the existence of the decision given on 30 January 1980, no authority for the review medical board which sat on 13 February 1980 to consider the claimant's application for review and accordingly their decision was a nullity and as such no proper foundation upon which to found jurisdiction on appeal from it in the medical appeal tribunal.

5. It is convenient to interpose at this juncture that:

(1) the practice referred to in paragraph 3(4) stems from the view taken on behalf of the Secretary of State that any issue as to whether unforeseen aggravation has occurred which arises in reference to section 110(2) of the Social Security Act 1975 ("the Act") is an issue for determination only by a medical board duly constituted under paragraph 1 of Schedule 12 to the Act by two or more medical practitioners and it is not an issue which can properly be determined by a single medical practitioner pursuant to the provisions of section 111(1) of the Act (reference to a single doctor) and regulations thereunder

(2) having regard to the definition of "disablement questions" in section 108(1) of the Act and to the use of that term in section 111(1) as definitive of the only subject matter thereby authorised for reference to a single medical practitioner I am quite satisfied that the practice above referred to correctly reflects the law in point and that - any question as to the claimant's consent apart - it was <u>not</u> within the jurisdiction of the single remaining medical practitioner before whom the claimant appeared on 30 January 1980 to give a ruling as to unforeseen aggravation of the results of the claimant's relevant injury.

6. (1) That being so, the decision purportedly so given falls properly within the first category of cases classified in the tribunal's Decision R(U) 3/63 i.e. (see paragraph 10 of that decision) where a decision has been given which it was not for the giver to give at all, because the jurisdiction so to decide is entrusted by statute to some other body.

But in R(U) 3/63 the Tribunal were directly contemplating only the course to be adopted where the purported decision of a local tribunal so tainted came in issue before them under the normal operation of the hierarchy of appellate jurisdictions - whilst in the present case the status of the purported decision of 30 January 1980 is not brought in issue before me by that route (if at all) - although I cannot effectively determine the issue which has now come

before me by the normal route without taking into account and reaching a conclusion upon the status of that purported decision as between a nullity and a decision valid until and unless set aside for irregularity.

In my judgment I am in the circumstances both entitled and required for the purposes of the appeal before me to proceed on the footing that the purported decision dated 30 January 1980 was void ab initio. For as distinct from a decision which although defective and voidable stands valid until duly set aside by the appropriate procedure, such "decision" was in truth and in law no decision by a medical board properly so called - and in consequence never was any impediment to a properly constituted medical board proceeding to entertain and give their decision upon the claimant's application for review (as was and did the review medical board of 13 February 1980).

(2) Accordingly, whilst I am for convenience and clarity making the declaration contained in paragraph 2(1) above, the true position is in my judgment that for the purposes of my decision it is an established fact that there was no competent adjudication upon the claimant's application for review prior to that of 13 February 1980.

(3) Thus, in my judgment, whilst the normal administrative practice of the Secretary of State referred to in paragraph 5(1) is clearly a useful one to continue, in the interests of clarity and certainty, an accidental omission to carry it through is not fatal to the validity of a subsequent decision upon the same application for review by a properly constituted review medical board if the first "decision" was truly a nullity "ab initio" (from the start).

7. (1) So proceeding, the way is clear for me to give the decision expressed in paragraph 2(2) above - against which of itself no contrary contention has been advanced on the Secretary of State's behalf, although I have before getting to that position needed to take account of (but have in the event rejected) the submission on the Secretary of State's behalf to which I have secondly referred in paragraph 4 above.

(2) I am relieved to have been able to deal with the matter in the way I have, as it could not be in the interests of the public or the claimant that the appeal brought before me should abort, in consequence of the earlier administrative oversight, leaving the expenditure of time and money incurred by all concerned with the review medical board's hearing on 13 February 1980 as well as that of the medical appeal tribunal wholly wasted.

8. My decision is as stated in paragraph 2 above.

(Signed) I Edwards-Jones
Commissioner

Date: 1 September 1981

Commissioner's File: C.I. 180/1981
DHSS File: I 2271/5442