

MJG/BC

SOCIAL SECURITY ACTS 1975 TO 1984

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

- 70
SI/2/10/1984
1. I allow the claimant's appeal against the decision of the medical appeal tribunal dated 26 January 1984 and I set that decision aside as being erroneous in law. I remit the case for rehearing and redetermination to a differently constituted medical appeal tribunal. Social Security Act 1975, section 112 as amended and the Social Security (Adjudication) Regulations 1984 [SI 1984 No 451], regulation 39.
 2. This is an appeal to the Commissioner by the claimant, a man born on 6 October 1953 and thus now aged 31, against the decision dated 26 January 1984 of the medical appeal tribunal that there had been no unforeseen aggravation of the results of the relevant injury to the claimant's back caused by an industrial accident on 10 January 1977, since a final assessment by a medical board (on 4 June 1980) of relevant loss of faculty as being 3% from 10 July 1980 to 9 January 1981.
 3. The claimant's appeal is on the footing that the medical appeal tribunal did not comply fully with regulation 23(1) of the Social Security (Determination of Claims and Questions) Regulations 1975 [SI 1975 No 558 - now replaced by regulation 34(4) of the above-cited Adjudication Regulations]. That regulation requires a medical appeal tribunal to give reasons for its decision and make findings of fact on all material questions. The claimant's appeal on that ground is supported by the Secretary of State's representative in a written submission dated 3 September 1984, where he submits as follows (paragraph 13).

"It is submitted on behalf of the Secretary of State that the decision of the MAT of 26 January 1984 should be held to be erroneous in point of law for failure to comply with the requirements of regulation 23(1) of the Social Security (Determination of Claims and Questions) Regulations 1975 (now regulation 34(4) of the Social Security (Adjudication) Regulations 1984) in that the MAT have failed to deal with the claimant's specific contention that the degenerative joint disease referred to in the decision of the medical board did not pre-exist the relevant accident. As this contention formed the main basis of the claimant's appeal to the MAT it was incumbent upon the tribunal to deal with it".

4. I have given careful consideration to the reasons given by the medical appeal tribunal for refusing leave to appeal. Technically the question should have been dealt with by the chairman alone not the full tribunal - see regulation 35 of the above-cited Adjudication Regulations but, as the chairman participated, I do not consider that any harm has been done. I have taken note of why the tribunal did not deal with the issue referred to in the Secretary of State's submission but I have come to the conclusion that that submission is right and that the claimant was entitled to have the medical appeal tribunal's findings and reasons on this particular point.

5. The Secretary of State further submits (paragraph 14) as follows,

"... that the decision of the MAT of 26 January 1984 should be held to be erroneous in point of law for want of compliance with the requirements of natural justice in that the MAT failed to give the claimant an opportunity to answer their finding that 'we consider that the trouble is functional rather than organic'. In the absence of any evidence which might indicate that the claimant had a functional problem, it is submitted that the MAT have raised a new point of real importance and should have given the claimant an opportunity to deal with it".

I have given careful consideration to this, bearing in mind that the medical appeal tribunal is the final arbiter on all medical and factual questions and the medical members of the tribunal are of course entitled to exercise their independent expertise and clinical judgment. However, I have come to the conclusion that the Secretary of State's submission must be accepted on this point also, since the claimant was entitled to give an answer to the assertion that his trouble was functional ie psychological. I must therefore for that reason also set the medical appeal tribunal's decision aside.

6. The new medical appeal tribunal that hears this case will wish to consider the above points so as to ensure that they are adequately dealt with at the new hearing. Having said that I should indicate that my having allowed this appeal is no indication whatsoever of any view by me as to whether the substance of the claimant's claim for alleged aggravation of his injury has any foundation. That it is entirely a matter for the new medical appeal tribunal.

(Signed) M J Goodman
Commissioner

Date: 19 December 1984

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