C1/226/1980

Decision C.I. 2/81

This decision is numbered because -

(i) this is not the first time that a medical appeal tribunal have dealt with an application for leave to appeal made out of time which they have no jurisdiction to do (paragraph 2);

(ii) of a summary of the general principles of procedure before a medical appeal tribunal. (paragraphs 4-6)

J S W

C1 226/1980

JSW/AG

SOCIAL SECURITY ACTS 1975 TO 1980

APPLICATION FOR LEAVE TO APPEAL FROM DECISION
OF MEDICAL APPEAL TRIBUNAL ON A QUESTION OF LAW

Decision C.I. 2/81

1. I grant an extension of time for making an application for leave to appeal to the Commissioner but the application for leave to appeal from the decision of the medical appeal tribunal dated 24 September 1979 is refused.

2. The claimant's application for leave to appeal to the Commissioner was made to the medical appeal tribunal beyond the prescribed time of 3 months from the date on which the decision of the tribunal was given, provided by regulation 26(1)(b) of the Social Security (Determination of Claims and Questions) Regulations 1975. The tribunal nevertheless purported to deal with the application and refused leave to appeal. They should have advised the claimant that his application was out of time and to apply to a Commissioner who, by regulation 26(3) of the said regulations may, if for special reasons he thinks fit, proceed to consider and determine the application. I agree with the submission of the Secretary of State that, in the circumstances, the refusal of the tribunal to give leave to appeal was a nullity. That being so, it is open to me to determine the application as if there had been a failure to apply to the medical appeal tribunal for leave to appeal within the prescribed time.

3. The tribunal confirmed the decision of a medical board assessing disablement from the loss of faculty at 1% from 17 May 1979 for life. At the hearing the claimant was represented by an official of his trade union. The main grounds of the claimant's application for leave to appeal to the Commissioner deal with medical matters, which are for the tribunal to determine. Section 112 of the Social Security Act 1975 provides that an appeal lies to a Social Security Commissioner from any decision of a medical appeal tribunal only with leave and only on the ground that the decision is erroneous in point of law. A Commissioner has no jurisdiction to decide medical questions on an appeal from a medical appeal tribunal or to determine the relevant loss of faculty or to assess the degree of disablement, if any. Those are matters for the tribunal to determine. It does not therefore assist a claimant's case on an application or an appeal to a Commissioner to submit a further medical report prepared after the date of the medical appeal tribunal's decision.

4. The claimant has also stated, in his grounds, that his case was the last for the day and was over 2 hours late in being heard. He has stated that he was in and out in 15 minutes and everyone seemed to be in a hurry to get away. Even his trade union representative was more worried about another appointment which he should have attended an hour earlier. While the claimant does not wish to question the tribunal members knowledge of certain matters, he is certain that the 1% assessment is not a realistic figure. He has concluded that there may be no point of law arising but he feels there is some injustice. The claimant's representative has not submitted any observations.

5. While it is plainly undesirable that proceedings should be, or should appear to be, hurried, aspects of a case, which might appear to a person unfamiliar with them to require lengthy consideration, r t seem relatively simple to qualified persons of experience. l ers of a tribunal exercising their medical expertise might readily be able to recognise a condition and assess the degree of disablement without lengthy consideration. Proceedings before a medical appeal tribunal are in the nature of an enquiry and the medical authorities set up under the Acts are expert investigating bodies entitled to use their own expertise to reach their own expert conclusions upon matters of medical fact and opinion. R v Medical Appeal Tribunal (North Midland Region), Ex parte Hubble /1958/ 2 Q.B. 228 at pages 240-41; /1958/ 2 All E.R. 374.

6. It would be incorrect to treat the procedure before a medical appeal tribunal as though they were a court. They are not obliged to find according to evidence and opinion in medical reports submitted to them. General principles to be observed are that a claimant must be given an opportunity to be represented, to be provided with copies of the relevant documents, to state his case and to be assisted in so doing. (Decision R(I) 6/69, paragraphs 6-7). The requirements of natural justice must be observed (Decision R(I) 29/61, paragraphs 16-18, ecision R(I) 14/75). A claimant must also be given an opportunity to eal with any fresh aspect of a case which has not arisen previously and of which he has had no notice. (Decision R(I) 4/71, paragraphs 8-9). The tribunal must also record adequate reasons and findings for their decision and deal with any specific contention relied upon by a claimant or his representative, although their reasons and findings need not necessarily be lengthy (Decision R(I) 18/61, paragraph 13, and regulation 23(1) of the said regulations.

7. I have examined the record of the case and the case papers bearing in mind the principles I have mentioned. I can find nothing in them or in the claimant's grounds for leave to appeal which indicates that the decision of the medical appeal tribunal may be erroneous in point of law. Leave to appeal is therefore refused.

(Signed) J S Watson
Commissioner

Date: 11 February 1981

Commissioner's File: C.I. 226/1980
DHSS File: I. 2271/5301