

JSW/LF

CI 288/1982

SOCIAL SECURITY ACTS 1975 TO 1981

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the medical appeal tribunal, dated 14 May 1982, is erroneous in law and is set aside.

2. The claimant appeals with leave of the medical appeal tribunal, who gave as their reason that "There is an apparent discrepancy in the medical findings relating to the knee".

3. The claimant sustained an industrial accident on 2 September 1980. On 4 March 1981, an initial medical board found injury to left leg as the fully relevant condition resulting from the accident and recorded osteoarthritis in spine, hysterectomy and appendicectomy as unconnected conditions. Disablement resulting from the relevant loss of faculty was provisionally assessed at 6% from 3 March 1981 to 2 September 1981. On 5 August 1981, a re-assessment medical board, who additionally recorded myxoedema, cholecystectomy, bladder operation, psychologically upset at present and injury to back 1970 as unconnected conditions, finally assessed disablement resulting from the relevant loss of faculty at 6% from 3 September 1981 to 2 December 1981.

4. On 22 December 1981, the claimant applied for a review on the ground of unforeseen aggravation since the last assessment was made. On 26 February 1982, a medical board decided that there had not been unforeseen aggravation of the results of the relevant injury. On appeal by the claimant, the medical appeal tribunal confirmed the decision of the medical board. The tribunal recorded their reasons and findings as follows:-

"We have heard from the claimant and her daughter and considered all the scheduled evidence. We have examined the claimant and viewed the X-ray films. We have noted the report by Dr Johnson dated 14.10.81 submitted to-day.

On examination of the left knee, there is no swelling. She has full movements with encouragement and the ligaments are stable. There is no undue crepitus on flexing the knee. She complains

of acute tenderness to pressure all round the knee-cap and over both sides of the lower femur and upper tibia.

We can find no evidence of any continuing disability in this lady's knee."

5. It is submitted on behalf of the Secretary of State that, despite the reason stated by the medical appeal tribunal for granting leave to appeal, no point of law of any substance is disclosed. Regulation 23(1) of the Social Security (Determination of Claims and Questions) Regulations 1975 [S.I. 1975 No. 558] provides that the record of the decision of a medical appeal tribunal shall be in writing and shall include a statement of the reasons for their decision, including their findings on all questions of fact material to the decision. That is a mandatory provision which, as I understand it, is required in order that claimants and others unfamiliar with medical matters and the operation of the adjudicating system might understand why the appeal has either failed or succeeded. In the present case, those thoroughly familiar with the system might well be able to infer the findings of the tribunal but the tribunal considered that there is a discrepancy. In my opinion, the finding of no evidence of any continuing disability in the knee introduces an ambiguity after the other recorded medical findings.

6. By section 108(2) of the Social Security Act 1975, disablement questions, in relation to industrial injuries benefit, shall be referred to and determined by a medical board or a medical appeal tribunal. An appeal from a decision of a medical appeal tribunal lies to a Commissioner with leave only on a point of law. The medical adjudicating authorities are the sole judges of medical questions. It is therefore important that their reasons and findings should be clear and capable of being understood by those unfamiliar with medical matters. When they are not, it is salutary to remit the case to the tribunal, even although there might not be a different result, because attention is thus drawn to the statutory requirement which, unfortunately, is not always properly complied with, leading to appeals which should not be necessary and introducing doubt when a decision comes before a Commissioner.

7. I agree with the submission on behalf of the Secretary of State that the grounds of the claimant's appeal disclose no point of law. In my judgment, however, for the reasons I have stated, the decision of the medical appeal tribunal is erroneous in point of law in that there was a failure to comply adequately with regulation 23(1) of the Determination of Claims and Questions Regulations. I set aside the decision and direct that the claimant's appeal be re-heard by the medical appeal tribunal, differently constituted if practicable.

8. An oral hearing of the appeal seems to have been assumed on the claimant's behalf but, after considering the record of the case and the reasons for the request, I was satisfied that the appeal

could properly be determined without a hearing and the claimant was so informed in writing.

9. The claimant's appeal is allowed.

(Signed) J S Watson
Commissioner

Date: 17 November 1982

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