

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: Edmund William Sowter

Medical Appeal Tribunal: London South

Original Decision Case No: LS 944/85

1. My decision is that the decision of the Medical Appeal Tribunal (hereinafter called MAT) dated 12 June 1985 is erroneous in point of law. Accordingly I set it aside and in accordance with normal practice it falls to be heard by a differently constituted medical appeal tribunal.
2. This is an appeal by the claimant with the leave of the Commissioner to the Commissioner against the decision of the MAT confirming decisions of the medical boards of 22 November 1983 and the decision of the adjudicating medical authority on 3 July 1984.
3. The facts and history of the case are dealt with in paragraphs 1 to 16 inclusive of the submission dated 7 May 1986 made on behalf of the Secretary of State on which the claimant has had the opportunity to comment. No useful purpose would be served by my setting out these matters afresh here.
4. In my judgment the decision of the MAT is erroneous in point of law for the reasons given in this paragraph of my decision immediately below.

The appeal before me is on a question of law. The questions which fall for determination by the MAT were whether by virtue of section 110(1) of the Social Security Act 1975, the MAT if satisfied by fresh evidence, could review the decisions of the medical board of 15 November 1971 and the MAT of 16 June 1981 on the grounds that these decisions were given in ignorance of a material fact or based on a mistake as to a material fact; and whether by virtue of section 110(2) of the Social Security Act 1975 there had been any unforeseen aggravation of the results of the relevant injury since the assessment made on 15 November 1971 and, if so, to assess the extent and duration of the resulting disablement; and whether with regard to the first question above referred to in respect of section 110(1) the MAT were required to determine whether there was a material fact in existence at the time of the decisions of the medical board of 15 November 1971 or the MAT of 16 June 1981 of which the medical board or the MAT were ignorant or mistaken, if so; since the decisions were given was there fresh evidence available which pointed to that fact; if so could the decisions of the medical board of 15 November 1971 or MAT of 16 June 1981 be reviewed; and whether with regard to the second question referred to above in this paragraph in respect of section 110(2) the MAT were required to determine if there was any worsening of the claimant's condition since the assessment made on 15 November 1971; whether that worsening was unforeseen; and to what extent such worsening was due to conditions other than those resulting from the relevant accident for example pre-existing or constitutional conditions; the MAT have stated that the conditions for a review on the grounds of fresh evidence and unforeseen aggravation are not satisfied and that the claimant suffers from a florid psychoneurosis of constitutional origin which affects his view of his disability. However the MAT have not gone on to consider whether this finding is related to the

relevant condition of anxiety state which was included in the findings and assessment of the medical board of 15 November 1971.

In my judgment the MAT also erred in law in that their decision failed to comply with regulation 34(4) of the Social Security (Adjudication) Regulations 1984 in that the MAT have failed to set out comprehensively their findings on all questions of fact material to their decision, in particular why the findings by Mr Davis as the result of the operation on 23 March 1983, had no connection with the injury sustained in 1966 but was merely a degenerative process which was not relevant to their decision.

5. Accordingly the claimant's appeal is allowed.

(Signed) J B Morcom
Commissioner

Date: 28 November 1986