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MAT - S. 47(A) SCAA - ^{copy} Recommendation for
Leave of absence An MAT has considered
An Leave Assessment.

93/94

JMH/JC/3

Commissioner's File: CI/599/1993



See Assessment to
AMA by Assessment
Committee

DSS File:

SOCIAL SECURITY ACTS 1975 TO 1990
SOCIAL SECURITY ADMINISTRATION ACT 1992
APPEAL FROM DECISION OF MEDICAL APPEAL TRIBUNAL ON A QUESTION
OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that since the claimant did not obtain the leave of a medical appeal tribunal, the decision of the adjudicating medical authority on 18.9.92. was a nullity, with the consequence that the decision of the MAT on 15.3.93. was also a nullity. If the claimant wishes to seek a review of the relevant assessment, then she will first have to seek, and obtain, the leave of a MAT to do so.

2. This is an appeal with the leave of the chairman from the decision of a MAT dated 15.3.93. It is supported by the Secretary of State.

3. (i) On 17.3.69. (T18/23) an AMA had assessed the extent of the claimant's disablement at 10% for life, Final. I shall call this "The 1969 Assessment".

(ii) On 24.8.91, the claimant requested a review of the 1969 Assessment on the grounds of unforeseen aggravation. On 15.10.81, a Medical Board considered the request and concluded that there had been no unforeseen aggravation since the 1969 Assessment (T30/7).

(iii) The claimant appealed to a MAT who, on 14.1.82., held as follows:

"Examination to-day substantially confirms the clinical findings of the Medical Board whose decision we confirm."

(iv) On 18.9.92, on an application for review, the AMA decided that T46/53 that there had been no unforeseen aggravation since the 1969 Assessment and the review was refused. The claimant had not obtained any leave from a MAT to make that application to the AMA.

(v) The claimant appealed to a MAT who, on 15.3.93. (T62/64) confirmed the decision of the AMA, but what they did or did not do is not strictly relevant for the purposes of this decision.

4. The grounds of the appeal and the short point of the case concerns whether the decision of the MAT under appeal had any effect at all having regard to section 47 (7) of the Administration Act 1992 (formerly section 110 (5) of the 1975 Act), which provides that an assessment made, confirmed or varied by a MAT cannot be reviewed under subsection (4) of that section (formerly section 11a (2) of the 1975 Act) without the leave of a MAT.

5. So far as is relevant to this case, section 47 provides as follows:-

"(4) Any assessment of the extent of the disablement resulting from the relevant loss of faculty may also be reviewed by an adjudicating medical practitioner if he is satisfied that since the making of the assessment there has been an unforeseen aggravation of the results of the relevant injury....

"(7) An assessment made, confirmed or varied by a medical appeal tribunal shall not be reviewed under subsection (4) above without the leave of a medical appeal tribunal."

I think it may assist by reading into subsection (7) appropriate words so that subsection reads:

"An assessment made, confirmed or varied by a medical appeal tribunal shall not be reviewed [on the grounds that there has been unforeseen aggravation] without the leave of the medical appeal tribunal."

6. It is common ground, and it has not been suggested otherwise, that the 1969 Assessment is the relevant assessment for the purposes of subsection (4). I concur. The short question is therefore:

"When the MAT made their decision on 14.1.1982 were they making an assessment, were they confirming an assessment, or were they varying an assessment?"

On a strict construction it seems to me that they were confirming an assessment, but I do not think the matter is quite so easy as that.

7. The point is taken by the claimant's representative, and the alternative arguments are succinctly analysed by the Secretary of State in his submissions to the Commissioner, para 14(76) as follows:

Either

"1. This section [s47(7)] applies only to an appeal to the MAT which results in the confirmation or variation of the whole of the original decision (i.e. that the section only applies when the matter has come before the MAT on an appeal in respect of their substantive assessment)".

In this case, that would mean where there had been an appeal direct from the 1969 Assessment and not a on review.

"2. This section applies whenever a tribunal has either expressly or by necessary implications confirmed an earlier assessment".

or

That is what the MAT did in this case on 14.1.82.

8. Now why is it necessary at all for leave to be obtained if a MAT has made a decision on the assessment? What is the logic behind that requirement? I can only hazard a guess. The requirement that leave be obtained was intended to be some sort of, as it were, "filter" so as to prevent unlimited applications to the AMA for review in circumstances where a MAT has, as it were, put its seal of approval on an assessment. In those circumstances, prima facie there seems to be no difference between (i) the case where a MAT has approved an assessment of an AMA on appeal from an original assessment; and (ii) the case where there was an application for review on the grounds of unforeseen aggravation on which the MAT had made a decision. However, that conclusion might - and I emphasise the hypothetical nature of that word - involve a conclusion that there should not be apportioned any greater weight to the former case than to the latter.

9. However the Secretary of State makes a very relevant point. He says:

"The theoretical difficulty with [his second alternative construction] is that at first sight it requires leave to be granted in a situation where the original MAT may not have been looking in detail at the original assessment at all but only at the question whether there was unforeseen aggravation as to justify a review."

But he neatly suggests an answer: he refers to R(I) 18/61 where a tribunal of commissioners set out what a MAT had to decide in considering whether there had been an unforeseen aggravation of the results of the relevant injury thus:

(i) Whether there was in fact any worsening of the claimant's condition since the last assessment was made;

(ii) If so, whether that worsening was an aggravation of the results of the relevant injury or whether it was due to constitutional or other causes;

(iii) If it was such an aggravation whether the aggravation was foreseen and sufficiently allowed for in the latest assessment or was unforeseen and merited a higher assessment.

The Secretary of State continues:

"It is submitted that in order for the MAT to be able to answer these questions they had to conduct their own medical examination of the claimant and assess the extent to which he is disabled as a result of the effects of the relevant injury and any other affective cause. Having made their assessment of the claimant's disablement the MAT can see by comparing their assessment with the latest assessment made (i.e. the one which the review is in respect of), whether the claimant's condition has worsened."

Indeed in 1982, the MAT expressly confirmed the decision of the medical board and said (I repeat):

"Examination today substantially confirms the clinical findings of the medical board whose decision we confirm."

When that is read against the background of what I tentatively perceive to be the purpose behind subsection (7) - viz it is a filter - it makes me think - and so I hold - that the Secretary of State's second alternative argument is correct namely:

"This section applies whenever a tribunal has either expressly or by necessary application confirmed an earlier assessment."

10. It seems to me that had the MAT decided in 1982 that the 1969 Assessment was no longer valid and the correct assessment was say 15%, they would, within the subsection, clearly have "varied" the 1969 Assessment. That is, I think, the natural construction. It would certainly have involved them looking in detail at the 1969 Assessment. In the event, they left the 1969 Assessment as it was and it seems to me, on a natural construction, that they must therefore have "confirmed" 1969 Assessment.

11. My decision is therefore set out in para 1 above. This is a difficult case and I am particularly indebted to the Secretary of State for his careful and illuminating analysis of the case and the law.

(Signed) J.M. Henty
Commissioner
(Date) 15 September 1994