DGR/SH/2

Commissioner's File: CI/605/1993

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. For the reasons set out below, the decision of the Medical Appeal Tribunal ("MAT") given on 19 January 1993 is not erroneous in point of law, and accordingly this appeal fails.

2. On 2 November 1988 the claimant had the misfortune to suffer an industrial accident. On 8 December 1988 he claimed disablement benefit. The history of that claim is set out in the submissions of the Secretary of State dated 23 November 1993, and there is no merit in my repeating such history here. Suffice it to say that the claimant contends that the decision of the MAT of 19 January 1993, not confirming the decision of the review medical board dated 10 April 1991, but finally assessing disablement at 5% from 26 November 1990 for life after offsetting 36% for depression, was in the circumstances of the case erroneous in point of law. The claimant complains of the alleged inadequacy of his award. He does not accept that a 36% offset is fair, and contends that the 5% award should be increased to at least 14%. Manifestly, challenges to the medical judgment of the tribunal do not raise points of law, and it is not open to me to interfere with the medical judgment of the tribunal. Accordingly the claimant's grounds of appeal are without foundation.

3. However the Secretary of State supports the appeal, and contends as follows:-

> " 14. The Secretary of State notes the observations made by the Commissioner when he granted leave to appeal on

8 October 1993 .. and Commissioner's decision CI/151/1987 ... As the Commissioner has observed, the decision of the initial AMA completed on 3 July 1989 ..... contains a number of amendments, including a reduction in the level of the assessment from 15% to 2%, which had been initialled by the AMA chairman only. Regulation 30(1) of the Social Security (Adjudication) Regulations 1986 requires the decision of the AMA to be signed by all members of the authority. That has not occurred in this case. In the circumstances it is submitted that, in accordance with what the Commissioner has said in CI/151/1987, the decision dated 3 July 1989 is an irregularity and, for justice to be seen to be done, it should be set aside and the matter referred to another adjudicating medical authority to start afresh. If the Commissioner accepts this submission then it follows that the decisions of the review medical boards dated 30 October 1989 ...., 4 October 1990 .... and 10 April 1991 .... will also need to be set aside as they were reviews of the original initial assessment. The decisions of the MAT dated 27 February 1992 ...., 27 April 1992 .... and 19 January 1993 .... will also need to be set aside as they dealt with an appeal from the claimant following the decision of the review medical board dated 10 April 1991. In this context the Commissioner may wish to note that as the decision of the MAT dated 27 April 1992 ... was only signed by the MAT chairman it could be argued that that decision should be held to be erroneous in point of law as it does not comply with the requirements in regulation 31(4) of the Social Security (Adjudication) Regulations 1986 that the MAT's decision should be signed by all the members of the tribunal."

I reject that submission.

4. I will assume, for the moment, that the initial adjudicating medical authority's decision of 3 July 1989 was vitiated by an irregularity. However, nothing would seem to turn on the point. For that decision was reviewed on various occasions, and one of those review decisions, namely that made on 10 April 1991 was in turn considered on appeal by three different medical appeal tribunals. Manifestly, when once there was a review, then the initial adjudicating medical authority's decision ceased to have any significance. The adjudicating authorities who carried out the various reviews considered the claimant's condition, and decided whether or not there had been unforeseen aggravation of the effects of the accident since the initial assessment was made. In doing so, they considered the condition of the claimant, and refused to review, or made a fresh assessment, as the case demanded, to give effect to the claimant's medical condition at the date from which the relevant review took place. Accordingly, it would appear to me to be immaterial whether or not there was in fact an irregularity arising in the decision of the initial adjudicating medical authority of 3 July 1989. Moreover, I would add for completeness that the fact that the decision of the MAT of 27 April 1992 was only signed by the MAT chairman would likewise appear to be wholly immaterial. For that

particular decision called for the presentation of further evidence, and adjourned the hearing. It was not therefore a real decision.

5. But I cannot accept that the decision of 3 July 1989 was tainted with irregularity in the first place. On the face of it the decision was signed by all three members of the tribunal. However, there were certain alterations - and they were significant alterations - initialled by the chairman alone. A similar situation arose in CI/151/1987 where the Commissioner observed as follows:-

> " 2. The claimant on 13 June 1978 met with an industrial accident in which he sustained a strain in the groin. His first claim for industrial benefit was made on 6 December 1983; and on it a medical board seemingly gave a decision dated 11 May 1984 that from the end of the [personal] injury benefit period there had been no loss of faculty. A record of the decision on form B118 was signed by both members of the board, but it contains a number of alterations or deletions including the deletion of a net 3% assessment, which [is] initialled by one member of the board only. Regulation 33(1) of the Social Security (Adjudication) Regulations 1984 in force at the time required the decision to be signed by both members; and the deletions being initialled by one of them (the chairman) only, it is impossible to be sure they represent the view of both members of the board."

6. The decision in the present case was signed by all the members, and on the face of it they approved the alterations. The presumption is that the alterations were effected before the members signed. Such a presumption applies in the case of deeds:-

> "A writing proposed to be executed as a deed may be altered by erasure or interlineation or in any other way before it is so executed; any alteration so made before execution does not affect the validity of the deeds. Any alteration, erasure or interlineation appearing upon the face of a deed is presumed, in the absence of evidence to the contrary, to have been made before the execution of the deed." [Halsbury's Laws of England, 4th Edition, Volume 12, paragraph 1377.]

It is, of course, otherwise in the case of a Will. Although the document now under consideration was not a deed it is difficult to see why the same presumption should not apply in the case of a less formal document. In the words of the footnote to paragraph 1453 of Halsbury's Laws of England, Volume 12:-

> "The presumption that alterations are made before the execution of the instrument, which arises in the case of a deed ..., does not apply to an instrument under hand, although the reason for the presumption, namely, that the instrument cannot be altered, after it is executed, without

fraud or wrong, and that the presumption is against fraud or wrong ... seems to exist equally in each case."

However, there would appear to be old authority which says that where there has been an alteration it lies on the party who seeks to enforce an altered instrument to prove the circumstances under which the alteration took place.

7. In the present case, no one seems to have challenged the propriety of the decision. No one suggested that the alteration took place after the members of the tribunal had signed. Moreover, many years have elapsed since the signing, and many decisions have been made on the basis that the decision was in order. In those circumstances I would be very slow to conclude that there had in fact been any irregularity.

8. But even if the alteration was made after the members of the tribunal had signed, the validity of the decision would have been unaffected if all of them agreed to the amendment. Again there is nothing to suggest that if the alteration was effected after the signatures, such alteration was effected without the sanction of all the members of the tribunal. No complaint was ever lodged. The changes were initialled by the chairman, and challenges to the propriety of this would call into question the conduct of the chairman. In the absence of any evidence to the contrary, I consider the proper course is to assume that the chairman acted with complete propriety, and that he has correctly interpreted the wishes of the other members of the tribunal.

9. It is necessary to take the world as it is. Mistakes are often made in documents, and they are corrected either before signing, or subsequently with the sanction of the signatories. If the document is not subsequently challenged within a reasonable time, and is acted on thereafter without demur, it should be, and in practice is, accepted at its face value. In the present instance, I see no reason for doubting that the decision of 3 July 1989 as recorded accurately reflects the intention of the members of the tribunal. Whatever merit the approach of the Commissioner might have had in the circumstances of the case in CI/151/1987, it has no merit in the present instance. The decision of 3 July 1989 is not now open to challenge.

10. Accordingly I dismiss this appeal.

(Signed) D.G. Rice
Commissioner
(Date) 20 October 1994