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SOCIAL SECURITY ACTS 1975 TO 1981

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Medical Appeal Tribunal: Leeds

Original Decision Case No: 14810/80

Application for leave Case No: 25409/80

/ORAL HEARING/

1. I allow the claimant's appeal and set aside the decision of the medical appeal tribunal dated 10 July 1980. The case is remitted to a differently constituted medical appeal tribunal for rehearing and decision: Social Security Act 1975, section 112 and the Social Security (Determination of Claims and Questions) Regulations 1975, /S.I. 1975 No 558/ regulation 30.

2. This appeal was the subject of an oral hearing before me on 16 February 1981 at the request of the claimant's representative. The claimant was represented by Mr John Douglas, Solicitor, and the Secretary of State was represented by Mr J P Canlin, Counsel of the Solicitor's Office of the Department of Health and Social Security. I am greatly indebted to Mr Douglas and to Mr Canlin for their assistance to me at the hearing. I should put on record at this stage that at the hearing Mr Canlin indicated that he supported the appeal in so far as it was an appeal on the ground that the medical appeal tribunal had not given adequate reasons for their decision.

3. It is in fact on that ground that I hold the decision of the medical appeal tribunal of 10 July 1980 to be erroneous in law. Therefore in accordance with the usual practice, I remit the appeal to a differently constituted medical appeal tribunal for rehearing and for a new decision. It is, of course, a fundamental principle that if a tribunal, including a medical appeal tribunal, gives inadequate

reasons for its decision that is an error of law, whether or not the actual decision is correct - see unreported Commissioner's Decision C.S. 4/82 and R(A) 1/72 (para 8). Regulation 23(1) of the above-cited Determination of Claims and Questions Regulations provides as follows:-

> "23. (1) A medical appeal tribunal shall in each case record their decision in writing in such form as may from time to time be approved by the Secretary of State and shall include in such record, which shall be signed by all the members of the tribunal, a statement of the reasons for their decision, including their findings on all questions of fact material to the decision."

In my judgment, the medical appeal tribunal in this case did not fully comply with regulation 23(1).

4. The hearing before the medical appeal tribunal on 10 July 1980 was the hearing of an appeal by the claimant against a medical board's decision dated 29 January 1980 to the effect that the claimant did not satisfy the medical conditions for an award of mobility allowance. In a written submission to the tribunal dated 30 May 1980, the Secretary of State's representative brought to the tribunal's attention the detailed provisions of section 37A(1) of the Social Security Act 1975 and of regulation 3 of the Mobility Allowance Regulations 1975, /S.I. 1975 No 1573/ as amended by the Mobility Allowance Amendment Regulations, 1979 /S.I. 1979 No 172/.

5. No entry was made by the tribunal chairman on the prescribed form (MY 365), in the space which indicates that it is to contain a "Note by chairman of any statements made, evidence given, and points of law or procedure raised at the hearing." Although I appreciate the difficulties of medical appeal tribunals, having to deal with a large number of cases in a comparatively short space of time, I nevertheless consider that in all cases the chairman of medical appeal tribunals should enter, albeit in a short or precis form, a note of all relevant evidence, statements, and contentions at the hearing. I do not set aside this particular decision of the medical appeal tribunal on that ground alone, but nevertheless the failure to make any entry in the space provided has made it additionally difficult to ascertain from the reasons for decision given by the medical appeal tribunal what in fact were the component parts of the medical appeal tribunal's decision.

6. Under the head in the form MY356 "Decision of tribunal" the medical appeal tribunal merely left standing the typed phrase "The decision of the medical board is confirmed" and deleted the rest of the phrases. The tribunal did not therefore give answers to the typed statements in part 2 of the form, which requires a separate answer to 4 different questions i.e. whether the claimant is unable to walk; virtually unable to walk; whether the exertion required to walk would constitute a danger to life; and whether the exertion required to walk would be likely to lead to serious deterioration in the claimant's health. In my judgment, it is desirable for the tribunal not only to confirm the decision of the board but to support it by answering <u>all</u> the relevant questions.

7. However, regulation 3(1) of the above-cited Mobility Allowance Regulations (as now amended) contains additional detailed factual tests. It reads as follows:

> "3. (1) A person shall only be treated, for the purposes of section 37A, as suffering from physical disablement such that he is either unable to walk or virtually unable to do so, if his physical condition as a whole is such that, without having regard to circumstances peculiar to that person as to place of residence or as to place of, or nature of, employment -
>
> (a) he is unable to walk; or
>
> (b) his ability to walk out of doors is so limited, as regards the distance over which or the speed at which or the length of time for which or the manner in which he can make progress on foot without severe discomfort, that he is virtually unable to walk; or
>
> (c) the exertion required to walk would constitute a danger to his life or would be likely to lead to a serious deterioration in his health."

In my judgment, in their decision on a mobility allowance claim a medical appeal tribunal should indicate their findings of fact on each of the component parts of regulation 3(1).

8. However, in the present case the medical appeal tribunal did not fully comply with this requirement. Their "findings and reason for decision" read as follows:

> "The tribunal heard the representative of the claimant. They consulted all the case documents considering all the scheduled medical evidence, and mobility notes from the claimant's relations handed in at this Tribunal to be considered in evidence. They considered the contents of Regulation 3 of the Mobility Allowance Regulations 1979 with respect to the distance over which, the speed at which, and the manner in which the claimant can make progress on foot. They conclude that the claimant is NOT virtually unable to walk. The exertion required to walk does not constitute a danger to his life, nor is it likely to lead to a serious deterioration in his health. The decision of 29.1.80 Board is upheld."

9. Although the medical appeal tribunal made a conscientious attempt to deal with the details of regulation 3 of the Mobility Allowance Regulations, they erred in two respects. First, they did not mention specifically a factor in regulation 3(1)(b) namely "... the length of time for which ... he can make progress on foot without severe discomfort ...". Secondly the medical appeal tribunal made only one finding of fact on all the component parts of regulation 3(1)(b) when they stated, "the claimant is NOT virtually

unable to walk". Mr Canlin and Mr Douglas both submitted that the medical appeal tribunal should have made a finding on each of the component factual tests in regulation 3(1)(b) and not merely made an omnibus finding comprehending them all. Such submissions, which I accept, do not arise from any pedantic desire to look for 'technical' faults in a medical appeal tribunal's decision. It is simply that the parties to an appeal before a medical appeal tribunal should be able to tell from the decision itself what were the tribunal's findings of fact on each of the factual tests in regulation 3(1). If there is an omnibus conclusion such as that in this case, the parties cannot ascertain exactly why the medical appeal tribunal arrived at their conclusion. That is all the more so in this case, because the chairman of the medical appeal tribunal did not make any note of evidence, contentions etc (see paragraph 5 above).

10. I deal also with two subsidiary submissions made to me by Mr Canlin and by Mr Douglas respectively. Mr Canlin pointed out that the medical appeal tribunal did not in their decision deal with a conflict of evidence on how far the claimant could walk. Mr Canlin pointed out that the medical practitioner's report dated 24 August 1979 stated that the claimant could walk unaided for up to 200 yards without stopping, whereas in a written statement by the claimant's sister handed in to the medical appeal tribunal on 10 July 1980 it was stated (for reasons given) that the medical practitioner had made a mistake and that the distance should have been 25 yards and not 200 yards. No doubt the new medical appeal tribunal that rehears this case will deal specifically with this point.

11. A further point with which they will no doubt wish to deal was a contention made by Mr Douglas, namely that the medical appeal tribunal did not deal specifically with the contents of the detailed letter from the claimant's general practitioner (Dr H) dated 16 October 1979, which was strongly in support of the claim for mobility allowance. I indicated at the hearing that I did not consider that the failure by the medical appeal tribunal in this case specifically to deal with Dr H's report and to say whether they accepted or rejected it vitiated their decision. Nevertheless again the medical appeal tribunal that rehears this case ought, I consider, to deal specifically with Dr H's report and explain whether they regard it as correct or not.

(Signed) M J Goodman
Commissioner

Date: 8 April 1982

Commissioner's File C.M. 7/1981
DHSS File: B51023/228