Personality change - compare before.
Loss of faculty - seperate assessment - no general principle of aggregation.

SH/11/MD

Commissioner's File: CS/45/1988

Region: Midlands

SOCIAL SECURITY ACTS 1975 TO 1986

CLAIM FOR SEVERE DISABLEMENT ALLOWANCE

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Richard Norfolk Roberts

Appeal Tribunal: Nottingham

Case No: N 185/5/87

1. I allow this appeal by the claimant. The decision of the medical appeal tribunal dated 11 August 1987 was erroneous in law.

2. The claimant was born in 1925. On 9 November 1984 he was involved in a car accident. He appears to have made a good recovery but on 18 April 1985 he was involved in a second car accident. On 17 April 1986 he made a claim for severe disablement allowance. On 11 June 1986 he was examined by an adjudicating medical practitioner and by a decision of the same date the adjudicating medical authority assessed his disablement at 63% from 25 April 1985 to 30 April 1995. The claimant appealed and on 11 August 1987 the medical appeal tribunal confirmed the decision of the adjudicating medical authority. The claimant now appeals with the leave of the tribunal chairman.

3. The claimant requested an oral hearing of this appeal but I am satisfied that the appeal can be properly determined without a hearing.

4. To qualify for severe disablement allowance the claimant must suffer from "loss of physical or mental faculty such that the assessed extent of the resulting disablement amounts to not less than 80%": section 36(5) of the Social Security Act 1975. In reaching the figure of 63% as their assessment in their decision dated 11 June 1986, the adjudicating medical authority took into account the following conditions:-

> "1. Personality change following head injury - 30%.
>
> 2. Vertigo and deafness following head injury with pre-existing cervical spondylosis causing no symptoms prior to RTA [Road Traffic Accident] - 20%.
>
> 3. Chest pain following fractured ribs - 3%.
>
> 4. Urinary dysfunction - bladder instability with a benign prostate enlargement (C/R) - 10%."

In support of the claimant's appeal to the medical appeal tribunal the claimant's representative, Mr. James, a county council welfare rights officer, presented a very full and cogent written submission in which in paragraph 3 he set out 12 "areas" in which he submitted that the claimant had suffered a loss of faculty resulting in severe disablement and he submits that the decision of the adjudicating medical authority following the examination on 11 June 1986 "seems to reflect only some of the resulting disablements and

we would ask the tribunal to consider all the aspects detailed below". In the ensuing 12 paragraphs Mr. James has dealt in detail with each of the 12 areas that he has specified and the written submission concludes:-

> "The aim of this submission has been to show that [the claimant] suffers from loss of faculty with resulting disablements which appear not to have [been] taken into account by the previous adjudicating medical authority. This is in part due to new evidence which is now available in the reports from Dr. Godwin-Austen. While I would not attempt to put percentage figures on the disablements described (and I acknowledge the difficulty quantifying many of them) I think that, in view of the evidence which has been provided of additional disablements to those previously assessed at 63%, [the claimant's] total disablement should be sufficient to qualify him for severe disablement allowance. I would thus ask the tribunal to allow his appeal."

5. The medical appeal tribunal stated in their reasons for their decision that their medical examination agreed with the medical reports submitted, "including in particular, the two reports from Dr Godwin-Austen". They continued:-

> "The Tribunal sees no reason to disagree with any of the 12 matters referred to in paragraph 3 of [the claimant's] written submission, but are of the opinion that it would not be realistic in making a medical assessment of disability in this case to itemise a particular degree of disablement against each of these heads. It is particularly difficult to make an assessment in respect of personality change when the Tribunal has no practical experience of the personality before the change occurred, but our assessment of the personality of the claimant is that he presents a picture today, within the limits of a normal personality with no very great personality defect. We note in particular some slight speech difficulty and problems with his memory. He gives the appearance of someone who has made a good recovery from the severe injury which he did sustain, particularly at the time of the second accident.
>
> The Tribunal feels that it is not appropriate in this case for them to make a detailed assessment against each and every one of the problems referred to in Mr. James' paragraph 3, but having given careful consideration to all the evidence before us and in particular the reports from the medical men who have attended to [the claimant] and reported on his condition, and having carefully considered the detailed submission by Mr. James, we see no reason to interfere in any way with the total assessment at the rate of 63% made by the adjudicating medical authority which we find to be appropriate to cover the total disablement at the present time of [the claimant]. Accordingly, the decision of the adjudicating medical authority of 11.6.86 is confirmed."

At first sight it is difficult to see any error in those reasons. However, the chairman of the tribunal, in granting leave to appeal to the Commissioner, set out very helpfully in a note dated 24 September 1987 his views on the application. He pointed out that the claimant was seeking leave to appeal "essentially on the question whether separate assessments should have been made on each aspect of disablement suffered by the [claimant]" and he further pointed out that it is normal practice for medical men "in the process of diagnosis and assessment of their patient's condition to consider 'the whole person' as well as the individual complaints and to assess and treat the patient accordingly". It is not necessary for me to quote the whole of that note (which is in the case papers) but the chairman concludes:-

> "Nevertheless I agree with [the claimant's representative] that the point merits consideration by the Commissioner and accordingly leave to appeal is given."

6. The decision of the medical appeal tribunal

I have come to the conclusion that the decision of the tribunal was erroneous in law for two reasons.

7. The first reason is that set out in the grounds of appeal dated 11 November 1987 where it is submitted that the basic grounds for the appeal are that the medical appeal tribunal failed to make findings on all matters of fact material to their decision and therefore failed to comply with what is now regulation 31(4) of the Social Security (Adjudication) Regulations 1986 (which came into operation on 6 April 1987). It is contended that the 12 areas of disablement "were detailed" in such a way to contrast with the 4 separate areas of disablement which had been itemised and assessed by the adjudicating medical authority. It is submitted that the adjudicating medical authority had made a total assessment of 63% based on 4 disablements and -

> "... that in a situation where it is specifically put to an MAT that there are areas of disablement which were not put before the AMA, then the tribunal should make specific findings to explain how they have still seen fit to confirm the decision of the AMA."

8. The Secretary of State in the written submission to the Commissioner dated 26 May 1988 submits that the decision of the medical appeal tribunal should be held to be erroneous in point of law. In paragraph 2 he has submitted:-

> "... having accepted the claimant's submission as to the specific areas in which he suffered a loss of faculty, they failed to explain their decision sufficiently clearly for the claimant to be able to see whether they found any resultant disablement arising from those conditions not assessed by the AMA. From the face of the record, the claimant could be led to understand that the MAT accepted that he was disabled by a number of conditions, not taken into account by the AMA. It is not therefore clear why they decided that there was no reason to interfere with the total assessment given by the AMA."

I agree with those submissions made by the claimant and by the Secretary of State. Those submissions are clear and concise and do not require further repetition by me.

9. It is incumbent upon a medical tribunal

(i) to set out "a statement of the reasons for their decision, including their findings on all questions of fact material to the decision": regulation 31(4) of the Adjudication Regulations 1986; and

(ii) to record their reasons in a way in which the claimant will be able to understand and discern why they reached the decision which they did reach: R(A)1/72 at paragraph 8.

In the present case, as the Secretary of State has pointed out in the written submission at paragraph 3, the tribunal's " stated confirmation of the decision of the adjudicating medical authority, while apparently accepting the existence of disabilities not already assessed, is an inconsistency which may be said to have left the claimant guessing on a material point". In those circumstances, I have come to the conclusion that the decision of the medical appeal tribunal was erroneous in law.

10. Personality change

The second reason why the decision was, in my judgment, erroneous is as follows.

The medical appeal tribunal stated in their reasons (see paragraph 6 above):

> "It is particularly difficult to make an assessment in respect of personality change when a tribunal has no practical experience of the personality before the change occurred ... "

I appreciate the apparent difficulty. However, that difficulty can readily be overcome by making enquiries and obtaining evidence about the personality before the change. Where there is evidence that there has been a change of personality, it seems to me to be incumbent upon a tribunal to inquire into and make findings of fact as to the personality of the particular claimant before the change and to compare the personality before the change with the personality of the claimant after the change, and then to reach a decision as to whether or not there has been a loss of faculty; if there has been a loss of faculty, the tribunal must assess the extent of the disablement resulting from that loss of faculty. It seems to me that this follows from the statutory requirements.

11. Statutory requirements.

Section 36 of the Social Security Act 1975 (introduced by the Health and Social Security Act 1984 section 11) provides that a person shall be entitled to a severe disablement allowance if he satisfies certain conditions. One of those conditions is that on the relevant day "he is both incapable of work and disabled": section 36(3)(a). The meaning of "disabled" is set out in section 36(5) which reads:

> "(5) A person is disabled for the purposes of this section if he suffers from loss of physical or mental faculty such that the assessed extent of the resulting disablement amounts to not less than 80 per cent."

"Assessed" means "assessed in accordance with Schedule 8 to this Act": section 36(8). Schedule 8 provides:

> "1. For the purposes of section 36 or 57 of this Act, the extent of disablement shall be assessed, by reference to the disabilities incurred by the claimant as a result of the relevant loss of faculty, in accordance with the following general principles:-
>
> (a) save as hereafter provided in this paragraph, the disabilities to be taken into account shall be all disabilities so incurred (whether or not involving loss of earning power or additional expense) to which the claimant may be expected, having regard to his physical and mental condition at the date of the assessment, to be subject during the period taken into account by the assessment as compared with a person of the same age and sex whose physical and mental condition is normal;
>
> (b) [not relevant];
>
> (c) the assessment shall be made without reference to the particular circumstances of the claimant other than age, sex, and physical and mental condition;
>
> (d) [not relevant]."

Paragraph 2 then provides that regulations may be made "for further defining the principles on which the extent of disablement is to be assessed and such regulations may in particular

direct that a prescribed loss of faculty shall be treated as resulting in a prescribed degree of disablement ... ". To qualify for severe disablement allowance, therefore, there must be a "loss of faculty". "Loss of faculty" was defined in R(I) 12/80 at paragraph 10 as follows:

> " ... And 'loss of faculty' denotes a loss of power or function of an organ of the body which is a cause of inability to do things: per Lord Diplock in Regina v National Insurance Commissioner, Ex parte Hudson [1972] AC 944 at p 1010C; see also the Supplement to Decision R(I) 3/69 at p 200E. A loss of faculty may be physical or mental and the relevant loss of faculty is that resulting from the relevant accident."

A Tribunal of Commissioners in R(I) 5/84 at paragraph 7 expressed their agreement with that citation. I appreciate that for the purposes of severe disablement allowance under section 36 of the Social Security Act 1975, a claimant does not have to show a loss of faculty "resulting from the relevant accident": that is a relevant consideration only where the claim is for disablement benefit. Nevertheless, "loss of faculty" must, in my judgment, have the same meaning in section 36(5) for the purpose of severe disablement allowance as it has in section 57(1) dealing with disablement benefit, namely "a loss of power or function of an organ of the body which is a cause of inability to do things" and which may be "physical or mental".

12. Accordingly, in my judgment, it is incumbent upon a tribunal, where it is submitted that there has been a personality change, to inquire into and reach a decision as to whether or not that personality change has resulted in a loss of faculty, physical or mental. The tribunal in their reasons stated that the claimant presented "a picture today, within the limits of a normal personality with no very great personality defect", although they noted "some slight speech difficulty and problems with his memory". It is clear that they did not inquire into or obtain any evidence as to the claimant's personality "before the change occurred". Their failure so to do constituted, in my judgment, also an error of law. For those reasons I set aside the decision.

13. Separate assessments.

Although I have set aside the decision, the appeal raises an important and fundamental question, namely should separate assessments be made on each aspect of disablement suffered by the claimant? I will now deal with that point.

14. In his written submission dated 11 November 1987, in paragraph 2, the claimant's representative has submitted that:-

> "...where there are distinct disabilities resulting from a loss of faculty and ... where these disabilities are put separately before an MAT, then the MAT should make separate assessments of the disabilities put before them ... I recognise that such an approach is not without difficulties - not least in the fact that the interplay of different disabilities can often lead to a final assessment which is either more than or less than an aggregate of the separate assessments. Nonetheless I would suggest that, for the claimant to be able to see the basis on which a decision has been made, MATs should make separate assessments and then should proceed to consider whether the interplay of various disabilities will affect their final assessment.
>
> The assessment of disablement for the purposes of awarding SDA is an area in which there exists a lot of confusion. Some guidance on the issue would be of assistance all round."

To attempt to answer that question I think it necessary to consider (i) the legal requirements (ii) the duties of a medical appeal tribunal and (iii) the disabilities in the present case .

15. The legal requirements.

It will be clear from paragraph 11 above that, in making the assessment "all disabilities" are to be taken into account by the medical appeal tribunal: Schedule 8 paragraph 1(a) to the Social Security Act 1975. That, however, does not answer the question whether or not there should be separate assessments for each disability. As I indicated in paragraph 11, Schedule 8 paragraph 2 provides that regulations may be made "for further defining the principles on which the extent of disablement is to be assessed ... " and for the purposes of section 57 of the Act (see Schedule 8 paragraph 1 above) the present regulations are the Social Security (General Benefit) Regulations 1982 (1982 S.I. No. 1408), Part III of which is headed "Provisions Relating to Industrial Injuries Benefit only". The regulations dealing with severe disablement allowance are the Social Security (Severe Disablement Allowance) Regulation 1984 but there is no regulation dealing with this point. Is there any help from decided cases?

16. The decided cases

In R(I) 39/61 a Tribunal of Commissioners was dealing with a claim for disablement benefi arising out of an industrial accident. At that date the assessment of disablement and disablement benefit were dealt with under section 12 of the National Insurance (Industrial Injuries) Act 1946 and severe disablement allowance had not yet been introduced. That was introduced by section 11 of the Health and Social Security Act 1984 in substitution for non-contributory invalidity pension. Section 12(2) of the National Insurance (Industrial Injuries) Act 1946 provided that the extent of disablement should be assessed "by reference to the disabilities incurred by the claimant as a result of the relevant loss of faculty" in accordance with the principles there set out. Those principles are set out in regulation 2 of the National Insurance (Industrial Injuries) (Benefit) Regulations 1948. Regulation 2(2) of those regulations provided that where as a result of the relevant accident the claimant had suffered an injury specified in the first column of the First Schedule to those regulations, "the loss of faculty suffered by the claimant as a result of that injury shall be treated for the purpose of section 12 of the Act (which section relates generally to the assessment of disablement and disablement benefit) as resulting in a degree of disablement set against such injury in the second column of the said First Schedule". The First Schedule set out under the heading "Prescribed degrees of disablement" a list of injuries with a figure for a percentage degree of disablement against each injury e.g. "Item 1 Loss of both hands or amputation at higher sites ... 100%". Those provisions are now contained in regulation 11(6) and Schedule 2 to the Social Security (General Benefit) Regulations 1982. While bearing in mind that the Tribunal of Commissioners in R(I) 39/61 were dealing with disablement benefit and not with severe disablement allowance, it is, I think, helpful to cite what the Tribunal said. They stated:

> "10... It is a fallacy to suppose that the disablement in respect of a loss of faculty arising from a number of injuries is necessarily to be assessed at a figure equal to the aggregate of the figures prescribed in the First Schedule for each of the several injuries.
>
> 11. A priori, this is unlikely. What is sought to be assessed is disablement in respect of loss of faculty, and not in respect of mere anatomical loss. Loss of faculty falls to be measured, primarily at least, by reference to loss of useful function. Since various parts of the body function in co-operation, the usefulness of any one such part may vary, to an extent depending upon whether the other parts with which it is in use to co-operate are present or not. Thus an index finger may be of some useful function by itself; and a thumb may be of some useful function by itself; but together their useful function is greatly increased. This factor is sometimes referred to as the 'connection factor'. The proposition that the loss of two parts of the body should necessarily be assessed as the aggregate of the loss of each part, ignores the 'connection factor'. The Act and the Regulations provide no warrant for ignoring the 'connection factor' in the

assessment of disablement. On the contrary: the Act, by its provisions in joining the assessment of disablement 'by reference to the disabilities incurred ... as a result of the relevant loss of faculty' (section 12(2)) directs the assessing bodies to look to loss of function, rather than to mere anatomical loss; and if loss of function be looked to, the connection factor (where it exists) cannot be ignored."

Those observations seem to me to be of general application. The Tribunal then went on to deal specifically with the First Schedule as follows:

"Moreover the Regulations (and in particular the First Schedule thereto) make it plain that there is no such 'principle of aggregation' as that for which the association contends. This is exemplified by the case of the claimant who has lost two fingers of one hand. The Schedule provides separate assessments for the loss of each of the fingers. But it also provides an assessment (Item 15) for the loss of two fingers: and in terms of the proviso to regulation 2(2) of the Regulations, it is as the single Item 15 that the loss of two fingers must be assessed, and not as an aggregation of separate items for each finger. The assessment prescribed for the loss of two fingers (Item 15 of the Schedule) is not in fact equal to the aggregate of the assessments prescribed for each of two fingers. It is in some instances less, and in some instances more, according to the fingers involved."

The Tribunal in that further passage are, in my judgment, supporting their earlier general observations by reference to the specific requirements of the First Schedule. The Tribunal then continued:

"12. The scheme of the Act and the Regulations is to require assessment of the claimant's disablement as a whole. The Act speaks of one loss of faculty, and not of a multiplicity of losses of faculty. Where the loss of faculty arises from a single (or multiple) injury specified in the First Schedule to the Regulations, the assessing board or tribunal must assess the resulting disablement at the figure prescribed in the Schedule; subject to adjustment if appropriate, in terms of regulation 2(3) of the Regulations. But where the loss of faculty arises from some injury not so specified, the assessing board or tribunal may merely 'have such regard as may be appropriate' to the scheduled assessments. Multiple injuries, not themselves constituting any specific item in the Schedule, are not to be regarded as 'an injury specified in the first column of the First Schedule' merely because they constitute an aggregate of injuries each of which is specified in the Schedule. Accordingly the disablement arising in respect of multiple injuries (not themselves constituting a specific item in the Schedule) is not required to be assessed at a specific figure prescribed in the Schedule, nor necessarily as the aggregate of specific figures in the Schedule."

That all seems clear. However, the Tribunal then went on:

"In some instances, no doubt, the disablement resulting from multiple injuries may reasonably be assessed by aggregating the disablements resulting from each injury. (This may have been the case in the assessments discussed in decisions CSI/74/50 and R(I) 42/55 to which we were referred.) But these decisions do not lay down that there is any general principle of aggregation."

17. As indicated above, the Tribunal referred to CS1/74/50 and R(1) 42/55. In R(I) 42/55 a medical appeal tribunal gave an assessment of disablement of 20% provisionally for seven months in respect of a back injury, to run concurrently with an assessment for life of 15% in respect of herniae, in relation to a claimant who had suffered both conditions as a result of one accident. A local appeal tribunal having treated that as an assessment of 35% for seven months followed by an assessment of 15% for life, held that in fact no award could properly be made in respect of the medical appeal tribunal's decision. The Tribunal of commissioners stated at paragraph 9:

"The difficulty arises in the present case because in our view (for the reasons given below) the Act provides that there can be only one 'loss of faculty' resulting from 'the relevant injuries', and the benefit authority are required to award benefit for the disablement resulting from that loss of faculty. If the medical authority has split up the loss of faculty into several parts, for which they make assessments of differing duration, it becomes impossible for the benefit authority to fulfil their function of awarding benefit in accordance with the Acts."

The Tribunal went on to state in paragraph 12 that the assessment for the purpose of section 12 of the Act of 1946 -

"is a single assessment consisting of the aggregate of all those percentages and the benefit authorities must award disablement benefit in accordance with this aggregate figure."

In CSI/74/50 the claimant suffered injury to three fingers of his left hand. The medical board assessed the disablement as an aggregate of the separate assessments for each finger. The claimant submitted that disablement benefit should be allowed on the basis of the three percentages given by the board, in relation to the three fingers injured, taken separately but the deputy Commissioner said:

"I am, however, unable to give effect to that contention. The statutory authorities have to proceed on the assessment as made by the board ... "

In dealing with those two decisions, the Tribunal of Commissioners in R(I) 39/61 at paragraph 12 stated, as I have indicated above that they did not lay down "any general principle of aggregation". I conclude with the observation of the deputy Commissioner in CSI/74/50:

"The statutory authorities have to proceed on the assessment as made by the board."

18. The assessment.

In relation to both industrial injuries benefit and severe disablement allowance, the assessment of the extent of the disablement resulting from the loss of faculty and the period to be taken into account by the assessment are the "disablement questions" (there is a further question in relation to industrial injuries benefit namely whether the relevant accident has resulted in a loss of faculty): section 108(1) of the Social Security Act 1975. The disablement questions are determined by "an adjudicating medical practitioner or by two or more adjudicating medical practitioners or by a medical appeal tribunal": section 108(2). An adjudicating medical practitioner and a medical board are both now included within the definition of "adjudicating medical authority": regulation 27 of the Social Security (Adjudication) Regulations 1986. An adjudication officer may refer to an adjudicating medical practitioner for determination of the disablement questions a claim for severe disablement allowance and if the claimant is dissatisfied with the decision of the adjudicating medical practitioner, he may appeal to a medical appeal tribunal: section 109(1) and (2) of the Social Security Act 1975.

19. The disablement questions.

In R v Medical Appeal Tribunal (North Midland Region) Ex parte Hubble [1958] 2 QB 228, Diplock J, as he then was, giving the judgment of the Court stated at page 244 that the "disablement questions" -

"are purely matters of medical fact and opinion to be decided by expert investigating bodies, either the medical board or, if the claimant or the Minister is not content with the decision of the medical board, by the medical appeal tribunal which substitutes its

expert opinion for that of the medical board."

And at page 240 Diplock J said:

> "As an expert investigating body it is the right and duty of the medical board to use their own expertise in deciding the medical questions referred to them. They may, if they think fit, make their own examination of the claimant and consider any other facts material to enable them to reach their expert conclusion as doctors do in diagnosis and prognosis of the case of an ordinary patient. Just as it is 'the case' of the claimant which is to be referred to the medical board by [section 39(1) of the National Insurance (Industrial Injuries) Act 1946], so also it is 'the case' of the claimant which is to be referred to the medical appeal tribunal under sub-sections (2) and (3). The effect of these sub-sections is, in our view, to substitute in the cases to which they apply another and presumably more highly qualified expert investigating body for the medical board, and we see no grounds for holding that their function is any different from that of the medical board, namely, to use their own expertise to reach their own expert conclusions upon the matters of medical fact and opinion involved in 'the case' of the claimant."

Those observations, in my view, apply not only to the medical board and to the medical appeal tribunal but also, now, to an adjudicating medical practitioner.

20. I conclude, therefore, that there is no general principle of aggregation and that it is for the adjudicating medical authority or the medical appeal tribunal, as the case may be, to use their own expertise in determining whether or not in determining the extent of disablement resulting from a loss of faculty, they aggregate the various aspects of disablement or whether they make separate assessments of the various disabilities and aggregate them. Sometimes a claimant will have separate and distinct disabilities which can be separately assessed and the degree of disablement may be the aggregate of those separate assessments. On the other hand, a claimant may have a number of disabilities and it will clearly not be possible to make separate assessments because they will tend to merge into one another or because of the "connection factor". That, I think, is borne out by considering and comparing the separate assessments made by the adjudicating medical authority and the "12 areas of disablement" set out in Mr James' written submissions.

21. <u>The disabilities in the present case</u>

It is clear that the adjudicating medical authority did make separate assessments. They assessed 4 conditions, namely 1. personality change; 2. vertigo and deafness following head injury; 3. chest pain and 4. urinary dysfunction (see paragraph 5 above). Comparison of those 4 conditions with the "12 areas of disablement" set out in paragraph 3 of Mr. James' written submission (page 55 of the case papers) shows, in my opinion

(i) Bladder control is within condition 4 (urinary dysfunction);

(ii) Blurred vision is probably within condition 2 (vertigo and deafness following head injury);

(iii) Obstruction of nasal passages. Is this within condition 2? It is, I suppose, likely to follow head injuries.

(iv) Loss of hearing is within condition 2.

(v) Restricted movement of neck. This, again, presumably follows head injuries.

(vi) Weakness of right knee. This is not within any of the 4 conditions.

(vii) Pain in his chest and side. This is within condition 3.

(viii) Impairment of verbal and general memory. This, I would think, is within condition 1.

(ix) Loss of language and communication skills. This is also within condition 1.

(x) Tendency to tire easily and reduction in ability to concentrate. This is within condition 1.

(xi) Change in personality is condition 1.

(xii) Social incapacity related to the various other disablements outlined above. This again must be within condition 1.

Thus, on my analysis, of the 12 areas, only (iii) and (vi) are probably not within one of the 4 conditions. I do not know whether or not each was distinct enough to warrant a separate assessment; but the analysis does, in my view, show how difficult it can be to describe or delimit each disability.

22. Conclusion.

The medical authorities, that is to say the adjudicating medical authority or the medical appeal tribunal, must consider the following matters:

(1) They must, for the purpose of section 36(3) of the Act of 1975, determine whether or not the claimant is "disabled".

(2) To determine that question they must determine whether or not he suffers from "loss of physical or mental faculty". That is to say, they must determine whether or not he suffers "a loss of power or function of an organ of the body which is a cause of inability to do things". That is a "disablement question": R(I) 5/84 at paragraph 6 citing R(I) 12/80 at paragraph 9. In other words, in determining whether or not the claimant suffers from "loss of physical or mental faculty", the medical authorities must decide the question as a matter of medical fact and opinion. I have pointed out in paragraph 16 above that the the Tribunal of Commissioners in R(I) 39/61 at paragraph 12 stated that "the Act" i.e. the National Insurance (Industrial Injuries) Act 1946 "speaks of one loss of faculty, and not of a multiplicity of losses of faculty". The phrase in section 12(2) of that Act was "the disabilities incurred by the claimant as a result of the relevant loss of faculty". Those words now appear in Social Security Act 1975 Schedule 8 paragraph 1 and now apply to both section 36 (with which this case is concerned) and section 57 of the Act.

(3) If they decide that there has been a loss of faculty, they must go on to decide whether that loss of faculty has resulted in disablement.

(4) If they decide that there has been a resultant disablement, they must assess the extent of that disablement.

(5) They must assess the extent of the disablement in accordance with the principles set out in paragraph 20 above.

23. For those reasons I allow this appeal.

(Signed) A.T. Hoolahan

Commissioner

Date: 14 October 1988