

DR/IM

SOCIAL SECURITY ACTS 1975 TO 1981

APPEAL TO THE COMMISSIONER FROM DECISION OF
MEDICAL APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Marthe Wilson (Mrs.)

CSM/3/1981

Medical Appeal Tribunal: Glasgow

Original Decision Case No: Glw.6106/80

Application for Leave Case No: Glw.12706/80

[ORAL HEARING]

1. My decision is that the decision of the medical appeal tribunal dated 6 June 1980 is not erroneous in point of law.
2. The claimant claimed and received mobility allowance from 14 July 1977 to 13 July 1979. She made a renewal claim for that allowance on 8 May 1979. After various procedural matters a medical board decided on 15 December 1979 that the claimant was not unable to walk or virtually unable to do so because of physical disablement. The claimant appealed against that decision, but on 6 June 1980 the said decision of the medical board was confirmed by a medical appeal tribunal. This meant that the claimant was not entitled to mobility allowance. The reasons for the medical appeal tribunal's said decision were as follows:-

"Having considered the evidence, examined the claimant, and seen her walking, we find that she is not unable or virtually unable to walk. She can walk for half an hour without severe discomfort."

3. The claimant applied to a medical appeal tribunal for leave to appeal to a Commissioner from the said decision of the medical appeal tribunal dated 6 June 1980. A medical appeal tribunal refused leave to appeal. Thereafter the claimant made an application for leave to appeal to a Commissioner. That application was granted by me. The question at issue now is whether or not I should allow the claimant's appeal.
4. In connection with the said application for leave to appeal to a Commissioner from the above-mentioned decision of the medical appeal tribunal the claimant stated as follows:-

/s/ That

"That the tribunal and the members thereof acted contrary to the principals (sic) of natural justice in that they failed to allow the Applicant and her representative to present the case for the Applicant and the arguments thereanent. In particular:-

1. The Applicant was not permitted to qualify answers demanded by members of the Board who, having suggested answers in response to their own questions, then denied the Applicant the opportunity to qualify such answers.
 2. The Applicant's representative was repeatedly interrupted by the Chairman and upon his protest on the conduct of the Appeal was advised by the Chairman that it would be conducted by him as he had always done.
 3. The Applicant's representative was not allowed to refer to the Medical Reports produced and in particular to identify inconsistencies in the Reports.
 4. The Appeal Hearing was conducted with undue haste and the members gave the impression to the Applicant and to her representative by repeated glances at their watches that speed was of more importance than a fair determination of the Applicant's Case.
 5. In the above circumstances the Applicant has been denied her Legal Right to Appeal the decision of the Medical Board to a Medical Appeal Tribunal since she and her Representative were not permitted to present a case to the Tribunal as prescribed."
5. Having regard to the allegations made about the members of the tribunal, as stated above, I decided to grant the application for leave to appeal. I was not of course accepting at that stage that there was any substance in these allegations. In the course of the written submission put forward for and on behalf of the Secretary of State for Social Services in connection with the appeal it was stated as follows:-

"It is submitted on behalf of the Secretary of State that by the nature of the points raised in the claimant's appeal, it is desirable in order to avoid a breach of the rules of natural justice, the case should be referred to a newly constituted medical appeal tribunal."

6. It seemed to me that it was being maintained on behalf of the Secretary of State that merely because the claimant had alleged that irregularities in procedure had taken place, I should therefore set aside the decision of the medical appeal tribunal. I was not prepared to accept that submission, and I therefore requested a further submission from a representative of the Secretary of State regarding the whole matter. In a later submission dated 9 November 1981 it was stated as follows:-

"Due to an unfortunate oversight details of comments made by the Secretary of State's representative and the Chairman of the Medical Appeal Tribunal on the appellant's complaints about the way in which her appeal was heard were omitted from the submission to the Commissioner dated 11 September 1981. Copies of these comments are now attached at docs 1-4.

In the light of these comments it is submitted on behalf of the Secretary of State that the claimant's representative was interrupted by the Chairman of the Medical Appeal Tribunal during the hearing on 6 June 1980 and that consequently there may have been a breach of national justice. Accordingly it is submitted that the case should be remitted to a freshly constituted Medical Appeal Tribunal."

The statement made by the chairman of the tribunal was in the following terms:-

"I remember this case well.

The allegations in the grounds of appeal are false and much resented.

In particular:

1. The applicant had every opportunity to answer fully the questions she was asked.
2. The applicant's representative was only interrupted once and did not protest. This was when he indicated his intention to read the whole of the evidence. I pointed out that we had read the papers and it was only necessary for him to refer to any passages which he thought particularly important.
3. The hearing was not conducted with haste. It is significant that there is a large clock in the room and there would be no point in consulting wrist watches."

The statement made by the Secretary of State's representative at the hearing before the medical appeal tribunal was in the following terms:-

/"I

"I attended the above hearing as representative of the Secretary of State. My notes on hearing are as follows.

'Rep lodged letters from Dr. Brown and chemist. Sandeman's report of Dec 77 accepted. Suchle's report not accepted. Medical Board report examination was thorough. Can't walk $\frac{1}{2}$ mile to shops - pain with bone on (R) foot and ulceration. Chairman reminded WRO that Tribunal knew history.'

My recollections of the hearing are similar to those of the Chairman attached. - Though I have a vague feeling that the Chairman twice mentioned to Mr. Irvine, the claimant's representative that it was not necessary for him (Mr. Irvine) to read each entry of each report because these had already been read by the Tribunal. The Chairman indicated that Mr. Irvine should simply highlight those parts of the evidence which he wished to draw to the attention of the Tribunal.

I do not recall any undue haste in the proceedings and I am quite sure that the claimant was given the opportunity to answer questions by medical members."

7. I decided to direct an oral hearing in connection with the claimant's appeal. At that hearing the claimant appeared accompanied by the welfare rights officer who had appeared for her before the said medical appeal tribunal. The Secretary of State was legally represented at my request. At this hearing the said welfare rights officer put forward before me a lengthy written statement in the course of which amplification was made regarding the allegations made in regard to the applications for leave to appeal mentioned above. The Secretary of State's legal representative referred to various Commissioners' decisions and also decisions given by the Courts regarding the principles of natural justice. At the end of his submission the said legal representative asked me to set aside the medical appeal tribunal's decision and to remit the matter for consideration by another medical appeal tribunal.

8. The medical appeal tribunal in question consisted of the following members. The chairman is a senior member of the Scottish Bar; he is a very experienced medical appeal tribunal chairman; and he is presently a Sheriff Principal. The two medical members are eminent medical specialists. It would indeed be very surprising if such a tribunal did not give a fair hearing to the claimant and her representative. Nevertheless, if I was satisfied that the principles of natural justice had been contravened, it would of course be my duty to set aside the tribunal's said decision.

9. I would first of all make reference to what was stated in the written submission dated 9 November 1981 on behalf of the Secretary of State for Social Services to the effect that as the claimant's representative was interrupted by the chairman of the medical appeal tribunal there consequently may have been a breach of natural justice and that the case should therefore

be remitted to a freshly constituted medical appeal tribunal. I do not accept that submission. Interruptions by members of a tribunal may well be helpful to parties and their representatives. Also, although frequent interruptions by members of a tribunal may on occasions be irritating to parties or their representatives, that in my opinion will normally not amount to a violation of the principles of natural justice.

10. The following matters fall to be mentioned:-

- (a) The claimant appeared at the hearing before me but did not give any evidence.
- (b) No written statements were obtained from the said two medical members regarding what took place at the hearing before the tribunal.
- (c) No statement has been produced from the clerk of the tribunal who was presumably present at the hearing.

11. It is naturally extremely difficult for me in the circumstances of this case, and having regard to the limited evidence before me, to decide whether or not the claimant's appeal should be allowed. It is, however, for those who allege a violation of the principles of natural justice, and particularly where the behaviour of tribunal members is involved, to establish that there was in fact a violation of certain principles of natural justice. After carefully reviewing all the evidence before me I have reached the conclusion that it has not been shown that the claimant and her representative did not get a fair hearing before the tribunal in question or that there was a violation of the principles of natural justice.

12. The claimant's appeal is disallowed.

(signed) Douglas Reith
Commissioner
Date: 6 May 1982

Commissioner's File: C.S.M.3/81
D. of H. & S.S. File: B.51023/240
M.O.B. 590088