

13G/SH/33

Commissioner's File: CWM/33/1938

DHSS File: B.51023/1524

SOCIAL SECURITY ACTS 1975 TO 1986
APPEAL FROM DECISION OF MEDICAL APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow the claimant's appeal against the decision of the medical appeal tribunal dated 1 October 1987 as that decision is erroneous in law. In accordance with the usual practice the claimant's appeal must be reheard and redetermined by a differently constituted medical appeal tribunal: Social Security Act 1975, section 112.

2. This is an appeal to the Commissioner by the claimant (a man) born 20 November 1925 against the decision of a medical appeal tribunal dated 1 October 1987 which dismissed the claimant's appeal from the decision of a medical board dated 21 April 1987 to the effect that the claimant did not satisfy the medical conditions for award of mobility allowance (to be found in section 37A of the Social Security Act 1975: regulation 3 of the Mobility Allowance Regulations 1975).

3. In the present case the appeal is brought with the leave of the medical appeal tribunal chairman. Moreover both the claimant's representative and the representative of the Secretary of State (in written representations dated 23 October 1987 and 29 May 1988 respectively) concur in submitting that the medical appeal tribunal erred in law in that contrary to regulation 31(4) of the Social Security (Adjudication) Regulations 1986, it failed to make sufficient findings of fact and give adequate reasons for its decision.

4. The only findings of fact and reasons for decision given by the medical appeal tribunal were as follows,

"The findings of the Adjudicating Medical Authority [i.e. Medical Board] of 21.4.87 accepted that upon examination today straight leg raising was 80° on both sides and the pulses in both feet were normal."

I am afraid that that does not adequately deal with the issues raised by the legislation referred to in paragraph 2 above and I accept the submission in paragraph 3 of the written submission dated 29 May 1988 of the Secretary of State's representative that "... the decision of an MAT should be capable of standing on its own notwithstanding any findings recorded in the chairman's notes of evidence". I also accept the submission, (paragraph 5,

"... that neither the medical board nor the MAT have recorded any findings on a question of severe discomfort arising from the claimant's back injury and the effect, if any, on his walking ability or whether it was sufficient to bring him within the provisions of regulation 3(1)(b) [of the Mobility Allowance Regulations 1975]."

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5. The new medical appeal tribunal will wish to look further into this matter and in this connection I endorse the statement (paragraph 4 of the submission dated 29 May 1988) on behalf of the Secretary of State,

"... that the phrase 'severe discomfort' must receive a wide interpretation and must be held to include pain, fatigue and unease of all kinds. This interpretation was accepted in R(M) 1/81."

6. I also accept the submission on behalf of the Secretary of State that it was entirely a matter within the sole province of the medical appeal tribunal as to whether it tested the claimant's walking by an indoor or outdoor test and I do not accept the suggestion (paragraph 2 of the claimant's representative's submission dated 23 October 1987) that,

"... in that event a note should at least have shown that the claimant was given the option of the [walking] test being carried out inside the building and that this was agreed by the claimant."

Appeal to the Commissioner in this jurisdiction lies only on a question of law and on issues of fact, medical opinion, diagnosis etc the decision of the medical appeal tribunal is final. This includes the method of testing the claimant's walking ability.

(Signed) M.J. Goodman
Commissioner

Date: 23 November 1988