In-patient in a hospital or similar institution

Claimant, an in-patient in a National Health Service rehabilitation centre, was sent home whilst the centre was closed. For ten days he continued his treatment, exercises, at home. He returned to the centre when it re-opened.

Held that whilst the claimant was at home he was not "an in-patient in a hospital or similar institution" and, therefore, was not in receipt of approved hospital treatment within the meaning of Section 34(2) of the Industrial Injuries Act. The two periods as an in-patient could not be linked and treated as continuous under Regulation 19(2) of the Industrial Injuries (Benefit) Regulations

1. My decision is that the claimant was not entitled to receive an increase of disablement benefit under Section 16 of the National Insurance (Industrial Injuries) Act, 1946, as amended by the National Insurance (Industrial Injuries) Act, 1953, in respect of approved hospital treatment from the 30th July, 1955 to the 9th August, 1955, both dates included.

2. The claimant, a coal miner, sustained an industrial accident on the 11th October, 1954 as a result of which his left big toe had to be amputated. He was in receipt of injury benefit until the end of the injury benefit period on the 9th April, 1955 and thereafter he was in receipt of disablement benefit

based on a degree of disablement provisionally assessed by medical boards at 20 per cent. from the 10th April, 1955 to the 9th October, 1955 and at 10 per cent. from the 10th October, 1955 to the 9th March, 1956.

3. Section 16 of the National Insurance (Industrial Injuries) Act, 1946, as amended by Section 3(3) of the National Insurance (Industrial Injuries) Act, 1953, enacts:

> "Where a person is awarded disablement benefit, but the extent of his disablement is assessed for the period taken into account by the assessment at less than a hundred per cent., it shall be treated as assessed at a hundred per cent. for any part of that period during which he receives approved hospital treatment (whether before or after the making of the assessment or the award of benefit):
>
> Provided that . . ."

The proviso is not now relevant.

4. By Section 34(2) of the National Insurance (Industrial Injuries) Act, 1946 it is enacted:

> "References in this Act to a person receiving approved hospital treatment shall be construed, in relation to any benefit payable to him, as referring to his receiving, as an in-patient in a hospital or similar institution, with the approval of the Minister medical treatment for the relevant injury or loss of faculty."

5. The claimant was an in-patient from 4th July, 1955 to the 29th July, 1955 and again from the 9th August, 1955 to the 15th August, 1955 in a miners' rehabilitation centre which is administered under the National Health Service. It is not disputed that the rehabilitation centre is a "hospital or similar institution" or that while the claimant was an in-patient there he was receiving "approved hospital treatment," and for the periods when he was an in-patient he has received an increase of disablement benefit under Section 16 of the Act.

6. On the 29th July, 1955 the rehabilitation centre closed down until the 9th August, 1955 for ten days annual summer holiday. All patients, including the claimant, were sent home for that ten days, but the claimant was instructed by the matron to continue his exercises at home and when he returned to the rehabilitation centre on the 9th August, 1955 he was asked whether he had done them.

7. The insurance officer decided that an increase of disablement benefit was not payable to the claimant from the 30th July, 1955 to the 9th August, 1955 on the ground that for that period he was not receiving treatment as an in-patient. The claimant appealed to a local appeal tribunal, who allowed his appeal on the ground that he was sent away from the rehabilitation centre through no fault of his own, and if the hospital accommodation had been available he would have continued to receive treatment therein, instead of at home.

8. In my judgment the decision of the tribunal cannot be sustained. When the rehabilitation centre was closed and the claimant was at home he was plainly not "an in-patient in a hospital or similar institution." An increase of benefit which is payable to him as an in-patient is not payable when he is not an in-patient, for he plainly does not fulfil the necessary condition.

9. The provisions of Regulation 19(2) of the National Insurance (Industrial Injuries) (Benefit) Regulations, 1948 [S.I. 1948 No. 1372] as amended by

the National Insurance (Industrial Injuries) (Benefit) Amendment Regulations, 1951 [S.I. 1951 No. 833] do not help the claimant. The effect of Regulation 19(2), so far as now relevant, is that distinct periods of medical treatment may be linked together and treated as continuous where the interval between them is of less than a week in each case. The interval here exceeds a week—it was ten days—and the claimant cannot therefore be regarded as receiving treatment as an in-patient continuously.

10. The insurance officer's appeal is allowed.