APPEAL FROM DECISION OF MEDICAL APPEAL TRIBUNAL ON A QUESTION OF LAW

Medical Board—review—fresh evidence

The claimant suffered an industrial accident in which he injured his arm. On a claim for disablement benefit a medical board assessed his degree of disablement at 3% for life. The claimant applied for review of that decision. Section 110(1) of the Social Security Act 1975 provides for review by a medical board if satisfied by fresh evidence that the decision was given in ignorance of or was based on a mistake as to a material fact. On appeal from a decision of a medical board refusing to review, the Medical Appeal Tribunal, at the invitation of the Secretary of State, found that there was fresh evidence, but having considered that evidence reached the same conclusion on the facts as the initial medical board. On appeal the Commissioner (in decision on Commissioner's file No CI 198/85) held that the decision of the Medical Appeal Tribunal was erroneous

in law, and there were no grounds on which the Medical Appeal Tribunal were entitled to review the decision of the initial medical board. The claimant appealed to the Court of Appeal.

On 15 January 1988 the Court of Appeal allowed the appeal and held:

i whether in any particular case there is fresh evidence to justify a review is a question of fact;

ii the Medical Appeal Tribunal's decision that there was fresh evidence did not conflict with the test laid down in *R v Medical Appeal Tribunal (North Midland Region) Ex Parte Hubble* (1959) 2 QB 408 ie, some evidence which the claimant was unable to produce before the decision was given or which he could not reasonably be expected to have produced in the circumstances of the case.

iii a fact is a material fact if it is a fact:

a. which would have influenced the judgment of the medical board. It is not necessary that it would have led to a different result—Lloyd LJ;

b. which would have called for serious consideration by the board and might well have affected its decision—Nicholls LJ;

NB The words "by fresh evidence" in Section 110(1) of the Social Security Act 1975 were repealed with effect from 6 April 1987, but see Section 110(1B) of the Act and Regulation 67 of the Social Security (Adjudication) Regulations 1986 (S.I.1986 No. 2218), both into force on 6 April 1987; see Appendix hereto.

---

1. For the reasons hereinafter appearing, the decision of the medical appeal tribunal given on 28 January 1985 is erroneous in point of law, and accordingly I set it aside. There were no grounds on which the tribunal were entitled to review the decision of the medical board dated 1 October 1980.

2. On 17 March 1980 the claiment had the misfortune to suffer an industrial accident. On 10 June 1980 he claimed disablement benefit, and the history of that claim is set out in the submissions of the Secretary of State dated 19 November 1985. Suffice it to say that the claimant seeks a review of the assessment made by a medical board on 1 October 1980. On 16 November 1981 a medical board considered the application, but decided that the conditions for a review were not satisfied. Thereupon the claimant appealed to a medical appeal tribunal who did not confirm the decision of the review medical board of 16 November 1981. They decided that the decision of 1 October 1980 was given in ignorance of a material fact and was based on a mistake as to a material fact, but that it should not be revised. The claimant now seeks to have the tribunal's decision set aside as being erroneous in law and asks for a fresh determination by a new medical appeal tribunal.

3. The Secretary of State agrees that the decision of the medical appeal tribunal should be set aside but on the grounds of a failure to comply with regulation 34(4) of the Social Security (Adjudication) Regulations 1984, so that there is no question of any rehearing.

4. The Secretary of State's submission is in the following form:—

"(1) The MAT are empowered to review under section 110(1) of the Social Security Act 1975, if they are satisfied by fresh evidence that the decision of the medical board on 1.10.80 was given in ignorance of a material fact or based on a mistake as to a material fact;

(2) Although it is not clear, the MAT appear to have shown in their reasons for decision, that they regarded documents 9, 10 and 11 now numbered as docs 10, 11 and 12 in these papers and comprising (1) a letter dated 27.6.81 from the claimant's doctor (docs 10 and 11) and (2) a report dated 30.7.81 from the Divisional Medical Officer (doc 12)

as fresh evidence showing that the medical board of 1.10.80 were not aware the claimant suffered with cervical spondylosis and nerve injury right arm;

(3) However, having regard to the information supplied by the local office (doc 1) which was before the medical board and shows that the claimant's incapacity for the purpose of the receipt of sickness and invalidity benefits from 18.7.80, was recorded as cervical spondylosis, right ulnar nerve lesion and depression, it is submitted that the conditions for review under section 110(1) of the Social Security Act 1975 were not, in fact, shown to be satisfied and that accordingly the MAT had no power to interfere with the decision of the medical board of 10.12.81."

The decision of 10 December 1981 was made by the medical board who originally sat on 16 November 1981. Their report was not completed until 10 December 1981.

5. I accept the above submissions. There were no grounds for reviewing the earlier decision of 1 October 1980. The medical board of that date were fully aware of the claimant's condition. Moreover, further confirmation of this is contained in paragraph 2 of the consultant neurologist's report of 5 December 1980 from St George's Hospital where there are express findings by Dr. Gordon a Senior Registrar to the Department of Neurology of "Cervical Spondylosis with root compression" and "previous history of right ulnar nerve transposition". It follows that there were no grounds for review under section 110(1) of the Social Security Act 1975, and accordingly I must set aside the tribunal's decision as being erroneous in point of law. Of course, there is no question of my directing the matter to be reheard.

6. I allow this appeal.

(Signed) D. G. Rice
Commissioner

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SOCIAL SECURITY COMMISSIONER

Royal Courts of Justice.
Friday, 15th January, 1988

Before:

LORD JUSTICE LLOYD

LORD JUSTICE NICHOLLS and

LORD JUSTICE STAUGHTON

EDWARD JOHN SAKER **Appellant**

—v—

THE SECRETARY OF STATE FOR SOCIAL SERVICES **Respondent**

(Transcript of the Shorthand Notes of the Association of Official Shorthandwriters Ltd., Room 392, Royal Courts of Justice, and 2 New Square, Lincoln's Inn, London, WC2).

MR. ROBIN ALLEN (instructed by the Battersea and Wandsworth Law Centre Ltd.) appeared on behalf of the Appellant.
MR. DUNCAN OUSELEY (instructed by the Solicitor, Department of Health and Social Security) appeared on behalf of the Appellant.

JUDGMENT
(approved)

A LORD JUSTICE LLOYD: On the 17th March the appellant, Edward Saker, then aged 28, suffered an injury at work. He was employed by a catering hire firm. He tripped over a box of cutlery which was lying on the floor and, in falling, fractured the head of the radius of his right arm. On the 1st October, 1980 he was examined by a medical board. By a report dated the 4th February, 1981, the medical board assessed the appellant's
B disability due to the injury at 3 per cent for life. The board regarded certain other injuries and abnormalities (to which I shall have to refer later) as being unconnected with the accident. On the 11th September, 1981 the claimant applied for review of that decision to a medical review board. It

A is convenient at this stage to read section 110 of the Social Security Act 1975 which governs the review of medical decisions. As originally enacted, subsection (1) reads:

> "Any decision under this Part of this Act of a medical board or a medical appeal tribunal may be reviewed at any time by a medical board if satisfied by fresh evidence that the decision was given in
B consequence of the non-disclosure or misrepresentation by the claimant or any other person of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent)."

As subsequently amended, the section now reads:

> "Any decision under this Part of this Act of an adjudicating medical practitioner or a medical appeal tribunal may be reviewed at any time
C by an adjudicating medical practitioner if satisfied by fresh evidence that the decision was given in ignorance of a material fact or was based on a mistake as to a material fact."

On the 16th November, 1981 the claimant's application was dismissed by the review board on the ground that the claimant had not put forward any new material facts since his examination by the medical board in October
D 1980. On the 5th June, 1983 the claimant gave notice of appeal to the medical tribunal. The Secretary of State's initial response was that the review board's decision that there were no grounds for review was correct (see page 48 of the bundle). But the Secretary of State subsequently changed his stance. In further observations, which appear at page 81 of the bundle, he invited the tribunal to decide that there *was* fresh evidence enabling the
E decision of the 1st October, 1980 to be reviewed and to decide afresh whether there was a loss of faculty resulting from the relevant accident and, if so, what disabilities were to be taken into account and to what extent and for what period. At the hearing before the medical appeal tribunal the Secretary of State's representative, Mr. Joseph, took the same line (see page 88 of the bundle). Not surprisingly, therefore, since it was common ground
F before the medical appeal tribunal, the tribunal decided that it was entitled to review the case.

But, having arrived at that decision, the medical appeal tribunal went on to reach the same conclusion as the medical board on the facts. In other words, the medical appeal tribunal, having reviewed the fresh evidence, concluded, as had the medical board, that the disability due to the accident
G was 3 per cent for life and that all other disabilities were unconnected.

One would perhaps have thought that the matter might have been allowed to rest there. But on the 23rd May, 1985 the claimant applied for leave to

A appeal to the social security commissioner against the second part of the medical appeal tribunal's decision. The first part of the decision was, of course, in the claimant's favour. The Secretary of State's response was to change tack once again. By a cross-appeal (if that is the right term) dated the 19th November, 1985 the Secretary of State appealed against the first part of the medical appeal tribunal's decision. The Secretary of State B submitted, contrary to the submission which he had put before the medical appeal tribunal, that there was no fresh evidence to justify a review under section 110, and accordingly the medical appeal tribunal had no power to interfere with the decision of the medical board. The commissioner upheld that submission. There is now an appeal by the claimant to this court by leave of Lord Justice Glidewell.

C The claimant's case on the facts is that he is suffering from two further conditions, one called cervical spondylosis and the other a lesion of his right ulnar nerve both of which were caused or, at any rate, exacerbated by the accident. He contended before the review board that the medical board had been unaware of the existence of these conditions. Accordingly, he argued, the medical board reached its decision in ignorance of a material fact within D the meaning of section 110 of the Act. That contention was, as I have said, rejected by the review board. But it was accepted by the medical appeal tribunal. I should now read the reasons which they gave for their decision:

> "We are satisfied that if the Medical Board of 1.10.80 had had before it the evidence that the claimant definitely suffered from cervical spondylosis and nerve injury to his right arm as set out in documents E 9, 10 and 11 it may have affected its decision. We find that these facts are material fresh evidence and we review the case on those grounds."

The documents to which the medical appeal tribunal refer are a letter dated the 27th June, 1981 from the claimant's general practitioner, in which he says:

> "From my records it would appear that at the time of the last medical F examination, my patient had evidence of cervical spondylosis and had worn a collar on and off since then."

The other document to which the medical appeal tribunal refer is a report signed on behalf of the divisional medical officer by Dr. Parker on 30th July 1981, in which Dr. Parker states that he has examined the claimant, and under the heading "General Description" gives the words "cervical G spondylosis, nerve injury in right arm, depression problems."

It will be noticed that both those documents came into existence between the claimant's appearance before the medical board in October 1980 and his

appearance before the medical review board in November 1981. So the medical appeal tribunal took the view that the conditions set out in section 110 of the Act had been satisfied by reason of that fresh evidence.

The commissioner took a different view. He said in paragraph 5 of his reasons:

> "There were no grounds for reviewing the earlier decision of 1 October 1980. The medical board of that date were fully aware of the claimant's condition. Moreover, further confirmation of this is contained in paragraph 2 of the consultant neurologist's report of 5 December 1980 from St. George's Hospital where there are express findings by Dr. Gordon, a Senior Registrar to the Department of Neurology, of 'Cervical Spondylosis with root compression' and 'previous history of right ulnar nerve transposition'. It follows that there were no grounds for review under section 110(1) of the Social Security Act 1975, and accordingly I must set aside the tribunal's decision as being erroneous in point of law."

I have some sympathy with the commissioner's view. The question for the medical appeal tribunal was whether there was fresh evidence that the medical board had acted in ignorance of a material fact. How, it may be asked, could it be said that the medical board had acted in ignorance of a material fact when they had before them the letter dated the 5th December, 1980 from Dr. Pauline Monro, the consultant neurologist at St. George's Hospital, which refers specifically to the two conditions which the claimant says were caused or exacerbated by the accident? I read the relevant paragraph from Dr. Monro's letter:

> "According to Dr. Gordon's notes he found Mr. Saker to be poly-symptomatic and therefore found difficulty in establishing an accurate diagnosis but he felt that the most likely explanation of Mr. Saker's problems was cervical spondylosis with root compression. Dr. Gordon reports that Mr. Saker dated all his symptoms since the accident on the 17th March 1980 when he tripped and fell, and at which time he fractured the head of the right radius and from that time had experienced pain in the forearm such that he had difficulty in holding a pen to write. Mr. Saker also complained of some episodes of 'electric shock like pain' radiating down the right arm and subsequently numbness in the thumb, index and middle fingers of the right hand with more spread to the left hand. Dr. Gordon noticed that there was a previous history of right ulnar nerve transposition in 1975 and that the patient had suffered from gout since the age of 28."

A Moreover, in addition to that letter, it seems at least highly probable that the medical board had in front of it a further document which was handed up in the course of the hearing before us and which would have formed part of the cover of the relevant file. That document again refers specifically to cervical spondylosis and right ulnar nerve lesion as the certified cause of incapacity since the 18th July, 1980.

B For those reasons I can well understand why the commissioner reached the decision he did. But the difficulty I feel is this. Under section 112 of the Social Security Act there is no appeal to the commissioner save on a question of law. Could it be said that the medical appeal tribunal had erred in law? The proper construction of section 110 of the Act is, of course, a question of law. But the question whether in any particular case there is C fresh evidence to justify a review is a pure question of fact. Since it was common ground before the medical appeal tribunal that there was fresh evidence to justify a review, it is, as I have said, not surprising that the medical appeal tribunal reached the view it did on the facts. Could it then be said that, in reaching that view, the medical appeal tribunal had misconstrued section 110? Could it be said that the test which the medical D appeal tribunal applied was erroneous in law?

Prompted by a question from Lord Justice Staughton, Mr. Ouseley, who appears for the Secretary of State, submitted that a fact could only be a material fact for the purpose of section 110 if it would have made a difference to the result.

Since the view taken by the medical appeal tribunal was that the fresh E evidence made no difference to the result, Mr. Ouseley submitted that the fact of which the medical board was ignorant could not have been material. It is not enough, he said, that the fact of which the medical board was ignorant might have made a difference to the result or affected the decision in some way.

I cannot accept Mr. Ouseley's submission. In my judgment a fact is a F material fact for the purpose of section 110 if it is a fact which would have influenced the judgment of the medical board. That corresponds to the definition of "material fact" which applies throughout the law of insurance, and which is enshrined in section 18(2) of the Marine Insurance Act 1906. I notice that it also corresponds to the meaning given to "material fact" in the current edition of Halsbury's Statutes, Vol. 45, at page 1209.

G To carry the analysis one stage further, what is meant by a fact which would have influenced the judgment of the medical board? The answer is provided by the decision of this court in *C.T.I. v Oceanus* [1984] 1 L1.476.

A In that case I had held in the court below that a fact is material only if it would—not might—have led a prudent insurer to decline the risk or charge a higher premium. My decision was unanimously reversed in the Court of Appeal. Lord Justice Kerr held that the word "influenced" means that the fact is one which would have had an impact on the formation of the prudent insurer's opinion; in other words, it must be a fact which he would properly
B have taken into account. Lord Justice Stephenson put it this way at page 529 of the report:

> "I conclude . . . that everything is material to which a prudent insurer . . . would wish to direct his mind."

Applying that approach, I would hold that the correct test is whether the medical board was in ignorance of a fact to which it would have wished to
C direct its mind. This is essentially the same as the test applied by the medical appeal tribunal, in the passage I have quoted, although not of course expressed in precisely the same language. So I would reject Mr. Ouseley's argument that the medical appeal tribunal have erred in law by applying the wrong test.

Then, are there any other grounds on which it could be said that the
D medical appeal tribunal had erred in law? I can see none. I conclude that the medical appeal tribunal was entitled to find that there was a fact of which the medical board was ignorant, namely the definite diagnosis of cervical spondylosis, that this was a material fact and that there was fresh evidence to support it. In other words, there was material on which the medical appeal tribunal could find that this was not simply a case of a
E dissatisfied claimant obtaining a second opinion from another doctor and relying on that second opinion as fresh evidence of a material fact. If that is right, then there were no grounds on which the commissioner could disturb the medical appeal tribunal's finding of fact in the first part of its decision, and the appeal must be allowed.

For completeness I should say that we were referred to the decision of
F *Reg. v. Medical Appeal Tribunal (North Midland Region), Ex parte Hubble* [1959] 2 Q.B. 408, in which this court considered the meaning of "fresh evidence" under section 40 of the 1946 Act, which is the lineal predecessor of section 110. We were also referred to the subsequent decision of the commissioner, which is reported as RI.17/66 and a further decision of this court in *Reg. v. National Insurance Commissioner, Ex parte Viscusi* [1974]
G 1 W.L.R. 646.

In *Ex parte Hubble* this court approved the meaning given to "fresh evidence" by the medical appeal tribunal in that case, namely that it means

some evidence which the claimant was unable to produce before the decision was given or which he could not reasonably be expected to have produced in the circumstances of the case. The conclusion which I have reached as to the findings of the medical appeal tribunal does not, I think, conflict in any way with the principles stated in those cases.

The only remaining question is what is to be the consequences of allowing the appeal. We heard further argument on the question after expressing a provisional view. Having allowed the appeal, it follows that the first part of the medical appeal tribunal's decision will stand. The appellant has passed through the gateway of section 110. But it does not follow that the second part of the medical appeal tribunal's decision can stand. The medical appeal tribunal gave no reasons for reaching the same conclusion as the medical board, despite the fresh evidence. Mr. Ouseley conceded that, by giving no reasons, the medical appeal tribunal has erred in law. Accordingly, it was agreed that, if we were to allow the appeal, as we have, the case must go back. Normally one would say that in those circumstances the case should go back to a medical appeal tribunal differently constituted. But Mr. Ouseley has referred us this morning to regulation 36(4) of the Adjudication Regulations 1986, under which if a decision goes back to a medical appeal tribunal which does not consist of the same members who constituted the original medical appeal tribunal, then the hearing is by way of a complete new hearing of the appeal. This would mean a further hearing on the question whether the appellant has passed through the gateway.

In order to meet that difficulty and to allow us to reach the conclusion to which we wish to come, Mr. Ouseley has on behalf of the Secretary of State this morning given an undertaking that when the matter is remitted the Secretary of State will not submit that there are no grounds for review. He will draw the new medical appeal tribunal's attention to the fact that the first medical appeal tribunal concluded that there were such grounds for review and that the challenge to the lawfulness of that decision has failed. In the light of that undertaking, I would order that the case be remitted to a medical appeal tribunal differently constituted.

I have said that I have some sympathy with the view expressed by the commissioner and the reasons for which he reached the decision which he did. That does not mean that I do not also have some sympathy for the claimant. I do; and I am glad that when the case goes back to the medical appeal tribunal, newly constituted, it will be able to consider the claimant's case afresh on all the evidence now available including the evidence which has become available since the decision of the review board in November 1981.

A Finally, I should say that I suspect that a large part of the difficulties which have arisen in this case have been brought about by the inconsistencies in the Secretary of State's approach at various stages of the history which I have related. But I should also express my gratitude that at this last stage Mr. Ouseley, on the Secretary of State's behalf, has given the undertaking which he has.

B For the reasons I have given I would allow this appeal.

LORD JUSTICE NICHOLLS: I agree that this appeal should be allowed.

Before the decision of the first medical board, given ultimately on the 4th February, 1981, could be reviewed, the medical board or, on appeal, the medical appeal tribunal had to be satisfied by fresh evidence that the decision was "given in ignorance of a material fact or based on a mistake C as to a material fact": see section 110 of the Social Security Act 1975, as amended at the relevant time. Reversing the decision of the medical board (whose report was completed on the 10th December, 1981) which adjudicated upon the claimant's review application, the appeal tribunal was so satisfied. In its decision given on the 28th January, 1985 the appeal tribunal expressed its conclusion in the terms which have been read by my D Lord.

An appeal from a decision of an appeal tribunal lies only on the ground that the decision was erroneous in point of law: see section 112. Thus, in this case the learned commissioner was entitled to disturb the conclusion of the appeal tribunal only if that conclusion was one which, properly directing themselves on the evidence and the law, the appeal tribunal could E not have reached.

In allowing the appeal, the commissioner held that the first medical board was well aware of the claimant's condition. In other words, the decision of the first medical board was not given in ignorance of a material fact, the fact in question being that the claimant, Mr. Saker, was suffering from cervical spondylosis.

F I find myself unable to agree with the learned commissioner. What the first medical board knew was this. The senior registrar in the Department of Neurology at St. George's Hospital, Dr. Gordon, had examined Mr. Saker on the 23rd September, 1980, Mr. Saker having been referred to that hospital by his general practitioner, Dr. Blonstein. Dr. Gordon felt that the most likely explanation of Mr. Saker's symptomatology was cervical G spondylosis with root compression. Dr. Saunders, a medical officer acting for the Department of Health and Social Security, was informed of this by

A a letter dated the 5th December, 1980 from the consultant neurologist, Dr. Monro. However, Dr. Monro herself examined Mr. Saker on the 23rd December, 1980, and she took a different view. Her impression, communicated to Dr. Saunders by a letter dated the 23rd December, was that there was no organic cause for Mr. Saker's symptoms but that he was psychiatrically disturbed. Perhaps not surprisingly in the light of this, the B first medical board made no mention of cervical spondylosis in its clinical findings beyond noting and attaching to their report the two letters from Dr. Monro dated the 5th and 23rd December. In these circumstances, in my view it was open to the appeal tribunal to conclude that the first medical board was ignorant of Mr. Saker's true condition regarding cervical spondylosis.

C I pause to observe that I do not think that the Secretary of State is assisted by the note in box 9 on form BI(8) to the effect that since the 18th July, 1980 Mr. Saker had been receiving sickness benefit in respect of cervical spondylosis, right ulnar nerve lesion and depression. This was a note on the inside page of the folder cover of the medical board's file. Even if this form was before the medical board, which it may well have been, and even if this D note was observed by the medical board, the medical board might, I should have thought, not have attached any significant weight to this formal record as against what was said in Dr. Monro's letters.

In the circumstances, in my view, the appeal tribunal could not be faulted as a matter of law for reaching the conclusion that the first medical board gave its decision in ignorance of Mr. Saker's true condition.

E When the review medical board considered the review application later in 1981 the position had changed. In particular, Mr. Saker was examined by Dr. Parker from the Divisional Medical Office of the Department of Health and Social Security on the 30th July, 1981, and the first item in his report under the heading of "General Description" was simply "cervical spondylosis". In my view it was, here again, open to the appeal tribunal to F treat this as fresh evidence within section 110. Before the appeal tribunal the Secretary of State expressly accepted that this was fresh evidence. No doubt this is why the appeal tribunal in its findings and reasons did not elaborate on this point. In my view, a body hearing an appeal on points of law only from a decision which was supported by both parties should be slow to conclude that there was no material on which that decision could G properly be reached. In the present case I feel unable so to conclude. In my view, applying the test as to what constitutes fresh evidence enunciated in *Reg. v. Medical Appeal Tribunal (North Midland Region), Ex parte Hubble* [1959] 2 Q.B. 408, it was open to the appeal tribunal to conclude that

A evidence that Mr. Saker was indeed suffering from cervical spondylosis was evidence which, in all the circumstances of this particular case, Mr. Saker could not reasonably be expected to have produced at the time of the decision of the first medical board.

Mr. Ouseley submitted that, even if this evidence were fresh evidence, it did not establish that the decision of the 4th February, 1981 was given in B ignorance of a fact which was material. He submitted that to be material a fact had to be one which *would* have altered the medical board's decision. It is not enough that the fact *could* or *might* have affected the decision. I think that this is too stringent a test. The Act contains no definition of "material", but the context is of a threshold which the claimant must surmount before a decision can be reviewed. In this context, in my view a C material fact is a fact which would have been material to the determination of the medical board which is sought to be reviewed. In general a fact will satisfy this test if it is one which, had it been known to the medical board, would have called for serious consideration by the board and might well have affected its decision.

In the present case the appeal tribunal had satisfied that the evidence that D Mr. Saker definitely suffered from cervical spondylosis and nerve injury to his right arm may have affected its decision. I do not think that these words in their context are to be read as meaning only that the appeal tribunal thought there was a possibility, however remote, that this evidence might have affected the medical board's decision. I think that the tribunal was saying that the evidence brought to light a new fact which called for serious E consideration, which is indeed what the tribunal then proceeded to give to this fact in carrying out the review.

In my view, therefore, the appeal tribunal did not err in law in reaching the conclusion that this was a case where it was satisfied on the pre-requisites necessary for a review of the medical board's decision.

It being common ground that, for lack of reasons, the decision which the F appeal tribunal reached on the review which it then undertook cannot stand, I agree that the appeal to this court should be allowed and the matter remitted to the medical appeal tribunal. It is also common ground that for practical reasons the remitter should be to a differently constituted appeal tribunal. The consequence of this, in accordance with regulation 36(4) of the Social Security (Adjudication) Regulations 1986, will be that the G proceedings on the remitter will be by way of a complete re-hearing of the appeal. Thus the differently constituted appeal tribunal will have to consider for itself whether grounds for review exist. That will be a matter

A for its decision, but the circumstances in which that tribunal will make its decision on this point will be that this court has decided that it was open to an appeal tribunal to conclude that on the evidence before the first appeal tribunal there were grounds for review, and the attitude of the Secretary of State will be as expressed in the undertaking he has offered to the court.

For these reasons I too would allow the appeal and make the order
B proposed by my Lord.

LORD JUSTICE STAUGHTON: I agree that this appeal should be allowed for the reasons given by Lord Justice Lloyd and Lord Justice Nicholls.

During the past eight years there have been nine occasions when Mr. Saker's claim or some part of it has been the subject of determination by a tribunal. These were: first, the medical board in February 1981; secondly,
C the review medical board in November and December 1981; thirdly, the medical appeal tribunal in January 1985; fourthly, that tribunal refused leave to appeal in May 1985; fifthly, the commissioner granted leave to appeal from the tribunal in February 1986; sixthly, the commissioner, by his decision in October 1986, set aside the decision of the medical appeal tribunal; seventhly, the commissioner in January 1987 refused leave to
D appeal to this court from his decision; eighthly, Lord Justice Glidewell in April 1987 granted leave to appeal to this court; and, ninthly, this court has reached a decision today.

I do not seek to apportion blame for this appalling catalogue of events. It was medically a difficult case owing to the multitude of symptoms of which Mr. Saker complained: and the procedure set out by law is complex.
E I merely express the hope that on the next and tenth occasion when Mr. Saker's claim is considered it will be the last.

LORD JUSTICE LLOYD: Very well; the appeal will be allowed.

MR. R. ALLFREY (for Mr. Allen): My Lord, I ask for an order that the Secretary of State pay the appellant's costs, such costs to be taxed under the Legal Aid Act.

F MR. OUSELEY: My Lord, I do not resist that.

LORD JUSTICE LLOYD: The appeal will be allowed with costs, those costs to include the costs of the application for leave, and there will be an order for legal aid taxation.