MOBILITY ALLOWANCE

Mobility Allowance—extent of a Medical Appeal Tribunal's obligation to give reasons for rejecting an appeal.

A medical appeal tribunal, in considering a claim for mobility allowance, though accepting a report from the claimant's doctor that he was subject to a degenerative spinal disease, having heard evidence from the claimant that he had walked 150–200 yards from his car to the tribunal, stopping 3 or 4 times on the way, and having observed the claimant's activities, necessitated during his medical examination, confirmed the decision of the medical board refusing the award.

In supporting the decision of the Commissioner that the tribunal has properly set out their reasons for their decision and their findings as to the speed, manner and distance the claimant could walk without severe discomfort, the Court of Appeal in *Baron v the Secretary of State* stated it would be an intolerable burden for a tribunal to have to make specific findings as to the distance which a claimant could walk without having to stop or the extent of the breathlessness and pain which caused him to do so. There was also no obligation requiring the tribunal to tell the claimant that they did not accept his description of his walking limitations.

1. My decision is that the decision of the medical appeal tribunal (hereinafter called MAT) dated 6 June 1984 is not erroneous in point of law.

2. This is an appeal by the claimant to the Commissioner against the decision of the MAT following the decision of the Commissioner dated 19 March 1984. The appeal to me is on a question of law.

3. The claimant requested an oral hearing to which request I acceded. Accordingly, on 8 March 1985 I held an oral hearing. Mr. R. Bloomfield of Counsel instructed by the Network For the Handicapped represented the claimant. Mr. M. Qureshi of the Solicitor's Office Department of Health and Social Security represented the adjudication officer. To both of them I am indebted.

4. The facts and history of the case are set out in paragraph 1(a) to (r) inclusive of the submission made on behalf of the Secretary of State on which the claimant and his representatives have had the opportunity to comment.

5. Mr. Bloomfield put forward all the possible arguments on behalf of the claimant. He outlined the four grounds of appeal given at paragraph 2 in the statement in support of the appeal received at the office of the Commissioner on 29 November 1984. Mr. Bloomfield conceded that there was no substance in the first ground, that is that based on natural justice. Dealing with the second ground of appeal Mr. Bloomfield submitted that the tribunal did not properly assess the level of discomfort in regard to pain and breathlessness, they merely stated that conclusion. Mr. Bloomfield analysed the MAT's reasons for decision dated 6 June 1984 on the basis that the separate paragraphs dealt with separate aspects and that the decision of the MAT was dealt with in the paragraph commencing, "We accept...". Mr. Bloomfield referred me to the decision of a Tribunal of Commissioners in R(M) 1/83 at paragraph 10 which he submitted applied here. Mr. Bloomfield submitted that the MAT have not mentioned how far the claimant can walk without pain and breathlessness. Mr. Bloomfield submitted that it was the claimant's contention he could not walk 10 to 12 yards without discomfort. He also submitted that the MAT have not indicated what sort of pain and breathlessness the claimant suffers though in their findings they refer to the examination of him. Mr. Bloomfield submitted that the medical examination should be in the findings and when the claimant suffers pain can be drawn from that. Pain and breathlessness were

not properly considered and it was impossible to say whether the MAT measured the severity of the pain and breathlessness properly. In assessing severe discomfort there has to be two stages. First what discomfort and secondly how severe it is. Mr. Bloomfield then dealt with the third ground of appeal that is that the MAT failed to give due and proportionate weight and consideration to the report of Dr. Smith dated 11 November 1982. Mr. Bloomfield submitted that the claimant placed his whole claim on the basis of Dr. Smith's report which the claimant describes as fact and not opinion. Mr. Bloomfield acknowledged that the MAT was not bound one way or the other by Dr. Smith's report. It was one more piece of evidence they had to consider and give due and proportionate weight to. Mr. Bloomfield submitted that though by their statements the MAT knew of it and had read it, they did not give it proper consideration when they made their decision. The basis so Mr. Bloomfield submitted as to whether the MAT have properly considered a medical report is not determined by the label but by the substance. Certain aspects were at variance with the findings of the MAT and Mr. Bloomfield pointed *inter alia* to the question of blood pressure, the left leg being shorter than the right and chest abnormality. Mr. Bloomfield submitted that although the MAT said they accepted Dr. Smith's report thereby indicating they had taken it properly into account that was not good enough. If the MAT accepted Dr. Smith's report they must by implication accept the findings in it. It was not open so submitted Mr. Bloomfield to accept Dr. Smith's report where it was at variance with their own observations in the light of a lack of consideration of it. Mr. Bloomfield then turned to what he submitted was the strongest basis of the claimant's appeal that is the fourth ground. Mr. Bloomfield submitted that the various paragraphs of the MAT's reasons for decision dealt with separate matters. There was no reference to the distance the claimant can walk. Mr. Bloomfield submitted that the claimant had put it to the MAT that he was limited in the distance he was able to walk and that by implication also in the time he could walk. He also submitted that the MAT made no findings as to the distance, time or speed he was able to walk without severe discomfort. The findings, Mr. Bloomfield submitted, on this aspect by the MAT were wholly inadequate. All the MAT had done was simply to repeat the words of the regulation and the claimant was consequently unable to appreciate what the criteria are and why his claim failed. Simply to repeat the regulations is not the right test—it is insufficient in the context of a claim such as this. Mr. Bloomfield in conclusion submitted that this was the strongest ground, that is of inadequate findings and reasons, and he invited me to give detailed guidance to the MAT if the case was sent back. This he submitted would finally dispose of the matter and avoid further appeals.

6. On the view I take of the case I see no reason to set out the submissions made before me at the hearing by Mr. Qureshi.

7. In my judgment the MAT did not err in law. In consequence, as I am not remitting the case, no question of detailed guidance to a differently consituted MAT arises. Mr. Bloomfield has conceded that the claim in respect of natural justice has no substance and I do not pursue this aspect further. As to the other grounds of appeal the decision of the medical appeal tribunal on 30 June 1983 was set aside by the Commissioner on 19 March 1984. Paragraph 3 of the Commissioner's decision refers to the submissions made on behalf of the Secretary of State which conceded that the 1983 decision of the medical appeal tribunal was erroneous in law. The case has to be considered in that light and in the light of the notes by the clerk contained in the case papers. Quite clearly there was specific consideration given to the question of severe discomfort and whether or not Dr. Smith's report had bearing. The X-rays have no relevance since the claimant states

that Dr. Smith's report is conclusive. The matter had been before a medical practitioner, a medical board and the earlier medical appeal tribunal and the Commissioner. The MAT here was rehearing the matter and it was important to identify the relevant issues. The MAT were only dealing with specific contentions no others were material. I need only refer to paragraph 11 of the decision of a Tribunal of Commissioners in R(M) 1/83, paragraph 10 of which was referred to by Mr. Bloomfield in argument. Paragraph 11 deals with what may be omitted. Where only one or two matters are in issue it is sufficient for the MAT to deal with them only. The MAT's findings that pain and breathlessness suffered by the claimant was not severe is really a matter for their clinical judgment. The MAT is an expert body and I need only refer to paragraph 13 of R(I) 18/61. So far as severe discomfort is concerned there is nothing in the regulations or in the decision of the Commissioner which says the pain or breathlessness has to reach a certain level before being regarded as severe discomfort. This is a matter entirely for the MAT in view of their medical expertise. I do not accept Mr. Bloomfield's submission based on the division of the MAT's decision into separate matters being considered in separate paragraphs. The whole of the decision has to be considered together. The paragraphs are not separately headed. The MAT are stating all the relevant matters together and they are not required to separate the matters out under different headings. There was evidence as to the distance the claimant could walk without severe discomfort before the MAT on the face of their record and in the notes of the clerk. The evidence came out before the MAT that the claimant had come by car and he had stopped three or four times when walking from the car. It emerged before the MAT that the claimant was able to walk some 200 yards only stopping three or four times. As to the issue of pain, the MAT referred to some discomfort. In view of all their findings, their decision that they did not accept that he suffered severe discomfort is justified by the findings. Further in the final sentence of their decision, the MAT state "We therefore confirm the decision of the Medical Board". The relevant period is from the date of claim and therefore evidence before the medical board is important. The MAT rightly took into account the evidence before the medical board and were entitled to rely on the clinical findings of the medical board. Pain and breathlessness were considered by the MAT and in view of their findings they were entitled to hold the claimant did not suffer severe discomfort while walking. As to Dr. Smith's report there was no medical evidence that the claimant suffered from blood pressure; from the report of the medical board it is clear that the claimant's heart was normal and though there was a weakness of the left leg the claimant was able to perform full movement. Dr. Smith's report is consistent with the medical board and the MAT. The law is clear as to the circumstances where a claimant is entitled to mobility allowance. This is not such a case. It is clear that the MAT rejected the evidence of the claimant and it is clear that they do not accept the claimant suffered from severe discomfort. Mr. Bloomfield invited me to say something about the X-ray report to the MAT. As to this it is not open to me to express views on the relevance or otherwise of reports on clinical matters. This is for the doctors. As to the point that the claimant has false notions of the rules of the Secretary of State, the Commissioner etc. and for that purpose the claimant should be given another chance, this does not constitute grounds in law. In my judgment the MAT have been diligent and efficient in their decision and have not erred in law.

8. Accordingly, the claimant's appeal is dismissed.

(Signed) J. B. Morcom
Commissioner

SOCIAL SECURITY ACTS 1975 TO 1981

NOTE ISSUED ON THE AUTHORITY OF THE CHIEF COMMISSIONER

The claimant appealed to the Court of Appeal. On 17 March 1986 the Court of Appeal (Lord Justice May, Lord Justice Lloyd and Sir John Megaw) dismissed the appeal.

APPENDIX TO R(M) 6/86

A

WILLIAM BARON	Appellant
and	(Claimant)
SECRETARY OF STATE FOR SOCIAL SERVICES	Respondent
	(Respondent)

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

B **MR. JOHN FRIEL** (instructed by the Network for the Handicapped Ltd.) appeared on behalf of the Appellant/Claimant.

MR. CHRISTOPHER SYMONS (instructed by the Solicitor to the Department of Health and Social Security).

JUDGMENT

(Revised)

LORD JUSTICE MAY: This is an appeal from a Decision of Mr. J. B. Morcom, a Social Security Commissioner, of 26th April 1985 dismissing the appeal to him of the present appellant (the applicant throughout) against a Decision of the Medical Appeal Tribunal of 6th June 1984. The case is one concerned with mobility allowance.

The Decision of the Medical Appeal Tribunal of 6th June 1984, appealed against to the Commissioner, was that the appellant was not unable, or virtually unable, to walk. That is material having regard to the terms of the relevant statutory provision.

Mobility allowance is dealt with by what is now section 37A of the Social Security Act 1975. That provides by subsections (1) and (2):

> "(1) Subject to the provisions of this section, a person who satisfies prescribed conditions as to residence or presence in Great Britain shall be entitled to a mobility allowance for any period throughout which he is suffering from physical disablement such that he is unable to walk or virtually unable to do so.
>
> (2) Regulations may prescribe the circumstances in which a person is or is not to be treated for the purposes of this section as suffering from such physical disablement as is mentioned above;...".

Regulations have been made under that statutory provision, the material one of which is Regulation 3 of the Mobility Allowance Regulations 1975 [S.I. 1975 No. 1573] as subsequently amended by the Mobility Allowance Amendment Regulations 1979 [S.I. 1979 No. 172]. The only material paragraph of Regulation 3 is paragraph (1), which reads as follows:

> "(1) A person shall only be treated, for the purposes of section 37A, as suffering from physical disablement such that he is either unable to walk or virtually unable to do so, if his physical condition as a whole is such that, without having regard to circumstances peculiar to that person as to place of residence or as to place of, or nature of, employment—
>
> (b) his ability to walk out of doors is so limited, as regards the distance over which or the speed at which or the length of time for which or the manner in which he can make progress on foot without severe discomfort, that he is virtually unable to walk;"

The applicant applied for a mobility allowance, it would seem, at least as long ago as 1981, and it may be as long ago as 1978. Since his original application he has been examined by a number of doctors, by two Medical Boards and two Medical Appeal Tribunals. The second examination by a

A Medical Appeal Tribunal was that of 6th June 1984, which was the subject of the appeal to the Commissioner which he dismissed and which forms the subject-matter of the present appeal before us.

In relation to decisions by Medical Appeal Tribunals in this particular context, for the purposes of this appeal I must refer to Regulation 34(4) of The Social Security (Adjudication) Regulations 1984. That sub-regulation B provides:

> "(4) A medical appeal tribunal shall in each case record their decision in writing in such form as may from time to time be approved by the Secretary of State and shall include in such record, which shall be signed by all the members of the tribunal, a statement of the reasons for their decision, including their findings on all questions of fact C material to the decision."

The essence of the appeal to the learned Commissioner and subsequent appeal to this court is that the Medical Appeal Tribunal dealing with this matter on 6th June 1984, did not adequately comply with their obligations under Regulation 34(4) of the 1984 Adjudication Regulations in that they did not give an adequate statement of the reasons for their Decision, or of D their findings on all questions of fact material to the decision.

The findings and reasons of the Medical Appeal Tribunal can be briefly described in this way. After an introductory sentence or two, they referred to an earlier report in the history of this applicant by a Dr. Smith dated 11th November 1982, a report to which I shall come back in a moment. They then recorded that the applicant told them "that he could not take a step E without feeling pain, which he said was constantly with him and after walking some 10 to 12 yards,... became so intolerable as to cause him to stop." They went on to say: "He also suffers from breathlessness which was equally distressing and also caused him to stop." Thus in this case the two particular disabilities affecting the applicant's mobility are pain and breathlessness when he walks. The Tribunal went on to record:

F > "He [the applicant] informed us" (and the notes of the hearing make it clear) "that he arrived for the hearing by car, which he had parked in a position from some 150–200 yards away from the Tribunal... and that he had walked from his parked car to the Tribunal, stopping three or four times for a rest of a minute or two."

The Tribunal then recorded the substance of their physical examination G of the claimant on that occasion. They recorded for instance that there was "some limitation of both flexion and extension accompanied by some discomfort in the lower back but other movements [of the spine] are full and

A pain free. . . . Straight leg raising is symetrically limited at 45° . . . Both legs are freely mobile. . . ". They concluded the notes of their examination by saying: "The activities necessitated during examination, including undressing and climbing on and off the examination couch, did not occasion breathlessness." They then proceeded to make certain findings (to which I shall also come back in a moment) after first referring to the report
B of Dr. Smith dated 11th November 1982 which I have already mentioned.

That was a relatively short report. It recorded in the first paragraph, as I read it, the nature and extent of the applicant's complaints to Dr. Smith about his inability to walk without pain in particular. Mr. Friel, on behalf of the applicant, submitted that it was apparent from the way in which the report was written that Dr. Smith had in fact accepted the complaints which
C were being made to her by the applicant as recorded in the first paragraph. For my part, I cannot read the report as so doing. Dr. Smith's finding, after a physical examination, was very shortly stated on the second page of the report in these terms:

> "Although functionally his walking ability is normal, the problem is the pain arising from his degenerative spinal disease which occurs on
D walking."

There is no doubt that that is the problem. This applicant unfortunately does have a widespread degenerative spinal condition which does cause him pain on walking. But the question for the Medical Appeal Tribunal was not so much did or did not that disability exist, but the effect of that disability on the appellant, both from the point of view of the pain it causes him and
E his breathlessness.

The tribunal's finding was in these terms:

> "We accept the report of Dr. Smith dated 11 November 1982 and we also accept that the claimant suffers pain and breathlessness in walking. However, from our observations of the claimant and from our examination of him as reported above, such pain and breathless-
F ness are not, in our opinion, sufficient and severe enough to qualify him for Mobility Allowance. We therefore make the following decision.
>
> The claimant is not unable to walk within the provisions of Regulation 3(1)(a). In our opinion the claimant does not satisfy the provisions of Regulation 3(1)(b) or (c). . . "

G and they therefore went on to confirm the earlier decision of a medical board.

A Essentially Mr. Friel, who in presenting this appeal has said everything that can be said on behalf of the applicant, takes two main points. He first of all submits that when one notes the terms of Regulation 34(4) of the Adjudication Regulations, the finding of the Medical Appeal Tribunal, in the terms that I have quoted, was not a sufficient compliance with the requirement of the Statutory Instrument. He submits for instance, as was B suggested in an earlier decision of a tribunal of commissioners, that there ought to have been a more specific finding of the distance which the applicant could reasonably walk without having to stop as the result either of pain or breathlessness which unfortunately afflicts him. He coupled with this a submission that the Medical Appeal Tribunal ought to have given details of their findings in that there should have been some indication C (though for my part I find it difficult to appreciate how this could be done) of the extent of the discomfort which accrues to this unfortunate applicant when he has walked whatever distance it may be, and is thereby forced to stop for a few minutes.

That it is by no means easy, if realistically possible, to give an assessment of the amount of discomfort for a person in these circumstances underlines D what I think was the problem before the Medical Appeal Tribunal on this occasion, and that is that they were considering a question which was a matter of degree. They were considering the extent to which the accepted pain and the accepted discomfort did affect the applicant's mobility. Having observed him, having heard what he had to say about the distance from which he had come to the Tribunal, and having studied the papers in E the case, including the report of Dr. Smith, they reached the conclusion that as a matter of degree, although there was some pain and some breathlessness, it was not severe enough to bring the applicant within the provisions of the Mobility Allowance Regulations, to which I have referred. It would be an almost intolerable burden on Medical Appeal Tribunals, in deciding cases of this nature as distinct from other types of cases, if they had to make F specific findings of distances which people could walk and the extent to which breathlessness and pain caused them to stop.

As was pointed out in *Regina v. Immigration Appeal Tribunal, Ex parte Khan (Mahmud)* [1983] 1 QB 790, at page 793, to which Mr. Friel has referred us, Lord Lane C. J., quoting from a decision of Sir John Donaldson in the national Industrial Relations Court in 1974, said this:

G > "It is impossible for us to lay down any precise guidelines. The overriding test must always be: is the tribunal providing both parties with the materials which will enable them to know that the tribunal has made no error of law in reaching its findings of fact?"

A In that particular instance the brief reasons set out did not suffice. In my judgment the reasons given by the Medical Appeal Tribunal in the instant case did suffice. They made it quite clear to the appellant—and indeed to the Department on the other hand—that the grounds upon which they came to their conclusion that the decision of the Medical Board should be upheld, namely, that as a matter of degree, although pain and breathlessness were B there, applying their medical expertise (and one has to bear in mind that that is one of the functions of the Medical Appeal Tribunal), were that the pain and breathlessness were not sufficient to qualify this applicant for mobility allowance.

The second substantive point which Mr. Friel takes on the appellant's behalf relates to the statement by the learned Commissioner, when giving C his reasons for dismissing the appeal, that it was clear that the Appeal Tribunal had rejected the evidence of the claimant and clear that they did not accept that he suffered from severe discomfort. Mr. Friel takes, as I understood his argument, two sub-points within the main point. First of all, that the Commissioner was wrong in concluding that that was the view the Medical Appeal Tribunal had taken of the applicant's evidence and appear- D ance before him. There was, Mr. Friel submitted, nothing in the reasons of the Medical Appeal Tribunal to suggest that they were not accepting to the full the claimant's evidence and the learned Commissioner should not have so held in the reasons which he gave.

With respect to Mr. Friel, I cannot accept that submission. It is quite clear, when one reads the Medical Appeal Tribunal's decision with any E sense of discernment, that that was precisely what they were finding. In effect, both in Dr. Smith's report and in the applicant's statement to the Appeal Tribunal, he was putting his walking ability at something of the order of 10 to 12 yards and yet, having recorded that at the bottom of one page, at the top of the next page the Tribunal recorded his statement that he had walked 150 to 200 yards from his parked car to the tribunal room F with a rest three or four times, perhaps for a minute or two, on the way. When one couples those parts of the Medical Appeal Tribunal's record with the record of the physical examination, and in particular such passages as those to which I have already referred, that "other movements are full and pain-free and the activities necessitated during examination, including undressing and climbing on and off the examination couch, did not G occasion breathlessness", it seems to me to indicate beyond peradventure that, to a substantial extent in carrying out their obligations to consider this applicant's disabilities as a matter of degree, they were not accepting to the full the story that he was telling them.

A In my judgment the learned Commissioner was fully entitled to reach the conclusion to which he came—which I think is a matter of necessary inference, though not expressly stated in the Medical Appeal Tribunal's reasons.

The second sub-point that Mr. Friel takes on this particular issue is that, if in truth it was the situation that the Medical Appeal Tribunal did not B accept in full what they were being told by the applicant, they should in fairness have put the matter to him. In support of that submission he referred briefly to the case of *Mahon v. Air New Zealand Ltd.* [1984] 1 AC 808, a decision of the Privy Council. The essential difference, however, between the facts in *Mahon's* case and the facts in the instant case is that in the latter it was indeed the issue of the accuracy of the applicant's story that the medi- C cal appeal tribunal were enquiring into. I do not think there was any obligation on them, as I understood Mr. Friel's suggestions, to intersperse in their examination of him, or to put to him at the end of their examination that they were not minded to accept that which he was telling them. That was the very issue which they had to determine. They had under the Adjudication Regulations to give reasons for it. They did determine that D particular issue and they gave reasons for it. In my judgment there was no absence of natural justice or lack of fairness—put it how one will—in the alleged failure of the Medical Appeal Tribunal to put to the applicant at least that he was exaggerating, or at worst that he was telling untruths. I do not think there was any such obligation on the Medical Appeal Tribunal in the circumstances of the instant case.

E For those reasons, in my judgment the learned Social Security Commissioner was in no way in error in the decision to which he came dismissing the appeal from the Medical Appeal Tribunal, and I for my part would dismiss this appeal.

LORD JUSTICE LLOYD: I agree. In addition to the grounds with which my Lord has dealt, Mr. Friel submitted before us that the decision of the F Medical Appeal Tribunal was *Wednesbury* unreasonable. That is in accordance with paragraph 3 of his amended notice of motion. But that argument does not appear to have been advanced before the Commissioner. It is not reflected in the statement in support of the appeal to the Commissioner and it was not developed before us at any length. In those circumstances I think it sufficient to say, in addition to what my Lord has said, that that way of G putting the matter is without foundation. I agree that the appeal should be dismissed.

SIR JOHN MEGAW: I also agree that the appeal should be dismissed for the reasons given by my Lords.

A *Appeal dismissed. Legal aid taxation of appellant's costs. Application for leave to appeal to the House of Lords refused.*

MR. SYMONS: My Lord, may I mention one matter. Obviously your Lordships had in mind rejecting the criticisms of the reasons and also rejecting the criticisms relating to the findings of fact, which of course is another requirement of the regulations. I merely mention that because your
B Lordships did not specifically refer to it in the course of your Lordships' judgment.

LORD JUSTICE MAY: If I did not, I certainly had it in mind and, as was apparent, was minded not to go all the way with the decision of the Tribunal of Commissioners that there had to be the very detailed findings that they suggested there ought to be.