
CHAPTER 14

Medical appeal tribunal

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CHAPTER 14

Medical appeal tribunals

(For general questions on adjudication etc. see Chapter 17 below)

Part 1: General considerations

S. 109 of and Sch. 12 to the SS Act 1975 and regs. 20-30 and Part 5 the SS (Determination of Claims and Questions) Regs. 1975 (hereinafter in Chapter 14 referred to as 'the Act' and 'the Regs.' respectively).

1 Constitution of tribunal

Sch. 12 of the Act and reg. 20 of the Regs.

- i One of the medical members of a MAT which decided that the claimant was not suffering from a relevant loss of faculty had sat as a member of tribunals on two previous occasions, on each of which the claimant's application for a review of an earlier decision of the tribunal was rejected. The claimant appealed on the ground that the medical member was ineligible to sit as a member of the tribunal, but it was held by a tribunal of Commissioners that the only ground on which it was, or could be, suggested that the decision of the tribunal was vitiated was that there was a real likelihood of the medical member in question being biased and, since there was no such likelihood, the tribunal's decision was not erroneous in law. R(I) 26/61 (T)
- ii The degree of a claimant's disablement was assessed by a MAT at 10%, for life, but one of the medical members of the tribunal had examined the claimant on behalf of his employer's insurers in connection with a common law action brought by the claimant against his employers in connection with the relevant industrial accident. It was understood that the medical member would, or might, be called as a witness for the employers at the trial of the action and the claimant appealed to the Commissioner on the ground that the MAT had been improperly constituted by the inclusion of the medical member in question. It was held by a tribunal of Commissioners that the decision of the medical appeal member was in fact biased against the claimant, it might reasonably be thought that he lacked the uncommitted independence of mind requisite to the performance of his duty as a member of the tribunal. As the claimant had not appreciated until after the hearing that the tribunal might not have been properly constituted he had not waived his right to take the point. See also 14.3.2, *below*. R(I) 28/61
- iii An appeal by a claimant from a medical board came before the MAT on three separate occasions. On the first occasion the hearing was adjourned for the production of X-rays and surgeon's report; on the second occasion the MAT was differently constituted and the case was again adjourned to enable the claimant to obtain legal representation; at the third hearing, at which the tribunal was again differently constituted from either of the two previous tribunals, and at which the claimant was legally represented, the appeal was dealt with as a hearing *de novo*. The claimant appealed on the ground that the changes in the constitution of the tribunals, which had been made without his express consent although he had not objected to them, rendered the decision of the third tribunal erroneous in law. It was held that as the hearing before the third tribunal had been a hearing *de novo* and in no sense a continuation of the previous hearings the procedure followed had not been repugnant to the principles of natural justice. R(I) 40/61
- iv Complaint was made by the claimant that one of the medical members of the MAT was the surgeon under whose care he had been while attending hospital and undergoing two surgical operations. The member in question intimated by letter that R(I) 5/73

14.1.1-2

his registrar had performed the operations, but it was held that it was plain on the evidence that in the course of treatment during which the claimant underwent the operations such treatment was under the supervision of the medical member of the tribunal, who had previously seen the claimant on occasions and advised on treatment. In those circumstances the tribunal member was a person who had taken part in the case as a medical practitioner and who had regularly attended the claimant, and was therefore barred from membership of the tribunal by (what is now) reg. 20(1)(b) of the Regs.

- R(DLA) 3/07 v The claimant was refused DLA and on appeal was examined by an examining medical practitioner (EMP). The DM reconsidered in the light of the EMP report and disallowed the claim again. The claimant appealed and the tribunal disallowed the appeal preferring the evidence of the EMP over the claimant's own evidence. Before the Commissioner, the claimant's representative argued for set aside of the tribunal's decision on grounds of apparent bias as the EMP concerned had sat with the chairman of the tribunal on three occasions in the previous two years. The Commissioner allowed the appeal saying that the lapse of time between these three occasions was not sufficient to destroy the objection of apparent bias and any doubts about such bias should be resolved by setting aside and the decision of the tribunal and remitting for rehearing by a differently constituted tribunal.

2 Jurisdiction

- R(I) 31/61 i It was contended that the decision of a MAT on disablement questions in relation to an accident was inconsistent with findings of fact previously made by the Commissioner when deciding that the accident was an industrial accident, but it was held, dismissing the appeal, that while the Commissioner's decision that the accident in question was an industrial accident was binding on the medical authorities, the disablement questions were for determination by the medical authorities. See paras. 6-8.
- R(I) 33/61 ii On a claim for disablement benefit a medical board decided that the claimant was not suffering from PD no. 38, and when she subsequently renewed her claim it was treated as being an application for a review of the earlier decision under what is now s. 110(1) of the Act and was referred to a medical board. The claimant then appealed against the medical board's review decision to the MAT and the tribunal purported to decide that the claimant had suffered from the PD. On appeal to the Commissioner from the tribunal's decision it was held that, in the absence of a diagnosis decision by the medical board, the tribunal may not determine the diagnosis question themselves. See also 14.2.2 ii *below*.
- R(I) 8/63 iii It was accepted by a decision of the Commissioner that a man had met with an industrial accident, but the MAT subsequently found that the accident had not resulted in any loss of faculty. On appeal to the Commissioner it was contended that the decision of the MAT was inconsistent with the Commissioner's decision but it was held that, while the medical authorities must accept a decision that a claimant has, or has not, suffered an industrial accident, they are not bound to accept anything more, though it is proper that the medical or benefit authorities take cognisance of the Commissioner's findings. See also 18.2.2 ii and iii *below*.
- R(I) 9/63 (T) iv An initial medical board found that the claimant had no loss of faculty resulting from an industrial accident, but a second claim in respect of the same accident was incorrectly referred to a further initial medical board instead of to a review medical board. The second board gave an assessment of 20 %, and the MAT, to whom the second board's decision was referred, refused to treat it as a decision of a review board or to set it aside as a nullity on the ground that it was given without jurisdiction. After considering the case on its merits the MAT decided that there was no relevant loss of faculty after the end of the injury benefit period. On appeal it was held by a tribunal of Commissioners that, while the MAT had jurisdiction to entertain the case, the only decision they were entitled to give, regard being had to the principle of *res judicata*, was that the question whether there was any relevant loss of faculty had been decided by the first-mentioned medical board; that the decision was final in the absence of appeal or review; and it was, therefore, not open to the tribunal to entertain the question on its merits. When an appellate body deals with an appeal its decision, even though it be a decision confirming the decision appealed from, sets aside the decision appealed from in the sense that the decision ceases by itself to govern the rights of those concerned. See para. 20-25. See R(S) 1/83. Followed in R(SB) 4/85.

- v In the case of a man who suffered a hiatus hernia at his work it was held by the Commissioner on a claim for injury benefit that the claimant had suffered personal injury caused by accident arising out of and in the course of his employment, but the medical appeal tribunal who examined the claimant in connection with his subsequent claim for disablement benefit decided that there was no loss of faculty resulting from the relevant accident since the hernia had not been caused or aggravated by the claimant's activities at work. It was held that the tribunal decision was not erroneous in law since they had answered the question reserved to them and in doing so were not bound by a decision of the statutory authority on the injury benefit claim; nor by any finding by the statutory authority that the claimant had suffered personal injury. The Commissioner's decision was (ultimately) quashed by the House of Lords. See *Minister of Social Security v Amalgamated Engineering Union, Ex parte Dowling*, 18.2.2 ii below and see also R(I) 10/68 and R(I) 3/69 and *Hudson and Jones v Secretary of State for Social Services*, 18.2.2iii below. But see now section 117 of the Act. R(I) 16/66
- vi The claimant claimed disablement benefit for prescribed disease C23. The adjudication officer decided that C23 was prescribed in relation to the claimant and referred the diagnosis question to a medical board. The medical board decided that the claimant was not suffering from prescribed disease C23 or any sequela of that disease. The claimant appealed to the medical appeal tribunal. By a majority, the tribunal confirmed the medical board's decision. In reaching their decision the tribunal considered whether the claimant could only be suffering from prescribed disease C23 if he had been engaged in an occupation involving exposure to substances listed in Schedule 1, paragraph 23 of the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985. It was held that the tribunal's decision was erroneous in law because they had considered a matter that was outside their jurisdiction (paragraph 15). The tribunal were required to decide whether the claimant was suffering from prescribed disease C23 without considering whether he had been engaged in an occupation involving the substances listed opposite the definition of the disease in Schedule 1 of the 1985 Prescribed Diseases Regulations. The Commissioner set out the questions which were for determination by the statutory adjudicating authorities and those which were for determination by the medical adjudicating authorities (paragraph 17). R(I) 4/91
- vii On 26 January 1988 the claimant applied for a review of his assessment, which had expired on 20 June 1976, on the grounds that there had been an unforeseen aggravation. On 4 March 1988 an adjudicating medical authority decided that there had been no unforeseen aggravation. The claimant appealed to the medical appeal tribunal who on 17 November 1988 finally assessed the claimant's disablement at various amounts from 20 June 1976 for life. The medical appeal tribunal had no jurisdiction to backdate the assessment prior to 26 October 1987 since the period to be taken into account by any assessment reviewed and revised under section 110(2) of the Social Security Act 1975 was a period not exceeding three months before the date of the application (section 110(5) of the 1975 Act and regulation 68(a) of the Social Security (Adjudication) Regulations 1986). Some six months out of time, the Secretary of State gave notice of application for leave to appeal which included reasons for the delay in making the application. It was held that the question for determination by the Commissioner was whether or not there were special reasons for granting an extension of time in this particular case. The Commissioner considered that the reasons given by the Secretary of State would not in themselves have been sufficient but taking into account the clear error in the tribunal's decision it was proper to extend the time. R(I) 5/91

3 Powers of medical appeal tribunal

- i A man who suffered from diabetic vascular disease injured his left foot and some 4 months later developed an ischaemic lesion. Less than a year later his left leg was amputated below the knee and a medical appeal tribunal assessed the overall disabilities at 60 per cent., from which they offset 30 per cent. for the diabetic vascular disease. It was held by a Tribunal of Commissioners that as a matter of law it was R(I) 41/60 (T)

open to a medical appeal tribunal to decide that the disease constituted a disability and that the percentage of the overall assessment disablement to be offset on account of the disease was a question of fact.

- R(I) 18/63 ii The only ground of appeal to the Commissioner from a decision of the medical appeal tribunal is that the decision is erroneous in point of law. A diagnosis question is a question of fact, but the question whether there is any evidence to support finding of fact is, in general, a question of law. Nevertheless, owing to the special nature of the jurisdiction of a medical appeal tribunal, whose medical members may rely on their own expertise, it would only be in an exceptional case that the Commissioner would feel justified in holding that the decision of such a tribunal was erroneous in law because there was no evidence to support it. However, when a medical appeal tribunal who were called upon to determine whether the claimant was suffering from prescribed disease no. 37 held that he was not suffering from the disease because, they said, it related to an occupation in a factory where nickel was produced and could not apply in the claimant's case, it was held that the tribunal had erred in law on the ground that what, in effect, they had done was to decide that the claimant had never worked in the prescribed occupation and that, therefore, the prescribed disease could have no application in his case, although that was a question which could only be determined by the benefit authority.
- R(I) 14/65 iii The Minister (as he then was) applied to the medical appeal tribunal out of time for leave to appeal to the Commissioner from a tribunal's decision. Notwithstanding the application was out of time, the medical appeal tribunal gave leave to appeal, but it was held that as the application for leave was made outside the prescribed time, and since the medical appeal tribunal had no discretion to extend the time for applying for such leave, the appeal could not be entertained since the purported grant of leave to appeal had no meaning. See paragraphs 6-7.
- R(I) 5/68 iv An insurance officer decided that a man had met with an industrial accident when a piece of grit or dust entered his eye and caused 'damage to nerve'. Subsequently the claimant became incapable of work by reason of 'glaucoma operation', but on a claim for disablement benefit the medical appeal tribunal found that the glaucoma was constitutional and did not result from the relevant accident. It was held that the medical appeal tribunal's decision was not erroneous in point of law since, although they had to accept as their premise that there had been an injury, a decision as to the cause of incapacity during the injury benefit period could not fetter their judgement in determining whether the claimant was disabled by his injury after the end of that period. See paragraphs 8-12 where the decision of the House of Lords in *Minister of Social Security v Amalgamated Engineering Union, Ex parte Dowling*, 18.2.2 ii below, is considered. See also R(I) 10/68 and *Hudson and Jones v Secretary of State for Social Services*, 18.2.2 iii below. But see now section 117 of the Act.
- R(I) 1/73 v It was accepted that a man had contracted prescribed disease no 42 and injury benefit was paid to him until the end of the injury benefit period. On his making a claim for disablement benefit it was decided by the medical appeal tribunal that he had not suffered from the disease and that this condition was wholly constitutional, but that decision was held to be erroneous in law on the ground that no diagnosis question was referred to the tribunal and they had no jurisdiction to decide such a question. The matter was accordingly referred to a second medical appeal tribunal, who decided that there was no loss of faculty resulting from prescribed disease no. 42, that the claimant was no longer suffering from any continuing effects of the accepted attack of the disease and had not so suffered at any time since the end of the injury benefit period. On appeal to the Commissioner it was held that the medical appeal tribunal's decision was not erroneous in law, there being no bar in law to preclude them from finding as a medical fact that the claimant was not suffering from, and had not suffered from, any continuing effects of the disease after the end of the injury benefit period. An application for an order of certiorari to quash the Commissioner's decision was refused by the Divisional Court. See *R. v Industrial Injuries Commissioner, Ex parte Maiden*, 18.1.3 v.

vi A medical appeal tribunal decided that a decision by a medical board was a nullity on the ground that the board had not been properly constituted. The tribunal then proceeded to examine the claimant and found that there was no loss of faculty due to the relevant accident. On appeal to the Commissioner it was held that a medical appeal tribunal has a discretion either to deal with the matter themselves or to remit the case back for a decision by another medical board; that where a medical board's decision falls to be set aside as being a nullity, not on some procedural or technical ground but because the board was not properly constituted, a medical appeal tribunal should in normal circumstances not proceed to give a decision on the merits without the consent of the claimant, but should remit the case back for decision by another medical board; that it is the duty of a medical appeal tribunal who decide that a medical board's decision is a nullity to make clear in their decision that they have applied their minds to the discretion they have in that connection; and that in the instant case it was not clear whether the tribunal had applied their minds to the question whether or not they had a discretion, and they had, accordingly, erred in law. R(I) 7/75

vii On 2 July 1986 an initial medical board assessed the claimant's disablement at ten per cent.. On 16 July 1986 the medical board altered the report and, *inter alia*, changed the assessment of disablement from ten to fifteen per cent.. The decision was not signed by all board members and one member was not present when the alternations were made. The decision dated 16 July 1986 was referred to the medical appeal tribunal who decided that there was no loss of faculty resulting from the relevant accident. The Commissioner held that the tribunal's decision was erroneous in law and a nullity. The medical board's decision that had been before the tribunal was invalid in that it was not signed by all the members of the medical board. The only decision that the tribunal could properly have given was to set aside the decision of the medical board. The Commissioner directed that as there was no valid decision of the medical board in existence, there should be a fresh reference by the adjudication officer to a differently constituted adjudicating medical authority who should consider the disablement questions afresh. R(I) 3/92

4 Conduct of hearing before medical appeal tribunal

Regulation 22(1) of the Regulations.

i The question whether the claimant has had an adequate hearing before a medical appeal tribunal cannot be answered by reference to any set formula, for the substance of the matter must be considered. In one sense the claimant is given an opportunity to say anything he has to say if he is present and nobody has told him to remain silent; but, on the other hand, a layman with no experience of appearing before a tribunal may well be hesitant and fearful of speaking out of turn and may reasonably expect that he will be told when the time comes for him to speak, as is the common practice in many forms of legal proceedings. Further, where at a medical appeal tribunal hearing some new point arises which is not previously known to have been an issue, it is desirable, if not essential, that the claimant should be informed so that he can, if he thinks fit, give or produce evidence on that point. Thus the decision of a medical appeal tribunal was set aside by a Tribunal of Commissioners when complaint was made that, after the Minister's representative had stated his case and one of the medical members of the tribunal had asked him (the claimant) a question and the medical members had examined him in the examination room, he had been told to go and had at no stage of the proceedings been asked whether there was anything he wanted to say. See paragraphs 16-18. R(I) 29/61 (T)

ii In many cases it is sufficient for a medical appeal tribunal to rely on the casepapers and statements made by representatives at the hearing without hearing evidence, but where a statement goes to the very heart of the matters at issue and the tribunal are not prepared to accept that statement they should make it clear at the hearing so that evidence could be called in support of the statement. At a hearing before the medical appeal tribunal the claimant's solicitor stated that certain observations made by a medical board were misleading, but in their decision the R(I) 30/61

medical appeal tribunal made no finding on that issue of fact. It was held that the tribunal should have given reasons for the assessment they made. See also 14.3.4 ii *below*.

- R(I) 35/61 iii A claimant based his appeal to the Commissioner from a decision of the medical appeal tribunal on 4 main grounds, *viz.*: that the decision should be disregarded because it proceeded upon a reference by the Minister and not upon an appeal by the claimant; that the degree of his disablement had not been fairly assessed; that he was not furnished with copies of an eye specialist's report; and that he was given a 'very poor' examination by the medical member of the tribunal. It was held that the first ground was without substance; that there was no allegation of error of law in the second ground; and that, as to the fourth ground, the medical appeal tribunal were not obliged to undertake any examination at all, although no doubt in suitable cases it was customary and proper for them to do so. As to the third ground upon which the appeal was based, it was held that the claimant should have been furnished with copies of the specialist's reports and that the failure to do so constituted an error of law.
- R(I) 14/68 iv A claimant with several provisional assessments of disabilities in respect of a back injury described as 'fully relevant' had the latest assessment wholly discharged by the medical appeal tribunal. On appeal to the Commissioner it was held that the medical appeal tribunal's decision was not erroneous in law, but on application being made to the Court of Appeal for an order of certiorari to quash the Commissioner's decision it was held that the tribunal had erred in law and the order was allowed to go. See *R. v Deputy Industrial Injuries Commissioner, Ex parte Howarth*, 18.1.3 iv.
- R(I) 6/69 v In a case in which the claimant contended that he had not been given an opportunity of presenting his case to the medical appeal tribunal as he wished it was said, in the course of a decision of the Commissioner setting aside the tribunal's decision on the ground of error of law, that it is the duty of a medical appeal tribunal to afford every claimant a reasonable opportunity of addressing them, of calling or adducing evidence, and of calling attention to any points or matters which he thinks should be taken into consideration. It involves something more than a mere passive willingness to accede to a request by the claimant, but calls for a degree of active assistance and encouragement. See paragraph 6-7.
- R(I) 2/73 vi A man twisted his knee in what was accepted as having been an industrial accident and, after various assessments of the extent of his disablement by medical boards and tribunals, the case came before a medical appeal tribunal on a third occasion. The tribunal then considered they should have the opinion of a consultant as to the reason why the claimant's knee continued to swell and as to the relevance of its doing so to the industrial accident. It was alleged on behalf of the claimant that the tribunal's desire for a consultant's report was a reference under the relevant statutory provisions and that the history and information given to the consultant contained errors and omissions and was misleading. On appeal to the Commissioner it was held that the tribunal's decision was not erroneous in law. It is the general practice of the Department, when the medical authorities require further medical evidence, to ensure that it is provided. It is helpful to claimants and to associations because the Department stands the cost involved. The claimant had been aware of the material submitted to the consultant before the resumed hearing by the medical appeal tribunal, but had raised no objection at that time.
- R(I) 7/81 vii In a case where a claimant complained that his case before a medical appeal tribunal was the last of the day; that the hearing started over 2 hours late; that it took only 15 minutes and everyone seemed to be in a hurry to get home, the Commissioner, in refusing leave to appeal on the basis that the tribunal's decision was not erroneous in point of law, reviewed the general principles to be observed in relation to such tribunal proceedings by reference to previous decisions (paragraphs 5 and 6).

5 Procedural considerations

- i An insurance officer is not entitled to withdraw an appeal to the Commissioner from a decision of the medical appeal tribunal without explaining the reasons for wishing to do so and without obtaining the Commissioner's approval for doing so. In the case in question the Commissioner did not consider the grounds for applying to withdraw the appeal justified granting the application. R(I) 41/61
- ii After appealing to the Commissioner from a decision of a medical appeal tribunal the claimant asked that his appeal be dropped because it was too far for him to travel to the hearing of it. Following R(I) 41/61 (14.1.5 i *above*) leave to withdraw the appeal was refused and, since it appeared that the claimant's trade union representative had not been notified of the date of the material hearing before the medical appeal tribunal, the appeal was allowed and the medical appeal tribunal's decision was set aside. R(I) 3/64
- iii The Commissioner may, under (what is now) regulation 29(7) of the Regulations, on granting leave to appeal from a decision of the medical appeal tribunal, proceed to determine the question of law which arises if consent to his doing so is given by or on behalf of the Secretary of State and the claimant. It was held that the regulation applies if consent has been given before the hearing by someone authorised to give it on behalf of the claimant, even though the party is not present, provided consent is not withdrawn. R(I) 5/65
- iv A medical appeal tribunal who had before them a consultant's report adverse to the claimant refused to grant an adjournment to enable the claimant to obtain a medical report from another consultant on the ground that no good purpose would be served thereby. The tribunal's decision and that of the Commissioner that the tribunal had not erred in law were quashed by the Divisional Court of the Queen's Bench Division. See *R. v Medical Appeal Tribunal (Midland Region), Ex parte Carrarini*, 18.1.3 ii *below*. R(I) 13/65
- v At the conclusion of the case a medical appeal tribunal adjourned the claimant's appeal for a report to be obtained from a consultant. A report was obtained but a question arose whether it should be used without its being disclosed to the claimant under the provisions of regulation 4 of the Social Security (Determination of Claims and Questions) Regulations 1975 (harmful information). The adjourned hearing was held before a differently constituted tribunal who were not informed of the contents of the report as it was thought that it might prejudice the claimant. The tribunal's decision was set aside because as a result of a wrong course being taken available evidence had not been put before the tribunal. See also R(M) 2/80. R(M) 1/79
- vi A medical appeal tribunal is not bound to obtain additional evidence offered by a consultant neurologist. But, if it does not, the claimant should be informed that, if she wishes that evidence to be considered, she should herself arrange for its production. A failure so to inform her is a breach of the rules of natural justice and renders a decision erroneous in point of law (paragraph 8). Since in this case the ability of the claimant's child to walk out of doors was not raised as a separate issue, the tribunal was not bound expressly to deal with that question and it could not be inferred from the absence of express findings on that point that they had overlooked it (paragraphs 9 and 10). See also R(I) 1/65 and R(M) 1/79. R(M) 2/80
- vii A medical appeal tribunal, confirming the decision of a medical board, found that a claimant's inability to walk was not due to a physical cause but was hysterical in origin. The Commissioner rejected the argument that the tribunal should not have decided the matter of hysteria without calling for psychiatric evidence on the ground that it was a matter for their expertise. For other synopses of this decision see 15.4.2 ii and 18.6.1 ix *below*. R(M) 1/88

6 Onus of proof

- R(I) 12/62 i The 2 main questions for decision by a medical appeal tribunal are: (1) 'is it shown on balance of probabilities that there was a relevant loss of faculty?'; and (2) 'if there was, what assessment is shown on balance of probabilities to be justified?' As to the meaning of 'balance of probabilities' see paragraph 10 of C.I. 401/50. A medical appeal tribunal, having examined the claimant's left eye, stated that they were doubtful whether the scarring in that eye was caused by the industrial accident as alleged, but that they were giving the claimant the benefit of the doubt. It was held that the claimant was not entitled to the benefit of the doubt, the proper basis upon which the medical appeal tribunal should determine the issue before them being that they are satisfied on the basis of balance of probabilities. See paragraphs 12-16.
- R(I) 1/65 ii When confirming a medical board's decision which had been referred to them, the medical appeal tribunal recorded: 'A reference by the insurance officer. The tribunal consider that the burden of proof which rests fully on the insurance officer has not been discharged.' On appeal to the Commissioner it was held that the decision of the medical appeal tribunal was erroneous in law because, whether the reference followed an appeal by the claimant or notification by the Minister, a tribunal must satisfy themselves that on the balance of probabilities the claimant has proved his, or her, case. See paragraphs 12-15. See also R(M) 2/80.
- R(I) 14/68 iii A claimant with several provisional assessments of disablement in respect of a back injury described as 'fully relevant' had the latest assessment wholly discharged by the medical appeal tribunal. On appeal to the Commissioner it was held that the medical appeal tribunal's decision was not erroneous in law, but on application being made to the Court of Appeal for an order of certiorari to quash the Commissioner's decision it was held that the tribunal had erred in law and the order was allowed to go. See *R. v Deputy Industrial Injuries Commissioner, Ex parte Howarth*, 18.1.3 iv.
- R(I) 2/73 iv 'Once a man has lost a faculty... he is presumed to suffer all the disabilities which a normal man would suffer from that loss of faculty.... But if he alleges that he is disabled to a greater extent than a normal man would be, the burden is on him to show it... the man makes a *prima facie* case by showing circumstances which point to the loss of faculty.. being a result of the injury. If it appears to the tribunal that there are circumstances which throw suspicion upon his claim - so that the tribunal are not satisfied that the claim is genuine - they should investigate it. The tribunal must balance the pros and cons. They must regard the probabilities. If in the end the tribunal are left in grave doubt whether the loss of faculty was the result of the injury - such that the balance is against the man - then they can discharge the assessment.' See per Lord Denning M.R. and *R. v. National Insurance Commissioner, Ex parte Viscusi*.

7 Refusal of leave to appeal to the Commissioner

As to requirement for leave to appeal see section 112(3) of the Act.

- R(I) 3/61 i Leave to appeal from the decision of the medical appeal tribunal was sought on the ground that, in assessing the loss of faculty resulting from the relevant accident, the tribunal had erred in law in failing to take into account the fact that the accident had made it difficult for the claimant to obtain employment in his pre-accident occupation. It was held that, although the claimant had raised a point of law, regard being had to the relevant statutory provisions, it was a bad point and that the Commissioner had a discretion to refuse leave even though a point of law is raised if it is of no substance.
- R(I) 6/61 ii In his application for leave to appeal to the Commissioner a claimant alleged that the medical appeal tribunal were wrong in law to say that he had no assessable loss of faculty, but it was held that the submission did not raise any question of law since the questions whether the claimant was suffering from a loss of faculty and, if he was, to

what extent the disablement resulting therefrom was to be assessed were questions of fact for the decision of a medical board or a medical appeal tribunal. Nevertheless it is desirable that the medical authorities should make it clear whether they have concluded that there *is* a loss of faculty but that the resulting disablement does not amount to 1 per cent.

iii A claimant with a life assessment made by a medical appeal tribunal unsuccessfully sought leave from the tribunal to make an application for review on the ground of unforeseen aggravation. He then sought to appeal to the Commissioner against the refusal of the tribunal to allow him to apply for a review and it was held that the Commissioner had no jurisdiction to entertain an application for leave to appeal against an exercise of the discretionary power given to the medical appeal tribunal under (what is now) section 110(5) of the Act. R(I) 15/68

8 Review

i The medical appeal tribunal upheld a decision of a medical board refusing a application for a review of a previous decision of the board on the ground that certain medical reports did not constitute 'fresh evidence', and on appeal the Commissioner upheld the medical appeal tribunal's decision and observed that the medical issues (which were controversial) were matters for decision by the members of the medical appeal tribunal. As to the meaning of 'fresh evidence' see paragraphs 13-14. R(I) 27/61

ii A medical appeal tribunal held that there was no loss of faculty resulting from an accident some 8 years previously in which the claimant had injured his ear. The claimant then obtained a certificate from his doctor to the effect that the doctor's records did not show any infection of the ear before the date of the action and he applied for a review of the earlier decision. The tribunal accepted the certificate as fresh evidence and reviewed the earlier decision, and on appeal it was held that they were entitled to do so. See paragraph 16 *et seq.* R(I) 17/66

iii A medical appeal tribunal decided that there was no loss of faculty resulting from an accident in which the claimant suffered an injury to his head. On 2 occasions the claimant sought leave for a review of that decision on the ground of unforeseen aggravation, but on either occasion was leave granted. Later, however, leave to review was granted on further application being made and a medical appeal tribunal found that there had been unforeseen aggravation. They were invited on behalf of the claimant to regard the date of application for review as being that when leave was first sought, but they were of the opinion that they had no power to do so. On appeal to the Commissioner it was held that an application for review of the decision of the medical appeal tribunal consists of an application together with leave of the tribunal and that without the necessary leave there is no completed application. An application for a review is disposed of or decided on leave being refused, and it is not revived at a later date when, on further application being made, leave is given. The medical appeal tribunal were, accordingly, correct in deciding that they had no power to treat the date of application for review of the decision of the medical appeal tribunal consists of an application together with leave of the tribunal and that without the necessary leave there is no completed application. An application for review is disposed of or decided on leave being refused, and it is not revived at a later date when, on further application being made, leave is given. The medical appeal tribunal were, accordingly, correct in deciding that they had no power to treat the date of application for review as being that when the first application was made. R(I) 5/71

Part 2: Principles of assessment

Schedule 8 of the Act and Part 3 of the Social Security (General Benefit) Regulations 1982.

1 General

- i A Tribunal of Commissioners said (see para. 9) that the Act (i.e. the National Insurance (Industrial Injuries) Act 1946) provided that there can be only one ‘loss of faculty’ resulting from ‘the relevant injury’ and the benefit authority are required to award benefit for the disablement resulting from that loss of faculty. If the medical authorities split up the loss of faculty into several parts, for which they make assessments of differing duration, it becomes impossible for the benefit authority to fulfil their function of awarding benefits in accordance with the Act. Thus, when a medical appeal tribunal gave an assessment of disablement of 20 per cent., provisionally for 7 months in respect of a back injury, to run concurrently with an assessment for life of 15 per cent. in respect of hernia, the local tribunal treated the assessment as being one of 35 per cent. for 7 months followed by 15 per cent., for life. It was held by the Tribunal of Commissioners that no award could properly be made on the basis of the medical appeal tribunal’s decision. See also R(I) 1/62. R(I) 42/55 (T)
- ii An assessment of 100 per cent. under (what was) the National Insurance (Industrial Injuries) Act 1946, unlike lower assessments, does not represent a specific degree of disablement but merely indicates that disablement is at or beyond a particular level, and that while in law 100 per cent. is the maximum assessment that may be made for the degree of disablement resulting from the relevant loss of faculty, however great that disablement may be in fact, where adjustment is appropriate the figure in relation to which it should be made is not the 100 per cent. ceiling figure fixed by law but the figure representing the real degree of disablement which may be much greater than 100 per cent. What the figure representing the real degree of disablement is is a question for determination by the medical authorities, who, in deciding that issue, should pay such regard as may be appropriate to the assessments laid down for the scheduled injury. Accordingly, when an accident has accelerated the progress, of a disabling condition which, apart from the accident, might, or would probably have worsened in any event at a later date, the medical authorities should bear in mind that it may be appropriate to make a provisional or final assessment for a limited period rather than a life assessment. See also paragraphs 11-15 of R(I) 30/61, 14.1.4 ii *above*. R(I) 34/61
- iii In the case of a man who suffered amputation of 3 fingers of his right hand a medical appeal tribunal assessed the degree of disablement resulting from the relevant loss of faculty as 15 per cent. for life. It was contended on behalf of the claimant that the scheduled assessments for the 3 amputations added up to 18 per cent. and that the tribunal had erred in law. It was held by a Tribunal of Commissioners that the scheme of the Act and Reg was (is) to require assessment of the claimant’s disablement as a whole and since disablement is to be assessed in respect of loss of faculty and not in respect of mere anatomical loss if falls to be measured, primarily at least, by reference to loss of useful function. Where the loss of faculty arises from a single, or multiple injury specified in the Schedule to the Reg the assessing board or tribunal must assess the resulting disablement at the figure prescribed in the Sch subject to adjustment, if appropriate. But where the loss of faculty arises from some injury not so specified the assessing board or tribunal may merely ‘have such regard as may be appropriate’ to the scheduled assessments. Multiple injuries not themselves constituting any specific item in the Sch are not to be regarded as ‘an injury specified in the first column of the First Schedule’ merely because they constituted an aggregate of injuries each of which is specified in the Sch. Accordingly the disablement arising in respect of multiple injuries (not themselves constituting a specific item in the Sch) is not required to be assessed at a specific figure prescribed in the Sch nor necessarily as the aggregate of specific figures in the Sch. A decision of the medical appeal tribunal was held not to have been erroneous in point of law. R(I) 39/61 (T)

14.2.1

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- R(I) 8/69 iv When considering an application for review on the ground of unforeseen aggravation a medical appeal tribunal allowed a late reference of the claimant's case relating to an earlier period in respect of which a medical board had found there was no loss of faculty. The medical appeal tribunal made an assessment of 5 per cent. for life from the end of the injury benefit period and a further assessment of 7 per cent. for life from a later date on the review for unforeseen aggravation. It was pointed out that two such assessments could not be made together since they invalidate each other. See paragraphs 34-36.
- R(I) 3/84 v A claimant for disablement benefit had lost the sight of both eyes. He had retrained to read braille and had qualified as a mechanical engineer and an inspector and had obtained employment as such. He contracted dermatitis from contact with the materials he handled in the course of his work and subsequently he also suffered an industrial accident in which he injured his right elbow with the result that he lost some sensation in the fingers of his right hand. He claimed industrial disablement benefit in respect of both dermatitis and the elbow injury. The claimant alleged that the latter prevented him from reading braille and from holding whatever was required and that this rendered him totally unemployable. A medical appeal tribunal assessed the disablement from the dermatitis at 5% for life. (From that decision a Social Security Commissioner refused leave to appeal.) In respect of the elbow injury his disablement was provisionally assessed at 30%, that being 15% for the disablement itself, increased by a further 15% for its effect on him as a blind man. The claimant appealed to the Commissioner, contending that the tribunal had erred in law by failing to take account of the effect of the elbow injury on his employment prospects. The Commissioner held that S 57 of, and Sch 8 of, the Social Security Act 1975 do not require unemployability or inability to do various kinds of work to be taken specifically into account in the assessment of disablement; such matters are the subject of separate provision in Ss 58 to 60 of that Act (para. 7); and para. 1(a) of Sch 8 means that a particular disability must be assessed at the same percentage figure regardless of whether or not it causes loss of earning power, although it must have regard to the claimant's physical and mental condition at the date of assessment (paragraph 10). This decision was subsequently upheld in the Court of Appeal, *sub nom. Robert James Murrell v. Secretary of State for Social Services*, R(I) 3/84, Appendix.
- R(I) 2/90 vi Following a final assessment of 18% disability for life, a medical board found unforeseen aggravation and made a provisional assessment of 40% for two years. A further provisional assessment of 50% was referred by the Secretary of State to a medical tribunal who varied that assessment to 10% for life. It was held that an assessment following unforeseen aggravation supersedes any earlier assessment, provisional or final. The medical appeal tribunal were therefore entitled to make a life assessment which was lower than the initial one. This decision was subsequently upheld in the Court of Appeal, *Robert Parker v. The Chief Adjudication Officer*, R(I) 2/90, Appendix. See also R(I) 7/65.
- R(I) 1/04 vii A Commissioner held that the tribunal had not erred in law by failing to have regard to the provisions of regulation 11(8) of the Social Security (General Benefit) Regulations 1982 in the context of Sch 2 of those regulations. The Commissioner held the provisions of reg 11(8) were permissive and disagreed with the decision R(I) 5/95 which stated a tribunal were required to indicate to what extent they had had regard to Sch 2 in their assessment of disablement.
- R(I) 4/04 viii A claimant injured his leg by accident and subsequently had a below knee amputation. A Commissioner held that disablement should be assessed in accordance with Sch 6 of the Social Security Contributions and Benefits Act 1992 and reg 11 of and Sch 2 to the Social Security (General Benefit) Regs 1982. Reg 11, Sch 2 provides a tariff as a starting point for assessment of amputation stumps of different lengths, subject to increase or reduction in accordance with reg 11(6). Disablement is dependent on the effectiveness of any prosthesis, which relates to the length of the stump. It is not the anatomical loss alone but the loss of function consequent upon that loss which has to be assessed. Two measurements had been taken of the stump, one of 14.5 centimetres, one of 12 centimetres. The Commissioner held a lower leg amputation should be measured with the knee flexed from the anterior medial edge of the upper articular

surface of the tibia. He substituted his own decision on the basis of a stump exceeding 9 centimetres but not exceeding 13 centimetres for which the Sch 2 assessment is 50%.

2 Adjustments and offset for pre-existing disability

- i A claimant injured his left index finger in an industrial accident and as a result of further industrial accidents some 4 years later his left thumb was amputated through the interphalangeal joint. The scheduled assessment for that disability was 20 per cent. and the medical appeal tribunal assessed the relevant loss of faculty at 10 per cent. for life by deducting 10 per cent. in respect of the first industrial accident from the scheduled assessment for the amputation of the claimant's thumb. The tribunal did not, however, indicate that they had considered whether the previous injuries to the left index and little fingers made the effects of the second injury more disabling than they would have been to the person whose hand, apart from that injury, was normal; nor did they indicate whether they had offset 10 per cent. for the first injury simply because the medical board had assessed the loss of faculty resulting from that injury at 10 per cent. or because the tribunal had determined that a 10 per cent. offset was appropriate for the disabilities which the claimant would in any event be subject as a result of the first injury. On appeal to the Commissioner it was held that, having regard to the provisions of (what was then) S 12(2) of the National Insurance (Industrial Injuries) Act 1946 (see now Sch 8 to the Act) and to (what subsequently became) reg 2 of the Social Security (Industrial Injuries) (Benefit) Regulations 1975, it is important that the medical authorities should make perfectly clear in their decisions into which class of relevant condition any condition falls and whether any particular condition is relevant or unconnected, and in the circumstances of the case under review failure to do so constituted an error of law. It was held further that if, in arriving at their net assessment of 10 per cent. the tribunal deducted 10 per cent. for the first injury simply because the loss of faculty resulting from that injury had been assessed at 10 per cent. they also erred in law, for their duty was to make their own assessment of the degree of disablement resulting from the second injury and in as much as that entailed adjustments the findings of the medical authorities in respect of the other conditions which had to be taken into account were not binding upon them. See also R(I) 41/60. R(I) 23/61
- ii A medical appeal tribunal found that an industrial accident had caused a left femoral hernia, that weak abdominal musculature (a constitutional condition) was a contributory factor, and that, for a total loss of faculty of 4 per cent., 2 per cent. should be offset on account of constitutional condition. On appeal to the Commissioner it was held that the decision of the medical appeal tribunal was erroneous in point of law in that they relied upon a ground for adjustment which was not a lawful ground, since their decision *ex facie* contained no findings of fact warranting an adjustment under S12(2) of the National Insurance (Industrial Injuries) Act 1946 or under reg 2 of the Benefit Regs then current. See now para. 1 of Sch 8 to the Act and (what became) reg 2 of the Social Security (Industrial Injuries) (Benefit) Reg 1975. See paragraphs 18-20 and see also R(I) 41/60, R(I) 9/62 and R(I) 18/61, 14.3.4 i *below*. R(I) 22/63
- iii A claimant was awarded an assessment of 20 per cent. for life by a medical board and on appeal to the medical appeal tribunal he requested the tribunal to reduce the assessment to 19 per cent. so that he might be paid a gratuity to enable him to start a business. The tribunal reduced the assessment to 19 per cent. for the reason given by the claimant, but at the same time recorded that they agreed that the assessment made by the medical board was reasonable. It was held that the tribunal had erred in law since their powers were laid down precisely by the Act and Regs, which required them to make the assessment without reference to the particular circumstances of the claimant other than age, sex and physical and mental condition. The claimant's desire to receive a gratuity was an 'other circumstance' and the medical appeal tribunal should have made their assessment without reference to it. R(I) 6/65

14.2.2

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- R(I) 2/74 iv A man injured his left foot in an industrial accident and an initial medical board made an assessment of the degree of his disablement of 10 per cent. (provisional). A second medical board recorded that the injury to the claimant's left foot was a fully relevant condition and that there were no unconnected conditions, and made a life assessment of 3 per cent. When appealing to the medical appeal tribunal against the second board's decision the claimant disclosed for the first time that he had had a previous accident to his left foot and the tribunal confirmed the board's decision on the basis that the condition of the claimant's left foot was an exacerbation through the accident of a pre-existing condition. On appeal to the Commissioner from the tribunal's decision it was held that their decision was erroneous in law on the ground, *inter alia*, that, for the reasons explained in paragraphs 22-25, it was a contradiction in terms and that the tribunal had omitted to answer the relevant statutory question. See also 14.3.2 vi *below*.
- R(I) 8/74 v A student nurse injured her back in an industrial accident and subsequently suffered very severe and disabling symptoms. Three awards of 100 per cent. disablement were made by reassessment medical boards and the case was then referred to the medical appeal tribunal, who did not confirm the decision of the latest board but awarded the claimant a disablement assessment of 10 per cent. attributable to the accident after making an overall assessment of 70 per cent. ascribed wholly to a hysterical element, with an offset of 60 per cent. for a hysterical disposition. On appeal to the Commissioner it was held that, where some disability arises from a hysterical condition, it is not enough to make an offset on the ground that a person suffered from a hysterical disposition. If an offset is to be made it must be on the ground that the person concerned would have suffered from the particular disability found to be present if he or she had not been injured in the relevant accident. For the purpose of making an offset the medical appeal tribunal should have been satisfied that, even if the claimant had not suffered a back injury on the date of the industrial accident, she would have been affected by her present disability, and if they were not so satisfied an offset was not authorised.
- R(I) 1/81 vi In a case where the claimant, as a result of an industrial accident, subsequently developed multiple sclerosis to which, it was found, she had a congenital predisposition, the medical appeal tribunal offset 10% of her disablement for this pre-existing condition, which previously had been symptomless. The Commissioner, in setting aside the tribunal's decision, distinguished between 'loss of faculty', 'disability' and 'disablement' for the purposes of the Act (paras 8 and 11) and explained the meaning of 'a congenital defect' for the purposes of reg 2(3) of the Social Security (Industrial Injuries) (Benefit) Regs 1975 (para 9) and held that one of the purposes of reg 2(2) and (3) of those Regs was to incorporate the common-law principle which requires that anyone liable to compensate an injured person for his injuries must take him as he is (para. 14). The assessment should take account of all the claimant's (relevant) disablement, except to the extent to which she would have been subject thereto during the period taken into account by the assessment, if the relevant accident had not occurred (para. 16). In so far also that the tribunal did not indicate that they had considered the questions: If the relevant accident had not occurred, would the claimant be subject to all the disablement which was now found to be hers? If not, to what extent would she have been so subject? - that too was an error of law (para. 16).
- R(I) 3/91 (T) vii The claimant suffered injuries arising out of three separate industrial accidents over a period of three years. He claimed disablement benefit in relation to all three accidents. His disablement was assessed by a medical board and the claimant appealed to the medical appeal tribunal against all three decisions. In each case the tribunal confirmed the decision of the medical board. The claimant's appeal to the Commissioner raised the question of assessing disablement when the disability results not only from an industrial accident but also from other causes. A Tribunal of Commissioners analysed the provisions of reg 11(3)-(5) of the Social Security (General Benefit) Regs 1982 (paras. 5 and 6) and held that as the tribunal did not consider whether the assessed disablement in relation to any of the accidents should have been increased as a result of any interaction, their decision was erroneous in law.

viii A woman, who was born without a right forearm and wore a cosmetic prosthesis, injured her left wrist at work and claimed disablement benefit. An adjudicating medical authority found the disability resulting from the loss of faculty to be impaired dexterity fully relevant and that the congenital disablement, though not of itself the other effective cause of that disability, increased through interaction the disability arising from the loss of faculty. The adjudicating medical authority described the artificial right hand and forearm as a “C” condition. The adjudicating medical authority made no offset but assessed disablement at 7% for the loss of faculty and 70% for the “C” condition. The decision was referred on behalf of the Secretary of State to the medical appeal tribunal. The medical appeal tribunal assessed disablement at 10% after offsetting 70% for the congenital disablement and adding 5% for the interaction of the industrial injury and congenital disablement. The claimant appealed to the Commissioner. It was held that all cases where there is a connection factor are cases where there is either an “O (Pre)” or “O (Post)” condition and that all such cases must be assessed in accordance with the provisions of reg 11 of the Social Security (General Benefit) Regs 1982. It was held that it was not possible to conceive of a case where there was a disability due to the interaction between a relevant loss of faculty and another condition where that other condition was not an “other effective cause” within the terms of reg 11(2) of the General Benefit Regs. The Commissioner agreed with the view expressed in CI/081/90 [to be reported as R(I) 4/94]. The Commissioner also held that in order to explain adequately the assessment of disablement, the medical appeal tribunal must make clear findings of fact and show that they had considered the whole of the period before them. The medical appeal tribunal should also explain the reasoning that led them to their assessment of the claimant’s disablement.

R(I) 1/95

3 Greater disabilities

i It was held by a tribunal of Commissioners that, while the assessment of the loss of faculty resulting from an industrial accident may be increased where that accident is made more disabling than it otherwise would have been as a result of a previous industrial accident, the benefit regs. then current did not authorise the assessment of the loss of faculty resulting from an industrial accident to be increased on the ground that a subsequent industrial accident not directly attributable to the first accident has made the first accident more disabling than it would otherwise have been, since it is the second accident that is the effective cause of any greater disabilities. See paras. 8 to 11.

R(I) 40/60
(T)

ii A man injured his right middle and ring fingers in an industrial accident. Many years previously part of his right index finger had been amputated. When assessing the degree of disablement resulting from the relevant loss of faculty a MAT appeared to have regarded the claimant’s right index finger condition as being an irrelevant consideration. It was held that the tribunal erred in law since, having regard to the relevant statutory provisions, they should have considered, and should in their decision have dealt with their conclusions on, the question whether the effects of the relevant industrial accident had been made more disabling to the claimant than they would have been in the case of a normal person by virtue of the claimant’s pre-existing right index finger condition. See para. 7 and see also R(I) 23/61, *above* 14.2.2 i.

R(I) 19/62

iii As a result of an industrial accident the tip of the phalanx of a man’s right little finger was amputated. Many years previously the terminal phalanx of his right index finger had been amputated and he had also injured his right little finger in a subsequent accident. It was held that any adjustment of the assessment of the degree of his disablement fell to be made, not by reference to the degree of disability in the previously injured fingers, but by reference to the increase in the disabilities incurred as a result of the relevant injury owing to the presence of the existing disabilities in those fingers. Further, the questions what regard is appropriate to be had to the regs., to what extent the claimant, regard being had to his physical and mental condition at the date of the assessment, may be expected to be subject to greater disabilities than would normally be incurred, what adjustment would be reasonable in the circumstances of the case, and what assessment ought to be made are all questions of fact.

R(I) 23/63

14.2.3

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- R(I) 11/66
(T) iv A MAT, finding relevant disablement in the claimant's left eye of 40 per cent., declined to make any adjustment to that assessment by reason of disablement in the right eye attributable to a condition arising subsequent to, and unconnected with, the relevant accident. It was held by the majority of a tribunal of Commissioners that the greater disability caused by a condition arising subsequent to the accident and unconnected therewith could not be disability suffered as a result of the relevant injury, which was the only disability justifying an increased assessment. The decision of the majority was upheld by the Divisional Court of the Queen's Bench Division, but on appeal to the CA the judgment of the Divisional Court was reversed. See *R v. Industrial Injuries Commissioner, Ex parte Cable*, below 18.1.3 iii.
- R(I) 1/79 v A man who had no vision in his left eye, for which he was in receipt of a war pension, sustained an industrial accident in which he injured his right eye. Two medical boards having assessed his disablement at 70 per cent. and 80 per cent. respectively for different periods, a MAT reduced those assessments to 55 per cent. (treated as 60 per cent under para. 5 of Sch 8 to the Social Security Act 1975). On appeal to the Commissioner it was held that the receipt of a war pension is not a matter to be taken into account in assessing disablement under the Social Security Act 1975. It was open to the MAT to start their assessment by reference to Sch 1(4) to the Social Security (Industrial Injuries) (Benefit) Regs 1975 but it did not follow that the assessment should necessarily be 100 per cent because it was open to the tribunal to apply reg 2(6) of the regs which confers a discretion to reduce an assessment below that provided in the Sch if the tribunal do not regard such an assessment reasonable as to the extent of disablement resulting from the relevant loss of faculty. On the other hand there is no objection in law to some other approach under reg 2. The tribunal made no findings on and gave no reasons for rejecting the claimant's contention that Sch 1(4) applied in his case. The claimant was therefore left guessing as to why the assessment was less than 100 per cent. That, coupled with the fact that the tribunal had referred to the claimant's war pension and to the fact that he was not completely blind without explaining how, if at all, these facts had been taken into account in the assessment, amounted to a failure to comply adequately with the requirement to give reasons in reg 23(1) of the Social Security (Determination of Claims and Questions) Regs 1975 and the decisions were set aside.
- R(I) 4/94 vi In the case of a woman who suffered physical injuries from a road accident followed later by depression and a psychiatric condition, the question arose as to the extent to which conditions arising after an accident (and not stemming from the accident) should be taken into account in the assessment of disablement. The Commissioner held that in such cases three questions of causation arose:
- (a) was the mental condition to be included in the relevant loss of faculty resulting in the disability? If it was then by virtue of Sch 6 of the Social Security Contributions and Benefits Act 1992 the condition was to be taken into account in the assessment of disablement;
 - (b) if the mental condition was not to be included in the relevant loss of faculty, was the mental condition another effective cause of the disability? If it was, then by virtue of reg 11(2) and (4) of the Social Security (General Benefit) Regs 1982, providing the disability arising from the relevant loss of faculty was at least 11%, account must be taken of disablement due to the other effective cause;
 - (c) if the mental condition was neither included in the relevant loss of faculty nor another effective cause of the disability then it was unconnected with the accident and could not be taken into account in the assessment of disablement.

The Commissioner rejected the argument of the Secretary of State that a disability which was neither caused by the relevant loss of faculty nor an additional effective cause of such disability should be taken into account in the assessment of disablement if it increased a disability which did arise from a relevant loss of faculty, the "C" (connected) condition. There was no basis in law for such a proposition. See also 14.2.2.viii.14.2.2.viii.

4 Whether there is a relevant loss of faculty

- i The claimant, who had had no useful vision in his right eye since birth, injured his left eye in an industrial accident and, on appeal from the decision of a medical board, the medical appeal tribunal found that the accident had caused a finer linear vitreous opacity in the claimant's left eye, that that had not reduced his visual acuity and did not constitute an assessable loss of faculty, with the result that there was no relevant loss of faculty. It was held by a Tribunal of Commissioners that, *inter alia*, the fact that the claimant required glasses to correct a defect of visual acuity did not necessarily mean that there was a relevant loss of faculty; nor did it necessarily follow from the fact that a defect of visual acuity can be corrected by glasses that there was no relevant loss of faculty. The question was one of fact for the medical authorities, who should consider all the circumstances of the case, including, for example, the claimant's condition without glasses, the fact that the defect can be corrected by glasses, and the fact that there may be circumstances where glasses are not available or constitute a serious inconvenience by reason of age and sex. See also *infra* 14.3.4 iii. R(I) 7/63 (T)
- ii A man injured his right eye, which had hitherto been in perfect condition, in an industrial accident, with the result that he suffered from some loss of vision in that eye. His left eye had previously been permanently defective and a consultant reported that the damage to the right eye was slight and that the accident had brought forward by a few years the need to wear spectacles. The decision of the medical appeal tribunal came before the Commissioner, when it was held that they had erred in law because their decision did not sufficiently distinguish between loss of faculty and disability. In that respect it was held that when the question of loss of faculty of vision was being considered, as distinct from the resultant disability, the use of aids to mitigate the consequences of such loss must be disregarded. It was also held that, if it was the view of the medical appeal tribunal that the power of vision in the claimant's right eye was normal for a man of his age, there was no specified finding to that effect. See paragraph 19. R(I) 7/67
- iii It was held by an insurance officer that a man was suffering from prescribed disease no. 42 and injury benefit was awarded to him. On a claim for disablement benefit the medical appeal tribunal found that there was no loss of faculty resulting from the prescribed disease and that the claimant's condition was due to constitutional eczema. On appeal to the Commissioner from the medical appeal tribunal's decision it was held that it was open to the medical authorities to decide that the claimant is not suffering any loss of faculty from a prescribed disease after the end of the injury benefit period because his condition is a constitutional one, notwithstanding that the condition is the same as that which the insurance officer accepted as a prescribed disease during the injury benefit period. See as to the application of the decision of the House of Lords in *Minister of Social Security v. Amalgamated Engineering Union, Ex parte Dowling*, *infra* 18.2.2ii, paragraphs 6-10. See also R(I) 1/73 and *R. v. National Insurance Commissioner, Ex parte Herbert Maiden, infra* 18.1.3 v. R(I) 4/68
- iv On appeal from a medical board, the medical appeal tribunal decided that the claimant was not suffering, and at no relevant time had suffered, from prescribed disease no. 48 (occupational deafness) on finding that his hearing loss due to occupational noise amounted to less than 50 decibels in the 'better ear'. On appeal to the Commissioner it was held that the medical appeal tribunal had not erred in law in interpreting 'the better ear' to mean, in the context of the description of prescribed disease no. 48, that ear in which the loss of hearing due to occupational noise is the less. R(I) 3/77

Part 3: ‘Erroneous in point of law’

Section 112(1) of the Act.

1 What constitutes an error of law

i A man complained that he had not been given a proper opportunity of presenting his case to the medical appeal tribunal and that the Minister’s representative, having stated his case, one of the medical members of the tribunal having asked him (the claimant) a question, and the medical member of the tribunal having examined him in the examination room, he had been told to go. At no state of the proceedings had he been asked whether there was anything he wanted to say. It was held by a Tribunal of Commissioners that an irregularity in the proceedings before a medical appeal tribunal amounting to a denial of justice renders the tribunal’s decision erroneous in point of law; and further the question whether a claimant has had an adequate hearing cannot be answered by reference to any set formula, but that a claimant should be invited expressly to say anything he might wish to say and should be brought back into the hearing room after the examination in order to make sure whether he has anything further to say arising out of the examination. Where at a medical appeal tribunal hearing some new point arises (as it did in that case) which is not previously known to have been in issue, it is desirable, if not always essential, that the claimant should be informed so that he can, if he thinks fit, give or produce evidence on the point. It was held that in that case the decision of the medical appeal tribunal was erroneous in point of law.

R(I) 29/61
(T)

ii The decision of a medical appeal tribunal confirming a medical board’s decision was given as follows: ‘We have heard Mr. Johnson for the appellant, who has been examined. We have considered the evidence in the Schedule and the additional evidence, and also the letter from the appellant’s employers. We agree with the board that the appellant is not suffering from prescribed disease no. 41 or from any other prescribed disease, and has not done so since 13th August 1973. The decision of the board is, therefore, upheld.’ On appeal to the Commissioner the tribunal’s decision was held not to be erroneous in point of law and, further, that the principles of natural justice are intended to ensure that a person had a fair hearing; that the tribunal were concerned with the diagnosis question and were not required to find positively what was the nature of the claimant’s condition if it was not a prescribed disease; and the tribunal were not obliged to go further into the matter of the claimant’s condition of work unless they consider it relevant to the diagnosis question. At paragraph 14 of the Commissioner’s decision reference was made to the following tests to be applied when it is being decided whether a decision of a medical appeal tribunal is erroneous in point of law, viz.: (1) there has been any breach of the rules of natural justice; or (2) there has been failure adequately to comply with the requirement to state in writing the reasons for the decision and the relevant findings (regulation 23(1) of the Regulations); or (3) the decision contains a false proposition of law *ex facie*; or (4) it is supported by no evidence; or (5) the facts found were such that no person acting judicially and properly instructed as to the relevant law could have come to the determination in question.

R(I) 14/75

2 Contrary to natural justice

i A claimant had not been given copies of 2 specialists' reports which had been supplied to the medical appeal tribunal and it was held, allowing the appeal, that the failure to furnish the claimant with copies of the reports constituted a breach of the requirements of natural justice which rendered the decision of the medical appeal tribunal erroneous in point of law. R(I) 35/61

ii A claimant alleged that he had not been given an opportunity of presenting his case before the medical appeal tribunal, whose decision was simply: 'We agree with the board.' It was held, allowing the appeal, that, although it was not suggested that the claimant had been *prevented* from addressing the tribunal and there was no suggestion of deliberate unfairness on the part of the tribunal, it was not denied that he had not been *invited* to address the tribunal and in the particular circumstances of the case the failure to invite the claimant to address the tribunal constituted a departure from the requirements of natural justice. It was observed that, unless it is plainly superfluous, it is a safe practice for the chairman of the medical appeal tribunal expressly to invite an unrepresented claimant to address the tribunal and that, while the practice of taking a claimant over his written grounds of appeal in the sense of giving him an opportunity to confirm or elaborate them is a good practice, it does not follow that the claimant may not have something additional to add. R(I) 10/62

iii The extract of hospital case notes made by a medical board and circulated to the claimant and the medical appeal tribunal recorded that there was no mention in the notes of the claimant's left eye. In their decision the medical appeal tribunal recorded that it was clear from the case notes that the claimant has suffered from recurring attacks of keratitis in each eye from a date well before the relevant accident. It was held that the tribunal's decision was erroneous in point of law because neither the claimant nor his representative had had a fair opportunity of meeting these allegations made against them based on the hospital case notes, of which the extract appeared to be inaccurate. See as to the procedure for making case notes available to the medical authorities paragraphs 9-13. R(I) 6/67

iv An initial medical board found that a back injury was a fully relevant condition to an industrial accident and ultimately the degree of the claimant's disablement was assessed at 8 per cent. for life by a medical appeal tribunal. A later medical appeal tribunal, when considering an appeal from a decision of a review medical board who had found unforeseen aggravation since the last assessment was made, did not confirm the decision of the board. They were satisfied that there had been unforeseen aggravation but assessed the claimant's overall disability at 90 per cent., from which they offset 50 per cent. in respect of osteo-arthritis of the hips. Prior to such finding there had been no mention of osteo-arthritis of the hip joint by the medical authorities, nor had any suggestion of this condition been made in observations to the tribunal. It was held that when a new point of real importance arises for the first time at a hearing the party whom it affects adversely should be given an adequate opportunity to meet it. The omission of the medical appeal tribunal to afford the claimant an opportunity to meet the new point was sufficient to render their decision erroneous in law. See R(I) 29/61, *supra* 14.3.1 i, and *R. v. Deputy Industrial Injuries Commissioner, Ex parte Thomas Howarth, infra* 18.1.3 iv. See also *supra* 14.1.4 iv. R(I) 4/71

v A claimant complained that, after his examination by the medical members of the tribunal, while he was dressing in the examination room the clerk to the tribunal came to him and asked certain questions seeking information regarding any civil action for damages for personal injuries he might have commenced. The clerk then returned to the room in which the tribunal was sitting, but the claimant was dismissed. It was held that the decision of the tribunal was erroneous in point of law for want of compliance with the rules of natural justice. It is wholly inconsistent with the principles of natural justice for an unrepresented claimant to give what amounts to evidence to the tribunal clerk or to any other person after the conclusion of the tribunal proceedings. It is for the tribunal themselves to ascertain the relevant facts, and not through the medium of their clerk. If they have overlooked some aspect of the case, it is open to them to enquire into it in a proper manner, for example by R(I) 2/72

requiring the claimant to return to the tribunal to answer further questions. It is immaterial whether the tribunal are influenced by information passed on to them by their clerk as a result of his questioning as the claimant is not to know that the tribunal, in adjudicating a party's case, attach no weight to what the clerk might have said.

- R(I) 2/74 vi When appealing to the medical appeal tribunal from a decision of a medical board a man disclosed for the first time that he had had a previous injury to his left foot, which had been injured in the relevant accident. On appeal to the Commissioner from the tribunal's decision confirming the medical board's assessment of 3 per cent. for life, it was held that the tribunal had erred in law on the ground that it was a breach of natural justice for the claimant not to have been told that the tribunal were minded to make an offset in view of his disclosure of an earlier accident. See also 14.2.2 iv *above*.
- R(I) 2/91 vii The claimant's disablement, in respect of prescribed disease A11 (vibration white finger), was assessed by a medical board at 7 per cent.. The claimant appealed against the decision on disablement because he considered the assessment to be too low. The Secretary of State asked the adjudication officer to refer the diagnosis to the medical appeal tribunal. The Secretary of State's submission to the tribunal was that the claimant had suffered from the prescribed disease from 1972. However the tribunal decided that the claimant had never suffered from the prescribed disease. It was held that the tribunal were entitled to decide both diagnosis and disablement questions; that the claimant had been encouraged to believe, by the terms of the Secretary of State's submission, that the diagnosis question was not in doubt; and that the tribunal should have told the claimant that they did not consider that he suffered from prescribed disease A11 so that he could have made submissions on that specific point before they finally reached their decision. The tribunal's failure to allow the claimant to deal directly with the contention that he had never suffered from prescribed disease A11 amounted to a denial of natural justice and, accordingly, their decision was erroneous in law.

3 Compliance with natural justice

- R(I) 18/62 i A man met with 2 industrial accidents in, respectively, 1954 and 1959 and the review medical board found that the results of the later accident constituted unforeseen aggravation of the results of the earlier accident. A medical appeal tribunal set aside the review board's decision on the grounds that they were not satisfied that the 1954 accident was other than a *causa sine qua non* of the 1959 accident. The claimant alleged that he had not been given a fair hearing before the medical appeal tribunal; that although the 1954 accident was only a *causa sine qua non* of the later accident in 1959, that accident should, in law, have been regarded as being unforeseen aggravation of the results of the earlier accident. It was held that the claimant's allegation that he had not had a fair hearing failed and that an accident could not be said to be unforeseen aggravation of the results of an earlier accident unless it was established that the earlier accident was an effective cause of it, which was a question of fact.
- R(I) 11/63 ii The claimant, who was an Ukrainian, complained that he had not had a fair hearing before the medical appeal tribunal because he spoke and understood very little English and that his wife, who attended with him at the hearing before the medical tribunal, did not speak his language, and that, as there was no interpreter present, he did not understand what was being said. On inquiries being made the chairman of the tribunal stated that he had made it clear to the claimant and to his wife that they should not hesitate to say if at any stage they had difficulty in understanding what was going on. It was held that the allegation that the claimant had not understood that the proceedings of the medical appeal tribunal were before an appellate tribunal was, on the evidence, impossible to believe; that the claimant himself was the best judge whether an interpreter was necessary; that neither he nor his wife had at any stage suggested that it was necessary; and that in any case the right to an interpreter had been waived. The claimant's appeal to the Commissioner was dismissed and it was emphasised that where the allegation is made that the

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proceedings before a medical appeal tribunal have in some way been misconducted it should be made promptly, not only in the interests of the claimant and of the respondents, but also in fairness to the tribunal. See paras 19-21.

iii A claimant appealed to the Commissioner from the decision of a medical appeal tribunal on the ground that he had not had a fair hearing because he had not been permitted to complete his address to the tribunal; that he had not been admitted to the tribunal after medical examination; that he had not been questioned as to the accident or the present condition of his injury; and that the case had been decided without full knowledge of facts which the claimant was competent to give. The medical appeal tribunal were invited to give their recollection of the matter, and after an oral hearing by the Commissioner it was held that the claimant had been invited to and had addressed the tribunal and had been questioned on the salient point in his case. His failure to present his case to his own satisfaction did not mean that he had not had a fair hearing. However, there is no general rule that a claimant must be re-admitted before the tribunal after examination and no reason for it to have been necessary in that case. The last ground of appeal could not, by itself, make a decision erroneous in point of law. See and compare R(I) 29/61, 14.1.4i *above*. R(I) 2/64

iv A medical appeal tribunal refused to grant the claimant an adjournment to enable him to produce a report from a consultant which he believed would be more favourable to him than the report which was before the tribunal. It was held that the decision of the medical appeal tribunal to refuse to grant an adjournment for any reason could not be said to be erroneous in point of law unless it should be established that they failed to exercise their undoubted discretion in a judicial manner. The Commissioner's decision was quashed by the Divisional Court of the Queen's Bench. See *R. v. Medical Appeal Tribunal (Midland Region), Ex parte Carrarini*, 14.1.5iv *above* and 18.1.3ii *below*. R(I) 13/65

v A medical appeal tribunal, having obtained an orthopaedic specialist's report concerning the amputation of the claimant's leg, made a final assessment of 100 per cent for a period. Unknown to the tribunal, the claimant's solicitors had obtained another orthopaedic specialist's report which expressed an opinion more favourable to the claimant's case, but when asked if there was anything he wished to say the claimant, who was unrepresented before the tribunal, replied only that he left himself in the hands of the tribunal. Application for leave to appeal was made on the grounds that the tribunal should have assisted the claimant by asking questions which would have elicited the existence of further evidence. It was held that the tribunal had not acted unfairly, so that the decision could not be found erroneous in law as involving a breach of the rules of natural justice. R(I) 3/70

vi The claimant appealed to the Commissioners from a decision of a Medical Appeal Tribunal that he was neither unable nor virtually unable to walk, and that the exertion required to walk would neither constitute a danger to his life nor be likely to lead to a serious deterioration in his health. The claimant contended that while the record of the Medical Appeal Tribunal said that he had been "observed... walking a distance of about 70 metres With one of the medical examiners holding his arm to guide him but not to provide support...", he had been "ferried" and that one of the members of the Medical Appeal Tribunal was "gently ushering him along". The Chief Commissioner issued a direction during the course of the appeal seeking further information from the members of the Medical Appeal Tribunal. The response of the Medical Appeal Tribunal to the Chief Commissioner's direction indicated that a second examiner had taken part in the walking test. It was held that as a matter of law, evidence of what took place when the walking test was conducted should be admitted and that the failure to record the part played by the second examiner constituted a failure to adequately record material findings of fact. See R(SB) 10/82, 17.4.1 ix and 30.3.7iv *below*. R(M) 1/89

4 Failure to give adequate reasons

i In giving their decision upholding the decision of a medical board, a medical appeal tribunal simply stated 'We agree with the Board'. It was held that the decision was a nullity because it did not, in the circumstances of the case, comply with the R(I) 18/61 (T)

requirements of (what is now) regulation 23(1) of the Regulations that the tribunal should include in their decision a statement of their reasons for it. See as to the requirements of the Regulations paras 13-14. See also R(I) 4/63, para. 7, 14.4.1 ii *below* and R(I) 13/63.

- R(I) 30/61 ii At a hearing before the medical appeal tribunal the claimant's solicitor stated that certain observations made by a medical board were misleading, but in the tribunal's decision they made no finding on that issue of fact. It was held that in many cases it is sufficient for a medical appeal tribunal to rely on the casepapers and statements made by representatives at the hearing without hearing evidence, but where, as in that case, a statement goes to the very heart of the matter at issue and the tribunal are not prepared to accept the statement, they should make it clear at the hearing in order that evidence may be called in support of it. Further, that in the circumstances of the case the tribunal should have given reason for the assessment they made and their failure to do so was a breach of the requirements of (what is now) regulation 23(1) of the Regulations, which require medical appeal tribunals to give reasons for their decisions, including their findings on all questions of fact material thereto, 14.1.4ii *above*.
- R(I) 7/63 (T) iii A medical appeal tribunal held that an industrial accident had not reduced the visual acuity in a claimant's eye and did not constitute an assessable loss of faculty. It was held that the decision was erroneous in point of law on the ground, *inter alia*, that in the circumstances of the case the tribunal did not comply with the requirement of (what is now) regulation 23(1) of the Regulations that a medical appeal tribunal shall include in their decision a statement of reasons for their decision, including their findings on all questions of fact material thereto. And see also R(I) 8/63 and paras 23-25 of R(I) 22/63.
- R(I) 13/63 iv A medical board found that headaches, vertigo and anxiety state were fully relevant to an industrial accident and that deafness was partly relevant to the accident. On appeal the medical appeal tribunal varied the board's assessment, but it was alleged that the tribunal had failed to specify the nature of the relevant loss of faculty. On appeal it was held that it was clear from the tribunal's decision that they had differed materially from the medical board and had rejected some of the board's findings, but had, nevertheless, accepted that there was a relevant loss of faculty. They had not, however, indicated either expressly or by clear implication what the relevant loss of faculty was, and their failure to include a finding on that material fact meant that their decision did not comply with the requirements of what was then regulation 13(1) of the National Insurance (Industrial Injuries) (Determination of Claims and Questions) Regulations 1948 (see now regulation 23 of the Social Security (Determination of Claims and Questions) Regulations 1975).
- R(I) 7/65 v How detailed a statement of the reasons for the decision of a medical appeal tribunal need be depends upon the circumstances of the case, but in cases where some specific contention addressed to the tribunal has been rejected it would certainly be necessary for them to give reasons for its rejection. Thus where a specific contention was made to a medical appeal tribunal and it was not clear from their decision whether the contention had been considered and decided, reasons for their decisions being solely 'We consider that the decision of the medical board is just and reasonable', it was held that the decision was erroneous in law on the ground that it did not comply with the requirements to give reasons.
- R(I) 3/66 (T) vi A man met with an industrial accident when his left hand was caught in a machine which caused injury to his left little finger and to the hand. Some time later the finger was amputated and after various assessments had been made by medical boards the question of the degree of the claimant's disablement came before the medical appeal tribunal, who reduced the latest assessment by a medical board from 15 per cent. to 7 per cent. and recorded their reasons for that decision, including their findings on all material questions of fact, as: 'The present flexion of the ring and middle fingers is hysterical and the accident is not the real and effective cause thereof.' It was held that the reasons for the tribunal's decision did not comply with (what is now) regulation 23(1) of the Regulations since it was not enough to say that the accident was not *the*

cause of a condition because such a finding does not exclude the possibility of the accident having been a contributory cause of the condition.

vii A man who had no vision in his left eye, for which he was in receipt of a war pension, sustained an industrial accident in which he injured his right eye. Two medical boards having assessed his disablement at 70% and 80% respectively for different periods, a MAT reduced those assessments to 55% (treated at 60% under para. 5 of Sch. 8 to the SS Act 1975). On appeal to the Commissioner it was held that the receipt of a war pension is not a matter to be taken into account in assessing disablement under the SS Act 1975. It was open to the MAT to start their assessment by reference to Sch. 1(4) to the SS (Industrial Injuries) (Benefit) Regs. 1975 but it did not follow that the assessment should necessarily be 100%. It was open to the tribunal to apply reg. 2(6) of the regs. which confers a discretion to reduce an assessment below that provided in the Sch. if the tribunal do not regard such an assessment reasonable as to the extent of disablement resulting from the relevant loss of faculty. On the other hand there is no objection in law to some other approach under reg. 2. The tribunal made no findings on and gave no reasons for rejecting the claimant's contention that Sch. 1(4) applied in his case. The claimant was therefore left guessing as to why the assessment was less than 100%. That, coupled with the fact that the tribunal had referred to the claimant's war pension and to the fact that he was not completely blind without explaining how, if at all, these facts had been taken into account in the assessment, amounted to a failure to comply adequately with the requirement to give reasons in reg. 23(1) of the SS (Determination of Claims and Questions) Regs. 1975 and the decisions were set aside. R(I) 1/79

viii A MAT decision that a claimant did not satisfy the qualifying conditions for mobility allowance was held by the Commissioner not to be erroneous in point of law. The CA (*Baron v. the S of S for SS*, R(M) 6/86 app.) rejected submissions on behalf of the claimant that the tribunal had given inadequate statements of the reasons for their decision and of their findings of fact. The overriding test was whether the MAT had provided both parties with the materials which would enable them to know that the tribunal had made no error of law in reaching their findings. In the present case the tribunal had made clear the grounds for their decision, namely that, as a matter of degree, although pain and breathlessness were there, applying their medical expertise, they were not sufficient to qualify the claimant for mobility allowance. It was clear from the tribunal's decision that they were not accepting the claimant's evidence as to how far he could walk. There was no obligation on the tribunal to put to the claimant at the time of their examination that they were not minded to accept what he had told them. That was the issue they had to determine. They were required to give reasons for their determination. A further summary of this decision is at 15.4.1 ix. R(M) 6/86

ix The claimant had suffered a right hand stroke. A MAT concluded that she did not satisfy the medical conditions. The members of the MAT observed her walking out of doors and noted that she could walk 100 yards at a slower than average pace without stopping and with manual support, and with no evidence of distress. The claimant appealed to the Commissioner on the grounds that she needed, and was given help to walk by one of the MAT doctors. The Commissioner held that if a claimant needs help in walking, the reason for the need and the nature of the help should be made clear so that guidance or reassurance of a precautionary nature can be distinguished from physical support. If the claimant needs physical support, the MAT should consider whether the need arises from a physical cause. If it does but is not so severe so as to prevent the claimant from walking, the tribunal should then consider if the withdrawal of the support would make the claimant unable or virtually unable to walk within the meaning of reg. 3(1)(a) and (b) of the Mobility Allowance Regs. 1975, or render the exertion to walk harmful for the purposes of reg. 3(1)(c). If the withdrawal of the support would mean that any of the provisions of reg. 3(1)(a), (b) or (c) were satisfied, the tribunal must then consider whether the claimant could use a suitable artificial aid as a substitute for the physical support. R(M) 1/90

14.3.4

R(I) 5/94 x Four different claimants appealed to Commissioners after MATs had made or confirmed decisions adverse to them concerning disablement benefit and mobility allowance. In all four cases the Commissioners dismissed the appeals holding that the tribunals had given adequate reasons for their decisions as required by reg. 31(4) of the SS (Adjudication) Regs. 1986. On appeal the CA held that, in considering whether a MAT gave adequate reasons, bearing in mind that fairness “requires a tribunal ... to give sufficient reasons for its decision to enable the parties to know the issues to which it addressed its mind and that it acted lawfully” (*Regina v. Civil Service Appeal Board, ex parte Cunningham* [1992] ICR 816 at 827), the following factors should be considered:

1. the decision should record the medical question which the tribunal has to answer;
2. where the MAT has medically examined the claimant it should record its findings;
3. where the clinical findings do not indicate an obvious diagnosis it may be necessary for the tribunal to explain briefly why it made one diagnosis rather than another, especially where the diagnosis differs from a reasoned diagnosis of another qualified practitioner who has examined the claimant;
4. as far as causation is concerned, where a claimant has previously been in receipt of some benefit or allowance (particularly if paid over a long period of time) and there is no question of malingering or bad faith, then an explanation should be given that allows the appellant and his advisors to know where the break in causation has been found.

R(I) 5/95 xi The claimant claimed disablement benefit in respect of PD A11. The MAT assessed disablement at 5% from 15 April 1992 for life, finding that the claimant's social and domestic activities such as playing bowls, darts, gardening and domestic duties had been affected. The Commissioner held that the tribunal's reasons were inadequate. While the assessment of disablement was largely a matter of judgment, the basis upon which such a judgment was exercised should be made reasonably clear to the parties. A tribunal should record findings as to the practical effects of the claimant's condition and indicate to what extent they had had regard to Sch. 2 of the SS (General Benefit) Regs. 1982. See also 9.7.3 i *above*.

Part 4: Miscellaneous

1 Unforeseen aggravation

- i An accident cannot be said to be unforeseen aggravation of the results of an earlier accident unless it is established that the earlier accident was an effective cause of the second accident, and the question whether or not that was so is one of fact. R(I) 18/62
- ii On most applications for review on the ground of unforeseen aggravation several questions arise immediately, namely whether there was an aggravation, whether (if so) it was unforeseen, and whether (if so) it was an unforeseen aggravation of the results of the relevant injury. Accordingly, when a medical appeal tribunal failed in their duty to record their reasons for finding that there had been no unforeseen aggravation of the claimant's condition, their decision was held by a Tribunal of Commissioners to be erroneous in law. See paragraphs 7-9. R(I) 4/63 (T)
- iii It is incumbent upon a medical appeal tribunal, when dealing with a claim for unforeseen aggravation, to make a finding whether the contended aggravating disability resulted from the relevant injury, and in that respect it is necessary for them to decide for themselves what the relevant injury consisted of unfettered by the findings as to injury by the insurance officer. Thus, in the case of a man who was awarded disablement benefit in respect of an accident when he sustained an injury to his left foot and 2 years later applied for a review on the ground of unforeseen aggravation alleging that a right inguinal hernia had also resulted from the accident, and the medical appeal tribunal, when dismissing the claimant's appeal from a decision of a medical board, expressed the view that the question whether the hernia resulted from the accident should be subject to a separate claim, it was held that their decision was erroneous in point of law on the ground that they did not consider the questions which it was necessary for them to consider if the application for the review was to be properly dealt with. R(I) 12/65
- iv A medical board had finally assessed the claimant's disablement at 10% for life in 1969. In August 1981 she applied for a review on grounds of unforeseen aggravation. In October 1981 a review medical board decided that there had been no unforeseen aggravation. This decision was confirmed by a medical appeal tribunal in January 1982. In 1992 the claimant made a further application for a review on grounds of unforeseen aggravation. The leave of the medical appeal tribunal to review the assessment was not obtained. The review adjudicating medical authority who considered her application in September 1992 decided that there had been no unforeseen aggravation. That decision was confirmed by a medical appeal tribunal in March 1993. It was held by the Commissioner that since the claimant did not obtain the leave of the medical appeal tribunal, the decision of the review adjudicating medical authority dated 18 September 1992 was a nullity with the consequence that the decision of the medical appeal tribunal dated 15 March 1993 was also a nullity. Reviews of assessments of disablement on grounds of unforeseen aggravation are provided for by section 47(4) of the Social Security Administration Act 1992. Section 47(7) of that Act requires the leave of a medical appeal tribunal to be obtained before the application for review can be considered in every case where the assessment to be reviewed was made, confirmed or varied by a medical appeal tribunal. R(I) 4/95

The decisions listed below are not included in chapter 14

A *Decisions relating to reg. 2(5) of the NI (Industrial Injuries) (Benefit) Regs. 1948 (the "paired organs" reg.), since the reg. was replaced as from 17 July 1968.*

R(I) 39/60	R(I) 17/62
R(I) 1/61	R(I) 5/64
R(I) 24/61	R(I) 9/65
	R(I) 11/68

B *The following decisions are no longer relevant*

R(I) 12/63	
R(I) 1/89	The words "pure tone" have been removed from the definition of the PDs.
R(I) 1/97	The division of responsibilities between the AO and the adjudicating medical authorities has now disappeared.
R(I) 1/98	Decision relates to statutory provisions which are no longer in force.

