



Social Security Administration Act 1992

1992 CHAPTER 5

PART II

ADJUDICATION

Adjudication in relation to industrial injuries and disablement benefit

44 Declaration that accident is an industrial accident

- (1) Where, in connection with any claim for industrial injuries benefit, it is determined that the relevant accident was or was not an industrial accident, an express declaration of that fact shall be made and recorded and (subject to subsection (3) below) a claimant shall be entitled to have the question whether the relevant accident was an industrial accident determined notwithstanding that his claim is disallowed on other grounds.
- (2) Subject to subsection (3) below and to section 60 below, any person suffering personal injury by accident shall be entitled, if he claims the accident was an industrial accident, to have that question determined, and a declaration made and recorded accordingly, notwithstanding that no claim for benefit has been made in connection with which the question arises; and this Part of this Act applies for that purpose as if the question had arisen in connection with a claim for benefit.
- (3) The adjudication officer, social security appeal tribunal or Commissioner (as the case may be) may refuse to determine the question whether an accident was an industrial accident if satisfied that it is unlikely to be necessary to determine the question for the purposes of any claim for benefit; but any such refusal of an adjudication officer or social security appeal tribunal shall be subject to appeal to a social security appeal tribunal or Commissioner, as the case may be.
- (4) Subject to the provisions of this Part of this Act as to appeal and review, any declaration under this section that an accident was or was not an industrial accident shall be conclusive for the purposes of any claim for industrial injuries benefit in respect of that accident.
- (5) Where subsection (4) above applies—

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- (a) in relation to a death occurring before 11th April 1988; or
 - (b) for the purposes of section 60(2) of the Contributions and Benefits Act,
- it shall have effect as if at the end there were added the words “whether or not the claimant is the person at whose instance the declaration was made”.
- (6) For the purposes of this section (but subject to section 60(3) below), an accident whereby a person suffers personal injury shall be deemed, in relation to him, to be an industrial accident if—
 - (a) it arises out of and in the course of his employment;
 - (b) that employment is employed earner’s employment for the purposes of Part V of the Contributions and Benefits Act;
 - (c) payment of benefit is not under section 94(5) of that Act precluded because the accident happened while he was outside Great Britain.
 - (7) A decision under this section shall be final except that sections 25 to 29 above apply to a decision under this section that an accident was or was not an industrial accident as they apply to a decision under sections 21 to 23 above if, but only if, the adjudication officer or social security appeal tribunal, as the case may be, is satisfied that the decision under this section was given in consequence of any wilful non-disclosure or misrepresentation of a material fact.

45 Disablement questions

- (1) In relation to industrial injuries benefit and severe disablement allowance, the “disablement questions” are the questions—
 - (a) in relation to industrial injuries benefit, whether the relevant accident has resulted in a loss of faculty;
 - (b) in relation to both benefits, at what degree the extent of disablement resulting from a loss of faculty is to be assessed, and what period is to be taken into account by the assessment;

but questions relating to the aggregation of percentages of disablement resulting from different accidents are not disablement questions (and accordingly fall to be determined by an adjudication officer).
- (2) Subject to and in accordance with regulations, the disablement questions shall be referred to and determined—
 - (a) by an adjudicating medical practitioner; or
 - (b) by two or more adjudicating medical practitioners; or
 - (c) by a medical appeal tribunal; or
 - (d) in such cases relating to severe disablement allowance as may be prescribed, by an adjudication officer.
- (3) Where—
 - (a) the case of a claimant for disablement benefit has been referred by the adjudication officer to one or more adjudicating medical practitioners for determination of the disablement questions; and
 - (b) on that or any subsequent reference, the extent of the disablement is provisionally assessed,

the case shall again be referred under this section, to one or more adjudicating medical practitioners as regulations may provide for the purposes of such subsequent

references, not later than the end of the period taken into account by the provisional assessment.

- (4) Where, in the case of a claimant for disablement benefit, the extent of any disablement of his resulting from an aggregable accident (that is to say, an accident other than the one which is the basis of the claim in question) has been assessed in accordance with paragraph 6(3) of Schedule 6 to the Contributions and Benefits Act at less than 14 per cent., then—
- (a) the adjudication officer may refer the disablement questions relating to the aggregable accident to one or more adjudicating medical practitioners for fresh determination; and
 - (b) on any such reference—
 - (i) those questions shall be determined as at the first day of the common period; and
 - (ii) the period to be taken into account shall be the period beginning with that day.
- (5) In subsection (4) above “the first day of the common period” means whichever is the later of—
- (a) the first day of the period taken into account by the assessment of the extent of the claimant’s disablement resulting from the accident which is the basis of the claim in question;
 - (b) the first day of the period taken into account by the assessment of the extent of his disablement resulting from the aggregable accident.
- (6) In the following provisions of this Act “adjudicating medical practitioner” means, in relation to any case, one such practitioner, unless regulations applicable to cases of that description provide for references to more than one.

46 Medical appeals and references

- (1) This section has effect where the case of a claimant for disablement benefit or severe disablement allowance has been referred by the adjudication officer to an adjudicating medical practitioner for determination of the disablement questions.
- (2) Subject to subsection (3) below, if the claimant is dissatisfied with the decision of the adjudicating medical practitioner, he may appeal in the prescribed manner and within the prescribed time, and the case shall be referred to a medical appeal tribunal.
- (3) If—
- (a) the Secretary of State notifies the adjudication officer within the prescribed time that he is of the opinion that any decision of the adjudicating medical practitioner ought to be considered by a medical appeal tribunal; or
 - (b) the adjudication officer is of the opinion that any such decision ought to be so considered,
- the adjudication officer shall refer the case to a medical appeal tribunal for their consideration, and the tribunal may confirm, reverse or vary the decision in whole or in part as on an appeal.

47 Review of medical decisions

- (1) Any decision under this Act of an adjudicating medical practitioner or a medical appeal tribunal may be reviewed at any time by an adjudicating medical practitioner

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if satisfied that the decision was given in ignorance of a material fact or was based on a mistake as to a material fact.

- (2) Any decision under this Act of an adjudicating medical practitioner may be reviewed at any time by such a practitioner if he is satisfied that the decision was erroneous in point of law.
- (3) Regulations may provide that a decision may not be reviewed under subsection (1) above unless the adjudicating medical practitioner is satisfied as mentioned in that subsection by fresh evidence.
- (4) Any assessment of the extent of the disablement resulting from the relevant loss of faculty may also be reviewed by an adjudicating medical practitioner if he is satisfied that since the making of the assessment there has been an unforeseen aggravation of the results of the relevant injury.
- (5) Where in connection with a claim for disablement benefit made after 25th August 1953 it is decided that the relevant accident has not resulted in a loss of faculty, the decision—
 - (a) may be reviewed under subsection (4) above as if it were an assessment of the extent of disablement resulting from a relevant loss of faculty; but
 - (b) subject to any further decision on appeal or review, shall be treated as deciding the question whether the relevant accident had so resulted both for the time about which the decision was given and for any subsequent time.
- (6) For the purposes of subsection (5) above, a final assessment of the extent of the disablement resulting from a loss of faculty made for a period limited by reference to a definite date shall be treated as deciding that at that date the relevant accident had not resulted in a loss of faculty.
- (7) An assessment made, confirmed or varied by a medical appeal tribunal shall not be reviewed under subsection (4) above without the leave of a medical appeal tribunal, and (notwithstanding the provisions of Part V of the Contributions and Benefits Act) on a review under that subsection the period to be taken into account by any revised assessment shall only include a period before the date of the application for the review if and in so far as regulations so provide.
- (8) Subject to the foregoing provisions of this section, an adjudicating medical practitioner may deal with a case on a review in any manner in which he could deal with it on an original reference to him, and in particular may in any case relating to disablement benefit make a provisional assessment notwithstanding that the assessment under review was final.
- (9) Section 46 above applies to an application for a review under this section and to a decision of an adjudicating medical practitioner in connection with such an application as it applies to an original claim for disablement benefit or severe disablement allowance, as the case may be, and to a decision of an adjudicating medical practitioner in connection with such a claim.
- (10) In subsection (6) above the reference to a final assessment does not include an assessment made for the purpose of section 12(1)(a) or (b) of the National Insurance (Industrial Injuries) Act 1946 as originally enacted and having the effect that benefit is not payable.

48 Appeal etc. on question of law to Commissioner

- (1) Subject to this section, an appeal lies to a Commissioner from any decision of a medical appeal tribunal (if given after 27th September 1959) on the ground that the decision is erroneous in point of law, at the instance of—
 - (a) an adjudication officer;
 - (b) the claimant;
 - (c) a trade union of which the claimant was a member at the time of the relevant accident or, in a case relating to severe disablement allowance, at the prescribed time; or
 - (d) the Secretary of State.
- (2) Subsection (1) above, as it applies to a trade union, applies also to any other association which exists to promote the interests and welfare of its members.
- (3) No appeal lies under subsection (1) above without the leave—
 - (a) of the person who was the chairman of the medical appeal tribunal when the decision was given or, in a prescribed case, the leave of some other chairman of a medical appeal tribunal; or
 - (b) subject to and in accordance with regulations, of a Commissioner, and regulations may make provision as to the manner in which, and the time within which, appeals are to be brought and applications made for leave to appeal.
- (4) On any such appeal, the question of law arising for the decision of the Commissioner and the facts on which it arises shall be submitted for his consideration in the prescribed manner.
- (5) Where the Commissioner holds that the decision was erroneous in point of law, he shall set it aside and refer the case to a medical appeal tribunal with directions for its determination.
- (6) Subject to any direction of the Commissioner, the tribunal on a reference under subsection (5) above shall consist of persons who were not members of the tribunal which gave the erroneous decision.