

Police Medical Appeal Board	Case Number: 222/JW	Page 1 of 10
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Report of the Police Medical Appeal Board Undertaken in Accordance With the Police Pensions Regulations 1987 and the Police (Injury Benefit) Regulations 2006

Appellant	Name: [REDACTED] Rank: Inspector Date of Birth: [REDACTED] Address: [REDACTED] [REDACTED]
Police Authority	Northumbria Police Authority
Date of Board	8 th April 2010
Time	13:30pm
Location	Regus – Leeds No. 2 Wellington Place Leeds LS1 4AP

Police Medical Appeal Board Members	
Chairperson	Dr Lanre Ogunyemi, Consultant Occupational Health
2nd Member	Dr Ian Lambert, Occupational Health Physician
Specialist	Mr Gerard Kelly, Consultant ENT Surgeon

Attendees	
Appellant	[REDACTED]
Appellant's representative	Mr Bob Watson, NARPO
Police Authority Representatives	Mr Trevor Forbes, Police Authority Representative
In attendance	Mr Gerald Lang, NARPO Observer

Reports and Documentation Submitted & Considered By the Board		
Ref.	Dated	Description
A	09/07/2009	Grounds of the appeal
B	09/07/2009	Appeal notification from Police Authority to Board
C	28/02/2010	Appellant's submission to Board in support of appeal
D	03/03/2010	Police Authority's submission to Board in response of appeal
E	09/07/2009	Occupational Health records
-	19/03/2010	Appellant's comments on the Police Authority's submission

Basis for Appeal

Mr [REDACTED] is appealing against the decision of the Selected Medical Practitioner to reduce his degree of disablement from Band 2 to Band 1. The date of the decision is 20 February 2009.

Occupational History

Mr [REDACTED] left school at the age of 15. He was an apprentice gas fitter with the Northern Gas Board for seven years until the age of 22. He then pursued an ambition to become a Marine Engineer. He was taken on by a company as a Junior Engineer in the Merchant Navy for about two to three years. He then initially joined the Police in 1965 and was with the Police for about 18 months. He then resigned to make a brief return to the Merchant Navy before taking a job with Esso Petroleum, in a shore-based role. He then returned back to policing in 1969. He progressed through the police ranks to become an Inspector by the time of his medical retirement in April 1994.

Background to Case

On 7 May 1993, Mr [REDACTED] was injured in the execution of his duties as a police officer. He was assaulted by a group of youths who dealt him several blows to the head, leading to hospital admission and the relevant permanently disabling injury – left ear injury, deafness and tinnitus. As a consequence of this injury, he was medically retired from the police service. The certificate dated 12 April 1994 signed by Dr I Robinson, acting as Medical Referee, describes the relevant illness to be 'post traumatic tinnitus and hearing loss' confirms his disablement from performing the ordinary duties of a member of the police force, determines the condition to be the result of an injury received in execution of duty and estimates the degree to which his earning capacity has been affected to be 26 – 50%.

Dr Robinson conducted a further review of ex-Inspector [REDACTED] injury pension on 6 July 2000 and did not appear to find that the degree of disability had changed. He determined that the injury award band should be unchanged. There have been no further assessments until Dr Broome's review on 20 February 2009. This review is the subject of today's challenge.

Submission by the Appellant and Representatives

The following represents the key points made in the submission on behalf of the Appellant:

- The SMP review was essentially a paper exercise undertaken on behalf of the Police Authority on which Inspector [REDACTED] was one of more than 60 cases reviewed in one morning. The SMP assessment lacked the depth of consideration that an independent/individual assessment would have achieved. It did not include an interview, review of GP records or review of other clinical records.
- The assessment has not acknowledged the more recent case law with regards to *Turner, Laws, Pollard and McGinty*.
- The Appellant believes that the decision made by the SMP is unlawful with regards to the above case law.
- The assumption of zero earning capacity passed the age of 65 is not a correct test and the Appellant quotes the ombudsman decision of *Ayre* as a relevant case.

- The question should have been whether the claimant's degree of disablement has altered before undertaking an assessment of earning capacity.
- The Home Office Guidance also states that *'each individual should be considered on his/her own merits'*, which has not been done in this case.
- The Home Office Guidance has no specific legal authority in itself.
- Mr █████ agreement was not obtained for the assessment against potential roles as comparators.
- The roles that have been identified by the Police Authority are not considered to be new jobs and should be discounted. Furthermore, the Appellant requests for disclosure of detailed job descriptions have not been met. He has not been given any idea of the physical demands or essential qualifications required for these roles.
- The Appellant petitions the Board to disregard this consideration of jobs by the Police Authority.
- The Appellant contends that the process followed by the Police Authority is not open, fair or transparent.

Comments made by Police Authority on the submission by the Appellant

There were no comments made by the Police Authority at this stage.

Review and Clarification of Medical Issues

The Board was able to question the Appellant and representative and clarify the following:

- The Appellant described the circumstances of the index event.
- He returned to work in August briefly for a period of two weeks in a supernumerary role following the index event. He found it difficult to tolerate the background noise within the control room, was unable to maintain concentration, would have been unable to meet the demands of taking command in an critical response situation and struggled for this fortnight.
- He then went off sick following this and has not worked since. No other modified jobs or opportunities for rehabilitation were apparently suggested.
- He feels the hearing in his right ear has worsened since the index event but the left - damaged - ear has not appreciably deteriorated.
- The tinnitus intrudes on his sleep less than once a month.

- With regards to his hearing disability, Mr ██████ is more bothered by the disorientation that accompanies this with his poor localisation of sound. He will struggle with background noise in a pub or family gathering but it would not stop him getting involved with this. He would however be unable to tolerate loud music and finds he needs to leave if the noise is persistent or becomes too loud.
- Following retirement, he did get involved in organising junior football teams and then later, over 40s football as voluntary/charitable work.
- He feels the hearing in his right ear has worsened since the index event, but the already poor hearing in his injured left ear has not appreciably deteriorated further.
- He has not had any psychological issues or anxiety concerns since the index event.
- He has had a trial of hearing aid which was unsuccessful.
- The assessment which led to his review was part of a Force wide review of everyone over the age of 65, who are still in receipt of an injury pension.
- The Appellant provided the Board with a breakdown of his current earnings.

Submission by the Police Authority Representatives

The following represents the key points made in the submission on behalf of the Police Authority:

- The HAYE matrix used in the initial assessment has now been superseded by the Police Earnings Assessment Matrix (PEAM). The median earning for this by an administrative assistant would be £20,000 based on the government websites.
- It is recognised that the current guidance from the Home Office does not sit well with current case law.
- The cogency argument/guidance that was used by the SMP complied with the Home Office Circular and Guidance at that time.
- The SMP dealt with the cases on an individual basis and if the SMP felt that it was necessary there would be a face to face assessment and examination. The Police Authority had agreed the relevant process with the SMP.
- If there was a good medical reason, then a functional assessment would be offered. . It is understood that a small number of individual assessments were conducted, but not in this case
- The updated Inspector's salary would be £49,488 per annum. The relevant ASHE earnings for those greater than 65 would be £27,434 per annum. This was obtained from a parliamentary answer.

- The Regulations do not specify how to undertake an assessment of the degree of disablement. Guidance on this is contained in Section 5 of the Home Office Guidance to Medical Referees. This Guidance states that the national average earnings should be used once the compulsory retirement age has been passed.
- It is clear in this case that the potential earnings of the Appellant as calculated by previous assessor are greater than the national average earnings.
- The three jobs put forward by the Police Authority are within the Appellant's competence. However it is recognised that the Safety Officer role should be excluded from the current considerations and the Police Authority rely primarily on the Major Crime Review role and the Performance Improvement Officer role. The updated salaries for these are £30,408 and £36,862 per annum respectively. His previously accepted earning potential should be used as the benchmark and this remains relevant.
- If this is representative of his earning capacity and compared against national average earnings, it still places Mr [REDACTED] in the slight band for an injury award.
- The Authority considered that these jobs were relevant because they are new jobs that have not been previously available.
- The Police Authority had asked for the appeal to be stayed until the awaited judgment on the appeal on the *Laws* appeal but this had not been agreeable to all parties.

Comments made by Appellant on the submission of the Police Authority

The Appellant observes that they have not had any access to any document describing the qualifications or essential criteria of the proposed roles. It is also noted that Mr [REDACTED] should have had the opportunity to consent to the review process. The Appellant observes that there was a civilian Serious Crime Review role already available in the Metropolitan office in the 1990s and that this is the same role as the Major Crime Review Officer role and therefore it is not new. It is also noted that the DDA existed in 1995 which was before the 2000 review and therefore, roles which take note of the DDA should not be considered to be 'new'.

The Appellant observes that his condition has not changed and therefore no new review should be required. The Appellant observes that he has never met the SMP.

Review and Clarification of Medical Issues

- The Board confirmed that the Police Authority did not dispute that there had been no change in the disability/infirmity experienced by the Appellant.
- The Police Authority observed that the Pensions Ombudsman's decision is only binding on the *Ayre* case.

Final Comments

Appellant

The Appellant observes that there has been no change in the infirmity or disablement. He draws the Board's attention to the lack of evidence or disclosure regarding matching jobs and observes that the roles proposed by the Police Authority have existed in one guise or the other since the 1980s/late 1990s. He contends that the Home Office Guidance also precludes this later review given that the review should have been done before age 65 and that normally no review after age 65 should occur. The Appellant also clarifies that they have been in discussion with Health Management who have stated that they would be happy to stay cases if both sides agree that a stay should be put in place. However they [the appellant] have not been approached before. The Appellant notes that they consider it ridiculous for anyone to consider his appeal to be frivolous. They also contend that the Police Authority have not facilitated the SMP's attendance at today's exercise.

Police Authority

The Police Authority in closing note that the SMP has complied with the existing Guidance at the time of his assessment. They do not accept that Dr Broome was being coerced as he is a very experienced independent Occupational Health Physician. A further review of the case had been necessary because of the impact of the High Court judgments. It is also noted that the DDA 2005 makes significant extensions to the DDA 1995. The Police Authority also observes that there has been a change in the functionality of management of his condition. It is noted that the relevant job matching to competences were done by Human Resource personnel who are very qualified to do this. The Police Authority acknowledges that the Board would carry out an independent assessment today and come to its own determination of the relevant degree of disablement.

Results of Clinical Assessment Performed By Consultant Specialist

Presenting complaint

Mr [REDACTED] gave a history of noticing a hearing loss in the left ear with constant tinnitus immediately after, or very soon after, an injury to his head, received in an assault on the 7th May 1993. He was treated for several days in hospital after this assault. He returned to work after a time, where he worked as an inspector, in a police control room, but could not manage because of his hearing loss and tinnitus. He had a trial of a hearing aid, perhaps 10 years ago but this provided no benefit to the hearing in the left ear. A hearing aid in the right ear provided too much noise and was not tolerated. He now feels his hearing in the left ear is similar to 1993, and he feels that he has almost no hearing in the left ear. He feels the hearing in his right ear has gradually deteriorated over the years since 1993. His tinnitus has remained constant and he describes this as central, not in one ear or the other. His tinnitus affects his ability to get to sleep, approximately once per month. He feels that he has no anxiety related to his hearing loss or tinnitus. When he is exposed to background noise, this becomes, 'too much to stand' and he feels that the distress from this loud noise is independent of his tinnitus, and any distress which his tinnitus causes.

case law leads the Board to the inescapable conclusion that there has not been a substantial alteration in the degree of disablement since the last review in 2000 and therefore, a review of the level of his injury should not take place.

Determination of the Board

The Board uphold the appeal of Mr [REDACTED] on the basis that there has been no substantial change to his degree of disablement since his last review in 2000. This is a unanimous decision. His injury award therefore remains in Band 2.

Signatures of Each Board Member



Dr Lanre Ogunyemi



Dr Ian Lambert



Mr Gerard Kelly

20 April 2010