

Police Medical Appeal Board	Case Number: 268/DH	Page 1 of 9
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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: Rank: Date of Birth: 19/04/1926 Address:
Police Authority	West Yorkshire
Date of Board	8 <sup>th</sup> January 2010
Time	9.30am
Location	Regus 2 Wellington Place Leeds LS15 8ZA
<b>Police Medical Appeal Board Members</b>	
Chairperson	Dr David Wallington, Occupational Health Physician
2 <sup>nd</sup> Member	Dr Daphne Pereira, Occupational Health Physician
Specialist	Mr Charles Kolb, Orthopaedic Surgeon

<b>Attendees</b>	
Appellant	Mr
Appellant's representative	
Police Authority Representatives	Ms Rachael Hunter, Police Authority
In attendance	

<b>Reports and Documentation Submitted &amp; Considered By the Board</b>		
Ref.	Dated	Description
A	26/08/2009	Grounds of the appeal
B	23/09/2009	Appeal notification from police authority to board
C	29/11/2009	Appellant's submission to board in support of appeal
D	30/11/2009	Police Authority's submission to board in response of appeal
E	Not Submitted	Occupational Health records
-	27/12/2009	Appellant's Comments on PA's submission

**Basis for Appeal**

Mr [REDACTED] is appealing against the decision of the SMP to reduce his degree of disablement from Band 3 to Band 1.

**Occupational History/Background to Case**

Mr [REDACTED] left school and signed on as a boy soldier before continuing on in the army once he became of age.

He joined Bradford City Police in January 1948. He served as a Police Constable, was promoted to Sergeant and served in this rank until he was ill health retired in February 1973.

Documentation pertaining to the ill health retirement and a subsequent injury on duty award are not as clear as is expected of assessments carried out at the present time.

Nevertheless there is reference to cervical and lumbar prolapsed intervertebral discs, originating from an injury on duty as far back as 1954.

Although not mentioned on the certificate, the Medical Officer in January 1973 considered that peptic ulceration could be considered part of the psychosomatic disability from the pain and suffering he experienced following the assault in 1954 and should be considered as part of the award.

His degree of disablement was set at 75% (Band 3).

The Appellant has never been reviewed since the time of granting the original award in 1973 until April 2009, when he was aged 83.

The Police Authority have followed the contents of a Home Office Circular (46/2004) and subsequent Guidance, whereby a Police Authority could advise an SMP, on reviewing the degree of disablement that, the former Officer could be placed in Band 1 on the basis that they would no longer be expected to be in the labour market, unless there were cogent reasons otherwise.

The Police Authority considered there were no cogent reasons and as a consequence the award was reduced to Band 1.

The Appellant argues that the Police Authority have failed to follow the Regulations in respect of the review of the degree of disablement. The Regulations do not discuss reviews at any specific age and equally there is no mention in the Regulations regarding cogency.

Furthermore the Appellant argues that, the Police Authority have failed to take notice of the cogent reasons put forward as to why his degree of disablement should not be reduced at a review carried out at this time.

This is the basis for the appeal.

**Submission by the Appellant and Representatives**

The following represents a summary of the key comments made by the Appellant in support of his appeal:

- Mr [REDACTED] was advised by Dr Ellis that he was unfit for Police Service due to his neck and back prolapsed discs and also due to the pulmonary embolism he had suffered.
- He had not been able to question the doctor's decision at the time both because he was quite ill and felt obliged to follow the advice of the Force Doctor.
- Mr [REDACTED] had always been an active individual having served his Country in the war and had always carried out his job to the best of his ability.
- His subsequent gastric problems were due to the kicking he had received in the assault. He had required a partial gastrectomy.
- Nevertheless he continued in service despite his symptoms including the severe problems in his neck and back.
- In the last five years of his service he had been taken off the streets in recognition of the fact that he was no longer fit enough to undertake active policing and an alternative role was identified for him of an administrative type nature.
- He had not argued at the time with the decision of the doctor or the fact that he had other problems because he was too ill.
- He has been retired for 37 years. There has been no contact from West Yorkshire Police in respect of his pension or injury benefits during this period of time, until this review in April 2009, when he was advised that his degree of disablement was to reduce to 0%.
- He had initially employed a solicitor but due to financial reasons had been forced to conduct his own case.
- The Appellant relies on the information submitted in his written argument.

#### **Comments made by Police Authority on the submission by the Appellant**

There were none.

#### **Review and Clarification of Medical Issues**

The Board were able to question the Appellant and clarify the following:

- Mr [REDACTED] reported that he had not been able to work for two years after his ill health retirement. Subsequently he started some local authority work, initially in the property department and then became an Enforcement Officer, which despite its title was merely a clerical role.
- In total he was employed from 1975 to 1978 and has not been in paid employment since that time.

- Mr ██████████ reported that there had been no improvement in his neck or back since his ill health retirement in 1973.

#### Submission by the Police Authority Representatives

The following represents the key points made by the Police Authority in support of their position:

- The Police Authority apologise for the absence of Dr Hynes. However due to the severe adverse weather conditions the Board had been postponed for 24 hours and he was therefore unable to attend.
- Mr ██████████ review had been conducted within the 2006 Benefit Regulations and in accordance with current case law.
- The Regulations allow for review at any age.
- Subsequent changes to the Regulations have allowed for transition arrangements and it is perfectly legal to carry out a review under the 2006 Regulations.
- A full medical assessment was carried out by Dr Hynes including a review of the Health Records.
- The SMP had only been allowed to look at the qualifying injury of cervical and lumbar spine disc problems, and whilst other conditions may have had an effect, could not be taken into account at that time.
- There is no provision for means testing of the award.
- Financial penury is a cogent reason not to decrease the award.
- The argument put forward that losing part of his income may result in the loss of his home on investigation was not accepted by the Police Authority or the SMP as a cogent reason, as savings could be made elsewhere.
- However, it is accepted that it may have prevented him moving into Warden assisted property but, again, this was not considered a cogent reason.
- It is argued that penury does exist in this case.
- Family circumstances are irrelevant when considering the degree of disablement.
- It is totally accepted by the Police Authority that Mr ██████████ had exemplary service; whilst this is commendable this is not part of the review process.
- From the symptoms described by the Appellant it is clear that he suffers from other medical conditions which impact upon his earnings capacity.
- The impact upon earnings has been assessed correctly by the SMP and the Police Authority.

- The Police Authority considers that the Board may wish to consider the apportionment of costs in this case.
- Although the SMP has not been able to attend today the Police Authority representative indicated that she had spoken to Dr Hynes and he has made the following comments:
  - a. Everything suggests that there has been an improvement in his neck and back condition since he has not required any treatment and there have been no GP attendances as a consequence of musculoskeletal problems affecting his neck or back.
  - b. Looking at the symptoms there is nothing to suggest that they would interfere with his ability to work if all of his other conditions were ignored.

#### **Comments made by Appellant on the submission of the Police Authority**

In respect of the argument about him having no treatment Mr [REDACTED] commented that, he had been told at the time of his retirement that he had to live with his back symptoms and that there was no further treatment. Any treatment that might be available would be of a major surgical nature and Mr [REDACTED] considered that he had had enough surgery in the past and was not prepared to accept any major back surgery. There therefore seemed little point in going to see his GP as he had previously been told that there was no treatment available.

His back problem has not improved and there were too many risks associated with surgery.

#### **Review and Clarification of Medical Issues**

The Board were able to question the Police Authority and clarify the following:

- The Police Authority representative explained the reason why they had used a £0 profile and any other figures would have resulted in a negative number which made no sense.
- The Police Authority considered that Mr [REDACTED] would no longer be earning and therefore no job comparators were put forward.
- Nevertheless the Police Authority had followed the Regulations and the Guidance from the Home Office contained within Circular 46/2004.
- The Police Authority considered that there had been a change both in his condition and a change in the job situation.

#### **Final Comments**

##### Appellant

Dr Hynes has indicated that his back is better. At the time of his examination with Dr Hynes he examined his neck briefly and asked questions about driving. There was no other examination.

There had been no communication from the Police Authority for 37 years regarding his pension.

36 years is not at regular intervals as indicated in the Pension Regulations.

The Appellant had indicated that he had received information from NARPO but they provide no financial assistance with regard to the appeal and he had paid a solicitor over £900 and could no longer afford to pay.

Mr [REDACTED] commented he had received a fair hearing by the Board.

#### Police Authority

No comments.

#### Final Questions

Mr [REDACTED] confirmed that he had been receiving higher attendance allowance because he required help with showering due to a shoulder problem.

He is able to dress and whilst he gets up at 7:30 am it takes him one and one-half to two hours to become mobile. He lives alone and can cope with "ready meals". He drives locally to the GP and the Chemist but does not drive on motorways.

He has his shopping delivered and he has sufficient IT skills to send emails but has no other significant skills other than being in the army or having served as a Police Officer.

The Appellant was questioned as to what he would have done in the absence of his qualifying injury and he considers that he would like to have been a landscape gardener/planner but was not able to do this because of his injury.

### **Results of Clinical Assessment Performed By Consultant Specialist**

#### EXAMINATION

A pleasant, upright and co-operative 83 year old man who presented his case well. He walked with a cane in his right hand, limping somewhat. He was wearing two hearing aids.

#### Cervical spine

There was no abnormality of contour or muscular spasm. There was tenderness over the 1<sup>st</sup> and 2<sup>nd</sup> cervical vertebrae and the 6<sup>th</sup> and 7<sup>th</sup> cervical vertebrae posteriorly. Right rotation was ½ with discomfort. Left rotation was ½ with discomfort. Forward flexion was ¾ with discomfort. Extension was ¾ with discomfort. Right lateral flexion was ½ with discomfort. Left lateral flexion was ½ with discomfort.

#### Lumbar spine

In the erect position there was a very mild lordosis without scoliosis. In forward flexion the fingertips reached the mid-shins with mild lumbar spine unroll and some discomfort [this was his most uncomfortable movement]. Left lateral flexion was negligible with discomfort, as were right lateral flexion and extension. Waddell's rotation both to the left and to the right did cause some discomfort but despite a request not to be active he was still active in trying to

help when rotating. There was tenderness over the 5<sup>th</sup> lumbar vertebra extending into the upper sacrum.

### IMPRESSION

Symptomatic cervical and lumbar spondylosis.

### **CASE DISCUSSION**

#### **Key Medical Considerations**

The Board will need to consider:

1. The functional capability of the Appellant;
2. What medical conditions lead to reduced functional capability;
3. What types of work may the Appellant reasonably perform, taking into account their functional capability, training and occupational experience;
4. Are there any cogent reasons why the Appellant should not be reduced to Band 1 due to him being past State Retirement Age?

#### **Relevant Case Law**

Police (Injury Benefit) Regulations 2006  
Paragraph 37 – Reassessment of injury pension

-(1) Subject to the provisions of this part, where an injury pension is payable under these Regulations, the Police Authority shall, at such intervals as may be suitable, consider whether the degree of the pensioner's disablement has altered and if after such consideration that the Police Authority find that the degree of the pensioner's disablement has substantially altered, the pension shall be revised accordingly.

#### *Turner 2009*

The Court determined that in order for an injury pension to be revised there must be a change either in the disablement or new jobs might have become available which the Appellant, taking into account his qualifying injury, is qualified to undertake.

#### **Detailed Case Discussion**

The Board has carefully considered all of the documents.

The Board has to determine the current degree of disablement. In so doing, it must be mindful of the Regulations and recent case law.

The 2006 Regulations indicate that in order for the injury pension to be altered, the degree of disablement must have substantially altered. Case law (Turner) indicates that there must be a change, either in the medical condition, or new jobs, which the Appellant is capable of doing, which might have become available since the time of the last review.

Mr [REDACTED] was ill health retired and granted an injury on duty award at Band 3 in 1973. He has not been further reviewed in 36 years.

The Police Authority have followed Home Office Guidance, in respect of ex-Officers who are over the age of 65 in that, in the absence of a cogent reason otherwise, the Police Authority can advise the SMP to place the individual in Band 1, on the basis that there is an expectation that the Officer will no longer be in the employment market as they will have reached State Retirement Age.

Mr [REDACTED] was ill health retired due to cervical and lumbar prolapsed intervertebral discs. His functional capability from these conditions alone has not improved. There is no doubt that over the years he has suffered other medical conditions, which of themselves might impact on his earnings capacity, especially the chronic chest condition.

It is clear from Mr [REDACTED] account that his qualifying injury has not improved over the years and whilst the SMP considers that the requirement for treatment as evidenced by the lack of GP attendances, the lack of medication or other treatment options indicates an *improvement in the condition*, the Board considers that this merely indicates no change in the Appellant's condition. Mr [REDACTED] was told there was no treatment other than surgery, which the Board totally accept is probably contra-indicated, in view of his previous history of pulmonary embolism.

The Board do not consider that an absence of medication or attendances at the GP surgery in this particular case argues for improvement.

In the absence of any evidence that his condition has improved over the years it is difficult to determine how the pension may be altered on this account.

The Police Authority considers that there are new jobs available which he could do but have not evidenced this with examples.

Ignoring his age, it is difficult to see how Mr [REDACTED] could undertake even a sedentary job, even on a part time basis, such that he could be capable of earning the equivalent of 75% of the salary of a worker in such a role, which would warrant a reduction to Band 1.

He does not have the background skills or experiences, having been out of the labour market since 1978, when he was forced to stop doing his sedentary role as an Enforcement Officer due to his qualifying injury.

It is therefore difficult to see how there could have been a substantial change.

If one follows this argument that, at 83, he would no longer be in the labour market, the Board would have to agree that, even in the absence of his qualifying injury, it is doubtful he would still be employed, both because of his age and his other medical conditions.

Irrespective of his qualifying injuries there has been no evidence produced that he would still be in employment at this time.

Arguably therefore the Appellant has only a small or even no loss of earnings at this point in time and could in accordance with Home Office Guidance be reduced to Band 1 unless there is a cogent reason otherwise.

The Police Authority has argued that there are no cogent reasons.



The Board have looked to the Regulations and note that the Police Authority is required to review the degree of disablement at suitable intervals. Suitable intervals are not defined within the Regulations and the Board are not aware of any case law pertaining to this issue.

However the Board considers that when the Regulations were written it would not have been expected that a gap of 36 years would be a suitable interval. The Board would argue that this in itself would be a cogent reason for not reducing the degree of disablement.

After an absence of review for 36 years and at the age of 83, the Appellant could not reasonably be expected to re-plan his financial circumstances and a requirement to do so appears iniquitous.

The Board can see the arguments from both sides and accept that the Police Authority have followed Home Office Guidance, in that they did refer the case to an SMP, Mr [REDACTED] was medically assessed and cogent reasons reviewed.

The Board doubts that he would have been in employment at this time, even if his qualifying injury was ignored, and the Appellant has not produced an argument to the contrary.

The Board therefore might conclude that the degree of disablement should be reduced to Band 1.

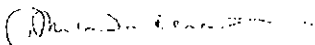
However the Board considers that there has been no improvement in the qualifying injury. It appears manifestly unfair to review for the first time, after 36 years, when the Appellant quite reasonably expects his financial situation to be stable after this period of time, with no communications from the Police Authority during this period to the contrary.

Finally the Board considers that the Home Office in formulating Guidance for the review after State Retirement Age, would not envisage a Police Authority carrying out a review after an interval of 36 years, which appears not to be a suitable interval envisaged by the Regulations.

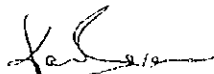
#### **Determination of the Board**

Having considered all of the evidence put to it, the Board unanimously uphold the appeal and consider that the degree of disablement should remain at the Band 3 level:

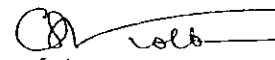
#### **Signatures of Each Board Member**



Dr David Wallington



Dr Daphne Pereira



Mr Charles Kolb

18 January 2010