

National Insurance and Social Security
NATIONAL INSURANCE AND SOCIAL
SECURITY (EMPLOYMENT INJURY,
DETERMINATION OF CLAIMS AND QUESTIONS)
REGULATIONS, 1970

Cap. 47.

S.I. 1971/5.
S.I. 1971/
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Authority: These regulations were made on 30th December, 1970 by the Minister under section 50 of the *National Insurance and Social Security Act*. Cap. 47.

Commencement: 4th January, 1971.

1. These Regulations may be cited as the *National Insurance and Social Security (Employment Injury, Determination of Claims and Questions) Regulations, 1970*. Short title.

PART I

Preliminary

2. For the purposes of these regulations

Interpretation.

“adjudicating authority” means a medical appeal tribunal or the Commissioner;

“appeal tribunal” means an appeal tribunal constituted under the *National Insurance and Social Security (Determination of Claims and Questions) Regulations, 1970*;

“applicant” means, for the purposes of Part II, any person who has made application to the Board for determination of a question to which Part II relates;

“appointed day” means the day appointed by the Minister pursuant to section 49 of the Act as the appointed day for the purposes of section 14 of the Act;

“claimant” means a person who has claimed benefit, and includes, for the purposes of Part II, a person whose right to be exempted from liability to pay, or to be credited with, a contribution, is in question;

“Commissioner” means a National Insurance Commissioner appointed in accordance with regulation 14 of the *National Insurance and Social Security (Determination of Claims and Questions) Regulations, 1970*;

contributions” means insurance contributions;

“Determination of Claims and Questions Regulations” means

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the *National Insurance and Social Security (Determination of Claims and Questions) Regulations, 1967*, made under the Act;

- “Director” means the Director, National Insurance;
- “disablement grant” means a disablement benefit paid or payable, as the case may require, in the form of a grant;
- “disablement pension” means a disablement benefit paid or payable, as the case may require, in the form of a pension;
- “Employment Injury (Claims and Payments) Regulations” means the *National Insurance and Social Security (Employment Injury Claims and Payments) Regulations, 1970*, made under the Act;
- “hearing” means oral hearing;
- “loss of faculty” means loss of physical or mental capacity;
- “medical appeal tribunal” means a medical appeal tribunal constituted under regulation 27;
- “medical board” means a medical board constituted under regulation 23;
- “member” in relation to a medical appeal tribunal includes the Chairman thereof;
- “office” means any office appointed as an office for the purposes of the Act or these regulations;
- “Prescribed Diseases Regulations” means the *Employment Injury (Prescribed Diseases) Regulations, 1971*;
- “question” includes, for the purposes of Part III, a claim for benefit;
- “relevant accident” and “relevant injury” have the meanings respectively assigned to them by regulation 2 of the *National Insurance and Social Security (Employment Injury Benefit) Regulations, 1970*;
- “reserved question” means any question set out in regulation 3.

PART II

Determination of Questions by Board

3. The following reserved questions arising under or in connection with the Act shall be determined by the Board,

Questions for determination by the Board.

whose decision shall be final, subject to the provisions of these regulations

- (a) whether a person is or was employed in insurable employment pursuant to section 14 of the Act;
- (b) whether a person is or was in excepted employment pursuant to Part II of the First Schedule to the Act;
- (c) as to the class of insured person in which a person is to be included;
- (d) at what rate contributions are or were payable in accordance with regulations made under the Act, or any question otherwise relating to a person's contributions;
- (e) who is or was liable for payment of contributions as the employer of any insured person;
- (f) as to which child or children should be granted death benefit.

4. (1) Any person desiring to obtain the decision of the Board on any question mentioned in regulation 3 shall deliver or send to the Board an application for the purpose in writing in a form approved by the Board and shall furnish such particulars as the Board may require for the purposes of the consideration and determination of any such question.

Procedure
for deter-
mination of
questions by
the Board

(2) The Board shall take steps to bring any such application and any such particulars to the notice of any person appearing to it to be interested therein and to obtain from such person such particulars within such time and in such form as it considers reasonably necessary for the proper determination of the question.

(3) The Board may, if it thinks fit, before determining the question, appoint a person to hold an inquiry into the matter and to report to it thereon, and any person so appointed may by summons require persons to attend at any such inquiry to give evidence or to produce documents reasonably required for the purposes of the inquiry and may take evidence on oath and for that purpose administer oaths.

(4) Reasonable notice of the date and place of the holding of such an inquiry shall be given to the applicant and to any persons notified of the application in accordance with paragraph (2).

(5) The applicant and any person appearing to the Board or to the person holding the inquiry to be interested in the application shall be entitled to attend and be heard at the inquiry, and to be represented by any other person, and the procedure thereat shall, subject to this regulation, be such as the person holding the inquiry shall determine.

(6) The Board shall give notice in writing of its decision to the applicant and to any person appearing to it to be interested therein and may publish its decision in such manner as it thinks fit.

Reference to High Court by Board of questions of law; appeals against decisions of Board on questions of law.

5. (1) Any question of law arising in connection with the determination by the Board of any such question as is mentioned in regulation 3 may, if the Board thinks fit, be referred by the Board for decision to the High Court.

(2) In the event of the Board determining in accordance with paragraph (1) to refer any question of law to the High Court, it shall send notice in writing of its intention so to do to the applicant and to any other person appearing to it to be interested therein.

(3) Any person aggrieved by the decision of the Board on any question of law which is not referred in accordance with paragraph (1) may, in accordance with rules of court made pursuant to section 35 (2) (a) of the Act, appeal from that decision to the High Court, and the applicant and any other person appearing to the Board to be interested shall, on request, be furnished with such a statement of the grounds of the decision as will enable them to determine whether any question of law has arisen upon which they may wish to appeal.

(4) Without prejudice to the rights of any other person, the Board shall be entitled to appear and be heard on any such reference or appeal.

Review of decision of the Board.

6. (1) The Board may, on new facts being brought to its notice, or if it is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact, review a decision given by it in accordance with this Part: but any such

decision shall not be reviewed while an appeal is pending against the decision of the Board on a question of law arising in connection therewith, or before the time for appealing has expired.

(2) The provisions of regulation 5 shall apply in relation to a decision on review as they apply to the original determination or decision.

PART III

Determination of Claims and Questions by the Director, Appeal Tribunal or Commissioner

7. (1) The following questions, that is to say

- (a) any question as to the right to benefit; and
- (b) any other question arising under or in connection with the Act, not being a reserved question or a disablement question, shall be submitted to the Director, who shall consider the question, and, so far as practicable, dispose of it in accordance with these regulations within 14 days from the date when it was submitted to him.

Submission
of questions
to Director.

(2) If on consideration of a question the Director is of the opinion that neither a reserved question nor a disablement question arises, then

- (a) if he is satisfied that the question ought to be determined wholly in favour of the claimant, he may determine the question accordingly;
- (b) in so far as he is not satisfied, he may either
 - (i) refer the question (so far as is practicable within 14 days from the date on which it was submitted to him) to an appeal tribunal for its decision; or
 - (ii) himself determine the question in whole or in part adversely to the claimant.

(3) Where the Director refers a question to an appeal tribunal in accordance with paragraph (2), notice in writing of such reference shall be given to the claimant.

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Declaration
that accident
is an
employment
accident.

8. (1) Where, in connection with any claim for benefit, it is determined that the relevant accident was or was not an employment accident, an express declaration of that fact shall be made and recorded and (subject to the provisions of paragraph (3)) a claimant shall be entitled to have the question whether the relevant accident was an employment accident determined, notwithstanding that his claim is disallowed on other grounds.

(2) Subject to paragraph (3), any person suffering personal injury by accident shall be entitled, if he claims the accident was an employment accident, to have the 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 the provisions of this Part shall apply for that purpose as if the question had arisen in connection with a claim for benefit.

(3) Notwithstanding anything in paragraph (1) or (2), the Director, appeal tribunal or Commissioner, as the case may be, may refuse to determine the question whether an accident was an employment accident, if satisfied that it is unlikely that it will be necessary to determine the question for the purposes of any claim to benefit; but any such refusal of the Director or appeal tribunal shall be subject to appeal to the appeal tribunal or Commissioner as the case may be.

(4) Subject to the provisions of this Part as to appeal and review, any declaration under this regulation that an accident was or was not an employment accident shall be conclusive for the purposes of any claim for benefit in respect of that accident, whether or not the claimant is the person at whose instance the declaration was made.

(5) For the purposes of this regulation an accident whereby a person suffers personal injury shall be deemed in relation to him, to be an employment accident if

- (a) it arises out of and in the course of his employment;
- (b) that employment is insurable employment; and
- (c) payment of benefit is not precluded because the accident happened while he was outside Barbados,

and references in the following provisions to an employment accident shall be construed accordingly.

(6) Regulation 15 shall apply to paragraphs (1) to (5), but only if the Director or appeal tribunal, as the case may be, is or are satisfied by fresh evidence that the decision under those paragraphs was given in consequence of any wilful non-disclosure or misrepresentation of a material fact; and, subject to the provisions of this paragraph, any decision under paragraphs (1) to (5) shall be final.

9. (1) If the Director has determined a question in whole or in part adversely to the claimant, the claimant shall, subject to this regulation, have a right of appeal in respect of the decision to the appeal tribunal and shall be notified in writing of the decision and the reasons therefor and of his right of appeal therefrom: but where a reserved question or a disablement question has arisen in connection with the decision of the Director and has been determined by the proper authority, and the Director certifies that the decision on that question is the sole ground of his decision, no appeal shall lie without the leave of the chairman of the appeal tribunal.

Appeal to
appeal
tribunal.

(2) An appeal against a decision of the Director must be brought by giving notice of appeal at the office of the Board within 21 days after the date of that decision or within such further time, not exceeding 4 months, as the chairman of the appeal tribunal may allow.

(3) A notice of appeal shall be in writing and shall contain a statement of the grounds upon which the appeal is made.

10. (1) Reasonable notice of time and place of the hearing before the appeal tribunal shall be given to the claimant, and to any other person who may appear to the chairman of the tribunal to be interested, and, except with the consent of the claimant, the appeal tribunal shall not proceed with the hearing of any case unless such notice has been given.

Time and
place of
hearings
before
appeal
tribunal.

(2) If a claimant or other person to whom notice of hearing has been duly given in accordance with these regulations fails to appear either in person or by representative at such hearing and has not given a reasonable explanation for his absence, the tribunal may proceed to determine the case, or may give such

directions with a view to the determination of the case as they think proper.

11. (1) Every hearing by an appeal tribunal shall be in public except in so far as the chairman of the tribunal may otherwise direct if he is of the opinion that intimate personal or financial circumstances may have to be disclosed or that considerations of public security are involved.

(2) The following persons shall be entitled to be heard at the hearing of any case by an appeal tribunal

- (a) the claimant;
- (b) the Director,

and any person appearing to the tribunal to be interested shall have the right to be present notwithstanding that the hearing of the case is not in public.

(3) Any person who by virtue of this regulation has the right to be heard at the hearing of a case by an appeal tribunal may be represented at the hearing by some other person, whether having professional qualifications or not, and for the purposes of the hearing, any such representative shall have all the rights to which the person he represents is entitled under these regulations.

(4) Any person who exercises the right conferred by this regulation to be heard at the hearing may call witnesses and shall be given an opportunity of putting questions directly to any witnesses called at the hearing.

(5) For the purposes of arriving at their decision, or discussing any question of procedure, an appeal tribunal may, notwithstanding anything in this regulation, order all persons not being members of the tribunal, other than an officer of the Board acting as clerk to the tribunal, to withdraw from the sitting of the tribunal.

12. (1) An appeal tribunal shall

- (a) record in writing in such form as may from time to time be approved by the Board all their decisions (whether on an appeal or on a reference from the Director); and
- (b) include in the record of every decision (which shall be

Hearings
before
appeal
tribunal.

Decisions of
appeal
tribunal.

signed by all the members of the tribunal) a statement of the reasons for their decision, including their findings on all questions of fact material thereto.

(2) Where the tribunal are unable to reach a unanimous decision on any case, the decision of the majority of the members thereof shall be the decision of the tribunal.

(3) As soon as may be practicable, a copy of the record of their decision made in accordance with this regulation shall be sent to the claimant and to the Director and to any other person who appears to the appeal tribunal to be interested.

13. (1) Subject as hereinafter provided, an appeal shall lie to the Commissioner, whose decision shall be final, subject to the provisions of these regulations, from any decision of an appeal tribunal at the instance of

Appeal to
National
Insurance
Com-
missioner.

- (a) the claimant;
- (b) the Director.

(2) An appeal to the Commissioner must be brought within 3 months from the date of the decision of the appeal tribunal or such further period as the Commissioner may in any case for special reasons allow, and such an appeal shall be brought by giving notice in writing to the Commissioner in a form approved by the Board stating the grounds of the appeal, and a copy of such notice shall be given

- (a) in the case of an appeal by the Director, to the claimant;
- (b) in the case of an appeal by the claimant, to the Director through the office of the Board.

14. (1) If the claimant or Director makes a request to the Commissioner for an oral hearing of the appeal, the Commissioner shall grant such request, unless, after considering the record of the case and the reasons put forward in the request for the hearing, he is satisfied that the appeal can properly be determined without a hearing, in which event he shall so inform the claimant and the Director in writing and may proceed to determine the case without a hearing.

Oral hearing
of appeal.

(2) If, in accordance with the provisions of paragraph (1), a request for an oral hearing has been granted, or if, notwith-

standing that no request has been made, the Commissioner is otherwise satisfied that an oral hearing is desirable, reasonable notice of the time and place of the hearing shall be given to the claimant and Director, and, if he thinks fit, to any other person appearing to the Commissioner to be interested.

(3) In any case in which an oral hearing of an appeal is held, such hearing shall be in public except in so far as the Commissioner may otherwise direct if he is of the opinion that intimate personal or financial circumstances may have to be disclosed or that considerations of public security are involved.

(4) Any person to whom notice of the hearing has been given shall be entitled to be heard at the hearing and to be represented thereat by some other person, whether having professional qualification or not, and for the purposes of the hearing such representative shall have all the rights to which that person whom he represents is entitled under these regulations.

(5) Any person who exercises the rights conferred by this regulation to be heard at the hearing may call witnesses and shall be given an opportunity of putting questions directly to any witnesses called at the hearing.

(6) If any person to whom notice of the hearing has been duly given fails to appear either in person or by representative at the hearing, and has not given a reasonable explanation for his absence, the Commissioner may proceed to determine the appeal or may give such directions with a view to the determination of the appeal as he thinks proper.

(7) If it appears to the Commissioner that any appeal under this regulation involves a question of law or fact of special difficulty, he may direct that in dealing with the appeal or any part thereof he shall have the assistance of an assessor or assessors.

(8) The Commissioner may, if he thinks fit, refer any question arising from his decision to a registered medical practitioner for examination and report.

Review of
decisions of
Director and
appeal
tribunal.

15. (1) Any decision under this Part of the Director, appeal tribunal, or Commissioner may be reviewed at any time by the Director, or on a reference from the Director, by an appeal tribunal, if

- (a) he is or they are satisfied, (but not without fresh evidence in the case of a decision of the Commissioner), that the decision was given in ignorance of, or was based on a mistake as to, some material fact;
- (b) there has been any relevant change of circumstances since the decision was given; or
- (c) the decision was based on the decision of any reserved question or disablement question and the decision of that question has been revised.

(2) A question may be raised with a view to such a review by means of an application in writing to the Director stating the grounds of the application.

(3) On receipt of any such application, the Director shall proceed to deal with or refer any question arising thereon in accordance with the Act and these regulations.

(4) Any decision given on a review under this regulation, and any refusal to review a decision under this regulation, shall be subject to appeal in like manner as an original decision, and the provisions of this Part shall, subject to the necessary modifications, apply in relation to any decision given on a review as they apply to the original decision of a question.

16. (1) Subject to these regulations and to paragraph (6) of regulation 14 of the *Employment Injury (Claims and Payments) Regulations, 1970*, benefit shall be payable in accordance with an award, notwithstanding that an appeal against the award is pending. Interim payments.

(2) Where it appears to the Board that a question has arisen whether

- (a) the conditions for the receipt of benefit payable under an award are or were fulfilled; or
- (b) an award of benefit ought to be revised in accordance with these regulations,

it may direct that payment of the benefit shall be suspended in whole or in part until that question has been determined.

Review of decisions involving payment of increase of benefits other than disablement grants.

17. (1) Subject to these regulations, where on review a decision is revised so as to make benefit payable, or to increase the rate of benefit, the decision on review shall have effect as from the date of the application for the review.

(1A) Subject to paragraph (2), if in any case the claimant proves that on a date earlier than the date on which the application for the review was made, he was (apart from satisfying the condition of making a claim therefor) entitled to benefit, he shall not be disqualified by virtue of the foregoing provisions of this paragraph for receiving any benefit to which he would have been entitled in respect of the period between the earlier date and the date on which the application for the review was made.

(2) Notwithstanding anything contained in this regulation, the following provisions shall have effect

- (a) paragraph (1A) shall apply subject to the conditions that no sum on account of benefit shall be paid to any person in respect of any part of the period referred to in (1B) earlier than 6 months before the date on which the application for the review was made;
- (b) the decision on review shall not in any event have effect for any period before the date on which the original decision took effect or would have taken effect if an award had been made;
- (c) if the said decision on review was based on a material change of circumstances subsequent to the date from which the original decision took effect, it shall not have effect for any period before the date declared by the Director, appeal tribunal, or the Commissioner, as the case may be, to be the date on which such material change of circumstances took place.

(3) For the purposes of this regulation, where a decision is reviewed at the instance of the Director under paragraph (1) of regulation 15, the date on which it was first decided by the Director that the decision should be reviewed shall be deemed to be the date of the application for the review.

(4) For the purposes of this regulation, "benefit" does not include a disablement grant.

18. Where on review a decision to direct payments or re-payments is revised and as a result

Directors of payments to be given on review.

(a) a person previously entitled to one benefit is awarded some other benefit in lieu thereof, the decision given on the review shall direct that any payments already made on account of the benefit originally awarded shall be treated as having been made on account of the benefit awarded by that decision;

(b) benefit previously awarded is held to be not payable or the rate of such benefit is reduced, the decision given on the review shall require repayment to the National Insurance Fund of the benefit paid in excess, unless the case is one to which paragraph (a) applies.

19. (1) If on consideration of a question the Director is of the opinion that a reserved or disablement question arises, he shall subject to paragraph (1A)

Director may refer reserved question arising to Board.

(a) refer the reserved question for determination to the Board or the disablement question to a medical board or to a medical appeal tribunal, as the case may require, to determine the same; and

(b) deal with any other questions as if a reserved question or a disablement question had not arisen.

(1A) The Director may

(i) postpone the reference of, or the dealing with, any question until after other questions have been determined;

(ii) in cases where the determination of any question disposes of a claim or any part thereof, make an award, or decide that an award cannot be made, as to the claim or that part thereof without referring or dealing with, or before the determination of, any other question.

(2) This regulation shall apply to the appeal tribunal or the Commissioner as it applies to the Director, except that an appeal tribunal or the Commissioner instead of themselves

referring a question for determination in accordance with subparagraph (a) of paragraph (1) shall require it to be so referred by the Director.

PART IV

Determination of Disablement Questions

Disable-
ment ques-
tions to be
determined
by medical
board or
medical ap-
peal tribunal.

20. (1) Any of the following questions (hereinafter referred to as “disablement questions”) that is to say

- (a) whether the relevant accident has resulted in a loss of faculty;
- (b) 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,

shall be referred to and determined by a medical board or a medical appeal tribunal in accordance with these regulations.

(2) Subject to these regulations, the decision of a medical appeal tribunal shall be final.

Determina-
tion of
certain
questions
other than
reserved or
disablement
questions.

21. Where the Director so decides on a prescribed disease diagnosis or recrudescence question under and subject to the provisions of the Prescribed Diseases Regulations that the question is one that should be referred to a medical board or a medical appeal tribunal, as the case may require, for its decision, it shall be so referred, and the decision of a medical appeal tribunal on the question shall be final.

Further
medical
board
where ex-
tent of dis-
ablement is
provi-
sionally
assessed.

22. Where the case of a claimant or beneficiary for disablement benefit has been referred by the Director to a medical board for determination of the disablement questions, and, on that or any other subsequent reference the extent of the disablement is provisionally assessed, the case shall again be referred to a medical board not later than the end of the period taken into account by the provisional assessment.

Constitu-
tion of
medical
boards.

23. (1) Medical boards shall be appointed by the Board and shall, except as provided in regulation 24, consist of 2 or

more medical practitioners, of whom one shall be appointed as chairman.

(2) The members of a medical board shall hold office for such period as the Board may direct, provided that at any time the Board may terminate the appointment of any member of a medical board.

(3) A medical practitioner shall not act as a member of a medical board for the purpose of the consideration of any case referred to the medical board if he

(a) is or may be directly affected by that case; or

(b) has taken any part in such case as a medical assessor or as a medical practitioner who has regularly attended the claimant or beneficiary or to whom any question has been referred for examination and report or as an employer or as a witness.

(4) A medical board shall not determine any question referred to them if

(a) any member thereof is unable to be present at the consideration of any question; or

(b) the medical board, being a medical board consisting of 2 members, is unable to reach a unanimous decision on any such question.

(5) In any case in which by reason of paragraph (4) a medical board is unable to determine any question which has been referred to it, the reference to that medical board shall be revoked and the questions arising in that case shall forthwith be referred to another medical board: but in a case to which sub-paragraph (b) of paragraph (4) relates, the reference shall be to a medical board consisting of 3 members, whose decision, if not unanimous, shall be that of the majority of such members.

24. (1) Notwithstanding anything contained in these regulations, disablement questions may, with the consent of the claimant, be referred to a single registered medical practitioner appointed by the Board instead of to a medical board.

Reference to single doctor of questions as to temporary disablement.

(2) Any decision on a reference made by virtue of this

regulation shall have effect as if it were a decision of a medical board, and shall be subject to appeal and review, and may be referred for consideration to a medical appeal tribunal, accordingly.

(3) Regulations 25 and 26 shall apply to the proceedings or reference to a single medical practitioner as if such practitioner were a medical board constituted in accordance with these regulations or the chairman of the board, as the case may be.

Notice of sitting and procedure of medical board.

25. (1) Reasonable notice of the time and place at which a medical board will sit for the consideration of any case shall be given to the claimant, and if, after such notice has been given, the claimant fails to appear at the sitting of the board, the board may not proceed to determine the questions referred to them without his consent.

(2) No person shall be entitled to be present during the consideration of any question by a medical board other than the claimant or beneficiary and any other person whom the medical board may, with the consent of the claimant or beneficiary, allow to be present as being a person who, in their opinion, is likely to assist them in the determination of that question.

Notice of decision of medical board.

26. (1) A medical board shall in each case record their decision in writing in such form as may from time to time be approved by the Board, and shall include in such record (which shall be signed by all members of the medical board)

- (a) a statement of their findings on all questions of fact material to the decision; and
- (b) in a case where the decision of a medical board consisting of 3 persons was not unanimous, a statement that one of the members dissented and the reasons given by him for so dissenting.

(2) As soon as may be practicable, the claimant or beneficiary and the Board shall be sent written notice of the decision of a medical board, and such notice shall be in such form as may from time to time be approved by the Board and shall contain a summary of the said findings of the medical board, including,

where the decision was not unanimous, a statement that one of the members dissented and of the reasons given by him for so dissenting.

27. (1) A medical appeal tribunal shall consist of a chairman who is an attorney-at-law of at least 5 years standing, appointed by the Minister and 2 members drawn by the Board from a panel of registered medical practitioners appointed by the Minister.

Constitution of medical appeal tribunal.

(2) The chairman and members of a medical appeal tribunal shall hold office for such period as the Minister may direct, provided that at any time the Minister may terminate the appointment of the chairman or any member of the medical appeal tribunal.

(3) A person shall not act as a member of a medical appeal tribunal for the purpose of the consideration of any case referred to them if he

- (a) is or may be directly affected by that case; or
- (b) has taken any part in such case as a medical assessor or as a medical practitioner who has regularly attended the claimant or beneficiary or who has acted as a member of a medical board to whom any question has been referred for examination and report or as an employer or as a witness.

(4) A tribunal constituted as aforesaid shall not proceed to determine any case referred to them if any member thereof is unable to be present at the consideration of that case; and where by reason of this paragraph such tribunal are unable to determine any case referred to them, reference to that tribunal shall be revoked and the case shall forthwith be referred to another tribunal constituted as aforesaid.

28. (1) This regulation shall have effect where the case of a claimant for disablement benefit has been referred by the Director to a medical board for determination of the disablement question.

Appeals from medical boards, and reference to medical appeal tribunals.

(2) If the claimant is dissatisfied with the decision of the medical board, he may appeal in accordance with regulation 29, and the case shall be referred to the medical appeal tribunal:

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but an appeal shall not lie against a provisional assessment of the extent of disablement before the expiration of 2 years from the date of the first reference of the case to a medical board, not where the period taken into account by the assessment falls wholly within the said 2 years.

(3) If the Director is of the opinion that any decision of a medical board ought to be considered by a medical appeal tribunal and he notifies a medical appeal tribunal in accordance with regulation 29, then the case shall be referred to a medical appeal tribunal for their consideration, and the medical appeal tribunal may confirm, reverse or vary the decision in whole or in part as on an appeal.

Notice of
appeal and
notification
of the Board.

29. (1) An appeal by a claimant against a decision of a medical board shall be brought by giving notice of appeal at the office of the Board within 3 months after the notice of that decision has been given in accordance with regulation 26 or within such further period as the chairman of a medical appeal tribunal may for good reason allow.

(2) A notice of appeal shall be made in writing and shall contain a statement of the grounds upon which the appeal is made.

(3) For the purpose of securing the reference of a case to a medical appeal tribunal in accordance with regulation 28, where the Director is of the opinion that a decision of a medical board ought to be considered by a medical appeal tribunal, the Director may notify a medical appeal tribunal of his opinion in that respect within 3 months after the date of that decision or such longer period as the chairman of a medical appeal tribunal may for good reason allow.

30. (1) For the purpose of determining any case referred to them, a medical appeal tribunal shall hold a hearing of appeal to be in public except in so far as the chairman of the tribunal may for special reasons otherwise direct.

(2) Reasonable notice of the time and place at which a medical appeal tribunal will hear a case shall be given to the claimant and to the Director, and except with the consent of the

claimant, the tribunal shall not proceed with the hearing unless such notice has been given.

(3) If a claimant to whom notice of hearing has been duly given in accordance with paragraph (2) fails to appear at the hearing, the medical appeal tribunal may proceed to determine the case notwithstanding his absence, or may give such directions with a view to the determination of the case as they may think proper, having regard to all the circumstances, including any explanation offered for the absence: but if a reasonable explanation for his absence has been given by him or on his behalf, the tribunal shall not, without his consent, determine the case in his absence, unless the hearing has first been adjourned for at least 1 month and reasonable notice of the time and place of the adjourned hearing has been given to him.

(4) Where a medical appeal tribunal are unable to reach a unanimous decision on any case referred to them, the decision of the majority of the members thereof shall be the decision of the tribunal.

(5) Where in any case there is before a medical appeal tribunal medical advice or medical evidence relating to the claimant which has not been disclosed to him and in the opinion of the chairman of the tribunal the disclosure to the claimant of that advice or evidence would be harmful to the claimant's health, such advice or evidence shall not be required to be disclosed to the claimant, but the tribunal shall not by reason of such non-disclosure be precluded from taking it into account for the purposes of their determination of the case.

(6) The Director and the claimant shall have the right to be heard at a hearing by a medical appeal tribunal and may be represented by some person duly authorised by the tribunal, and for the purposes of the proceedings at such a hearing any such representative shall have all the rights and powers to which the person whom he represents is entitled under these regulations.

(7) Any person who exercises the right conferred by this regulation to be heard at a hearing by a medical appeal tribunal may call witnesses and shall be given an opportunity of putting questions directly to any witnesses called at the hearing.

Record and notice of decision of medical appeal tribunal.

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

(2) As soon as may be practicable, the claimant shall be sent written notice of the decision of a medical appeal tribunal, and such notice shall be in such form as may from time to time be approved by the Board and shall contain a summary of the record of that decision made in accordance with paragraph (1).

PART V

Appeal or Reference to the Commissioner on a point of Law from a Medical Appeal Tribunal

Appeals and references from medical appeal tribunal and Commissioner.

32. (1) Subject as hereinafter provided, an appeal shall lie to the Commissioner from any decision of a medical appeal tribunal on the ground that the decision is erroneous on a point of law, at the instance of

- (a) the claimant; or
- (b) an association of employed persons of which the claimant was a member at the time of the relevant accident; or
- (c) the Director.

(2) No appeal shall lie under paragraph (1) without the leave of the medical appeal tribunal or of the Commissioner, and the following provisions of these regulations shall apply as to the time within which appeals are to be brought and applications made for leave to appeal.

(3) Where any question of law arises in a case before a medical appeal tribunal, the tribunal may refer that question to the Commissioner for his decision.

(4) On any such appeal or reference, 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

accordance with this Part, and the medical appeal tribunal on being informed of his decision in accordance with regulation 38 on the question of law shall give, confirm or revise their decision on the case accordingly.

33. A person to whom written notice of a decision of a medical appeal tribunal is sent in accordance with regulation 31 (2) shall be informed in writing of the conditions governing an appeal to the Commissioner, and there shall be supplied to him, or, where he is represented by another person, to that person, a copy of the record of that decision made in accordance with regulation 31 (1) if, for the purposes of an appeal, he or that other person makes a request therefor in writing at the office of the Board.

Further provision as to notice of decision of medical appeal tribunal.

34. (1) Subject to paragraphs (2) to (6), an application for leave to appeal to the Commissioner from a decision of a medical appeal tribunal on the ground that a decision is erroneous in point of law shall be made in the first instance to a medical appeal tribunal

Application for leave to appeal to the Commissioner from decision of medical appeal tribunal.

- (a) orally at the hearing by the tribunal of the appeal from, or reference of, the decision of the medical board, or
- (b) in writing within 3 months from the date on which the decision of the tribunal was given.

(2) A person who has been refused leave to appeal by a medical appeal tribunal may make an application in writing for such leave to the Commissioner within 21 days from the date on which the decision refusing leave was given, or within such further time as the Commissioner may for special reasons allow.

(3) Where there has been a failure to apply to a medical appeal tribunal for leave to appeal within the time specified in paragraph (1) (b), an application in writing for such leave may nevertheless be made to the Commissioner, who may, if for special reasons he thinks fit, proceed, notwithstanding such failure, to consider and determine the application.

(4) Every application for leave to appeal required by these regulations to be in writing shall be made by giving or sending

the application to the office of the Board for transmission to the medical appeal tribunal or to the Commissioner, as the case may be, and such application shall include a statement of the point of law in respect of which it is alleged that the decision of the tribunal is erroneous and on which it is wished to appeal.

(5) Where an application for leave to appeal is made to the Commissioner, the Director shall cause to be sent to the Commissioner a copy of the record, made in accordance with regulation 31 (1) of the decision of the medical appeal tribunal, and if leave to appeal has been refused by the tribunal, a copy of the record of the decision refusing such leave.

(6) Where an application in writing for leave to appeal is made by the Director, a copy of the application shall be sent to the claimant.

Appeal
against
decision of
medical
appeal
tribunal.

35. (1) Subject to regulation 37 (7), an appeal against the decision of a medical appeal tribunal shall be brought by giving notice thereof in writing at the office of the Board within 3 months from the date on which the decision giving leave to appeal was given, or within such further time as the Commissioner may for special reasons allow, and such notice shall include a statement of the point of law in respect of which it is alleged that the decision is erroneous and on which it is wished to appeal.

(2) A copy of the notice of appeal shall be sent to the chairman of the medical appeal tribunal, and, in the case of an appeal by the Director, to the claimant, and the Director shall, as soon as may be practicable, cause to be sent to the Commissioner

- (a) a copy of the record, made in accordance with regulation 31 (1), of the decision under appeal;
- (b) the notice of appeal; and
- (c) where the application for leave to appeal was made to the tribunal, a copy of the decision of the tribunal on that application.

Reference by
medical ap-
peal tribunal
of a question
of law for
decision by
the Com-
missioner.

36. Where any question of law arises in a case before a medical appeal tribunal and the tribunal decides to refer that question to the Commissioner for his decision in accordance with regulation 32 (3), the tribunal shall cause to be sent

- (a) to the Commissioner, a submission in writing signed by the chairman of the tribunal, which shall include a statement of the said question and the facts on which it arises; and
- (b) to the Director and the claimant, a copy of that submission.

37. (1) If the Director or the claimant or the association to which reference is made in regulation 32 (1) (b), as the case may be, makes a request to an adjudicating authority for a hearing of an application for leave to appeal, appeal or reference under this Part, such request shall be granted: but in the case of an application in writing for leave to appeal made to the medical appeal tribunal, if, after considering the documents in the case and the reasons put forward in such request, the tribunal are satisfied that the application can properly be determined without a hearing, the person who made the request shall be informed in writing and the application shall be so determined.

Provisions as to the hearing and determination of applications for leave to appeal and of appeals and references.

(2) If, in accordance with paragraph (1), a request for a hearing has been granted, or, if (notwithstanding that no request has been made) the adjudicating authority is otherwise satisfied that a hearing is desirable, reasonable notice of the time and place of the hearing shall be given to the Director and the claimant or the association to which reference is made in regulation 32 (1) (b), and every such hearing shall be in public except in so far as the adjudicating authority for special reasons may otherwise direct.

(3) The Director and the claimant or the association to which reference is made in regulation 32 (1) (b) shall have the right to be present and to be heard at such a hearing by an adjudicating authority, and may be represented by an attorney-at-law or any other person.

(4) If any person to whom notice of hearing has been duly given in accordance with paragraph (2) fails to appear either in person or by representative at the hearing, the adjudicating authority may proceed to determine the application, appeal or reference.

(5) Where a medical appeal tribunal is unable to reach a unanimous decision on an application for leave to appeal, the decision of the majority of the members thereof shall be the decision of the tribunal.

(6) The decision of a medical appeal tribunal on an application for leave to appeal shall be recorded in writing, and there shall be included in such record, which shall be signed by all members thereof, a statement of the reasons for such decision, and a copy of the record shall be sent as soon as may be practicable to the Director and to the claimant or the association.

(7) Where the Commissioner at the hearing of an application made to him in accordance with regulation 34 gives leave to appeal, he may, with the consent of the Director and the claimant or the association, forthwith hear and decide the question of law arising on the appeal.

(8) The Commissioner may either before, or at any time during the hearing of an appeal or reference, require the medical appeal tribunal to submit such further statement of the facts on which the question of law submitted for his decision arises as he considers necessary for the proper determination of that question.

(9) The decision of the Commissioner on an application for leave to appeal shall be recorded in writing and signed by him, and a copy thereof shall be sent as soon as may be practicable to the chairman of the medical appeal tribunal and to the Director and to the claimant or the association.

(10) The decision of the Commissioner on the question of law raised by an appeal or reference shall be in writing and signed by him, and as soon as may be practicable a signed copy thereof shall be sent to the chairman of the medical appeal tribunal and copies thereof shall be sent to the Director and the claimant or the association.

Procedure of
medical ap-
peal tribunal
on receipt of
the Com-
missioner's
decision.

38. (1) For the purposes of giving, confirming or revising their decision on the case in accordance with regulation 32 (4), a medical appeal tribunal shall hold a hearing, and, subject to paragraphs (2) and (3), those provisions of Parts IV and VI

which relate to the hearing of appeals by, the procedure of, and the right of audience and representation before, medical appeal tribunals, shall apply to the hearing as if it were the original hearing of an appeal, subject to the modification that the association shall have the same rights thereunder as the claimant: but this paragraph shall not apply in relation to the confirming by a medical appeal tribunal of a decision which the Commissioner has held not to be erroneous in point of law.

(2) For the purposes of confirming or revising their decision on the case, a medical appeal tribunal, whether or not consisting of the members who constituted the tribunal when that decision was given in the first place, shall proceed upon the facts included in the record of the decision so given: but if, having regard to the decision of the Commissioner on the question of law, the finding of additional facts is necessary for the purposes aforesaid, the tribunal may receive further evidence and find such facts.

(3) When after receipt of the decision of the Commissioner on a point of law a medical appeal tribunal gives, confirms or revises its decision on the case, such decision shall be recorded and notified in accordance with regulation 31.

PART VI

Miscellaneous

39. (1) Subject to the Act and these regulations, the procedure on the determination of any question by the Board or an appeal tribunal shall be such as the Board or the appeal tribunal, as the case may be, may determine.

Miscellaneous powers of the Board and appeal tribunal.

(2) Except in proceedings on applications for leave to appeal appeals or references under Part V, the Board or an appeal tribunal, as the case may be, may refer to a registered medical practitioner for examination and report any question arising for their determination.

(3) For the purpose of arriving at their decision or discussing any question of procedure at any sitting or hearing, a medical

board or a medical appeal tribunal, as the case may be, may, notwithstanding anything in these regulations, order all persons, not being members of, or the person acting as clerk to, the board or such tribunal, to withdraw from such sitting or hearing.

(4) Any power given by these regulations to extend the period during which anything is required to be done thereunder or to dispense with any of the requirements thereof may be exercised in any case, notwithstanding that the period during which the thing is required to be done has expired.

Review of
decisions of
medical
boards and
medical
appeal
tribunals.

40. (1) Subject to paragraphs (2) to (5) any decision of a medical board or a medical appeal tribunal may be reviewed by a medical board if a medical board is satisfied by fresh evidence that the decision was given in consequence of the non-disclosure or misrepresentation by the claimant or any other person of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent).

(2) Any assessment of the extent of the disablement resulting from the relevant loss of faculty may also be reviewed by a medical board if the medical board is satisfied that since the making of the assessment there has been substantial unforeseen aggravation of the result of the relevant injury.

(3) Where, in connection with a claim for disablement benefit, it is decided that the relevant injury has not resulted in a loss of faculty, the decision

(a) may be reviewed under paragraph (2) as if it were an assessment of the extent of the disablement resulting from the relevant loss of faculty; but

(b) subject to any further decision on appeal or review, shall be treated as deciding whether the relevant accident has so resulted both for the time about which the decision was given and for any subsequent time,

and for the purposes of this paragraph a final assessment of the extent of the disablement resulting from a loss of faculty made for a period limited by a reference to a definite date shall be treated as deciding that at that date the relevant accident has not resulted in a loss of faculty.

(4) An assessment made, confirmed or varied by a medical appeal tribunal shall not be reviewed under paragraph (2)

without the leave of the medical appeal tribunal; and on a review under that paragraph 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.

(5) Subject to paragraphs (1) to (4), a medical board may deal with a case on a review in any manner in which they could deal with it on an original reference to them, and in particular may make a provisional assessment notwithstanding that the assessment under review was final; and regulation 28 shall apply to an application for a review under this regulation and to a decision of a medical board in connection with such an application as it applies to an original claim for disablement benefit and to a decision of a medical board in connection with such a claim.

41. On a review of any assessment under regulation 40 (2), the period to be taken into account by any revised assessment may include any period not exceeding 3 months before the date of the application for the review if the medical board is satisfied that throughout that period there has been substantial unforeseen aggravation of the results of the injury since the making of the assessment under review.

Period to be taken into account by assessment revised on grounds of unforeseen aggravation.

42. Where, in the opinion of the Director, an application for review raises a question as to the review of a decision of a medical appeal tribunal and, by virtue of regulation 40 (4), such a decision may not be reviewed without the leave of a medical appeal tribunal, the Director shall submit the application to a medical appeal tribunal so that such tribunal may consider whether such leave shall be granted and shall not refer the question to a medical board with a view to a review of that decision unless that medical appeal tribunal grant such leave.

Application for review of decision of medical appeal tribunal.

43. (1) Subject to paragraph (3), any sum on account of benefit which has been paid to any person in pursuance of a decision which is afterwards revised on a review, or reversed or varied on an appeal, shall be treated as paid on account of any benefit which it is decided is or was payable to him in respect

Adjustment of benefits.

of the same accident or disease, and in respect of the same period (hereinafter referred to as "the common period").

(2) For the purposes of paragraph (1), disablement grant under paragraph (3) of regulation 7 of the *National Insurance and Social Security (Employment Injury Benefit) Regulations, 1970*, shall be treated as a periodical payment payable in respect of the period taken into account by the relevant assessment of the degree of disablement (that period, where it is more than 365 weeks or is not limited by reference to a definite date, being deemed to be one of 365 weeks); and

(a) to the extent to which disablement grant falls to be treated as paid on account of disablement pension or disablement pension falls to be treated as paid on account of disablement grant, the disablement grant shall be treated as payable at a weekly rate calculated by dividing by 365 an amount equal to the amount of the disablement grant payable for the period limited by reference to the beneficiary's life in respect of the said assessment of the degree of disablement, fractions of a cent being disregarded; and

(b) to the extent to which a disablement grant falls to be treated as paid on account of another disablement grant, so much of the first-mentioned disablement grant shall be so treated as bears the same ratio to its total amount as does the common period to the disablement grant period, fractions of a dollar being disregarded.

(3) Paragraphs (1) and (2) shall not operate so as to require any sum paid on account of benefit to be treated as paid on account of other benefit to the extent to which that sum exceeds the amount which is payable or treated as payable in respect of the common period, of the other benefit.

Decision to be conclusive for purpose of proceedings under Act, etc.

44. (1) Where in any proceedings

(a) for an offence under the Act; or

(b) involving any question as to the payment of contributions under the Act; or

(c) for the recovery of any sums due to the Fund,

any question arises which under the Act or regulations is to be determined by the Board, or by the court in the event of an appeal on a point of law, or the Director, appeal tribunal,

Commissioner, medical board or medical appeal tribunal, the decision by the appropriate determining authority shall, unless an appeal under these regulations is pending or the time for so appealing has not expired, be conclusive for the purpose of these proceedings.

(2) If any such decision under paragraph (1) has not been obtained and the decision of the question is necessary for the determination of the proceedings, the question shall be referred to the appropriate determining authority, as the case may require, in accordance with the procedure (modified where necessary) prescribed in these regulations.

(3) Where any such appeal as is mentioned in paragraph (1) is pending, or the time for so appealing has not expired, or where any question has been referred under paragraph (2), the authority dealing with the case shall adjourn the proceedings until such time as a final decision upon the question has been obtained.

45. There shall be paid out of the Fund to the National Insurance Commissioner and the chairman of the appeal tribunal and a chairman of the medical board or medical appeal tribunal such salary or other remuneration and such expenses as the Minister responsible for Finance from time to time determines.

Authority for
payment of
expenses.

46. (1) There shall be paid

- (a) to the members of an appeal tribunal (not being the chairman);
- (b) to a person or persons sitting as assessors (where necessary) with the National Insurance Commissioner;
- (c) to a person or persons appointed by the Board under regulation 4;
- (d) to members of medical boards (not being a chairman);
- (e) to members of a medical appeal tribunal (not being a chairman)

such remuneration and such travelling or other allowances as the Board may determine, and such sums shall properly be payable out of the Fund.

(2) There shall be paid to persons required to attend on the consideration of a case before the appeal tribunal or before the Board or a medical board or medical appeal tribunal such travelling or other allowances as the Board may by resolution declare, and such sums shall be properly payable out of the Fund.

(3) There shall be paid such other expenses incurred in connection with the work of the Commissioner, the appeal tribunal, the Board, a medical board or medical appeal tribunal as the Board may determine, and such sums shall be properly payable out of the Fund.

(4) For the purposes of this regulation references to travelling or other allowances include references to compensation for loss of remuneration: but such compensation shall not be paid to any person in respect of any time during which he is in receipt of a remuneration under this regulation.