

**GUIDANCE ON MEDICAL APPEALS
UNDER THE POLICE PENSIONS REGULATIONS 1987 AND THE POLICE
(INJURY BENEFIT) REGULATIONS 2006**

SECTION 4

**PERMAMENT DISABLEMENT AS A RESULT OF INJURY IN THE
EXECUTION OF DUTY**

The provision for an injury award is set out in regulation 11 of the Police (Injury Benefit) Regulations 2006. This states:

11. — (1) This regulation applies to a person who ceases or has ceased to be a member of a police force and is permanently disabled as a result of an injury received without his own default in the execution of his duty (in Schedule 3 referred to as the "relevant injury").

2. The question whether an officer or retired officer qualifies for an injury is referred for a medical decision in the following contexts:

- When a police authority is considering a claim from an officer who is also being considered for possible medical retirement on the grounds of permanent disablement;
- When a police authority is considering a claim from a former officer who is already in receipt of an ill-health pension or of a deferred pension which is being paid early on account of his or her permanent disablement; and
- When a police authority is considering a claim by a former officer who is not receiving an early pension – in which case the question of whether the claimant is permanently disabled must be considered as well as a preliminary step.

3. Before dealing with the detail of the medical issues to be considered by the selected medical practitioner (SMP) it is important to be clear about the meaning of the various terms related to injury received without default in the execution of duty. There are two main sources of guidance on what is meant by injury in the execution of duty for the purpose of the Regulations:

- The Regulations themselves; and
- What the courts say on the Regulations.

Without his own default

4. The issue of whether or not an injury is received without the officer's own default is a matter for the police authority to determine. The definition of default is as follows:

6(4) For the purposes of these Regulations an injury shall be treated as received without the default of the member concerned unless the injury is wholly or mainly due to his own serious and culpable negligence or misconduct.

5. If the police authority considers that there is no default, and that the claim is not spurious or vexatious, it will refer the question whether the disablement is a result of an injury in the execution of duty. In order to answer this the SMP will have to be clear as to the law on what is an injury in the execution of duty and on what sort of causal connection needs to be established between the injury and the disablement.

Injury received in the execution of duty

6. The Regulations give the following definition of ***injury received in the execution of duty***:

6(1) A reference in these Regulations to an injury received in the execution of duty by a member of a police force means an injury received in the execution of that person's duty as a constable and, where the person concerned is an auxiliary policeman, during a period of active service as such.

Note that the reference to constable is not to the rank but to the office of constable, which all ranks hold in common.

Duty

7. For the purpose of injury awards duty is defined in some detail as follows:

6(2) For the purposes of these Regulations an injury shall be treated as received by a person in the execution of his duty as a constable if-

(a) the member concerned received the injury while on duty or while on a journey necessary to enable him to report for duty or return home after duty, or

(b) he would not have received the injury had he not been known to be a constable, or

(c) the police authority are of the opinion that the preceding condition may be satisfied and that the injury should be treated as one received in the execution of duty.

Note that (c) above, which involves considering whether the injury should be treated as received under (b) despite it not being clear if it was, is a matter for the police authority to decide, not the SMP or the board. This will have been decided before the case reaches appeal.

Note that police duty extends to playing sport for the police if this is while on duty.

The question for the SMP

8. The procedure for a police authority to refer the question of whether a person qualifies for an injury award to its SMP is set out in regulation 30 of the Police (Injury Benefit) Regulations 2006 (the Regulations):

30(2) Where the police authority are [...] further considering whether to grant an injury pension, shall so refer the following questions:-

(c) whether the disablement is the result of an injury received in the execution of duty, [...]

Injury

9. The Regulations (in the definitions at Schedule 1) specify that ***injury*** includes any injury or disease, ***whether of body or mind***.

Disablement, death or treatment in hospital the result of an injury

10. The Regulations specify that **disablement** is deemed to be ***the result of an injury if the injury has caused or substantially contributed*** to the disablement.

8. For the purposes of these Regulations disablement or death or treatment at a hospital shall be deemed to be the result of an injury if the injury has caused or

substantially contributed to the disablement or death or the condition for which treatment is being received.

Caused

11. This has been interpreted by the courts in a number of cases, which the parties may draw to your attention, but it is suggested the following points should be noted:

- it is necessary to establish a direct causal link between the permanent disablement and service as a police officer;
- in cases where the permanent disablement through injury was the result of a single, significant incident the question will be a relatively simple one – was the injury received in the execution of duty as defined in Regulation 6(2)?
- an injury does not have to be received through a single, significant incident; where no single moment of injury can be identified it is suggested that to all intents and purposes the question for the SMP is whether the permanent disablement through injury was caused by, or received in, the execution of duty as opposed to domestic or other circumstances not related to police duty – bearing in mind the following points:
 - *police duty* should not be given a narrow meaning; it relates to all aspects of the officer's work;
 - the Court of Appeal has held that stress-related illness through exposure to police disciplinary proceedings does not count as an injury received in the *execution of duty*;
 - *police duty* does not extend to a sporting activity for the police while not carried out on duty, unless the provisions at 6(2) (b) or (c) apply – where the injury was due to the officer being known to be a constable.
- causation has been held by a court to include the “straw that broke the camel's back”. If all the previous straws were in the execution of duty, then the decision for the SMP is relatively straightforward. However, in cases where not all the straws were related to police duty the question will centre on to what extent if any incidents related to police duty, as opposed to non-related incidents, caused or substantially contributed to the permanent disablement, or simply accelerated its onset.
- an injury which accelerates the onset of permanent disablement, rather than aggravates the condition to make it permanent, has been held by a court in a non-binding judgment not to cause the permanent disablement (although the court held that this judgement does not lay down any general principle).
 - In the case of *Jennings* the Board was not asked to determine whether the symptoms would have been the same or different following the natural progression of the underlying condition. There was no finding in the present case that the symptoms would have been identical. The causation question is essentially a medical question to be determined by the doctors. *Jennings* has not affected the role of the decision-maker under the scheme to determine, in the light of the medical evidence in a particular case, whether a qualifying injury has made a substantial contribution to the infirmity.

Substantially contributed to

12. The Regulations do not interpret ***substantially contributed to*** and we are not aware of any interpretation given by the courts. It is suggested that *substantial* does not have to mean predominant. Whether the injury has or has not made a substantial contribution to permanent disablement is a medical decision.

13. In many cases the issue is likely to be straightforward: whether a particular injury

caused or substantially contributed to the disablement. In some cases however the issue may be more complex. There may be an issue as to whether there was a single injury or more than one injury which contributed to the disablement. This can affect the calculation of degree or disablement where a relevant injury was not received in the execution of duty. Where this is relevant the board's findings as to whether there is one injury or more than injury should be clearly stated.

Evidence-based approach

14. In injury cases in particular it is important that the SMP should satisfy him or herself that the evidence presented about the circumstances surrounding the injury and the disablement in question is not accepted uncritically from either party. It is for the SMP to test and weigh the evidence given in the light of the other evidence provided and in the light of his or her own medical knowledge and reasoning. In deciding whether a statement put to him or her as a matter of fact is to be accepted as such, after having duly tested and weighed it, the SMP should apply the balance of probabilities and not a higher evidential test.